STATE OF NEW YORK
OFFICE OF CANNABIS MANAGEMENT
OFFICE OF ADMINISTRATIVE HEARINGS

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

DECISION

-against- **Inspection No. - 114202512100030**

RICH EMPIRE TOBACCO, INC., d/b/a EMPIRE SMOKE SHOP,

Respondent.

The Office of Cannabis Management requested a hearing for an inspection which occurred on December 10, 2025. The hearing was held on March 11, 2026.

The Respondent did not appear and was not represented by counsel at the hearing.

The Office of Cannabis Management was represented by Kevin Marek, Esq.

Senior Investigative Specialist 1 Eva Chumsky (hereinafter "Chumsky") testified on behalf of OCM.

Joshua Pennel, Esq. Administrative Law Judge (the Presiding Judge)

I. ISSUE

The allegations set forth in the Notice of Violation/Order to Cease Unlicensed Activity (hereinafter "NOV") asserts that the Respondent was offering cannabis products, as defined by Cannabis Law Article 3, for sale without an appropriate registration, license, or permit. These allegations are based upon observations made during an inspection conducted at 87 Franklin Plaza, Dansville, NY 14437.

The scope of the hearing involves determination of whether OCM, by a preponderance of the evidence, was justified in issuing to Respondent the NOV and what penalty under Cannabis Law Article 6 §132 is justified.

II. APPLICABLE LAW

Cannabis Law Article 6 §125(1) states that "[n]o person shall cultivate, process, distribute for sale or sell at wholesale or retail or deliver to consumers any cannabis, cannabis product, medical cannabis or cannabinoid hemp or hemp extract product, or any product marketed or labeled as such, within the state without obtaining the appropriate registration, license, or permit therefor required…."

Cannabis Law Article 6 §138-A provides that "The board or the Office of Cannabis Management shall, in accordance with the authority otherwise conferred in this chapter, have the authority to: 1. order any person who is unlawfully cultivating, processing, distributing or selling cannabis, cannabis product, cannabinoid hemp or hemp extract product, or any product marketed or labeled as such in this state without obtaining the appropriate registration, license, or permit therefor, or engaging in an indirect retail sale to cease such prohibited conduct. 2. seize any cannabis, cannabis product, cannabinoid hemp or hemp extract product, or any product marketed or labeled as such, found in the possession of a person engaged in the conduct described in subdivision one of this section."

Cannabis Law Article 6 §132(1)(a) provides that any person who sells cannabis, or cannabis products, or any product marketed or labeled as such, without having an appropriate registration, license or permit therefor, may be subject to a civil penalty of not more than ten thousand dollars for each day during which such violation continues.

Cannabis Law Article 6 §132 (1)(c) requires that any civil penalties assessed "shall take into consideration the nature of such violation and shall assess a penalty that is proportionate to the violation…."

III. FINDINGS OF FACT

1. On December 10, 2025, OCM conducted an inspection of Rich Empire, Inc. (hereinafter "Rich Empire"), located at 87 Franklin Plaza, Dansville, NY 14437. OCM requested a hearing to determine the validity of the NOV and to have a penalty imposed. The hearing was held on March 11, 2026.

2. OCM effected service upon Respondent by both mailing a hearing notice to the business address and serving the New York Department of State (hereinafter "DOS") on behalf of the corporation. OCM submitted an affidavit attesting to both of these methods and while service by mail was incomplete, the service to the DOS satisfied the due process requirements necessary in this matter. Service was completed in a timely manner and Respondent's failure to respond to the hearing notice or appear at the hearing resulted in a default hearing being conducted.

3. The testimony and evidence support a finding that Respondent was offering for sale cannabis. Testimony presented detailed a publicly facing store with products on display in a manner consistent with a showroom. While OCM recovered only a small amount of product, the product prominently listed that it contained Delta-8 cannabis.

4. The testimony and evidence support the finding that the products recovered from Rich Empire were illicit. Rich Empire did not possess an adult use cannabis license and did not possess proper authorization for its conduct.

5. The Office of Cannabis Management conducted a proper search of the location. The product recovered was in plain view and the storefront was open at the time OCM entered.

IV. ANALYSIS AND CONCLUSIONS OF LAW

Service and Notice

I find the notice OCM provided Respondent constituted adequate notice for the hearing held on March 11, 2026, and concerning the NOV issued on December 10, 2025. OCM mailed a copy of the Notice of Hearing more than forty-five (45) days prior to the date of the hearing (see 9 NYCRR §133.10(f)) and the notice provided the date of the alleged offense, the inspection number associated with the NOV, the pertinent sections of the law, specifically Cannabis Law Article 6, §138-a, and the penalty which may be assessed ($10,000). Service by mail was made to the store's location and provided to the New York Department of State pursuant to New York Business Corporation Law §306 (see Ex. F). Although the notice mailed to the store was returned to OCM as undeliverable, the Department of State accepted service on January 23, 2026 (id). This hearing, therefore, proceeded in Respondent's absence, as a default hearing. The hearing nonetheless comports with the applicable requirements delineated in the New York Cannabis Law, 9 NYCRR §133, and the New York State Administrative Procedures Act. While adequate service allows the hearing to proceed, it does not remove OCM's burden to provide sufficient evidence that a violation occurred and that a penalty is warranted.

Validity of the Regulatory Inspection

Upon arrival at Rich Empire, investigators saw neon lights stating that the store was "Open." The store had many of the hallmarks of a publicly facing store. Present on site included a point-of-sale system, an ATM, products with price tags, and a large inventory of items displayed in a manner consistent with items available for purchase (Ex. C-1-4). Chumsky testified some of the products found on site displayed signs and symbols that are related to cannabis (Ex. C-4), an indication to potential customers that cannabis may be obtained onsite. Additionally, the store advertised itself as a "smoke shop" and had a sign which stated that "glass" was available on site, a fact that can be easily seen from outside the store as there are many bongs and pipes on the shelves inside the store (Ex. C-1). Most items on display were typical of a "smoke shop" and not illegal to possess or sell (Ex. C-3). A small number of products containing "Delta-8 THC" were on display alongside the other products. These products were in plain view and stated on the packaging that the item contained Delta-8 THC (see Ex. D). Respondent possessed neither an adult

use or hemp license.[1] The fact that the store was open, contained products and advertisements which insinuated that cannabis might be procured on site, and openly displayed a cannabis products support a finding that OCM conducted a valid regulatory search of Rich Empire and legally sized illicit products found within.

Determination Concerning Notice of Violation

Chumsky stated that she discovered a small amount of "Delta-8" cannabis products on display in the store (Ex. D). During the inspection, she identified these as cannabis, based on their label which stated that the product contained "250 mg" of "Delta 8 THC & HHC." While the number of illicit products recovered from Rich Empire was small and constitutes the total amount of cannabis products recovered from the store, the product qualifies as a "THC" product under New York State Law (see Cannabis Law Art. 1 §3(52)) and constitutes a violation of the cannabis law.[2] These products had a price tag affixed to the display box in which they were contained, making it more likely than not that the products were available for purchase. In total, thirty-two (32) illicit products were seized from Rich Empire. All products were of the same basic variety (with flavor variations) and no additional illicit products, hemp or cannabis, were supported by the evidence. The small amount recovered, while a violation of cannabis law, does not warrant a significant fine.

Penalty

Cannabis Law § 132(1)(c) requires that any civil penalty imposed be proportionate to the nature of the violation. In determining the appropriate penalty, I have considered the quantity and nature of the illicit products established in the record, including the limited number of products proven to constitute unlawful cannabis products under the Cannabis Law and applicable regulations. I have also determined that while the evidence sufficiently establishes a violation of Cannabis Law Article 6, it also supports mitigation as to penalty.

During the hearing, OCM characterized certain products as hemp products and requested consideration of hemp-related enforcement provisions under Article 5. The Notice of Violation, however, proceeded as an Article 6 unlicensed cannabis matter. Therefore, while I conclude that the products at issue constituted unlawful cannabis products under the Cannabis Law, OCM's litigation posture during the hearing bears on proportionality and the appropriate penalty to be imposed.

The hearing record reflects that Rich Empire Inc. previously possessed a hemp license that expired approximately one month prior to the inspection. Further, there is no evidence of large-scale illicit operations, sales to minors, unlawful processing, or consumer harm by Rich Empire Inc. Consequently, considering the limited quantity of illicit products recovered and the totality of the circumstances, a reduced civil penalty is warranted and proportionate pursuant to Cannabis Law § 132(1)(c).

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[1] Respondent's valid hemp license expired approximately one month prior to the inspection.

[2] OCM characterized certain products as hemp products and attempted to shift mid-hearing toward the application of Article 5 hemp enforcement provisions and penalties. This raises legitimate due process concerns because administrative penalties must generally be tied to the violations charged in the Notice of Violation and properly notified to the Respondent. Nevertheless, I conclude that the Article 6 violation was established because the products met the statutory definition of cannabis or THC products under the Cannabis Law.

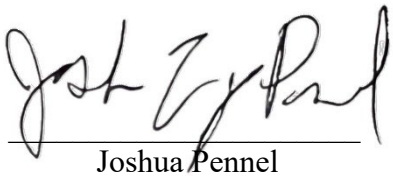
DECISION

The Respondent engaged in the sale of illicit cannabis and cannabis products without a license, registration, or permit to do so, at the location of at 87 Franklin Plaza, Dansville, NY 14437. In so doing, Respondent violated Cannabis Law Article 6.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6, RESPONDENT IS HEREBY ORDERED TO PAY A $750 FINE UNDER CANNABIS LAW ARTICLE 6 §132 FOR VIOLATIONS UNDER §125, AND AS A PROPORTIONATE PENALTY, FOR THE UNLICENSED SALE OF ILLICIT CANNABIS ON DECEMBER 10, 2025.

This constitutes the final decision of the Office of Administrative Hearings. A copy of this decision shall be served upon the parties.

Dated: 05/18/2026



Joshua Pennel
Administrative Law Judge

PLEASE BE ADVISED: Either party may appeal this decision within 30 calendar days of receipt, according to the specific manner described in Regulations at 9 NYCRR §§ 133.23(g)(5) and 133.25(k).

This decision was sent via e-mail on 05/18/2026, to the following:

Kevin Marek, Esq.
Nickolas Perry
Sheila Wagner

This decision was sent via mail on 05/18/2026, to the following:

Rich Empire Tobacco, INC.
d/b/a Empire Smoke Shop
87 Franklin Plaza
Dansville, NY 14437