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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION AND ORDER
OAH2026-0019

A & X Convenience Inc.,

Respondent.

Respondent requested a hearing on September 8, 2026, for an inspection which occurred on September 2, 2026. A hearing was scheduled for and held on September 10, 2026.

Respondent represented himself and testified on his own behalf.

The Office of Cannabis Management (hereinafter "OCM") was represented by Anthony Pitnell, Esq.

Investigative Specialist Gisela Loforte (hereinafter "Loforte") 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, and Order to Seal (jointly 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 which was conducted at 235 Union Ave., New Rochelle, NY 10801.

The scope of the hearing involves determination of whether, by a preponderance of the evidence, the order to seal issued by OCM was issued in accordance with Cannabis Law Article 6 § 138-B.

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-B(1) provides that orders to seal: In addition to any other authority conferred in this chapter, pursuant to the provisions of this section, the board or the office shall have the authority to issue an order to seal the building or premises of any business engaged in unlicensed activity, when such activity is conducted, maintained, or permitted in such building or premises, occupied as a place of business as described in subdivision eight of section ten of this chapter, in violation of subdivision one or one-a of section one hundred twenty-five or subdivision one or eight or section one hundred thirty-two of this article.

Cannabis Law Article 6 §138-B(2) states that any order to seal shall be served by delivery of the order to the owner of the business or other person of suitable age or discretion in actual or apparent control of the premises at the time of the inspection and shall be posted at the building or premises that have been sealed, secured and closed. A copy of the order shall also be mailed to any address for the owner of the business at any address provided by the person to whom such order was delivered pursuant to this subdivision. The order shall remain in effect pending a hearing and final determination of the board, or until such order is vacated by the office pursuant to subdivision six of this section. An order to seal shall explicitly state the procedure to request a hearing within seven days.

Cannabis Law Article 6 §138-B(6) provides that an order to seal may be issued by the office or the board pursuant to subdivision three of this section only if:

(a) no part of the premises to be sealed is used in part as a residence and pursuant to local law or ordinance is zoned and lawfully occupied as a residence; and

(b) the unlicensed activity as described in this section is more than a de minimis part of the business activity on the premises or in the building to be sealed pursuant to this subdivision, the office shall issue a notice of violation and order to cease the unlicensed conduct, which shall constitute notice that such activity must cease immediately (see Regulations at 9 NYCRR 133.25(f)(2-3)).

Cannabis Law Article 6 §138-B(7) provides that in assessing whether unlicensed activity within a building is more than de minimis, the office or board, as relevant, shall consider factors such as any one or more of the following:

(a) the presence of signs or symbols, indoors or out, advertising the sale of cannabis or otherwise indicating that cannabis is sold on the premises;

(b) information shared in any advertisements or other marketing content in connection with the unlicensed business activity and any direct or indirect sales of cannabis or other conduct in violation of this chapter;

(c) the volume of illicit cannabis products on site; and

(d) the variety of illicit cannabis products on site (see Regulations at 9 NYCRR 133.25 (f)(3)(i-iv)).

Cannabis Law Article 6 §138-B (3) provides that the office may issue an order to seal with an immediate effective date if such order is based upon a finding by the office of an imminent threat to the public health, safety, and welfare (see Regulations at 9 NYCRR 133.25(f)(1)).

Cannabis Law Article 6 §138-B (4) sets forth the factors that determine an imminent threat to public health, safety, and welfare shall be limited to:

(a) documented sales to minors;

(b) unlicensed processing of cannabis products at the building or premises;

(c) orders issued following an inspection wherein the person engaged in the unlicensed activity engaged in violent, tumultuous, or other behaviors indicating expressed intent to not comply with the office's order to cease the unlicensed activity;

(d) documented presence of unlawful firearms at the building or premises;

(e) proximity of the building or premises to schools, houses of worship, or public youth facilities;

(f) presence of products deemed unsafe based on reports of illness or hospitalization; or

(g) sales of, or offers to sell, cannabis products not tested or labeled lawfully in accordance with this chapter (see Regulations at 9 NYCRR 133.25(f)(1)(i-vii).

III. FINDINGS OF FACT

1. On September 2, 2026, OCM conducted an inspection of A&X Convenience Inc. (hereinafter "A&X") located at 235 Union Ave., New Rochelle, NY 10801 (Ex. E). At that time, an NOV was issued and the premises were sealed. On September 8, 2026, Respondent requested a hearing, which was held on September 10, 2026.

2. The testimony and evidence support the finding that A&X had a significant amount of cannabis products on site. The total number of products present and the testimony by Loforte supports the finding that the store was actively selling these products. Further, undercover operations conducted by OCM as well as Respondent's testimony support such a finding.

3. Loforte testified that the premises to be sealed showed no signs that they were used in part or in total as a residence. The evidence supports this assertion as none of the basic residential amenities appear on site. Respondent made no argument to counter this assertion.

4. The unlicensed activity which warranted an order to seal constituted more than a "de minimis" part the business activity. The Cannabis Law Article 6 §138-b (7) and OCM Regulations part 133.25(f)(3) enumerate the factors to consider when determining if unlicensed activity occurring within a business is more than de minimis. The amount of cannabis and variety of cannabis products discovered at A&X was significant (see Ex. B & C). In total, approximately eighty (80) individual items, labeled or suspected of being illicit cannabis, were recovered from the store. Further, evidence of on-site processing supports the finding that A&X could produce additional products on a continuous basis (Ex. A-15-16).

5. A&X did not possess an adult-use cannabis license. Loforte testified that multiple undercover operations occurred at the location, attempting to secure illicit products, including one operation immediately preceding the inspection, which resulted in an employee of the store offering suspected cannabis products for purchase. According to testimony and evidence presented, the store was open to the public at the time of the inspection and cannabis was discovered at the location during the course of a properly executed regulatory inspection.

6. The unlicensed activity being conducted at A&X constituted an imminent threat to public health, safety, and welfare in that there were sales of, or offers to sell, cannabis products that were not tested or labeled lawfully in accordance with Cannabis Law Article 6.

7. The NOV was properly served on a person of suitable age and in apparent control of the business. The document was also posted on the front of the premises.

IV. ANALYSIS AND CONCLUSIONS OF LAW

The evidence and testimony presented extensive evidence of A&X's cannabis possession. Approximately eighty (80) items were seized alongside an indeterminate amount of cannabis flower during the inspection of A&X (Ex. D), and many were explicitly labeled as cannabis products and likely marketed to A&X's clientele as containing cannabis (see generally, Ex. B-C). The products ranged in variety to an extent that made it unlikely that the products were onsite for personal use or that the products were not for sale. Pre-rolled cannabis cigarettes, loose cannabis flower, and edibles were all recovered from A&X (Ex. B-C). Further, devices typical of processing were discovered in the store. Scales and a grinder were recovered and these along with the presents of pre-rolled cigarettes and loose flower make it more likely than not that processing was likely occurring onsite (Ex. A-15-16). This practice would allow for A&X to replenish its stock of illicit products "in house" and provide a perpetual supply of fresh illicit products.

Loforte testified that prior to entering the store to conduct the inspection on September 2, 2026, OCM sent an employee into A&X to conduct an undercover operation. The store was

open and an employee on site at the time of this operation. The store possessed many of the hallmarks of a publicly facing store (point-of-sale system, security cameras, register, and receipts) (Ex. A-4 & 9-11). Further, a utility bill and checkbook, both in the name of "A & X Convenience," were discovered onsite. The undercover operation consisted of the OCM employee entering the store dressed in "plain clothes" and requesting cannabis products from the A&X employee. OCM investigators remained outside during the operation, listening to the interaction via telephone. The A&X employee offered the undercover employee a cannabis product in the form of a pre-roll cannabis cigarette (Ex. A-14). Immediately after this product was offered, Loforte entered the store and began a regulatory inspection. Loforte testified that she discovered a black bag placed directly under the cash register, which contained a sizable amount of items suspected to be or labeled as cannabis products (Ex. A-17-18). These products came in a variety of forms including loose cannabis flower (Ex B), edibles (Ex. C-9-15), and pre-rolled cannabis cigarettes (Ex. C-4-8). In total, approximately eighty (80) individual products were recovered and documented in the vouchers submitted into evidence (Ex. D). These vouchers appear to correspond with the evidentiary photographs taken during the inspection and submitted at the hearing. Many of the products recovered contained either blatant labels that the product contained cannabis, had words or phrasing on the packaging that indicated that cannabis products were contained within, or were identified by Loforte, due to her training and experience, as containing cannabis. Many of the products possess a "CA" cannabis warning label. This label contains the abbreviation for California and a picture of a cannabis leaf (Ex. C2-3, 7, 9, 13, & 15). Loforte testified that this symbol is often present on cannabis products. Some products overtly stated that they contained cannabis or THC (tetrahydrocannabinol) (Ex. C-4, 6, 10, 12, & 14). Still other products were seized by Loforte due to either language being present on the label, which she knew to be associated with cannabis (indica, sativa), or her knowledge of the traits and characteristics of cannabis (smell, appearance) (Ex. B).

In addition to seizing a significant quantity of illicit product in various forms, the evidence also shows that a variety of flavors and brands were found at A&X. Stiizy, Wyld, Puff LA, and Elegant were found during the inspection (see generally, Ex C). Further, the pre-packaged flower discovered onsite came in a variety of flavors and indicated that they contained a specific strain or variety of cannabis (sativa, indica, hybrid) (see generally, Ex. B). The loose flower packages were likely produced onsite as the scales present in the store contained what appears to be cannabis residue and the labels used on the plastic containers appear to be the sort produced using basic label making devices (id.). The variety discovered at A&X, coupled with the processing likely occurring on site, leads me to the conclusion that the store maintained a sophisticated operation, designed to provide the variety that the individualized taste of a customer might desire. The volume and variety of products found in the possession of A&X, coupled with the testimony concerning the undercover operation leads to the conclusion that A&X was selling cannabis products as part of the store's operation. Further, Respondent stated on cross-examination that the employee present at A&X on the date of the inspection confessed that he was selling cannabis products from the store. Loforte testified that the store did not possess an adult-use license, making any sales of cannabis products performed by A&X illicit and not allowed under Cannabis Law.

Residence

Loforte testified that the store lacked the accoutrements generally associated with a residence. The evidence and testimony show that items such as a bed, dresser, and kitchen were

absent from A&X. Further, Loforte stated that no other room, aside from the "showroom," were found and that the employee of A&X informed her that no one lived or resided on site. Respondent made no argument to contradict this evidence, and I find that A&X operated solely as a commercial property and that no part of it was utilized as a residence.

De Minimis

The unlicensed activity which warranted an order to seal constituted more than a "de minimis" part the business activity. The Cannabis Law Article 6 §138-b (7) and OCM Regulations part 133.25(f)(3) enumerate the factors to consider when determining if unlicensed activity occurring within a business is more than de minimis. Four factors are delineated, and any one may be controlling. The amount of illicit product discovered at A&X was significant and likely constituted a sizable portion of the business' total inventory. Although legal items were seen on display, testimony highlighted that some of the products were out of date, suggesting that they were used as "props" and rarely actually sold (Ex. A. 5-8). Further, while the store had the basic layout of a convenience store, the amount of product recovered from A&X likely constituted a significant source of revenue. Dozens of products that violate the cannabis law were recovered and A&X could produce additional products inhouse by processing loose cannabis flower. As noted above, the volume of products came in a variety of forms, brands, flavors, and strains, likely designed to cater to the individualized taste of A&X's clientele. While the illicit product recovered from A&X may still constitute a minor amount of the business conducted, de minimis does not mean "minor," but rather an amount above a trifling of insignificant amount. The evidence does not support a finding of de minimis, as the amount and variety recovered was too significant. Cannabis Law delineates four prongs which are to be used when determining de minimis and in this matter, I find that two of the four prongs (volume and variety) were met by the evidence submitted by OCM. Taken together, the evidence supports the finding that A&X's activities constitute more than a de minimis part of the business activity.

Imminent Threat

The unlicensed activity being conducted at A&X constituted an imminent threat to public health, safety, and welfare in that there were sales of, or offers to sell, cannabis products that were not tested or labeled lawfully in accordance with Cannabis Law Article 6. None of the products discovered at A&X appear to have been tested in New York (none possessed the necessary state stamp that proves that the product underwent the necessary testing) and the evidence shows that many or all the products never underwent New York State testing (see generally Ex. B-C). While some products had a generic warning label or a generic stamp indicating that the product contained cannabis some had no safety warning (compare Ex. C-2-3, 7, & 9-15 & B); see also, above). The products seized from A&X did not meet the necessary testing and labeling requirements of New York, failing to inform potential users of the dangers associated with cannabis products. The lack of testing and inappropriate labeling makes A&X's actions a danger to the public health, safety, and welfare pursuant to Cannabis Law Article 6 §138-b(4)(g). Further, evidence of processing existed onsite, and it is more likely than not that A&X produced cannabis products without the necessary license. The likely conclusion of this processing is that the necessary safety and cleanliness standards required of a cannabis processor did not occur at A&X. This further supports the finding that A&X's actions created a health and safety threat. The products recovered from A&X, therefore, and their lack of a New York label

authenticating that the products underwent testing required under the law, coupled with the evidence of processing, lead to the conclusion that A&X's actions posed a threat to the public.

Respondent argued during his opening statement and testimony that while he owned A&X, he was only present at the store sporadically. He testified that his father had health issues, related to a recent fall, and that he provided care for his father which limited his time at the store. He stated that his lack of oversight –he visited the store approximately once a week – allowed the employee present on the date of the inspection to sell illicit products from A&X without authorization. He testified that he neither personally sold cannabis nor did he authorize his employee to do so. While Respondent's testimony may be truthful, I find in this case that it is not persuasive. Respondent presented no evidence of his absence from the store, relying solely on his testimony to support his claim. It is unclear whether the employee was acting entirely independently when selling illicit products or if Respondent had knowledge of the activity. A business owner should maintain control over the activities of his store and his failure to do so is, at best, negligent. A store owner cannot maintain little-to-no oversight of his business and then rely on this absence to escape liability. While there may be unique cases where an employee is acting in a completely independent and deceitful manner, performing actions of which the owner is unaware that might minimize the owner's liability, that is not the case here. Cannabis Law requires no specific knowledge when selling illicit products and it is incumbent on a business owner to maintain control over the actions of their business. In conclusion, I find that OCM showed by a preponderance of the evidence that Respondent was selling cannabis products without the appropriate license, that the amount sold/seized constituted more than a de minimis amount, that no part of the business was being used as a residence, and that the selling of the products constituted a threat to public health and safety, thereby satisfying all elements of the law related to an order to seal.

Service

OCM properly served the NOV/OTS after its issuance. The document was given to the employee present on site and in "actual or apparent control of the premises" at the time of the inspection. In addition to this service, OCM posted a copy of the NOV/OTS on the storefront and there is no evidence that the employee provided OCM with an address for the owner. For these reasons, I find that OCM satisfied the elements of the statute required to perform service and that notice was properly issued to Respondent.

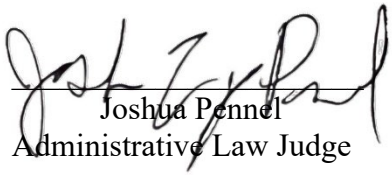
V. DECISION

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 235 Union Ave., New Rochelle, NY 10801. In so doing, Respondent violated Cannabis Law Article 6. The Order to Seal is hereby affirmed.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON SEPTEMBER 2, 2026, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

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

Dated: September 14, 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 §133.25(k).

This decision was sent via email on September 14, 2026, to the following:

Kevin Pena

Anthony Pitnell, Esq.

Nickolas Perry

Sheila Wagner