



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Michael Nacmias, Esq. - Nacmias Law Firm 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 0208163762 et al. (1 Summons) DEPT OF FINANCE, -against- AK CONVENIENCE MARKET INC Hearing Date: 01/21/2026 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
0208163762	Sustained	03/06/2025	3360 B ATLANTIC AVENUE Brooklyn

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

Telephone hearing held on January 21, 2026.

Respondent AK CONVENIENCE MARKET INC appeared by Attorney FRANK TAMBERINO, Esq.

Mr. Tamberino indicated his email address for receipt of the decision is ftamberino@nacmiuslaw.com.

NYC Sherriff's Department/ Department of Finance, and NYPD Attorney Kiana Smith Esq. appeared for Petitioner.

The summons alleges a violation of NYC Administrative Code 7-551(a), unlicensed sale of cannabis. The summons alleges that on 3/6/25 at 13:19 at 3360B ATLANTIC AVENUE, Brooklyn, the Sheriff's Issuing Officer saw cannabis and cannabis marketed products for sale without a valid retail license. The first hearing date noted was May 8, 2025.

Ms. Smith acknowledged that the summons did not have a sealing order and Petitioner was not pursuing one.

Ms. Smith submitted into the record P1-P11, and Mr. Tamberino objected to the evidence generally as it was not short, concise or particularized. I accepted the evidence into the record over Mr. Tamberino's objection, as the rules of evidence at OATH allow for this evidence to be admitted, they contain caselaw, texts of relevant law, and are relevant and specific to the summons. There is no length cutoff and voluminous evidence is not a reason for it to not be admitted.

Petitioner's Case-in-Chief:

In support of the violation, Petitioner submitted a copy of the front and back of the summons, Office of the City Sheriff Order to Cease Unlicensed Activity & Seizure Notice, DOF Seizure Receipts, NYPD Property Clerk's invoices for controlled substance, photographs taken on the date of inspection, NYS Office of Cannabis Management Directory of 220 Licensed Adult-Use Cannabis Dispensaries, Table of Authorities, Memorandum of Law, Sheriff's Cover Sheet, Service Certification, Tobacco Inspection Form, and an Exhibit List (marked Petitioner's Exhibits P1-P11). Ms. Smith indicated the OCM Directory was outdated and submitted into the record the updated list containing 421 dispensaries.

Ms. Smith requested OATH sustain the summons issued against Respondent located at 3360B Atlantic Avee for two reason: Respondent was permitting the sale of cannabis without the appropriate license, and operation of the business poses an imminent threat to public welfare.

Ms. Smith argued Respondent permitted sale of cannabis at the place of business without the required registration, permit or license to do so, in violation of the law.

Ms. Smith argued under 125 of the cannabis law, a business must obtain a CAURD license prior to the sale of cannabis. Ms. Smith argued there are approximately 421 CAURD licenses issued by NYS Office of Cannabis Management (P6) and Respondent is not located on that list. Ms. Smith argued Respondent is not allowed to sell cannabis in any capacity.

Ms. Smith referred to P5, and noted there was cannabis found in black plastic bags, displayed on the countertop with cannabis flower, prerolls, opened cannabis. Even with a CUARD license, these products were not labeled properly. Ms. Smith argued none of these products have the proper NYS labeling on them. Ms. Smith noted there were blue KUSH and Stizzy boxes with the CA label. Ms. Smith referred to the table of authorities, page 54 which note the required labeling.

Ms. Smith noted 2 lbs of THC flower, and .4 lbs of THC vapes were seized.

Respondent's Rebuttal:

Mr. Tamberino argued this hearing is specifically for the marketing of cannabis, not for the possession. Mr. Tamberino argued Petitioner has not presented operation of sale or marketing of cannabis here. Mr. Tamberino argued this material was discovered in a black plastic, unmarked bag. Mr. Tamberino argued the product was taken out of the bag and placed on the counter for photographs to be taken. Mr. Tamberino argued this is a repeated NYPD practice for these types of violations. Mr. Tamberino argued the evidence card notes "behind sales counter." Mr. Tamberino argued in Petitioner's argument and description of argument, the product was found in a bag behind the counter and the photograph was taken to create the impression that the product was for sale. Mr. Tamberino argued this is a dishonest attempt by the officers to create the impression that the products were marketed for sale. Mr. Tamberino argued this may have been in the possession of someone at the store, but in a black, opaque unmarked bag, there is no credible assumption that the products were for sale. Mr. Tamberino moved to dismiss.

Closing:

Ms. Smith argued that the sign above the store notes "smoke shop, vape, hookah" so it is a reasonable assumption they sell smoke-related product including cannabis. Ms. Smith argued in photograph 1 of page 1, the black plastic bag is seen behind the counter so it is reasonable to assume the premises is selling cannabis and someone can just go to the store assuming they sell cannabis or through word of mouth and the plastic bag can be accessed with the cannabis products. Ms. Smith acknowledged everything was moved to the counter to take a picture, but without spreading out the product on the countertop, one would not be able to take a picture of the products through the black plastic bag.

Mr. Tamberino argued that Petitioner puts forth many tenuous assumptions as a smoke shop selling accessories for cannabis smoking. Mr. Tamberino argued something on the shelf behind the counter in an unmarked bag is another tenuous assumption.

Relevant Law:

Section 125(1) of the NYS Cannabis Law prohibits anyone to "...cultivate, process, distribute for sale or sell at wholesale or retail or deliver to consumers any cannabis, cannabis product, medical cannabis or cannabinoid hemp or hemp extract product, or any product marketed or labeled as such, within the State without first obtaining the appropriate registration, license or permit..."

The charged section of law herein, NYC Administrative Code 7-551(a), incorporates section 125(1) of the NYS Cannabis Law and subjects' businesses or individual business owners to civil penalty for violation of said section.

Findings:

I credit the issuing officer's sworn statement and Petitioner's evidence established a violation. Per § 6-12(b) of Title 48 of the Rules of the City of New York (RCNY), the summons is affirmed under penalty of perjury by the officer who wrote the summons. Thus, Petitioner's case can be established without the appearance of the Issuing Officer. Lab tests are not required to confirm that the products have THC or cannabis because Respondent was selling products "marketed" as cannabis.

Here, Petitioner's evidence speaks for itself and supports the fact that there were items for sale within Respondent's establishment deemed to be cannabis product (see P5); that the Respondent did not have a valid license to sell cannabis products (see P6). The credible evidence shows Respondent was selling untested and not-properly-labeled cannabis from black plastic bags hanging behind the counter. Here, I found Petitioner's evidence very credible. Respondent failed to present any evidence or witness to refute the facts or in support of a legal defense to the charge.

I did not find Mr. Tamberino's arguments persuasive. Respondent cannot escape liability by claiming no cannabis was observed offered for sale at the premises when there are plastic bags hanging behind the countertop, full of cannabis products. Respondent's argument that the cannabis products were not for sale because they were not on full display fails because Respondent's sale of illegal cannabis products would only be possible if it were not on full display. This scheme is clear and the argument that there was no cannabis being sold is incredulous.

Respondent must be held accountable.

Based on the foregoing, I find that Petitioner has established a violation of NYC Administrative Code 7-551(a) in that the un rebutted evidence submitted establishes that the Respondent business sold and marketed products as cannabis without a license.

The allegation has not been rebutted and I find that Petitioner has proven its case by a preponderance of the evidence that the cited cannabis was being sold and offered for sale illegally. I find that Respondent did not establish a defense to the factual allegations in that there was clearly cannabis being sold at the premises.

I find that the summons itself does not allege the number of days of illegal selling. Therefore, the summons is SUSTAINED, and a \$10,000 penalty is imposed.

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)).

Respondent's email is: ftamberino@nacmiaslaw.com

Petitioner's email: kiana.smith@nypd.org



01/21/2026

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Joseph Fan, Judicial Hearing Officer

Date