

At I.A.S. Part ⁷² of the Supreme Court of the State of New York, held in and of the county of New York, at the County Courthouse thereof, located at 360 Adams Street, Brooklyn, New York, on the 15th day of December, 2023.

Present:
Hon. Debra Silber JSC for J. Barr
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

NEW YORK STATE OFFICE OF CANNABIS
MANAGEMENT,

Petitioner,

-against-

BIG CHIEF SMOKE SHOP CORP.; CORNER PLUG CORP.; AHMED ELDWEIK; the property located at 7323 3RD AVENUE, BROOKLYN, NY 11209 bearing block number 05918 and lot number 0001; HAMILTON EMPIRE REALTY CORP. as owner of the property located at 7323 3rd Avenue, Brooklyn, NY; "John Doe" and "Jane Doe," fictitiously named parties, true names unknown, the intended being the owners, lessors, lessees, operators, or occupants of the commercial premises operating as "Big Chief Smoke Shop," located within the building at 7323 3rd Avenue, Brooklyn, NY; and any person claiming any right, title, or interest in the real property that is a subject of this proceeding,

Respondents.

Index No.: 967/23

Hon.

~~EX PARTE~~ ORDER TO SHOW
CAUSE FOR PRELIMINARY
INJUNCTION, TEMPORARY
CLOSING ORDER, AND
TEMPORARY RESTRAINING
ORDER PURSUANT TO CANNABIS
LAW § 16-a

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UPON the Petition, verified by Rudolph M. Baptiste, Assistant Attorney General of the New York State Office of the Attorney General, on December 14, 2023; the Affidavit of Raissa Lomba, Investigator with the New York State Office of Cannabis Management (“OCM”), sworn to December 13, 2023; the Affidavit of James Lawson, OCM Investigator, sworn to December 14, 2023; the Affidavit of Crystal Combs, OAG Investigator, sworn to December 13, 2023; the Affidavit of Crystal John, OAG Investigator, sworn to December 13, 2023; the Affirmation of Rudolph M. Baptiste, dated December 14, 2023; each with exhibits thereto, and the Memorandum of Law in support, and upon the motion of Letitia James, Attorney General of the State of New York, attorney for the Petitioner, it is

~~ORDERED~~ ^{Let} that Respondents show cause at a hearing before this Court, at IAS Part ¹³ Room ^{4.38} of this Court located at ^{320 Jay} ~~360~~ Adams Street, Brooklyn, NY 11201, on the ^{20th} day of ^{December, 2023} at ^{9:30 A.M.} o'clock in the forenoon/afternoon, which is no more than three business days from the granting of this application for an *ex parte* order as required by Cannabis Law §§ 16-a(3) and (4), or as soon thereafter as counsel may be heard, why a preliminary injunction order and, ultimately, a permanent order and judgment should not be made pursuant to New York State Consolidated Law Service Chapter 7-A (“Cannabis Law”) and CPLR Articles 4 and 63:

1. permanently enjoining the Big Chief Respondents¹ from cultivating, processing, distributing, delivering, or dispensing cannabis, cannabis product, or any product marketed or labeled as such for sale without a license in this State;

¹ The “Big Chief Respondents” are Big Chief Smoke Shop Corp., Corner Plug Corp., and Ahmed Eldweik.

2. permanently enjoining Respondent Hamilton Empire Realty Corp. from permitting the sale of cannabis without a license at its property located at 7323 3rd Avenue, Brooklyn NY 11209 or any other building or premises it owns;
3. pursuant to Cannabis Law § 132(1), imposing a penalty of \$10,000 for each day during which the Big Chief Respondents sold cannabis without a license, from May 3, 2023 to August 15, 2023, and imposing a penalty of \$20,000 per day for each day thereafter that the Big Chief Respondents have continued to engage in the unlicensed sale of cannabis after receiving an order to cease from OCM, or from August 16, 2023 to the present, and an additional civil penalty of 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 Big Chief Respondents' possession based on the retail list price of such products;
4. pursuant to Cannabis Law § 16-a(1)(h), imposing on Respondent Hamilton Empire Realty Corp., and as to Respondent 7323 3RD AVENUE, BROOKLYN, NY 11209, a penalty of \$10,000 for each day Respondent Hamilton Empire Realty Corp. permitted the Big Chief Respondents' unlicensed activity at their property;
5. pursuant to 9 NYCRR §§ 133.23(b)(5), (b)(7), and Cannabis Law § 16(1), imposing a fine of up to \$5,000 for each time the Big Chief Respondents removed, altered, defaced, or otherwise covered a notice of violation, order to cease unlicensed activity, or warning sticker posted by OCM;
6. pursuant to Cannabis Law § 16(4) granting equitable relief including disgorgement as to the Big Chief Respondents for sales of cannabis prior to August 16, 2023;

7. directing the award of actual costs, expenses, and disbursements of OCM and OAG in bringing and maintaining this proceeding, pursuant to Cannabis Law § 16-a(7)(e), and directing that such amount be included in a judgment against Respondents;
8. directing the Big Chief Respondents to provide a full financial accounting, including daily sales receipts, bank account statements, and other documents necessary to calculate the applicable penalties under Cannabis Law § 132;
9. directing the Respondent Hamilton Empire Realty Corp. to provide a full accounting of all rents paid to them by the Big Chief Respondents;
10. directing entry of a judgment in favor of OCM against the Big Chief Respondents, plus interest;
11. directing that any judgment issued as to the Respondent Hamilton Empire Realty Corp. or Respondent 7323 3RD AVENUE, BROOKLYN, NY 11209 become a priority lien on such real property pursuant to Cannabis Law § 16-a(7)(d);
12. directing that any illicit cannabis found in the possession of the Big Chief Respondents or located at 7323 3rd Avenue, Brooklyn, NY 11209 be seized and turned over to OCM;
13. authorizing any police officer or peace officer with jurisdiction to seize and remove from the property located at 7323 3rd Avenue, Brooklyn, NY, 11209 all material, equipment, and instrumentalities used by the Big Chief Respondents for commercial purposes, specifically, in the creation and maintenance of the unlicensed sale of cannabis, and directing the Sheriff to sell such property, with the net proceeds paid to the general fund of the State;

14. directing the closure of all portions of the premises used by the Big Chief Respondents for commercial purposes, including the unlicensed sale of cannabis, at 7323 3rd Avenue, Brooklyn, NY, 11209, for a period of one year pursuant to Cannabis Law § 16-a; and

15. for such other and further relief as this Court deems just and proper.

IT APPEARING that cause for *ex parte* temporary injunctive relief in the form a temporary closing order as to 7323 3rd Avenue, Brooklyn, NY 11209 and a temporary restraining order as to all Respondents exists under Cannabis Law §§ 16(4) and 16-a and CPLR Article 63, in that the Big Chief Respondents continue to sell cannabis without a license in violation of an OCM order to cease at Big Chief Smoke Shop Corp., an unlicensed cannabis dispensary, and Hamilton Empire Realty Corp. has permitted Big Chief Smoke Shop Corp. to operate, which are actions that have caused and will continue to cause injury unless the Respondents are restrained before a hearing can be held; it is hereby:

ORDERED that pending the hearing ~~and determination~~ of Petitioner's motion for a preliminary injunction, Respondents, their agents, employees, successors, assigns, and any other person acting under Respondents' direction or control, whether acting individually, or through any corporation, company, entity, or device, are hereby temporarily restrained from:

1. cultivating, processing, distributing, delivering, selling, transferring, giving, or dispensing cannabis, cannabis product, cannabinoid hemp, or hemp extract product for sale without a license in this State;
2. permitting anyone leasing or otherwise occupying 7323 3rd Avenue, Brooklyn, NY 11209 to engage in cultivating, processing, distributing, delivering, selling,

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transferring, giving, or dispensing cannabis, cannabis product, cannabinoid hemp, or hemp extract product for sale without a license in this State;

3. use and/or occupancy of 7323 3rd Avenue, Brooklyn, NY 11209, specifically the premises being occupied by the Big Chief Respondents for commercial purposes, for any purpose whatsoever;
4. removing or in any manner interfering with the furniture, fixtures, and movable property used in conducting, maintaining, or permitting such unlicensed activity;
5. transferring, selling, or otherwise disposing of any assets owned, possessed, or controlled by the Big Chief Respondents, including any assets in the control or custody of any third party on behalf of the Big Chief Respondents;
6. destroying, transferring, or otherwise disposing of any business records, documents, electronic data, or property related to the Big Chief Respondents' unlicensed cannabis business; and it is further

ORDERED that pending the hearing ~~and determination~~ of Petitioner's motion for a preliminary injunction, the property located at 7323 3rd Avenue, Brooklyn, NY 11209 that has been used and/or occupied by the Big Chief Respondents for commercial purposes shall be CLOSED, and the police officer or peace officer serving this Order shall:

1. enter upon the building or premises;
2. command all persons present in the building or premises to vacate the premises forthwith;
3. seize any cannabis, cannabis product, cannabinoid hemp, or hemp extract product, as authorized by Cannabis Law § 138-a, to be held or turned over to OCM pending a permanent injunction in this proceeding pursuant to Cannabis Law § 16-a(7)(a);

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- 4. make and return to the Court an inventory of personal property situated in and used in conducting, maintaining, or permitting the unlicensed activity, which may consist of photographs of such property;
- 5. upon the building or premises being vacated, the premises shall be securely locked, including by using a padlock or changing the lock, with the keys delivered to the owner, lessor, or lessee of the building or retained by the officer until the appropriate party is ascertained;
- 6. post a copy of this Order and accompanying notice stating that the premises have been "closed by court order" and warning that "mutilation or removal of such a posted order or such a posted notice while it remains in force, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than five thousand dollars or by imprisonment not exceeding ninety days, or by both," pursuant to Cannabis Law § 16-a(5)(c); and it is further

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ORDERED that upon service of a copy of this Order, via electronic mail, facsimile, or as otherwise provided for in the CPLR, on any bank, payment processor, or other institution that holds funds in the name of or to the credit of Big Chief Smoke Shop Corp., Corner Plug Corp., Ahmed Eldweik, and/or any fictitious names used thereby, is hereby temporarily restrained from paying out, transferring, honoring drafts, checks, or charges against, or setting off or assigning to themselves or any other person or firm any such funds until further order of this Court; and it is

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ORDERED that Petitioner is permitted to exceed the word limit provided for in 22 NYCRR § 202.8-b(b) in its Memorandum of Law; and it is further

ORDERED that as required by Cannabis Law § 16-a(1)(f) within three days of receipt of this Order, Respondent Hamilton Empire Realty Corp. shall provide to Petitioner the names of any other commercial owners, lessors, and lessees of 7323 3rd Avenue, Brooklyn, NY 11209; and it is further

SUFFICIENT CAUSE to me appearing therefore,

LET service for *in rem* jurisdiction over 7323 3rd Avenue, Brooklyn, NY 11209 be executed pursuant to Cannabis Law § 16-a(1)(c), by affixing this Order to Show Cause to the door of the building or premises and by mailing the Order to Show Cause by certified or registered mail, return receipt requested; and let service for *in personam* jurisdiction over Hamilton Empire Realty Corp. be executed by sending via overnight mail this Order to Show Cause, with supporting papers, to Hamilton Empire Realty Corp., 662 Morris Park Avenue, Bronx, NY 10462, and let service for *in personam* jurisdiction over the Big Chief Respondents be executed by sending via overnight mail this Order to Show Cause, with supporting papers, to Big Chief Smoke Shop Corp., 7323 3rd Avenue, Brooklyn, NY 11209, and Corner Plug Corp., 7323 3rd Avenue, Brooklyn, NY 11209, and by either personal service upon Ahmed Eldweik or if personal service cannot be made upon Ahmed Eldweik following a reasonable attempt, then by overnight mail of this Order to Show

Cause, with supporting papers, to Ahmed Eldweik at 130 Rhine Avenue, Staten Island, NY 10304, *on or*

→ *before the 21st day of December 2023,*

Papers in opposition to Petitioner's motion for a preliminary injunction, if any, shall be served upon counsel for Petitioner, Rudolph M. Baptiste, at New York State Office of the Attorney General, 55 Hanson Place, Suite 1080, Brooklyn, NY 11217 and via email to Rudolph.Baptiste@ag.ny.gov, so as to be received by 5 p.m. one business day prior to the hearing on the preliminary injunction.

in personam by overnight mail

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