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,

DECISION AND ORDER

-against-

INSP. NO. 123 2025 1217 0007

SMOKE PALACE TOBACCO SHOP CORPORATION.,

RESPONDENT

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Petitioner New York State Office of Cannabis Management ("OCM") brought this proceeding against Respondent Smoke Palace Tobacco Shop Corporation ("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 statement of charges alleges that the Respondent was observed "offering/providing/cultivating/processing cannabis, cannabis products, medical cannabis, or any product marketed or labeled as such as defined by Cannabis Law § 3 …" without the requisite license, registration or permit to do so in violation of Cannabis Law §§ 125 and 132 and Title 9 NYCRR Part 120.

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 can establish 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 resulting in a lack of personal jurisdiction over Respondent. 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 17, 2025, Respondent was observed conducting business as Smoke Palace Tobacco Shop Corporation, 217 E Post Road, White Plains, NY, 10601.

2. On the same date, Petitioner conducted a regulatory inspection of Respondent's business, 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 pursuant to Cannabis Law §§ 17 and 138-a and Title 9 NYCRR § 133.25 (c).[2]

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 pursuant to Cannabis Law §§ 17 and 138-a and Title 9 NYCRR §§ 133.25 (d) and (i)(1).

4. A hearing to enforce the NOV and order to cease unlicensed activity was scheduled with the OAH for April 16, 2026.

5. Petitioner mailed a notice of hearing, via the United States Postal Service, to Respondent at 217 E Post Road, White Plains, NY, 10601.

6. On April 16, 2026, Petitioner was represented by Abir Ahmed, Esq. No appearance was made on behalf of Respondent. Petitioner was not ready to proceed based on inability to establish service on Respondent and the matter was adjourned to June 18, 2026, for a hearing.

7. On June 18, 2026, Petitioner was represented by William Pham, Esq. No appearance was made on behalf of Respondent. Petitioner initially indicated they were ready to proceed but ultimately acknowledged service had not been effectuated on Respondent. Service efforts made by Petitioner were rejected. Petitioner attempted personal service on the Respondent via service on the New York State Department of State ("DOS"), however, service was rejected. No additional service efforts were made after prior efforts were rejected.

8. Petitioner was not provided with an alternate address for Respondent at the time of the regulatory inspection and stated additional time was needed to investigate and identify alternative addresses for effectuating service.

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).*

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

[2] Following the regulatory inspection, Petitioner also issued an immediate sealing order for Respondent's business premises. No hearing request has been made with respect to the sealing order issued for Respondent's business premises. Petitioner's hearing request seeks solely to enforce the NOV and order to cease unlicensed activity pursuant to Cannabis Law § 138-a (3) and 9 NYCRR §§ 133.25 (i) and 133.10 (a) and (e).

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 the DOS, however, service was subsequently rejected. Thereafter, it is undisputed that Petitioner did not make any additional service efforts on Respondent for the June 18, 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)*. 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 were no service attempts effectuated and Petitioner stated no alternative address or other identifying information available to effectuate service reasonably calculated to apprise the Respondent of this action, Petitioner has not demonstrated good cause exists for an adjournment. *9 NYCRR §§ 133.11 (b) and 133.17 (d)(1)*. Moreover, failure to demonstrate compliance with statutory and regulatory service mandates, results in a failure to meet jurisdictional prerequisites. *Macchia v. Russo, 67 N.Y.2d 592 (1986); Feinstein v. Bergner, 48 N.Y.2d 234, 239 (1979)*. Thus,

Petitioner's failure to effectuate service on Respondent leaves the OAH without jurisdiction over Respondent. *Id.*

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: July 2, 2026

Celena L. Ditchev

Celena L. Ditchev
Supervising Administrative Law Judge

Submitted to:
Petitioner NYS OCM by William Pham, Esq.
Respondent Smoke Palace Tobacco Shop Corp
Sheila Wagner, Cannabis Control Board Executive Assistant
Nickolas Perry, Cannabis Control Board Senior Advisor