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

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IN THE MATTER OF

NEW YORK STATE OFFICE OF CANNABIS MANAGEMENT,

PETITIONER,

-against-

TROY SPOT INC.,

RESPONDENT

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DECISION AND ORDER

INSP. NO. 132 2025 1230 0011

Petitioner New York State Office of Cannabis Management ("OCM") brought this proceeding against Respondent Troy Spot Inc.'s ("Respondent"), pursuant to New York State Cannabis Law ("Cannabis Law") §§ 17 and 138-a and Title 9 New York Codes, Rules, and Regulations ("NYCRR") § 133.25 (i) to enforce an order to cease unlicensed activity[1] and seek a financial penalty for the notice of violation ("NOV") issued to Respondent. The NOV alleges that the Respondent was observed "offering/providing/cultivating/processing" cannabis, cannabis products, medical cannabis, cannabinoid hemp, cannabinoid hemp extract, or any product marketed or labeled as such" without the requisite license, registration or permit to do so in violation of Cannabis Law §§ 125, 132, 101 and 9 NYCRR § 114.14 (d)(1).

ISSUE

Whether the requested adjudicatory proceeding should be dismissed without prejudice based on the inability of Petitioner to demonstrate proof of service on Respondent pursuant to the Cannabis Law and regulations?

The purpose of the requested hearing is to determine whether Petitioner established by a preponderance of the evidence that Respondent was engaged in unlicensed activity in violation of the cannabis law and if so, whether a penalty should be assessed. *Cannabis Law §§ 138-a; 132 (1) and (1-a); 9 NYCRR § 133.25 (i).*

For the reasons set forth below, I find that service of the notice of hearing was not effectuated in a manner consistent with statutory and regulatory requirements. Accordingly, the administrative proceeding to enforce the NOV and cease order is dismissed without prejudice.

[1] Unlicensed activity is defined as any activity within the authority of the office or the board to regulate, for which a person should have obtained a license, registration, or permit issued by the office or board, but failed to do the same. *Cannabis Law § 131(3)(a); 9NYCRR § 133.1 (i).*

FINDINGS OF FACT

1. On December 30, 2025, Respondent was observed conducting business as Troy Spot Inc. located at 281 Congress Street, Troy, NY, 12180 ("281 Congress Street").

2. On the same date, Petitioner conducted a regulatory inspection of Respondent's business, on December 30, 2025, pursuant to Cannabis Law §§ 11 and 138-a and NYCRR § 133.25 (a). At the conclusion of the inspection, Petitioner issued the instant NOV and ordered Respondent to cease unlicensed activity.

3. On or about February 17, 2026, Petitioner requested an administrative proceeding with the Office of Administrative Hearings ("OAH") to enforce the NOV and cease order issued to Respondent pursuant to Cannabis Law §§ 17 and 138-a and Title 9 NYCRR § 133.25 (c). A hearing was scheduled for April 16, 2026.

4. Petitioner mailed a notice of hearing, via the United States Postal Service, to Respondent at the business premises, 281 Congress Street.

5. On April 16, 2026, Petitioner was represented by Anthony Pitnell, Esq. No appearance was made on behalf of Respondent.[2] Petitioner was not ready to proceed, and the matter was adjourned to June 9, 2026, for a hearing.

6. On June 9, 2026, Petitioner was represented by Anthony Pitnell, Esq. No appearance was made on behalf of Respondent. Petitioner was not ready to proceed based on an inability to effectuate service on Respondent. After the regulatory inspection, Respondent vacated the premises, and a new business entity began operating at the premises, 281 Congress Street.

7. Petitioner was not provided with an alternate address for Respondent at the time of the regulatory inspection.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

Petitioner is authorized to take enforcement action and impose sanctions, including but not limited to, issuing a NOV seeking civil penalties, seizure of product, and a cease order. *Cannabis Law §§ 132; 138-a; 9 NYCRR §§ 133.25 (b) and (d).*

[2] While no appearance was made on behalf of Respondent Troy Spot Inc., an appearance was made, through counsel, for a business entity that is currently operating at the commercial premises located at 281 Congress Street, Troy, NY. Counsel indicated his client, a different business entity from Respondent, received the notice of hearing that was mailed by the Petitioner to 281 Congress Street. Counsel further offered to provide documentation to Petitioner. On June 9, 2026, Petitioner indicated documentation was provided, reviewed, and determined to be sufficient to confirm the business entity now operating at 281 Congress Street was not the same business and did not have the same business owner as the business entity that was operating at the time of the inspection in December 2025.

In the event Petitioner issues a NOV and cease order, a party may request, or the office may initiate, an administrative proceeding to enforce a cease order and order a financial penalty for the violation. *Cannabis Law §§ 132 (7) and 138-a (3); 9 NYCRR §§ 133.25 (i) and 133.10 (a).* All adjudicatory proceedings shall be conducted by the Office of Administrative Hearings through the service of administrative law judges ("ALJ") who will have all the power and authority of presiding officers or hearing officers as defined by the State Administrative Procedure Act ("SAPA") and other pertinent statutes and regulations. *9 NYCRR § 133.16*. In an adjudicatory proceeding, all parties shall be afforded an opportunity for hearing within reasonable time. *SAPA § 301 (1).* An ALJ shall have the power to "take all measures necessary …. for the maintenance of order and the efficient conduct of the hearing and conduct the hearing in accordance with the requirements of due process." *9 NYCRR § 133.17 (d)(11)*. A notice of hearing for an administrative proceeding to enforce a NOV and an order to cease unlicensed activity may provide for a hearing date on less than 45 calendar days' notice. *Cannabis Law 17 (3); 9 NYCRR § 133.25 (i)(1).* Service of the notice of hearing or order shall be made by personal service or by registered or certified mail. *Cannabis Law § 17 (4).*

In matters where the government is taking action affecting life, liberty, or property, due process of the law is inherently within the scope of the proceeding. *U.S. Const. amend. V and XIV; N.Y. Constitution Article 1 § 6*. Moreover, in this matter, an ALJ is mandated by regulations to conduct a hearing in accordance with the requirements of due process. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v Central Hanover Trust Co., 339 U.S. 306, 314 (1950).* In an administrative proceeding the standard for service is whether the notice is reasonably calculated to make the parties aware of the proceeding so that they have an opportunity to be heard. *Reda v. Dep't of Health of City of New York, 137 Misc. 2d 61, 63, (Sup. Ct. 1987), aff'd, 143 A.D.2d 1073 (1988); Raschel v. Rish, 69 N.Y.2d 694, 696 [1986]; Mullane v. Central Hanover Bank & Trust Co., 339 U.S. at 314.*

Here, Petitioner was unable to effectuate service on Respondent. Petitioner had previously served notice for the April 14, 2026, hearing on Respondent via mail at 281 Congress St., however, Petitioner confirmed Respondent was no longer operating at the location and the notice received by another entity. Thereafter, it is undisputed, that Petitioner did not effectuate service on Respondent for the June 9, 2026, hearing date.

When deciding if a defect in service is merely technical courts must be guided by the principle of notice "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Ruffin v. Lion Corp., 15 N.Y.3d 582–83, citing Raschel v. Rish, 69 N.Y.2d 694, 696 [1986], quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, (1950).* Delivery of a summons and complaint to the wrong person is a substantial defect. *Ruffin, 15 N.Y. 3d at 583.* Additionally, failure to demonstrate any proof of service is not a mere technical defect, but rather, a substantial procedural defect that prevents the adjudication of the NOV and the statement of charges contained therein. Considering there was no service attempts effectuated and no alternative address or other identifying information available for service reasonably calculated to apprise the Respondent of this action, Petitioner has not demonstrated good cause for an adjournment. *9 NYCRR §§ 133.11 (b) and 133.17 (d)(1).* Furthermore, Petitioner's failure to comply with the service mandates of Cannabis Law § 17 (4) and implementing regulations in Title 9 NYCRR Part 133 results in a failure to acquire jurisdiction over the Respondent. *Macchia v. Russo, 67 N.Y.2d 592 (1986); Feinstein v. Bergner, 48 N.Y.2d 234, 239 (1979).*

Thus, based on the totality of the circumstances and the information provided by Petitioner, the matter is dismissed without prejudice.

DETERMINATION

WHEREFORE, it is hereby determined that Petitioner failed to demonstrate proof of service thereby necessitating a dismissal of the action without prejudice.

WHEREFORE, IT IS HEREBY ORDERED that the instant administrative proceeding is dismissed without prejudice.

Nothing in this determination constitutes a ruling on the merits of the statement of charges contained in the NOV. This constitutes the final decision of the Office of Administrative Hearings.

DATED: June 18, 2026

Celena L. Ditchev

Celena L. Ditchev
Supervising Administrative Law Judge

This decision was issued to the parties via electronic mail and by regular mail.

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