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

*IN THE MATTER OF*
NEW YORK STATE OFFICE OF CANNABIS MANAGEMENT,

Petitioner

DECISION ON ORDER
TO SEAL PREMISES

Ind. No. OAH2026-0029

-against-

LITTLE ITALY CONVENIENCE & BEER
DBA LITTLE ITALY 1 DELI,

RESPONDENT
----------X

On October 2, 2026, respondent Little Italy Convenience & Beer dba Little Italy 1 Deli ("Respondent") requested an emergency hearing on an immediate sealing order issued by petitioner New York State Office of Cannabis Management ("Petitioner") pursuant to Cannabis Law §§ 17 (3); 138-b (3) and Title 9 NYCRR § 133.25 (g)(1).

On October 6, 2026, a hearing was held remotely via videoconference. Both parties appeared and were represented by counsel.

Respondent appeared by counsel and was represented by James Kirschner, Esq. at the hearing. Mohamedou Aicha testified on behalf of Respondent.

William Pham, Esq. represented the Petitioner, Office of Cannabis Management. Petitioner relied on photographs, documentary evidence and testimony from four witnesses, Investigator Michael O'Bryan, Investigator Bladimir Nunez, Investigator Lakenya McKoy, and Investigator Gloria Castelblanco.

Laura Krzeminski, Administrative Law Judge ("ALJ"), Presiding Judge.

## HEARING ISSUE

The hearing was held pursuant to Cannabis Law § 138-b and 9 NYCRR § 133.25. The purpose of the hearing is to determine whether the immediate Order to Seal issued for respondent business premises was issued in accordance with the law and whether the sealing order should be extended for one year. *Cannabis Law 138-b (9); 9 NYCRR § 133.25 (g)(1).*

The statement of charges alleges respondent was engaging in sales and offers to sell cannabis, cannabis products, medical cannabis, cannabinoid hemp, and products marketed and labeled as such without a license, registration, or permit to do so in violation of Cannabis Law §§ 125, 132, and 101 and OCM regulations Title 9 NYCRR § 120 (i) and § 114.14 (d)(1) and such conduct was an imminent threat to public health, safety, and welfare.

For the reasons set forth below, I find that petitioner established by a preponderance of the

evidence that the sealing order in this matter was issued in accordance with the Cannabis Law and related implementing regulations.

## APPLICABLE LAW

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.*

Cannabis Law Article 6 § 125 states that no person[1] shall cultivate, process, distribute for sale or sell at wholesale or retail or deliver to consumers any cannabis, cannabis product[2], medical cannabis or cannabinoid hemp or hemp extract product, or any product marketed or labeled as such, within the state without first obtaining the appropriate registration, license or permit.

In response to a violation of the Cannabis Law and related regulations, Petitioner is authorized to take enforcement action and impose sanctions, including but not limited to, issuing a NOV seeking civil penalties,[3] seizure of product, and a cease order. *Cannabis Law §§ 132; 138-a; 9 NYCRR §§133.25 (b) and (d).*

Petitioners are further authorized to issue an immediate sealing order 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. *Cannabis Law §§ 138-b (1) and (3); 9 NYCRR §* 133.25 (f). Factors that determine an imminent threat to public health, safety, and welfare include are set forth in Cannabis Law § 138-b (4) and include but are not limited to documented sales to minors; unlicensed processing of cannabis products at the building or premises; and sales of, or offers to sell, cannabis products not tested or labeled lawfully in accordance with the cannabis law.

Upon finding such an imminent threat, an OTS may be issued only if: no part of the premises to be sealed is used in part as a residence and pursuant to local law or ordinance is zone and lawfully 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 pursuant to the order. *Cannabis Law § 138-b (6).*

Cannabis Law Article 6 §138-b(5) sets forth an additional basis for issuing an order to seal: "Notwithstanding the factors listed in subdivision four of this section and the restriction set forth in paragraph (b) of subdivision six of this section, the office may issue an order to seal with an immediate effective date upon a second or subsequent inspection in which unlicensed activity is confirmed to be continuing more than ten calendar days after a notice of violation and order to cease unlicensed activity was previously issued by the office, provided that the office has also provided notice pursuant to subparagraph (ii) of paragraph (a) of subdivision thirteen of section one hundred thirty-eight-a of this article."

Cannabis Law Article 6 §138-a(13)(ii) states: The board or the office of cannabis management shall, in accordance with the authority otherwise conferred in this chapter, have the authority to: that upon finding a violation of this section by a holder of a license issued by the state liquor authority, a registration issued by the commissioner of taxation and finance to sell cigarettes or tobacco products at retail, a registration issued by the commissioner of taxation and finance to sell vapor products at retail, or a lottery sales agent license issued by the division of lottery, (a) issue a notice of violation to the holder or an agent thereof

[1] 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*).

[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).*

[3] Any person who … offers to sell, or sells cannabis, cannabis products, medical cannabis, or any product marketed or labeled as such, without a registration, license or permit therefor … may be subject to a civil penalty of not more than $10,000 for each day such violation continues and an additional civil penalty 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. *Cannabis Law § 132 (1)(a).*

that clearly states (ii) that the holder's business premises may be subject to an order to seal if upon a subsequent inspection the office finds that the violation has not been abated.

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.

## Findings of Fact

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

1. On October 1, 2026, OCM conducted an inspection of Little Italy Convenience & Beer dba Little Italy 1 Deli located at 682 E. 187th St, Bronx, NY 10458. At that time, a Notice of Violation ("NOV"), Order to Cease Unlicensed Activity ("Cease Order") and an Order to Seal ("OTS") were issued, and the premises were sealed. On October 2, 2026, Respondent requested an emergency hearing, which was held on October 6, 2026[4].

2. Respondent conducts business as Little Italy Convenience & Beer doing business as or under the name of "Little Italy 1 Deli" ("Little Italy"). *Petitioner's Exhibit* ("*Pet. Ex.") A and G, and see Respondent's Exhibit* ("*Res. Ex.") 2*.

3. Petitioner has not issued respondent any license, permit, or registration authorizing respondent to engage in the sale or offers to sell of cannabis, cannabis products, medical cannabis, or cannabinoid hemp.

4. Investigator ("Inv.") O'Bryan testified that the inspection he conducted that day was with Inv. Nunez, Lawson, Supervising Inv. Jenkins and the New York City Police Department.

5. Inv. O'Bryan testified, and the evidence reflects, that Little Italy was open for the public and operating when an undercover Inv. Nunez entered into the business to conduct an undercover controlled purchase.

6. Inv. Nunez entered Little Italy first and spoke to a male behind the sales counter, Mohamedou Aicha (Mr. Aicha), who identified himself as a cashier at Little Italy. Inv. Nunez, and the Mr. Aicha testified that at first the Inv. Nunez requested a product called "Switch," which Mr. Aicha believed to be a tobacco product. Inv. Nunez then advised the Respondent that they didn't want tobacco and asked if they had an eighth, which is a request for cannabis flower. Inv. Nunez also asked how much the cannabis was.

7. Inv. Nunez testified that Mr. Aicha advised them that it was $25.00, to which Inv. Nunez stated how about two for $40.00. Then, Mr. Aicha responded in the affirmative and reached for a vial of cannabis to give to the Inv. Nunez to look at. Inv. Nunez opened the vial and saw that it contained cannabis flower, then requested a second [eighth of cannabis]. While the Respondent was reaching for the second vial, the remaining investigative team entered the store to conduct the inspection.

8. Inv. Nunez further testified twice that they specifically remember Mr. Aicha going left and down to retrieve the cannabis product vial and placing it on the counter. Inv. Nunez stated the vial was "dark purple."

9. After the purchase, Inv. Nunez prompted the rest of the team, including Inv. O'Bryan to enter the store and conduct their inspection. At this time, Inv. Nunez was rushed out of the business premises, and the remaining team completed the inspection. The cannabis vial offered to Inv. Nunez remained on that counter at this time.

10. Inv. Nunez testified that after he was rushed out of the business, he had no knowledge of what

[4] The oral hearing was held on the record on October 6, 2026, but the record held open to allow parties time to submit additional records until end of business on October 7, 2026. The record was closed on October 7, 2026 at 5:00 p.m. It should be noted that the Petitioner tried to submit additional evidence and/or oral arguments after the deadline which were not considered in this decision.

happened next. They were not certain which investigators were present, but believed it to be O'Bryan, Warner, and other personnel.

11. Inv. O'Bryan testified that the initial inspection on October 1, 2026 started at approximately 4:11 pm and ended at approximately 5:30 pm. They further testified that they acted as a recorder during the inspection, and that they came into Little Italy to help complete the initial inspection and take photographs that were offered into evidence[5].

12. Inv. O'Bryan testified that they were on the call during Inv. Nunez's undercover attempt to purchase cannabis and that Inv. Nunez was offered flower for sale. They did not see the undercover purchase, but they heard it.

13. Upon entering the store, Inv. O'Bryan noted that cannabis vials were on the counter at the store.

14. Inv. O'Bryan testified, and the exhibits reflect that Little Italy was used as a retail space and not a residence. *Pet. Ex. B.* Mr. Aicha made no indication that the premises were used as a residence.

15. Inv. O'Bryan described a notebook of business records that they stated were a price list and a ledger [of cannabis sales] of eighths that were found behind the sales counter and near the cash register and that the determination that this was a cannabis price list and ledger is based on their previous experiences and past inspections. *Pet Ex. D2-D11.* Notably, Pet. Ex. D5, D7, D9, and D11 refer to "8ths" as appearing to be part of the sales total on 9/3, 9/4, 9/30, and 10/1, respectively. Specifically on Pet Ex D5 it states:

*Cash – 396 $25 Chris*
*Out - $20 Haroon [2} 8th Chris Perfecta Alein Grabber Chris*
*Debit – 473*
*Total 869 with outs is 914*

When you add all the totals together, 396, $20, $25, 473, the total is $914.00, which appears to be the total income for the day and at least some of the sales identified as coming from eighths. Additionally, on that same page, there appears to be a price list "Haroon" at $20 and "Alien grabbapefectos" at $25.

16. Pet. Ex. D9 there is a chart with the headline that states "st" [starting] numbers, "add" [additional], what is "left", and how much is "sold."

17. Petitioner's Ex. D5, D7, and D9 shows that the Respondent "sold" some items in grams. For example, in the chart in Pet. Ex. D5 it the headline and third column states:

| *ST* | *ADD* | *LT* | *SD* |
|---|---|---|---|
| *8.9* | *2g* | *8.5* | *3.4* |
| | *1m* | | |

When you start with 8.9 and add 2 g plus 1g (1M = 1g) and are left with 8.5, it reflects that the Little Italy sold 3.4 grams of product on that day.

18. Petitioner's Ex. B1-B6, C3 depicts Little Italy selling various items including paper towels, toilet paper, soft drinks, ice-cream, beer, potato chips, candy, lighters, household items, and gums. Notably, Pet. Ex. B5 reflects a number of "Zip Loc" baggies on a top shelf, one of which appears to be opened and being used at the business.

19. Pet.Ex. D9 reflects names of products such as "Haroune (sic)," "Ice" and "Mexico" in their "out" sales.

20. Inv. O'Bryan testified that the entirety of the all the cannabis and cannabis products that were observed and seized during the initial inspection on October 1, 2026 were found in Exhibit C2-3. which totaled about 6 vials: 4 clear, 1 red, and 1 yellow. The voucher, which reflects 1 single unit of cannabis flower is indicative of the Investigator combining all 6 vials of flower into a single bag. *Pet. Ex. E1.*

[5]Regarding Pet. Exhibit C, Inv. O'Bryan testified that he took the photographs of Pet. Ex. C-C3. The remaining photos of Pet. Ex. C, were taken at an inspection that took place later in the day in which Inv. O'Bryan was not present. Petitioner did not offer the remaining exhibits in Pet. Ex. C into evidence.

21. Mr. Aicha testified that they had seven or eight more vials of cannabis other than the cannabis vial he put on the counter.

22. None of the cannabis products seized possessed the necessary NYS state stamp that proves that the product is a licensed NYS product which underwent the necessary New York State testing. Moreover, this product appeared to be cannabis flower in see through plastic vials of various colors with a handmade label on them and none were labeled as being tested in accordance with New York State laws. *Pet Ex. C1-C3.*

23. Mr. Aicha testified that the cannabis vials were for his personal use and that any statement regarding the sale or offers to sell these products was meant to be a joke. They testified that they did not offer to sell cannabis to the investigator during the inspection and had no intention to sell cannabis to the investigator. Mr. Aicha explained that they told the undercover investigator that "I got an eighth" [of cannabis] but "it's mine." They added that they smoke about 10 1/8th vials per day and that in fact, they went to purchase more across the street because the store was closed and they thought they would have the next day off.

24. Mr. Aicha further states, and Inv. O'Bryan and evidence corroborates, that vials of cannabis were found in Mr. Aicha's pockets. Specifically, a video dated October 1, 2026 and timestamped for 4:13 pm shows an unidentified man telling Mr. Aicha to clean out his pockets. *Respondent's Exhibit* ("*Resp. Ex.") 3.* At this time, he removes four vials of cannabis and places them on the counter. *Id.*

25. Res. Ex. 3 also shows an open safe behind the counter and to the left of Mr. Aicha.

26. Mr. Aicha testified, and the exhibits reflect, that Mr. Aicha was provided with paperwork [by the investigator] and that Mr. Aicha signed the certificate of service and provided their identification[6]. *Pet. Ex. A and E2.*

27. Inv. O'Bryan testified that a copy of the NOV, Cease Order, and OTS[7] was given to the employee in charge, Mr. Aicha, who executed the same. Inv. O'Bryan further testified that Mr. Aicha was the cashier in apparent control of the store, that Mr. Aicha signed the NOV/Cease Order/OTS, and that service was completed prior to the premises being secured by the Petitioner. *Pet. Ex. A.* At the time Mr. Aicha signed the certificate of service and received personal service of the NOV/Cease Order/OTS, he was not under arrest.

28. The NOV/Cease Order/OTS contains and investigator's signature and date of October 1, 2026 at the bottom of the page. *Pet. Ex. A.*

29. Little Italy premises was sealed and then a copy of the NOV, cease order, and OTS was posted on the front of the business premises. *Pet. Ex. F1-F5.*

30. Inv. O'Bryan further that Mr. Aicha was warned not to return to the business that evening as the business had been sealed.

31. Inv. O'Bryan stated, and exhibits reflect, that the premises were secured by the front door locks being changed by a contracted locksmith and the store's exterior gate was padlocked. *Pet. Ex. F3.*

32. Mr. Aicha testified that after leaving the store once the October 1, 2026 initial inspection was completed, they were called by their boss who asked them to return to work. Mr. Aicha returned to work that night, and they

[6] It is further noted that Petitioner's OTS, NOV, and Cease Order states that "Service Accepted by: Mohamedou Aichu" then shows a signature. Mr. Aicha's spelling of their last name is "Aicha" is indicated in their Work Authorization document in Pet. Ex. E2. The discrepancy in the spelling of the last name isn't considered as Mr. Aicha admitted accepting service of the [NOV/Cease Order/OTS] on October 1, 2026.

[7] Petitioner's OTS, NOV, and Cease Order are on a single page, 8 x 14 document, that also contains a Certificate of Service and section for an OCM investigator to sign under the penalty of Penal Law § 210.4.

testified that the store was opened and the locks removed at that time. Additionally, Mr. Aicha testified that they did not see any sticker on the storefront and is not aware of who removed the locks or the sticker.

33. Inv. O'Bryan testified, another Investigator drove by Little Italy and saw that the business was open and operating despite the seal order being issued earlier that day. At which point, other investigators returned to the Respondent's business and a second inspection took place.

34. Inv. O'Bryan further testified that the second set of investigators included Inv. Nunez, Inv. Young, Inv. Warner, Inv. Kyley and Supervising Inv. Jenkins. At the second inspection, around approximately 8:00pm – 8:30 pm, Mr. Aicha was arrested.

35. Inv. McKoy testified that they were present during a prior inspection that took place at Little Italy, which is the same address and the same business entity on May 19, 2026.

36. At that time of the May 19, 2026 inspection, the Respondent did not hold any license, permit, or registration authorizing respondent to engage in the sale or offers to sell of cannabis, cannabis products, medical cannabis, or cannabinoid hemp.

37. Inv. McKoy further testified that they were present for an attempt to buy cannabis and upon entry into the business did see two vials of cannabis offered for sale.

38. Inv. McKoy prepared the NOV/Cease Order/OTS and testified that Pet. Ex. G is an accurate depiction of what occurred during the inspection of May 19, 2026 and what was prepared and issued by them that day. [8]

39. The May 19, 2026 NOV/Cease Order/OTS states that "IF NO ORDER TO SEAL ISSUED AND UPON A SUBSEQUENT INSPECTION THE VIOLATION HAS NOT BEEN ABATED, THEN THE PREMISES MAY BE SUBJECT TO AN ORDER TO SEAL." *Pet. Ex. G.*

40. The May 19, 2026 NOV/Cease Order/OTS further states that "on 5/19/26, … I observed the respondent(s) offering/providing/cultivating cannabis, cannabis products, medical cannabis or any product marketed or labeled as such…without an appropriate license or permit, or in which the content of THC is prohibited." *Pet. Ex. G.* The NOV also has a box marked with a check which states that "My observation of cannabis, cannabinoid hemp, cannabinoid hemp extract products, products marketed/labeled and containing cannabis and/or cannabinoid hemp being offered/stored/provided/cultivated/processed which requires licensure, to wit: Cannabis Flower." Id.

41. The exhibits reflect that a copy of the May 19, 2026 NOV, Cease Order, and OTS[9] was personally served on the Respondent by being given to the employee who accepted service as indicated by that employee executing the certificate of service on the same. *Pet. Ex. G.*

42. The NOV/Cease Order/OTS contains Inv. McKoy's signature and date of May 19, 2026 at the bottom of the page. *Pet. Ex. G.*

43. Inv. Castelblanco testified that they were present during a prior inspection that took place at Little Italy, which is the same address and the same business entity on February 3, 2026.

44. At that time of the February 3, 2026 inspection, the Respondent did not hold any license, permit, or registration authorizing respondent to engage in the sale or offers to sell of cannabis, cannabis products, medical cannabis, or cannabinoid hemp.

[8] Petitioner's 5/19/2026 OTS, NOV, and Cease Order are on a single page, 8 x 14 document, that also contains a Certificate of Service and section for an OCM investigator to sign under the penalty of Penal Law § 210.4.

[9] Petitioner's 5/19/26 OTS, NOV, and Cease Order are on a single page, 8 x 14 document, that also contains a Certificate of Service and section for an OCM investigator to sign under the penalty of Penal Law § 210.4.

45. Inv. Castelblanco testified that during the February 3, 2026 inspection that the unlicensed cannabis activity they witnessed included customers walking in and out of the business and cannabis flower behind the sales counter and in possession of the individual located behind the sales counter.

46. Inv. Castelblanco prepared the NOV and Cease Order and testified that *Pet. Ex. H* is an accurate depiction of what occurred during the inspection of February 3, 2026. [10]

47. The February 3, 2026 NOV and Cease Order states that "IF NO ORDER TO SEAL ISSUED AND UPON A SUBSEQUENT INSPECTION THE VIOLATION HAS NOT BEEN ABATED, THEN THE PREMISES MAY BE SUBJECT TO AN ORDER TO SEAL." *Pet. Ex. H*.

48. The February 3, 2026 NOV/Cease Order further states that "on 2/3/26, … I observed the respondent(s) offering/providing/cultivating cannabis, cannabis products, medical cannabis or any product marketed or labeled as such…without an appropriate license or permit, or in which the content of THC is prohibited." *Pet. Ex. H*. The NOV also has a box marked with a check which states that "My observation of cannabis, cannabinoid hemp, cannabinoid hemp extract products, products marketed/labeled and containing cannabis and/or cannabinoid hemp being offered/stored/provided/cultivated/processed which requires licensure, to wit: Cannabis Flower." Id.

49. The exhibits reflect that a copy of the February 3, 2026 NOV and Cease Order[9] was personally served on the Respondent by being given to the employee who accepted service as indicated by that employee executing the certificate of service on the same. *Pet. Ex. H*.

50. The NOV/Cease Order contains the Investigator's signature and a date of February 3, 2026 at the bottom of the page. *Pet. Ex. H*.

51. No testimony was provided regarding whether the Respondent's location had any licenses issued by the State Liquor Authority, a Registration Issued by the Commissioner of Finance to Sell Cigarettes, Tobacco, Vapes, or by the Division of Lottery to sell lotto.

52. Photographic evidence of the interior and the storefront, reflects that the Respondents did have beer and tobacco offered for sale at their business. *Pet Ex. B1 and B4.*

53. Petitioner provided Pet. Ex. J indicating, and Inv. Castelblanco testified, that the NOV/Cease Order/OTS was sent via certified mail to the landlord of the premises. Notably, while the Petitioner did provide a copy of the letters showing that the envelopes were filled out and including a certified mail sticker with return receipt requested form attached to it, but no postmark or tracking information was provided.

54. Respondent indicated that service to the owner of the premises was insufficient because of a failure to send a copy of the NOV/Cease Order/OTS to the owner of the business and submitted Res. Ex. 1 which appears to be a previous request for hearing that indicates the name of the owner of the business and a home address for the party claiming to be the owner of the business. *Res. Ex. 1.* It is noted that the NOVs for May 19, 2026, and October 1, 2026 state that the owner of the business is "unknown." *Pet. Ex. G and A*.

## LEGAL ANALYSIS AND CONCLUSIONS OF LAW

In an administrative proceeding challenging an OTS with immediate effect, the Petitioner bears the burden of establishing its case by a preponderance of the evidence. See Cannabis Law § 17(2); 9 NYCRR § 133.25(f). The burden of proving a fact by the preponderance of the evidence "simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence." Chepilko v. Henry, 722 F. Supp. 3d 329, 343 (S.D.N.Y. 2024), appeal dism. (Feb. 2025), [citations omitted].

[10] Petitioner's 2/03/2026 NOV and Cease Order are on a single page, 8 x 14 document, that also contains a Certificate of Service and section for an OCM investigator to sign under the penalty of Penal Law § 210.4.

To sustain an immediate OTS under the general statutory framework, the Petitioner must establish by a preponderance of the evidence that the Respondent was engaging in unlicensed activity in violation of the Cannabis Law, that such activity posed an imminent threat to public health, safety, and welfare, that no part of the sealed premises is lawfully used as a residence, and that the unlicensed activity constitutes more than a de minimis part of the business activity. See Cannabis Law §§ 138-b(3), (4), (7); 9 NYCRR § 133.25(f).

In the alternative, pursuant to Cannabis Law § 138-b(5), the Petitioner may justify an immediate OTS by proving by a preponderance of the evidence that the Respondent's unlicensed activity was confirmed to be continuing during a second or subsequent inspection, that this subsequent inspection occurred more than ten calendar days after the Petitioner previously issued a Notice of Violation and Cease Order Unlicensed Activity to the Respondent, and that the Petitioner provided the mandatory statutory notice to the owner of the real property pursuant to Cannabis Law § 138-a(13)(a)(ii)..

**Unlicensed Cannabis Activity**

Petitioner has the burden to prove unlicensed activity by a preponderance of the evidence. In this case, four investigators appeared during the hearing on behalf of the Petitioner.

The evidence reflects, that at all times relevant, the Respondent did not possess an adult-use cannabis license, permit, or registration authorizing respondent to engage in the sale or offers to sell of cannabis, cannabis products, medical cannabis, or cannabinoid hemp. In the minutes before the October 1, 2026 inspection, Inv. Nunez entered Little Italy and attempted to purchase cannabis in a controlled buy. After the officer requested the cannabis, the clerk reached over to the left and handed a vial of cannabis to Inv. Nunez to purchase. In contrast, Mr. Aicha stated, and Inv. O'Bryan, and evidence reflects that vials of cannabis were found in Mr. Aicha's pockets. Specifically, a video dated October 1, 2026 and timestamped for 4:13 pm shows an unidentified man telling Mr. Aicha to clean out his pockets. *Resp. Ex. 3*. At this time, he removes four vials of cannabis and places them on the counter. *Id.*

However, a review of the entire record reflects that Inv. O'Bryan did not observe Inv. Nunez's attempted purchase of cannabis, as he was on a call rather than physically present. The record also reflects that the inspection began around 4:11 p.m and ended at approximately 5:30 p.m. A video shows that on October 1, 2026 at approximately 4:13 pm, Mr. Aicha removes cannabis vials from his pockets. In addition to Inv. Nunez stating that he we certain that the clerk reached over to the left and handed a vial of cannabis to Inv. Nunez to purchase, Mr. Nunez testified that he was rushed out of the store once the attempted purchase of cannabis was completed, therefore, it is possible that Inv. Nunez was no longer present in the store when the cannabis was removed from Mr. Aicha's pockets, as indicated in the video. *Res. Ex.3*.

The Respondent further indicated that there were discrepancies as to the color of the vial Inv. Nunez was handed. Inv. Nunez indeed testified to having been handed a "dark purple" vial of cannabis. The record shows that there were no dark purple vials in the photos taken by Inv. O'Bryan during the first inspection that took place on October 1, 2026. It's worth noting that the evidence reflects that Inv. Nunez conducted two separate inspections that day as Inv. O'Bryan testified that Inv. Nunez was present at the second inspection which Mr. Aicha was arrested between 8:00 pm and 8:30 pm that day.

The Respondent's arguments are unpersuasive as there are other numerous reasons for cannabis vials shown being removed from Mr. Aicha's pockets in the video or for the lack of a dark purple vial in the photos taken by Inv. O'Bryan. Perhaps Mr. Aicha had other vials to the left of the counter or was able to put the cannabis vials in his pocket during or after Inv. Nunez was rushed out of the business premises. Additionally, in regard to the missing purple vial, it is possible that Mr. Aicha was able to hide the purple vial at some point in time, or that Inv. Nunez is recalling a purple vial from the second inspection or simply did not take a mental note of the exact color and the vial looked to be purple to them.

Regardless of whether the vials were in Mr. Aicha's pockets, or whether one of the cannabis vials Mr. Aicha handed to Inv. Nunez was purple, is irrelevant to whether the Respondent, Little Italy was actively participating in unlicensed cannabis activity at the time of the October 1, 2026 inspection, and moreover, such evidence is not sufficient to overcome the evidence and credibility of Inv. Nunez's and Inv. O'Bryan's testimony.

When Inv. Nunez entered Little Italy, he spoke to Mr. Aicha, who identified himself as a cashier at Little Italy. Inv. Nunez requested a product called "Switch" which that cashier believed to be a tobacco product.

Inv. Nunez then advised the Respondent that they didn't want tobacco and asked if they had an eighth, which is a request for cannabis flower. Inv. Nunez also asked Mr. Aicha how much the cannabis was.

Inv. Nunez testified that Mr. Aicha advised him it was $25.00, to which Inv. Nunez stated how about two for $40.00. Then, Mr. Aicha responded in the affirmative. Mr. Aicha grabbed the first cannabis flower vial and presented it to Mr. Aicha, and as Mr. Aicha reached for the second vial, the remaining investigative team entered the store to conduct the inspection. Inv. Nunez also testified twice that they were certain that Mr. Aicha reached down to the left and grabbed the [cannabis] vials to hand to him. Notwithstanding Inv. Nunez's certainty, and the video reflecting an open safe to the left of Mr. Aicha, regardless of where the product came from, I find that Mr. Aicha showed and offered for sale the cannabis vials to Inv. Nunez voluntarily.

Additionally, Inv. O'Bryan testified that the entirety of the all the cannabis and cannabis products that were observed and seized were found in Exhibit C2-3. which totaled about 6 vials: 4 clear, 1 red, and 1 yellow. The voucher, which reflects 1 single unit of cannabis flower is indicative of the Investigator combining all 6 vials of flower into a single bag. Pet.Ex. D9 reflects names of such as "Haroune (sic)," "Ice" and "Mexico" in their out sales. None of the cannabis products seized possessed the necessary NYS state stamp that proves that the product is a licensed NYS product which underwent the necessary New York State testing. Moreover, this product appeared to be in see through plastic vials of various colors with a handmade label on them and none were labeled as being tested in accordance with New York State laws. *Pet_Ex. C1-C3.*

As if the former weren't sufficient to prove by a preponderance of the evidence that unlicensed cannabis activity took place at Little Italy on October 1, 2026, Inv. O'Bryan described a notebook of business records that he stated was a price list and a ledger [of cannabis sales] of eighths that were found behind the sales counter and near the cash register based on his previous experiences and past inspections. Pet Ex. D2-D11. Notably, Pet. Ex. D5, D7, D9, and D11 refer to "8ths" as appearing to be part of the sales total on 9/3, 9/4, 9/30, and 10/1, respectively. Specifically on Pet Ex D5 it states:

*Cash – 396 $25 Chris*
*Out - $20 Haroon [2}8th Chris Perfecta Alein Grabber Chris*
*Debit – 473*
*Total 869 with outs is 914*

When you add all the totals together, 396, $20, $25, 473, the total is $914.00.

Notwithstanding that the store has a cash register, Pet's Ex. B8, to keep track of its purchases by rendering a paper ledger unnecessary, this appears to be the total income for the day and at least some of the sales identified as coming from eighths and further indicates these sales took place on at least four occasions - 9/3, 9/4, 9/30, and 10/1. Additionally, on that same page, there appears to be a price list "Haroon" at $20 and "Alien grabbapefectos" at $25.

Further, Pet. Ex. D9 shows a chart with the headlines as follows: "st" [starting] numbers, "add" [additional], what is "left", and how much is "sold." Petitioner's Ex. D5, D7, and D9 appears to have "sold" some items in grams. For example, in the chart in Pet. Ex. B5 it the headline and third column states:

| *ST* | *ADD* | *LT* | *SD* |
|---|---|---|---|
| *8.9* | *2g* | *8.5* | *3.4* |
| | *1m* | | |

When you start with 8.9 and add 2 g plus 1g (1M = 1g) and are left with 8.5, it reflects that Little Italy sold 3.4 grams of product. When you consider that beer, ice-cream and candy are not sold in grams, but cannabis products are, and you take this information along with the fact that Pet. Ex. B5 reflects a number of "Zip Loc" baggies on a top shelf, one of which appears to be opened and being used at the business, and that cannabis was found on-site and offered for sale to Inv. Nunez. it reflects that it is more likely than not that unlicensed cannabis activity occurred at Little Italy.

Finally, Mr. Aicha's testified that these vials were for his personal use and that any statement regarding the sale or offers to sell these products was meant to be a joke is absurd and for all of these reasons and in spite of Mr. Aicha's testimony, I find that active cannabis sales were more likely than not occurring at Little Italy, that the Respondent is responsible for the activities of their employees, and that OCM's search was

valid and the seizure legal. Finally, based on the testimony and the totality of the evidence in the record, not only do I find that unlicensed cannabis activity occurred, including unlicensed sales and offers to sell cannabis and cannabis products occurred at Little Italy, in violation of Cannabis Law §§ 125 and 132, I further find that unlicensed cannabis activity occurred not only on October 1, 2026, which was the date of the most recent inspection, but more likely than not unlicensed cannabis activity occurred on September 3, 2026 September 4, 2026 and September 30, 2026.

**Continued Unlicensed Activity Ten Days After Issuance of Notice of Violation and Order to Cease Unlicensed Activity**

Pursuant to Cannabis Law § 138-b(5), the Petitioner may justify an immediate OTS by establishing by a preponderance of the evidence that the Respondent's unlicensed activity was confirmed to be continuing during a second or subsequent inspection; this subsequent inspection occurred more than ten calendar days after the Petitioner previously issued a NOV and Cease Order to the Respondent; and the Petitioner provided the statutory notice in accordance with Cannabis Law § 138-a(13)(a)(ii).

Based on the testimony and the totality of the evidence in the record it has been established that unlicensed cannabis activity occurred at Little Italy as indicated above, including unlicensed sales and offers to sell cannabis and cannabis products occurred in violation of Cannabis Law §§ 125 and 132 and Petitioner has met it burden in that regard.

Notwithstanding that the evidence reflects that the business was padlocked after the October 1, 2026 initial inspection was completed, and Mr. Aicha testified that later that same day their boss asked them to return to work, and then found the store was opened and the lock removed, Petitioner must still prove that continuing unlicensed activity occurred more than ten calendar days after the Petitioner previously issued a NOV and Cease Order to the Respondent.

Inv. McKoy prepared the NOV, Cease Order, and OTS, which contains their signature and date of May 19, 2026 at the bottom of the page, and testified that Pet. Ex. G is an accurate depiction of what occurred during the inspection of Little Italy on May 19, 2026 and what was prepared and issued by them that day. At that time, the Respondent did not hold any license, permit, or registration authorizing respondent to engage in the sale or offers to sell of cannabis, cannabis products, medical cannabis, or cannabinoid hemp.

Inv. McKoy testified that they were present for an attempt to buy cannabis and upon entry into the business did see two vials of cannabis offered for sale. The NOV, Cease Order, OTS further shows, and corroborates Inv. McKoy's testimony regarding unlicensed cannabis activity at the Respondent's business on May 19, 2026, as it states that "on 5/19/26, … I observed the respondent(s) offering/providing/cultivating cannabis, cannabis products, medical cannabis or any product marketed or labeled as such…without an appropriate license or permit, or in which the content of THC is prohibited" and that "My observation of cannabis, cannabinoid hemp, cannabinoid hemp extract products, products marketed/labeled and containing cannabis and/or cannabinoid hemp being offered/stored/provided/cultivated/processed which requires licensure, to wit: Cannabis Flower." Id.

Additionally, Inv. McKoy's testimony, and exhibits show, that a copy of the May 19, 2026 NOV, Cease Order, and OTS was issued to the Respondent on May 19, 2026 by being given to the employee who accepted service as indicated by that employee executing the certificate of service and Inv. McKoy's signature and the May 19, 2026 date at the bottom of the page.

Inv. Castelblanco testified that they were present during a prior inspection that took place at Little Italy, which is the same address and the same business entity on February 3, 2026. At that time of the February 3, 2026 inspection, the Respondent did not hold any license, permit, or registration authorizing respondent to engage in the sale or offers to sell of cannabis, cannabis products, medical cannabis, or cannabinoid hemp.

Inv. Castelblanco testified that during the February 3, 2026 inspection that the unlicensed cannabis activity they witnessed included customers walking in and out of the business and cannabis flower behind the sales counter and in possession of the individual located behind the sales counter. The NOV and Cease Order, further shows, and corroborates Inv. Castelblanco's testimony stating that "on 2/3/26, … I observed the respondent(s) offering/providing/cultivating cannabis, cannabis products, medical cannabis or any product marketed or labeled as such…without an appropriate license or permit, or in which the content of THC is prohibited." Pet. Ex. H. The NOV also has a box marked with a check which states that "My observation of cannabis, cannabinoid hemp, cannabinoid hemp extract products, products marketed/labeled and containing cannabis and/or cannabinoid hemp being offered/stored/provided/cultivated/processed which requires licensure, to wit: Cannabis Flower." Id.

Additionally, Inv. Castelblanco's testimony, and exhibits show, that a copy of the February 3, 2026 NOV and Cease Order, was issued to the Respondent on February 3, 2026 by being given to the employee who accepted service as indicated by that employee executing the certificate of service and the investigator's signature and the February 3, 2026 date at the bottom of the page.

The testimony of Inv. O'Bryan and Mr. Aichu, along with the October 1, 2026, OTS which contains and investigator's signature and date of October 1, 2026 at the bottom of the page shows that the October 1, 2026 OTS was issued to the Respondent on October 1, 2026.

Based on the foregoing facts, I find that Petitioner has met its burden as both investigators testified, and the evidence in the NOV corroborates their testimony, that they confirmed unlicensed cannabis activity on February 3, 2026 and May 19, 2026, respectively. Moreover, the record established that unlicensed cannabis activity occurred at Little Italy on October 1, 2026, as well as September 3, 2026 September 4, 2026 and September 30, 2026, as indicated above. Because October 1, 2026 is 240 days and 135 days, respectively, after the Petitioner previously issued the corresponding NOVs/Cease Orders to the Respondent on February 3, 2026 and May 19, 2026, I find that the unlicensed cannabis activity to be continuing more than 10 days after the issuance of the February 3, 2026 and May 19, 2026 NOVs/Cease Orders.

The final element that the Petitioner must prove is whether the Petitioner satisfied the statutory notice in accordance with Cannabis Law § 138-a(13)(a)(ii).

It is noted that no testimony was provided regarding whether the Respondent's location had any licenses issued by the State Liquor Authority, a registration issued by the Commissioner of Finance to sell cigarettes, Tobacco, Vapes, or by the Division of Lottery to sell lotto. However, photographic evidence of the interior and the storefront reflects that the Respondents did have beer and tobacco offered for sale at their business. *Pet Ex. B1 and B4.* That being said, evidence of sales by the Respondent is not necessarily indicative of a license to sell those products. In fact, it appears based on their lack of a cannabis license and their repetitive sales of cannabis despite the issuance of multiple NOVs and Cease Order, and a subsequent sealing order, that this Respondent has no respect for compliance with the law. Moreover, Respondent never mentioned whether it had any such license.

Nonetheless, both NOVs/Orders to Cease issued to the Respondent on February 3, 2026 and May 19, 2026, respectively, state that "IF NO ORDER TO SEAL ISSUED AND UPON A SUBSEQUENT INSPECTION THE VIOLATION HAS NOT BEEN ABATED, THEN THE PREMISES MAY BE SUBJECT TO AN ORDER TO SEAL." *Pet. Ex. G and H*. Therefore, regardless of whether such license exists, I find that this element of the statute has been satisfied by the statement contained in the corresponding NOVs/Cease Order.

In conclusion, I find that OCM showed by a preponderance of the evidence that Respondent was selling cannabis products without the appropriate license, the Respondent's unlicensed activity was confirmed to be continuing during a second and third subsequent inspection; the October 1, 2026 subsequent inspection occurred more than ten calendar days after the Petitioner previously issued February 3, 2026 and May 19, 2026 NOVs and Orders to Cease to the respondent; and the Petitioner, although not required to provide notice, did provide the statutory notice in accordance with Cannabis Law § 138-a(13)(a)(ii), thereby satisfying all elements of the law related to an order to seal.

## **Service**

Respondent contends that the OTS should be dismissed for improper service. Respondent asserts that

OCM committed a fatal jurisdictional error by failing to put forth evidence that the OTS was mailed to the Respondent or to the Landlord[11]. Specifically, Respondent argues service was defective because the Office failed to mail the NOV/OTS to the business owner's residence—disclosed in a prior hearing request (*Res. Ex. 1*)—and failed to prove timely mailing to the landlord under 9 NYCRR 133.25(g)(2). Notably, the May 19, 2026 and October 1, 2026 NOVs listed the business owner as 'unknown.'

The Respondent's arguments are unpersuasive and unsupported by law. In an administrative proceeding, the question of proper service is whether the notice is reasonably calculated, under all circumstances, to make the parties aware of the proceeding and afford them an opportunity to be heard (*Ruffin v. Lion Corp*., 15 N.Y.3d 582, 583 [2010]; *Raschel v. Rish*, 69 N.Y.2d 694, 696 [1986]; *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 314 [1950]). While a party's appearance at a hearing should not be deemed to satisfy service requirements, here there appears to be no dispute that service of the OTS was effectuated on Respondent. In fact, there is no allegation that Respondent did not receive a copy of the sealing order or was otherwise unaware that the premises were inspected and sealed. Concededly, two methods of service were employed. Personal service was effectuated on Mr. Aicha, a person of suitable age and discretion who identified themselves as an employee in apparent control of the premises. The certificate of service reflects their signature. Additionally, Petitioner established that the NOV and OTS were conspicuously posted on the exterior of Little Italy. While Respondent contends that the Office was aware of the business owner's home address because a prior administrative hearing request included this information, and therefore the Petitioner should have mailed a copy of the NOV/OTS in accordance with the regulation, I find this argument unpersuasive. Administrative efficiency and the urgent public safety mandates of the Cannabis Law require swift action when unlicensed activity is detected. Although Petitioner maintains certain procedures in the normal course of an investigation—such as checking the Department of State for alternate addresses or searching its internal database for a cannabis or hemp license—requiring Petitioner to cross-reference historical databases or search every document in every file to find an off-site alternate address would impose an unduly burdensome requirement and would severely frustrate the agency's regulatory purpose.

Furthermore, while there is no evidence that Petitioner mailed a copy of the OTS to the business owner, there is also nothing in the record to confirm that Petitioner was provided with an alternate address for Respondent by any reasonable means, such as from the employee during personal service or through standard investigative searches. (See Cannabis Law § 138-b [2]; 9 NYCRR § 133.25 [2]). Therefore, Respondent's reliance on the Office's failure to search the entirety of its records for alternate addresses to overcome the service methods that were effectuated is not persuasive, particularly where no allegations of prejudice have been asserted or demonstrated. see, e.g., *Buscher v. Ehrich*, 12 A.D.2d 887, 888 [1961]; see also *Matter of Shopsmart Convenience dba The Garden v. OCM*, Insp. 207 2024 0717 0025 [CCB, November 2024]; *Matter of 7th Avenue Organic v. OCM*, Insp. 102202406180011, [CCB, March 2025]; *Matter of Frees' Ice Cream Novelties LLC v. OCM*, Insp. 134 2625 0212 0093 [CCB, February 2026]). 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*.

Accordingly, the Petitioner was under no legal obligation to mail the October 1, 2026 NOV/Cease Order/OTS to the business owner's home address, and the service executed upon the cashier on-site is sustained as legally sufficient.

Respondent also asserts that the Office's failure to provide notice to the Landlord pursuant to 9 NYCRR 133.25(g)(2) is also a fatal jurisdictional error. In this case, there is evidence indicating that the NOV/OTS was prepared to be sent to the landlord—including a photograph of the mail and the credible testimony of Inv. Castelblanco. However, the investigator did not personally complete the mailing, as it was

[11] Respondent cited *Office of Cannabis Management v. Kassim d/b/a Blue Cloud Plus Corp.*, NYS Office of Administrative Hearings, Index No. OAH2026-0020 (Sept. 18, 2026); however, this case is distinguishable from the instant matter as the defect could not be viewed as technical in light of personal service not being effectuated and respondent saying he learned about the hearing from other (where party in apparent control of the business was under arrest at the time that personal service was attempted. In this matter, personal service was successfully completed on Respondent's employee prior to his arrest several hours later.)

not part of their job duties. Furthermore, Petitioner provided no actual proof of mailing within five days, such as a postmark on the certified mail receipt or a tracking document from the United States Postal Service (USPS). Consequently, while an adjudicator might find by a preponderance of the evidence, that the mailings were sent in the normal course of business in accordance with the regulations, an adjudicator could conversely find that Petitioner failed to meet its burden. This is especially true when the testifying witness was not directly involved in the mailing process, and Petitioner failed to provide objective proof of mailing—such as a postmark or tracking information—which is easily obtainable. In any event, any failure to provide service to the landlord is irrelevant here, as it did not cause any prejudice to the Respondent and does not invalidate the service made upon Respondent. Because this defense is personal to the property owner, Respondent lacks standing to assert a jurisdictional challenge based on improper service on behalf of a third party. Indeed, the Cannabis Control Board has held that 'the defense of lack of jurisdiction based on improper service is personal in nature and may only be raised by the party improperly served' (*Matter of Z-Snacks LLC*, INSPECTION NO.: 102202406050002], at [Page 9], *adopted by* CCB [2025-11] [citing *Lehman Bros. Bank v Hickson*, 186 AD3d 1348 [2d Dept 2020]; *Rhoe v Reid*, 166 AD3d 919 [2d Dept 2018]]). Consequently, Appellant cannot raise a challenge based on improper service on behalf of another party, here the real estate owner."

It is within the trier of fact's discretion to determine whether a defect in service is so substantial as to divest the tribunal of jurisdiction (see *Conrey v. Tellone*, 151 A.D.3d 655, 656 [2017]). "In deciding whether a defect in service is merely technical, courts must be guided by the principle of notice to the defendant—notice that must be '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 578, 582–83 [2010], quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 [1950]).

While Petitioner failed to mail the NOV/OTS to Respondent's home address (which he had provided on their prior hearing request) and may (or may not) have failed to meet its burdens to mail the same to the landlord within five days of service, these defects are technical. They did not prejudice Respondent's ability to request a hearing in a timely manner, retain counsel, and be heard on the merits. Personal service in this matter not only made Respondent aware of their rights and the allegations against their business, but it also afforded them sufficient time to request an emergency hearing and retain an attorney. As such, I am denying Respondent's application to dismiss the OTS for lack of jurisdiction.

## DETERMINATION

**WHEREFORE, IT IS HEREBY DETERMINED** that petitioner established by a preponderance of the evidence that the respondent was engaging in unlicensed activity in violation of the cannabis law and that such conduct was continuing for more than ten calendar days after the Petitioner previously issued the February 3, 2026 and May 19, 2026 NOVs and Orders to Cease to the respondent; and the Petitioner did provide the mandatory statutory notice in accordance with Cannabis Law § 138-a(13)(a)(ii), and thereby satisfying all elements of the law related to an order to seal;

**WHEREFORE, IT IS HEREBY ORDERED** that the order to seal, issued to respondent Little Italy Convenience & Beer dba Little Italy Deli 1, is hereby extended one-year from the date of this decision, pursuant to Cannabis Law Article 6 § 138-b (9).

DATED: October 14, 2026

Laura Krzeminski

Laura Krzeminski
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).*

Submitted to:
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Respondent Little Italy Convenience & Beer
Sheila Wagner, Cannabis Control Board Executive
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Advisor