



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Frank Tamberino, Esq. 592 Pacific Street 1st Floor BROOKLYN, NY 11217	Summons No: 0215092305 et al. (1 Summons) DEPT OF FINANCE, -against- TO THE BUSINESS OPERATING AT 3 Hearing Date: 07/29/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$10,000.00

Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
0215092305	Sustained	06/10/2025	39-06 108th Street Queens

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	ABE1	AC 7-551(A)	Sustained	\$10,000.00

Findings of Fact & Conclusions of Law

The hearing was conducted on July 29, 2025, by Court Call. Petitioner appeared through counsel, Anthony Pedone, Esq. (ceuoath@nypd.org). Respondent, the business operating at 39-06 108th Street, Queens dd/a BU Convenience, appeared through counsel, Frank Tamberino, Esq. of Nacmias Law (michael@nacmiaslaw.com). Respondent declined to request the presence of the issuing officer. Neither party presented witnesses.

The summons, issued on July 25, 2024, alleges a violation of Administrative Code 7-551(a): Cannabis violation by a place of business. The sworn summons was read into the record. The summons avers that cannabis and cannabis marketed products were observed for sale at the cited location without a valid cannabis license.

deny that the cited address is correct. Respondent has presented no evidence to show that it was not operating at 39-06 108th Street in Queens as BU Convenience. As can be seen in Exhibit 6b, page 4, there is clearly signage on the store identifying it as BU Convenience. As Petitioner argues, the title BudUp NYC which appears on the printed individual menus, which prominently list BU Convenience at the top, appears to be merely an online or Instagram handle used by Respondent and does alter my determination. Respondent's store located at 39-06 108th Street in Queens is clearly doing business as BU Convenience and Respondent is properly identified in the instant summons.

I credit the sworn summons and evidence submitted by the Petitioner. Pursuant to 48 RCNY 6-12(b) a summons affirmed under penalty of perjury is prima facie evidence of the facts stated therein. I find that Petitioner's Exhibits 6a and 6b merely support the statements made in the summons. Respondent argues that the evidence produced did not meet Petitioner's Burden as there was no hint of actual sale or marketing for sale to the public seen in that evidence. However, Respondent failed the address that it is also a violation of the Code for Respondent to keep Cannabis with the intent to sell. I find that Petitioner has met its burden of showing that items discovered and seized on June 10, 2025, were in fact cannabis products which Respondent kept with the intent to sell unlawfully. I credit that the cited premises were open for business at the time of inspection. As can be seen at pages 6 and 7 of Exhibit 6B there were no items visibly offered for sale at the cited premises aside from the limited selection of cannabis paraphernalia openly displayed in two small display cases below the front counter. It is illogical to conclude that any business in NYC could survive selling only those products seen obviously offered for sale. The evidence produced by Petitioner of extensive processing of cannabis on the premises, sale prices listed on storage drawers and bags of cannabis flower, extensive amounts of pre-rolls, including one pre-roll discovered in the display case below the front counter, together with price menus corresponding to labeling on discovered packages of cannabis flower, meets Petitioner's burden of showing that Respondent kept the seized Cannabis with the intent to sell it unlawfully.

The fact that Petitioner has met its initial burden of establishing a prima facie case through the evidence they submitted means that the burden has now shifted to the Respondent to rebut that prima facie case by a preponderance of evidence. Respondent has failed to do so. In fact, Respondent has failed to offer any competent evidence to rebut Petitioner's prima facie case. Respondent offered no sworn testimony that the cannabis discovered by Petitioner was in fact for personal use of any given individual, being stored for future sale, or present for any other reason than that Respondent intended to sell that cannabis unlawfully. Arguing that, in the absence of actual sales or sufficient proof of marketing for sale to the public, the truly substantial amount of cannabis discovered at the cited premises could merely have been stored at the location for some nebulous future reason is not evidence of such.

I find, as well, that Petitioner has met its burden of showing that Respondent's activities posed an imminent threat to public health, welfare, and safety, thereby supporting the issuance of the instant closure order. Petitioner has established that Respondent kept cannabis, which was not properly tested or labeled, with the intent to sell unlawfully within prohibited proximity to a school. Petitioner has also established that Respondent engaged in the unlawful processing of cannabis at the cited location. Respondent has failed to rebut or even address the evidence produced by Petitioner regarding these issues.

Accordingly, the instant summons is sustained, and I recommend that the Order of Closure issued in this matter be continued.

OATH's decision regarding the SUMMONS is a final administrative determination and cannot be appealed at OATH or to the NYC Sheriff (See Administrative Code section 7-552(b)(2)). OATH's recommendation regarding the SEALING ORDER is subject to a final determination by the NYC Sheriff within four business days after the conclusion of the hearing in this case. Respondent may contact the NYC Sheriff to make any submission with respect to the SEALING ORDER.



07/29/2025

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Antonio Cavallaro, Hearing Officer

Date