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-

DECISION AND ORDER
INDEX. NO. OAH2026-0021

BOUTIQUE CONVENIENCE CORP DBA BOUTIQ CONVENIENCE,
RESPONDENT

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This administrative proceeding involves two separate regulatory inspections conducted by the Petitioner New York State Office of Cannabis Management ("OCM") at Respondent Boutique Convenience Corporation dba BOUTIQ Convenience ("Respondent") place of business.

On September 17, 2026, a virtual hearing was conducted before the undersigned Supervising Administrative Law Judge Celena L. Ditchev. Petitioner OCM ("Petitioner") was represented by Kevin Marek, Esq. Respondent appeared through counsel, Nadia Kahnauth, Esq. At the hearing, Petitioner relied upon testimony from OCM Investigative Specialist Castelblanco, Investigative Specialist Dillon, and documentary evidence. Respondent did not present any evidence.

PROCEDURAL BACKGROUND

On August 18, 2026, Petitioner conducted a regulatory inspection, inspection 123 2026 0818 0018, of Respondent's business premises pursuant to Cannabis Law §§ 11(3), 138-a and Title 9 of the Codes, Rules, Regulations of the State of New York ("NYCRR") § 133.25(a). Based on observations made during the inspection, Petitioner issued a notice of violation ("NOV") alleging unlicensed cannabis activity in violation of the cannabis law. *Petitioner Exhibit ("Pet. Ex.") A*. Petitioner also issued an order to cease the unlicensed activity ("cease order") pursuant to Cannabis Law § 138-a(1) and 9 NYCRR § 133.25(c), and an immediate order to seal ("OTS") pursuant to Cannabis Law § 138-b (3).[1] *Pet. Ex. A*. The statement of charges asserts Respondent was observed engaging in the unlicensed offering/providing/cultivating/processing of cannabis, cannabis products[2], medical cannabis, cannabinoid hemp, cannabinoid hemp extract, and products marketed and labeled as such in violation of

[1] Petitioner's OTS, NOV, and Cease Order are on a single page, 8 x14, document, that also contains a Certificate of Service.
[2] Cannabis products, or adult-use cannabis products, means cannabis, concentrated cannabis, and cannabis-infused products for use by a cannabis consumer. *Cannabis Law § 3(9).*

Cannabis Law §§ 125, 132, and 101 and implementing regulations governing adult-use cannabis and cannabinoid hemp. Petitioner further asserts that such conduct was an imminent threat to public health, safety, and welfare, no part of the business premises was used as a residence and lawfully zoned as such, and the unlicensed activity was more than a de minimis part of the business activity authorizing the issuance of an immediate sealing order pursuant to Cannabis Law § 138-b(3).

Respondent requested a hearing on or about August 31, 2026, more than seven (7) days after the regulatory inspection and issuance of the OTS. Consequently, Respondent was not entitled to an expedited hearing to be held within three business days of the request. *Cannabis Law § 138-b(3); 9 NYCRR §§ 133.25 (h)(1) and (i)(1).* A hearing was scheduled for September 17, 2026, on the NOV, the cease order, and the OTS.[3]

Subsequently, on September 1, 2026, prior to the scheduled hearing, Petitioner conducted a second regulatory inspection, inspection 123 2026 0901 0019, of Respondent's business premises. Based on observations made prior to and during the inspection, Petitioner issued a second NOV, a second cease order, and a second OTS pursuant to Cannabis Law § 138-b(5). The statement of charges asserted Respondent was engaging in the unlicensed offering/providing/cultivating/processing of cannabis, cannabis products, and products marketed or labeled as such, in violation of the cannabis law and implementing regulations. The statement of charges further asserted that the September 1 inspection was a subsequent inspection, and the unlicensed activity was confirmed to be continuing more than 10 days after the issuance of a prior NOV and cease order. The subsequent OTS issued on September 1 indicated the prior NOV and order to cease unlicensed activity were issued on August 18, 2026, and included the regulatory inspection number, inspection 123 2026 0818 0018.

Petitioner requested a hearing on the subsequent inspection and that such proceeding be consolidated with the scheduled hearing for the first inspection. Upon consent of the Respondent, consolidation was granted and a joint hearing conducted on September 17, 2026. *9 NYCRR § 133.18(b)(1).*

HEARING ISSUES

The scope of the instant administrative proceeding includes a determination on the NOV, the cease order, and the OTS issued on August 18, 2026, as well as a determination on the NOV, the cease order, and the OTS issued on September 1, 2026.

[3] On the same date, August 31, 2026, the Office of Administrative Hearings, notified Respondent's Counsel that the hearing request submitted was incomplete and additional information was needed before a hearing could be scheduled. On September 11, 2026, Counsel for Respondent notified the Office of Administrative Hearings additional information was provided and included a notice of appearance. The hearing was scheduled for September 17, 2026, and a notice of hearing sent to all parties.

For the reasons set forth below, I find that the Petitioner demonstrated by a preponderance of the evidence that the Respondent was engaged in unlicensed activity in violation of the cannabis law and implementing regulations on August 18 and sustain the NOV. I further find the cease order was lawfully issued and affirm the order. I further find that Petitioner demonstrated by a preponderance of the evidence that the OTS issued on August 18 was issued in accordance with Cannabis Law § 138-b(3).

Additionally, for the reasons further set forth below, I find that the Petitioner demonstrated by a preponderance of the evidence that the Respondent continued the unlicensed activity between August 18 and the subsequent inspection on September 1 and sustain the NOV. Similarly, the cease order was lawfully issued and I affirm the order. The Petitioner further demonstrated by a preponderance of the evidence that the OTS was issued in accordance with Cannabis Law 138-§ (b)(5).

FINDINGS OF FACT

Based on the credible testimony and the documentary evidence[4] presented at the hearing, I find the following facts.

1. Respondent conducts business as Boutique Convenience Corporation dba BOUTIQ Convenience at 23 Ave B, New York, N.Y. 10009.

2. Petitioner received a complaint reporting the sale of cannabis and cannabis products occurring at Respondent's business premises.

3. Petitioner was further informed that the sales occurring at Respondent's business premises led to at least one person becoming ill and subsequently hospitalized.

4. Petitioner confirmed no license as been issued to Respondent authorizing the sale of cannabis, cannabis products, medical cannabis, cannabinoid hemp, cannabinoid hemp extract, or any products marketed and labeled as such.

5. OCM investigators conducted an investigation and regulatory inspection on August 18, 2026.

6. As part of the investigation, OCM Investigative Specialist G. Castelblanco ("Inv. Castelblanco") entered Respondent's business premises, during business hours, as a potential customer. She observed one individual behind the counter. She requested cannabis flower and other cannabis products, including cannabis-infused[5] edibles.

[4] Parties stipulated to the entry of Petitioner's evidentiary exhibits, Exhibits A – J.
[5] "Cannabis-infused products" means products that have been manufactured and contain either cannabis or concentrated cannabis and other ingredients that are intended for use or consumption. Cannabis Law § 3(10)

7. The salesclerk agreed to sell the products and went a back room area off the retail sales floor. He returned with the requested cannabis products. The OCM investigative team came in immediately upon the clerk returning and conducted an administrative regulatory inspection of Respondent's business premises.

8. During the inspection, OCM investigators observed and seized a variety of cannabis, cannabis products, medical cannabis, cannabinoid hemp products, and products marketed and labeled as such from Respondent's business premises. OCM documented the products seized on vouchers and with photographs that depicted cannabis, cannabis products, and products marketed and labeled as such. *Pet. Exs. B, C, and D.*[6]

9. OCM investigators also seized products containing psilocin mushrooms. *Pet. Ex. D1.* Inv. Castelblanco received one of these bars when she requested cannabis-infused edibles.

10. OCM investigators also observed evidence of unlicensed processing including grinders, a scale, and a volume of empty packaging that was testified to be common packing for cannabis flower. *Pet. Exs. C12-C17.*

11. Petitioner also observed two large safes in the back room off the sales floor but the safes were locked and OCM investigators did not open the safes or any other locked areas or drawers.

12. Based on the inspection conducted, Petitioner issued a NOV asserting unlicensed activity in violation of Cannabis Law §§ 125, 132, and 101, an order to cease the unlicensed activity, and OTS to Respondent.

13. A copy of the NOV, cease order, and the OTS was personally served, by Inv. Castelblanco, on the individual present at the time of the inspection who identified themselves as an employee and signed the certificate of service. *Pet. Ex. A.* Inv. Castelblanco also posted a copy of the document to the front of the business premises along with an OCM warning notifying the public that the premises was sealed. *Pet. Ex. E.*

14. OCM enforcement did contact the New York City Police Department and officers were present during the inspection. Inv. Castelblanco testified the officers did not take part in the inspection.

15. On August 19, 2026, OCM investigators were notified that Respondent's business premises was no longer sealed and the business open.

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[6] Pet. Ex. B is a total of 5 OCM vouchers documenting a total of 48 cannabis, cannabis products, cannabinoid hemp edibles and products marketed and labeled as such of a variety of products and in sizes. Pet. Ex. C is a total of 17 photographs of Respondent's business premises and items observed. Pet. Ex. D is a total of 12 photographs depicting products observed and seized during the insepction.

16. On September 1, 2026, Petitioner conducted a second, or subsequent inspection of Respondent's business premises.

17. Prior to the inspection, a different OCM investigator, Investigative Specialist C. Dillon ("Inv. Dillon") entered Respondent's business premises during business hours and requested to purchase cannabis.

18. The salesclerk initially responded that the requested product was not sold there, but the investigator continued in the request stating they only had $20.00 to spend. The salesclerk agreed to sell a 3.5-gram bag of cannabis for $20.00 and entered it onto the point-of-sale system. *Pet. Ex. H2.* The salesclerk then went into a back room and returned with the 3.5-gram bag of cannabis flower. *Pet. Ex. I1.*

19. The OCM enforcement team entered the Respondent's business premises after the salesclerk returned and Inv. Dillon left the premises.

20. During the September 1 inspection, photographs were taken of the exterior and interior of the business along with a photograph of the cannabis flower that was recovered as part of the sale to Inv. Dillon. *Pet. Exs. H and I.*

21. The NOV, cease order, the OTS and the OCM public warning sticker that were all posted by Inv. Castelblanco after the August 18 inspection and sealing of Respondent's business were no longer posted at the time of the September 1 inspection. *Pet. Ex. H1.*

22. A copy of the NOV, cease order, and the OTS was personally served by Petitioner on the individual present at the time of the inspection who identified themselves as an employee and signed the certificate of service. *Pet. Ex. F.* Petitioner also posted a copy to the front of the business premises along with an OCM warning notifying the public that the premises was sealed. *Pet. Ex. J.*

ANALYSIS AND CONCLUSIONS OF LAW

Petitioner bears the burden of establishing a violation by a preponderance of the evidence. *Cannabis Law § 17(2); 9 NYCRR § 133.18(d)(6).*

Petitioner's Authority to Conduct a Regulatory Inspection

The Marihuana Regulation and Taxation Act ("MRTA"), enacted in 2021, legalized adult-use cannabis and included enactment of Chapter 7-A of the New York State Consolidated Laws, known as the Cannabis Law. *Cannabis Law § 1.* Pursuant to the Cannabis Law, Petitioner OCM is vested with explicit functions, powers and duties. This includes, and is not limited to, conducting regulatory

inspections of any place of business[7] … where cannabis, cannabis product, cannabinoid hemp, hemp extract products, or any products marketed or labeled as such, are cultivated, processed, manufactured, distributed, stored, or sold, irrespective of whether a registration, license, or permit has been issued. *Cannabis Law § 11(3).*

Respondent's motion to dismiss[8] is denied. Respondent asserts a Fourth Amendment violation on grounds that Petitioner lacked authority to conduct a warrantless regulatory inspection. Respondent's reliance on NY Supreme Court Justice Marcelle's ruling in *Super Smoke N Save LLC v. NYS Cannabis Control Bd., 86 Misc. 3d 452, 226 N.Y.S.3d 847 (N.Y. Sup. Ct. 2025), rev'd and vacated, 261 N.Y.S.3d 768 (App. Div. 2026)* is without merit considering the subsequent ruling in that matter by the Third Department. The Third Department found that the cannabis law and implementing regulations provide "meaningful limitation[s]" on how inspections are conducted and ensures that "the search is limited in scope to that necessary to meet the interest that legitimized the search in the first place." *Super Smoke N Save, 261 N.Y.S.3d at 778* quoting *People v. Quackenbush,* 88 N.Y.2d at 542 [internal quotation marks and citation omitted]; *New York v. Burger, 482 U.S. 691, 703 (Sup. Ct. 1987).* Moreover, contrary to Respondent's arguments, an otherwise lawful administrative inspection is not rendered unconstitutional merely because police are present during the search or because the search uncovers evidence of criminal activity. *Super Smoke N Save, 261 N.Y.S.3d at 778;* citing *New York v. Burger, 482 U.S. at 716–717.*

August 18, 2026, Administrative Inspection

The inspection of Respondent's business premises conducted by Petitioner on August 18 was a lawful authorized administrative inspection under the cannabis law and regulations. *Cannabis Law § 11(3); 9 NYCRR § 133.25(a).*

While Respondent argues Petitioner conducted an unfettered search and the inspection extended into closed areas and drawers, this is contrary to the evidence in the record. Inv. Castelblanco explicitly stated that no closed areas, drawers, or the locked safes were opened by OCM investigators. Further, the fact that the August 18 inspection uncovered cannabis products and products that contained psilocybin mushrooms does not render Petitioner's administrative inspection unconstitutional nor did it require

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[7] "[P]lace of business" shall not include a residence or other real property not otherwise held out as open to the public or otherwise being utilized in a business or commercial manner or any private vehicle on or about the same such property, unless probable cause exists to believe that such residence, real property, or vehicle are being used in such business or commercial manner for the activity described herein.

[8] The motion was made during the hearing in the opening statement. To the extent Respondent challenged the manner in which inspections were applied to their business, the motion to dismiss and the "as-applied" claims were prematurely raised as they had not yet been subjected to administrative review and the fact-finding process. *Super Smoke N Save LLC v. NYS Cannabis Control Bd., 86 Misc. 3d 452, 226 N.Y.S.3d 847 (N.Y. Sup. Ct. 2025), rev'd and vacated, 261 N.Y.S.3d 768 (App. Div. 2026).*

Petitioner to obtain a search warrant. *Super Smoke N Save, 261 N.Y.S.3d at 778;* citing *New York v. Burger, 482 U.S. at 716–717.* Additionally, the presence of the police did not render the inspection unlawful or otherwise unconstitutional. *Id.*

Petitioner established that the inspection was an authorized inspection as there was reason to believe that cannabis and cannabis products were being sold at the premises. Inv. Castelblanco credibly testified to OCM receiving a complaint of unlicensed cannabis sales occurring at Respondent's place of business prior to the inspection. The complaint included information that someone became ill after purchasing products from Respondent's business. Although psilocybin mushroom products were recovered during the inspection, Investigator Castelblanco credibly testified that prior to the inspection Petitioner was unaware that such products were on site. Additionally, Inv. Castelblanco testified that prior to the inspection, OCM investigators corroborated the unlicensed cannabis sales through a controlled undercover operation. Inv. Castelblanco entered as customer, requested, and received cannabis flower, cannabis vapes, and an edible chocolate bar that contained psilocybin mushrooms from the salesclerk.

Based on the totality of the circumstances, the August 18 inspection by Petitioner of Respondent's business premises constituted a lawful administrative inspection under the cannabis law and implementing regulations. *Cannabis Law § 11(3); 9 NYCRR § 133.25(a); Super Smoke N Save, 261 N.Y.S.3d at 778.*

Unlicensed Activity and Issuance of the OTS on August 18

Cannabis Law § 125 states that no person[9] shall cultivate, process, distribute for sale or sell at wholesale or retail … to consumers any cannabis, cannabis product, medical cannabis or cannabinoid hemp or hemp extract product, or any product marketed or labeled as such, without first obtaining the appropriate registration, license or permit. In response to a violation, Petitioner is authorized to take enforcement action and impose sanctions, including but not limited to, issuing a NOV, seizure of product, and issuance of a cease order. *Cannabis Law §§ 132; 138-a; 9 NYCRR §§ 133.25(b)(1) and (d)(2).*

The statement of charges contained in the August 18 NOV, cease order, and OTS assert that during an inspection of Respondent's business premises, Respondent was observed engaging in unlicensed offers to sell and unlicensed processing of cannabis, cannabis products, medical cannabis, cannabinoid hemp, cannabinoid hemp extract, and products marketed and labeled as such. The NOV and order to cease the unlicensed activity issued by Petitioner to the Respondent for observations made

[9] Under the Cannabis Law, "person" is broadly defined as "an individual, institution, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other entity." *Cannabis Law § 3 (40-a*).

on August 18 were authorized enforcement actions. Petitioner was further authorized in the seizure of the cannabis, cannabis products, medical cannabis, cannabinoid hemp products, and any products marketed and labeled as such. *Cannabis Law § 138-a(2); 9 NYCRR §§ 133.25(b)(1) and (d)(2); see Super Smoke N, 261 N.Y.S.3d at 778.*

Petitioner further asserts that the unlicensed activity was an imminent threat to public health, safety, and welfare. Cannabis Law § 138-b further grants Petitioner substantive enforcement authority to issue an immediate OTS for the building or premises occupied as a place of business engaged in unlicensed activity in violation of Cannabis Law sections 125(1) or (1)(a) or 132 (1) or (8). *Cannabis Law § 138-b(1); 9 NYCRR § 133.25(f).* Petitioner is authorized to issue an immediate OTS for the building or premises of any business engaged in unlicensed activity upon the finding of an imminent threat to public health, safety, and welfare provided that no part of the premises to be sealed is lawfully used in part or occupied as a residence and the unlicensed activity is more than a de minimis part of the business activity at the premises, or building, to be sealed. *Cannabis Law §§ 138-b(3) and (6); 9 NYCRR § 133.25(f)(1)-(4).*

Petitioner established a prima facie evidence of an imminent threat to public health, safety, and welfare based on the presence of products deemed unsafe based on reports of illness or hospitalization. *Cannabis Law 138-b(4)(f); 9 NYCRR § 133.25(f)(1)(vi).* A variety of products were seized including cannabis, cannabinoid hemp products, and cannabis vapes labeled for medical use. *Pet. Exs. B and D2-D9.* The evidence further demonstrated by a preponderance of the evidence that Respondent's business was not used as a residence. Further, Respondent did not raise any challenge or seek to controvert the commercial nature of the premises inspected. Petitioner's evidence also established that the unlicensed cannabis activity was more than a de minimis part of Respondent's business activity occurring at the premises. Inv. Castelblanco testified to recovering a variety of products during the August 18 inspection including: two 3.5-gram bags of cannabis flower, one 7-gram bag of cannabis flower, two 2-gram cannabis vapes, 1 bag unweighted cannabis flower, ten .5-gram pre-rolls, one 1-gram pre-roll, and 31 unweighted hemp edibles. *Pet. Ex. B.* While there was limited evidence regarding products on display, the photographs demonstrated blatant marketing and advertising signage listing. *Pet. Exs. C3, C10.* In addition to the variety of products found during the inspection, there was a volume of empty packaging found with evidence of processing such as grinders and a scale. P*et. Exs. C12-C18*. Most notable, for considering the imminent threat to public health, safety, and welfare in this matter is the presence of products that were not labeled or tested in accordance with the cannabis law. The cannabis vapes in particular were labeled for medical use only. *Pet. Exs. D8-D9.* Moreover, Inv. Castelblanco testified to requesting cannabis-infused edibles and received an edible chocolate bar that contained psilocybin mushrooms.

Service of the NOV, cease order, and OTS issued August 18

In an administrative proceeding the standard for service is whether the notice under all the circumstances is reasonably calculated to make the parties aware of the proceeding and afford an opportunity to be heard. *Ruffin v. Lion Corp., 15 N.Y.3d 582–83 (2010); Raschel v. Rish, 69 N.Y.2d 694, 696 (1986); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, (1950).* Here, the evidence is uncontroverted that a copy of the NOV, cease order, and OTS were personally served on the individual present at the time of the inspection who identified themselves as an employee and signed the certificate of service. *Pet. Ex. A.* Inv. Castelblanco also credibly testified to having posted a copy of the document to the front of the business premises and then photographed the document on the front of the business premises along with an OCM warning notifying the public that the premises was sealed. *Pet. Ex. E.*

Although there was no evidence as to whether Petitioner subsequently mailed a copy of the NOV, the cease order, and the OTS, there was no evidence that the employee present at the time of the inspection provided an alternative address for the business owner. *Cannabis Law § 138-b(2).* Respondent was not issued any license from Petitioner authorizing the sale of cannabis, cannabis products, medical cannabis, cannabinoid hemp, or products marketed and labeled as such. There was also no evidence that Petitioner accessed internal records to identify the name or other information about the business owner. *c.f. OCM v. Blue Cloud Plus Corporation, OAH2026-0020 (Sept. 2026).* Thus, any defect in service here was "merely technical" as the service methods effectuated by petitioner on the respondent were reasonably calculated to make petitioner aware of the proceeding. *Ruffin, 15 N.Y.3d at 582.* Moreover, while a party's appearance at a hearing should not be deemed to satisfy service requirements, Respondent did not assert any challenge to service or notice or otherwise challenge Petitioner's evidence of service.

September 1, 2026, Administrative Inspection

The subsequent inspection of Respondent's business premises conducted by Petitioner on September 1 was a lawful authorized administrative inspection pursuant to the cannabis law and implementing regulations. *Cannabis Law §§ 11(3) and 138-a; 9 NYCRR § 133.25(a).* Petitioner's subsequent inspection was prompted by information of the business reopening despite the issuance of the OTS and a padlock sealing the premises. While Petitioner is permitted to refer certain actions to the local district attorney or the Attorney General's Office for enforcement, this in no way limits Petitioner's authority under the law to initiate administrative proceedings. *Cannabis Law 10(6), 132(7), and 138-b(12); 9 NYCRR 133.25(b)(1)-(2).*

Unlicensed Activity and Issuance of September 1 NOV, cease order, and OTS

Petitioner's witness credibly testified to having entered Respondent's business premises on September 1 and requesting to purchase cannabis and only having $20.00. The investigator testified that after some discussion with the salesclerk, she was offered a 3.5-gram bag of cannabis flower for $20.00. Similarly, to August 18, the salesclerk went to a back room and returned with a bag of cannabis flower for the investigator. Contrary to Respondent's argument, the exchange of money is not required to demonstrate a sale pursuant to Cannabis Law 132 (1)(a) and the inclusion of the authority to impose a civil penalty for any person who offers to sell cannabis, cannabis products, medical cannabis, or any product marketed or labeled as such, without having an appropriate registration, license or permit. … may be subject to a civil penalty (emphasis added). *Cannabis Law § 132(1)(a).*

Furthermore, Cannabis Law § 138-b(1) authorizes Petitioner to issue an immediate OTS for the building or premises occupied as a place of business engaged in unlicensed activity in violation of Cannabis Law sections 125(1) or (1)(a) or 132 (1) or (8). The statement of charges contained in September 1 NOV, cease order, and OTS assert that during an inspection of Respondent's business premises, Respondent was observed and confirmed to be engaging in unlicensed activity continuing more than 10 calendar days after a NOV, cease order, and OTS were previously issued. The statement of charges also identified the August 18 inspection as the previous issuance date. Petitioner is authorized upon a second or subsequent inspection in which unlicensed activity is confirmed to be continuing more than 10 calendar days after a NOV and cease order was previously issued by Petitioner to immediately seal the place of business notwithstanding any factors demonstrating an imminent threat to public health, safety, and welfare or consideration to whether the unlicensed activity is a de minimis part of the business activity. *Cannabis Law § 138-b(5).* Petitioner must, however, provide notice that the business premises may be subject to an immediate sealing order if upon a subsequent inspection the office finds that the violation has not been abated as required by Cannabis Law § 138-a(13)(a)(ii).

Petitioner demonstrated such service by way of personal service of the August 18 NOV, cease order, and the OTS was effectuated on an agent, an employee, present at the time of the inspection and by conspicuously posting a copy at the premises. The NOV and cease order includes language that upon a subsequent inspection if the violation is not abated the premises may be subject to an OTS. *Pet. Ex. A.* The OTS contained language that the posted order shall not be removed or mutilated in any way except when authorized by OCM. *Pet. Ex. A.*

Petitioner also demonstrated personal service of the September 1 NOV, cease order, and OTS on the employee present at the time of the inspection and that a copy was posted at the premises. *Pet. Exs. F and J1-J2.*

During the subsequent inspection of Respondent's business premises on September 1, the premises was found unsealed and open for business. A copy of the NOV, cease order, and OTS that were posted on the exterior of the premises were no longer posted. Indeed, the evidence revealed that the posted copy was found in the back room of the business premises, completely intact. *Pet. Ex. H5*. The evidence further demonstrated and confirmed that the premises remained open for business and that no part of the premises was used as a residence. Accordingly, Petitioner's evidence demonstrates by a preponderance of the evidence that the OTS issued on the September 1 subsequent inspection was issued in accordance with Cannabis Law § 138-b(5) and 9 NYCRR § 133.25(f)(5) as the unlicensed activity was confirmed to be continuing more than ten calendar days after the NOV and cease order were issued.

Continued Unlicensed Activity Between Inspections

Petitioner's evidence further demonstrates by a preponderance of the evidence that the unlicensed activity was continuing, on each business day, between the first and second inspection. A party who has the burden of proof by a preponderance of the evidence must prove his or her contention by the greater weight of evidence. *Viele v. Mack Paving & Construction Co., 150 A.D. 839 (2nd Dept. 1912).* The evidence must be of such weight as to produce a reasonable belief in the truth of the facts asserted; mere proof of a possibility is insufficient to establish a fact by a preponderance of the evidence. *Jarrett v. Madifari, 67 A.D.2d 396 (1st Dept. 1979); Meehan v. State, 95 Misc. 2d 678 (Ct. Cl. 1978).*

The evidence in this matter produces more than a mere possibility that Respondent continued the unlicensed activity more than 10 calendar days after the issuance of the cease order. The sworn statements of the investigators are sufficient to establish a prima facie case that such conduct continued for each business day between the initial inspection and the last observed or otherwise documented conduct. *9 NYCRR § 133.25(j).* Here, OCM investigators responded promptly to corroborate the continued violation by conducting a subsequent inspection thirteen days after the first inspection and issuance of the NOV and cease order. By law, Petitioner must confirm the continued unlicensed activity more than ten calendar days after 10 days. *Cannabis Law 138-b(5).* Furthermore, Inv. Dillon credibly testified the salesclerk agreed to the sale of a 3.5-gram bag of cannabis flower for the $20.00 she stated she had to spend. The amount was entered into the point-of-sale system for payment *(Pet. Ex. H2)* and the salesclerk retreated to a back room returning with the cannabis product *(Pet. Ex. I1).* The testimony of the two OCM investigators further supports the continued unlicensed activity given the similarities in the manner in which the unlicensed sales occurred on both August 18 and September 1. The premises also remained visibly the same, operating under the same name, the retail sales floor the same as it was

on August 18, the signs and symbols of cannabis brands visibly displayed, including on the front door to the premises, and the same point-of-sale system. *Pet. Exs. C5-C6 and H1-H5.*

Civil Penalties

A violation of unlicensed activity may be subject to a civil penalty of not more than ten thousand dollars for each day during which such violation continues and an additional civil penalty in an amount of no more than five times the revenue from such prohibited sales or, in an amount of no more than three times the projected revenue for any such product found in the possession of such person based on the retail list price of such products (emphasis added). *Cannabis Law § 132(1)(a).*

In addition to the civil penalties pursuant to Cannabis Law § 132(1)(a), when a person has been ordered to cease the unlicensed activity pursuant to Cannabis Law § 138-(a)(1), such person may be assessed a civil penalty of no more than twenty thousand dollars per day for each day during which such violation continues after receiving the cease order. *Cannabis Law § 132(1)(a).*

Any civil penalties assessed shall take into consideration the nature of such violation and shall assess a penalty that is proportionate to the violation. *Cannabis Law § 132 (1)(c).*

Here, the evidence demonstrates that on August 18, Respondent was engaging in unlicensed activity in unlicensed activity in violation of the cannabis law and regulations and that such activity was an imminent threat to public health, safety, and welfare. Consequently, an immediate OTS was issued. Inv. Castelblanco testified that on August 19, 2026, the day after the OTS was issued, OCM was made aware that the padlock sealing the premises was removed and the business open. Petitioner's confirmed that the unlicensed activity was continuing more than 10 days after the issuance of the cease order. The reopening and continued unlicensed activity was promptly corroborated by Petitioner via a subsequent inspection on September 1 during which Respondent made an unlicensed offer to sell.

Respondent's actions demonstrate an intent to evade the cannabis law. Part of the legislative intent behind the MRTA was to regulate, control, and tax cannabis generating significant revenue, prevent access to cannabis by those under the age of twenty-one, generate significant new revenue, and to reduce the illegal drug market. *Cannabis Law § 2.*

Taking into consideration the totality of the evidence and the deliberate nature of the violations, Respondent is ordered to pay the following civil penalties pursuant to Cannabis Law 132(1)(a):

1. $7,500 for the August 18 violation
2. $10,000 for the September 1 violation

3. $100 based on five times the revenue ($20.00) from the prohibited sale on September 1
4. $67,500 for the confirmed continued unlicensed activity between August 18 and September 1; approximately 9 business days; $7,500 penalty per day

Mutilation of the Posted OTS and the Padlock

Pursuant to Cannabis Law § 138-b(8)(d), mutilation or removal of the OTS and the padlock used to seal the premises while it remains in force… shall be punishable, on conviction, by a fine of not more than five thousand dollars or by a class B misdemeanor, or both, provided such order or notice contains therein a notice of such penalty, and shall be referred to the local district attorney for enforcement (emphasis added). Petitioner request for this tribunal to assess a fine in the amount of $5,000 pursuant to Cannabis Law § 138-(b)(8)(d). However, this tribunal is constrained by the language in the statute mandating that such removal or mutilation shall be punishable "on conviction, by a fine…. or by a class B misdemeanor…. and shall be referred to the local district attorney for enforcement." *Cannabis Law § 138-(b)(8)(d).* The OAH was created for the purpose of conducting all administrative proceedings that devolve upon the CCB by statute. *9 NYCRR § 133.16*. The CCB is not authorized by statute to punish by conviction.

While an argument can be made that an additional civil penalty of $5,000 can be assessed pursuant to Cannabis Law § 16(1) as a civil penalty for a violation of 9 NYCRR § 133.25(g)(4), that was not the theory under which Petitioner argued their case nor the law cited as the authority for such relief during the course of the hearing. This distinction is furthered by the fact that the NOV, cease order, and OTS issued on September 1 do not allege the violation or the manner in which the violation is alleged to have occurred. The statement of charges does not include with any specificity the allegation that Respondent removed or mutilated the padlock or posted order. Although Petitioner's NOV, cease order, and OTS include template language stating the removal or mutilation of the OTS constitutes a violation, it states such violation is a violation of 9 NYCRR § 133.25 and shall be punishable by a fine of up to $5,000 or by a class B misdemeanor and shall be referred to the local district attorney for enforcement. This standard language does not meaningfully provide notice of the charge.[10]

It is well settled that the principles of due process applicable to criminal trials also apply to government administrative proceedings. *Morrissey v. Brewer, 408 U.S. 471 (1972); Mathews v Eldridge, 424*

[10] This language also infers that any such violation would be referred to the local district attorney or enforcement and not to OAH, although Cannabis Law § 16(1) authorizes the assessment of a $5,000 civil penalty against any person who violates, disobeys or disregards any term or provision of the cannabis law, or of any lawful notice, order or regulation pursuant thereto for each such violation or subsequent violation.

U.S. 319, 334-335 (1976); Murray v Murphy, 24 NY2d 150, 157 (1969); People ex rel. McGee v. Walters, 62 N.Y.2d 317 (1984); Wolfe v. Kelly, 79 A.D.3d 406, 409 (1st Dept. 2010). A fundamental principle of due process is notice of the charges. *Murray v Murphy, 24 NY2d at 157*. Pursuant to the cannabis law and implementing regulations, an ALJ shall conduct a hearing in "accordance with the requirements of due process." *Cannabis Law § 17(2)-(3) and (7); 9 NYCRR § 133.17(d)(11).* In New York, courts have found a lack of due process and set aside administrative determinations made after hearings when such determinations were based on information that was not the subject of the notice. *see e.g., Murray v. Murphy, 24 N.Y.2d at 157; Brown v. Saranac Lake Cent. School Dist., 273 A.D.2d 785 (3rd Dept 2000); Kiyonaga v. New York State Justice Center for the Protection of People with Special Needs, 204 A.D.3d 1351 (3rd Dept 2022)* [the Court set aside an administrative determination based on conduct that was not the subject of the notice of hearing, observing "[t]he first fundamental of due process is notice of the charges made."]

Based on the lack of notice regarding a violation of the cannabis law and regulations for the removal or mutilation of the posted order and padlock, Petitioner's request for a $5,000 fine pursuant to Cannabis Law § 138-b(8)(d) is denied.

DETERMINATION

Based on the foregoing, I find that Petitioner demonstrated by a preponderance of the evidence that on August 18, 2026, Respondent was engaging in unlicensed activity in violation of Cannabis Law §§ 125, 132, and 101; such conduct was an imminent threat to public health, safety, and welfare; no part of the Respondent's business premises was used in part as a residence; and the unlicensed activity was more than a de minimis part of Respondent's business activity occurring at the premises. Thus, the NOV, cease order, and OTS were issued in accordance with Cannabis Law § 138-b(3).

Additionally, I find that the Petitioner demonstrated by a preponderance of the evidence that on September 1, 2026, Respondent was confirmed to be continuing the unlicensed activity in violation of the cease order issued on August 18. Therefore, the OTS was issued in accordance with Cannabis Law § 138-b(5).

Pursuant to Cannabis Law § 132(1)(a) all penalties are found to be lawful and proportionate pursuant to Cannabis Law § 132(1)(c).

WHEREFORE, IT IS HEREBY ORDERED that the OTS issued on August 18 to Respondent Boutique Convenience Corporation dba BOUTIQ Convenience business premises at 23 Ave B, New York, N.Y. 10009, is extended for one year from the date of this decision.

ORDERED that the NOV and order to cease unlicensed activity on August 18 are sustained;

ORDERED that Respondent shall pay a civil penalty in the amount of $7,500 for the sustained August 18 NOV;

ORDERED that the OTS issued on September 1 to Respondent Boutique Convenience Corporation dba BOUTIQ Convenience business premises at 23 Ave B, New York, N.Y. 10009, is extended for one year from the date of this decision.

ORDERED that the NOV and order to cease unlicensed activity issued September 1 are sustained;

ORDERED that Respondent shall pay a civil penalty in the amount of $10,000 plus an additional $100 for the sustained September 1 NOV;

ORDERED that Respondent shall pay a civil penalty of $67,500 for the continued unlicensed activity between the inspection dates; as such it is further

ORDERED that Respondent shall pay a total of $85,100 in civil penalties pursuant to this Decision and Order, OAH2026-0021.

DATED: October 15, 2026

/s/ Celena L. Ditchev

Celena L. Ditchev
Supervising Administrative Law Judge

This constitutes the final decision of the Office of Administrative Hearings. 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).

Payment of the Civil Penalty due under this Decision and Order shall be paid directly to New York State Office of Cannabis Management and shall include a reference to CASE CAPTION/OAH INDEX NUMBER in the memo section and mailed to the following address: NYS Office of Cannabis Management Administrative Unit: Fees & Fines, PO BOX 2071, Albany, NY 12220.

If any penalty is not paid within six months, the amount thereof will be entered as a judgment in the office of the clerk of the county of Albany and in any other county in which the person resides, has a place of business, or through which it operates. If such judgment has not been satisfied within thirty days thereafter, no license, registration, or permit shall be issued by the CCB to such person for three years thereafter. *Cannabis Law § 138-a(14).* Unpaid civil penalties provided for in Cannabis Law § 132 may be recovered by Petitioner OCM or the Attorney General on behalf of the CCB in an action or proceeding brought pursuant to Cannabis Law § 138-a. *Cannabis Law § 132(7).*