



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: 0215098410 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
0215098410	Sustained	04/15/2025	3360B 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 4/15/25 at 14:53 at 3360B ATLANTIC AVENUE, Brooklyn, the Sheriff's Issuing Officer saw cannabis and cannabis marketed products for sale without a valid retail license cease and desist was issued. The first hearing date noted was June

18, 2025.

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

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, Sheriff's Inspection Summary, 2 Service Certifications, and an Exhibit List (marked Petitioner's Exhibits P1-P12). 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 Smith indicated the OCM Directory was outdated and submitted into the record the updated list containing 421 dispensaries.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 Ave for two reasons: 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 on page 4, behind the countertop, there are different baggies of cannabis flower for sale. Ms. Smith noted this is the second summons within a two month timeframe, so it is not like Respondent was not placed on notice and cannabis was still found. Ms. Smith noted on the last page of P5, the summons was posted on the front of the store, and in the display, there was an "open" sign with a marijuana leaf, which would indicate to customers that the location sells cannabis.

Respondent's Rebuttal:

Mr. Tamberino argued Respondent denies the violation and argued no cannabis products were for sale or observed for sale. Mr. Tamberino argued cannabis products were not displayed in any way, and therefore they can't be marketed for sale. Mr. Tamberino argued the products could not be seen from the front of the counter, displayed in a visible way. Mr. Tamberino argued the reason why Petitioner reaches for tiny details like the marijuana leaf on the front of the store is because the argument is not strong enough. Mr. Tamberino argued in tobacco cases, there will be an undercover officer or agent that purchases the product to show something was being marketed for sale and just because NYPD did not expend the resources to do that, does not mean assumptions can just be made here. Mr. Tamberino argued the photographs otherwise do not show anything except non-meritorious things such as a receipt for a drink. Mr. Tamberino moved to dismiss.

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 behind the counter, even if not in full view of the public and customers.

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 a number of cannabis products behind the countertop. 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. Here, the cannabis products were easily accessible by the salesperson. If these products were for personal use, it would not explain why they were in the actual countertop display, next to the other non-cannabis products that are offered for sale. Further, the amount of cannabis products seized (P4 shows 6.4 lbs of THC flower, 1b of THC edibles, and 2.4 lbs of THC vapes) to be more than a de minimis amount or for personal use. 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

unrebutted evidence submitted establishes that the Respondent business sold and marketed products as cannabis without a license.

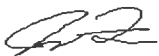
The allegation has not been rebutted and I find that Petitioner has proven its case by a preponderance of the evidence that the cited cannabis was being sold and offered for sale illegally. I find that Respondent did not establish a defense to the factual allegations in that there was clearly cannabis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



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Joseph Fan, Judicial Hearing Officer

Date