

**BEFORE THE CANNABIS CONTROL DIVISION
FOR THE STATE OF NEW MEXICO**

IN THE MATTER OF:

Case No. 2023-002

Golden Roots,
License No. CCD-VICE-2022-011

Respondent.

FINAL DECISION AND ORDER

THIS MATTER having come before the New Mexico Regulation and Licensing Department (the “Department”) for consideration and decision on October 6, 2023 upon completion of an evidentiary hearing held on September 1, 2023 at the Regulation and Licensing offices located at 5500 San Antonio Dr NE, Albuquerque, NM 87109; the State of New Mexico having been represented at the hearing by Cannabis Control Division (“Division”) Counsel, Robert Sachs (“Administrative Prosecutor”); Respondent, Golden Roots, having not made an appearance at the hearing; and the duly appointed Hearing Officer Max Shepherd (“Hearing Officer”) having timely submitted to the Department a written report setting forth his findings of fact, in accordance with 61-1-7(A) NMSA 1978, of the Uniform Licensing Act, the Department issues the following:

FINDINGS OF FACT

The Department makes these Findings of Fact:

1. Respondent was issued a vertically integrated cannabis establishment license on March 16, 2022, with a principal business address of 13620 Covered Wagon SE, Albuquerque, NM 87123.
2. As part of their license, Respondent was authorized to produce and retail cannabis and cannabis product.

3. On May 20, 2022, Division compliance officers visited Respondent's listed grow location at 301 Wyoming Blvd NE, Albuquerque, New Mexico 87108 after a suspicious request was submitted to the Division, asking the Division to allow Respondent to enter fully mature, harvested, dried cannabis plants into their track and trace system after only being licensed for two months. Cannabis plants take several months to reach maturity and take even more time after harvest to be fully dried.

4. Upon arriving at the facility, Division compliance officers found no evidence of a functional cannabis production site and no evidence that any cannabis plants had been grown at this particular location.

5. Division compliance officers stated in a post-inspection report that the facility "appeared to be under construction and was not operational."

6. After conducting a full inspection, Division compliance officers finished their inspection checklist, where every item was marked either "out of compliance" or "unable to observe" due to the lack of completeness found in the facility.

7. Division Compliance Officers ran several reports using the online cannabis inventory tracking system called BioTrack, meant to track all cannabis and cannabis products from "seed to sale," which all licensees are required to utilize.

8. One of Respondent's BioTrack reports showed that commercial cannabis activity associated with harvested mature plants had begun as early as April 12, 2023, only a month after having received a license from the Division.

9. One of Respondent's BioTrack reports showed that the first inbound transfer of cannabis product from another cannabis licensee occurred on August 9, 2022. Therefore, all

outbound cannabis prior to August 9, 2022, should have been generated by Respondent at Respondent's facility since there was no other source of the cannabis.

10. Several of Respondent's BioTrack reports showed that the first outbound transfer of cannabis product from Respondent to another licensee occurred on April 26, 2022, which is shortly more than a month from initial licensure for Respondent. Several such transfers were made from April 26, 2022, through May 20, 2022, the date of the Division's inspection of the facility.

11. One of Respondent's BioTrack reports showed that the total percentage of water weight lost through the drying stage were inconsistent with one another and inconsistent with the typical amount of water lost through the drying stage. The reported percentage of weight lost ranged from 3.78% to 97.51%.

12. One of Respondent's BioTrack reports showed that many adjustments were made to Respondent's inventory including adjustments down in inventory for approximately 24 pounds at a time, with the justification for the adjustment as "bad."

13. On January 25, 2023, and in accordance with NMSA 1978, § 61-1-4(D), the Division sent its Notice of Contemplated Action ("NCA") in the above-captioned matter to Respondent at the Respondent's last known addresses of record via United States Postal Service Certified Mail, Return Receipt Requested, Article No. 7018 1139 6259 2883 and Article No. 7018 1130 6259 2906.

14. The NCA contained within certified mail Article No. 7018 1130 6259 2906 was returned to the Division with the label, "no such street unable to forward."

15. The Return Receipt for Article No. 7018 1139 6259 2883 was never received by the Division and was considered as not delivered to Respondent.

16. On March 10, 2023, Respondent submitted a change of controlling person form requesting the removal of controlling persons Jorge A Molina-Villalba and Luis Adrian Burciaga Carraco.

17. On May 1, 2023, the Division approved the removal of the two controlling persons leaving the sole controlling person as Abbas Alshimery.

18. On or about March 15, 2023, the Division again sent its NCA in the above-captioned matter to Respondent at the last known addresses of record via United States Postal Service Certified Mail, Return Receipt Requested, Article No. 7018 1130 6259 2937 and Article No. 7018 1130 6259 2944.

19. On March 17, 2023, the Division received the Return Receipt for Article No. 7018 1130 6259 2937, which appears to have been signed by Respondent.

20. The Division did not receive the Return Receipt for Article No. 7018 1130 6259 2944.

21. The NCA notified Respondent that the Division had before it sufficient evidence which, if not rebutted or satisfactorily explained at a formal hearing, will justify the suspension or revocation of Respondent's license issued by the New Mexico Cannabis Control Division or to impose such other penalties as are permitted by law.

22. The NCA further notified Respondent that the "Division will take such action without a hearing unless, within twenty (20) days after receipt of this Notice of Contemplated Action, the Respondent requests of the Division a formal hearing by certified mail, return receipt requested."

23. NMSA 1978, § 61-1-4(E) authorizes the Division to take the action contemplated in the NCA if a licensee does not mail a request for a hearing within the time and in the manner prescribed by NMSA 1978, §61-1-4.

24. Respondent did not request a hearing within the time and in the manner prescribed.

25. Respondent had not otherwise communicated with the Division or offered any evidence rebutting or explaining the violations alleged in the NCA.

26. On April 28, 2023, the Division issued a final Decision and Order revoking Respondent's license and imposing a fee of \$10,000 for violations noted in the NCA.

27. On May 19, 2023, Respondent informed the Division that counsel had been retained.

28. On May 22, 2023, a representative for Respondent's counsel requested that the case be reopened on the basis that Respondent's owner was out of the country seeking medical care for a "life and death" issue.

29. In accordance with NMSA 1978, 61-1-21, the Division reopened the case due to Respondent's medical emergency.

30. On June 9, 2023, the Division met with Respondent's counsel to discuss the administrative process at which point Respondent's counsel requested the opportunity for a settlement agreement.

31. The Division accepted on the condition that Respondent provide evidence directly related to the violations listed in the NCA.

32. On July 6, 2023, Respondent and the Division met via videoconferencing and reviewed evidence submitted by Respondent.

33. On July 11, 2023, the Division informed Respondent that the evidence submitted was not found to be sufficient to justify a settlement agreement and was therefore not in the best interest of the state.

34. On July 11, 2023, the Division resent the NCA to Respondent, providing them an additional opportunity to request a hearing.

35. On July 17, 2023, Respondent's counsel requested a hearing on behalf of Respondent.

36. On July 20, 2023, the Division issued a Notice of Hearing and served it upon the parties informing all persons that the hearing was to be held on August 21, 2023, from 9:30am to 4:00pm at 5500 San Antonio Dr. NE, Albuquerque, NM 87109.

37. On August 9, 2023, Respondent's counsel requested a continuance which would allow Respondent to secure new counsel.

38. On August 18, 2023, Hearing Officer Max Shepherd granted the continuance and set the new date for the hearing for September 1, 2023.

39. On August 18, 2023, as part of a routine inspection of retail location in the area, Division compliance officers attempted to inspect Respondent's retail location located at 806 Old Coors Dr SW, Suite D, Albuquerque, New Mexico 87121 at approximately 11:50AM.

40. Respondent's employee, Ali Alshimery, denied Division compliance officers access to the facility.

41. The Division returned to Respondent's Coors retail location with subpoenas requesting immediate access to the facility along with surveillance footage from August 11, 2023 – August 18, 2023, all transport manifests present on-site from August 1, 2023 – August 18,

2023, and all sales reports captured by both BioTrack and any other point of sale system utilized by Respondent.

42. Respondent's employee, Ali Alshimery again denied Division compliance officers access to the facility.

43. To date, Respondent has not complied with either subpoena.

44. On August 23, 2023, Respondent's original counsel reached out to the Division, informing them that the counsel that was set to take over the matter had health issues which precluded her from representing Respondent.

45. On August 23, 2023, the Division issued the new notice of hearing with the updated date and properly served it upon the parties on record.

46. On August 25, 2023, Respondent's initial counsel, Bowles Law Firm sent correspondence to the Division officially withdrawing as representation for Respondent.

47. On September 1, 2023, the Division held a hearing presided by hearing officer Max Shepherd at the Regulation and Licensing Office located at 5500 San Antonio Dr. NE, Albuquerque, NM 87109.

48. Respondent did not make an appearance during the hearing, and the hearing nonetheless commenced in accordance with NMSA 1978, 61-1-15, "Procedure where person fails to request or appear for hearing."

49. The Division presented its case first by entering exhibits 1 – 26 into the record detailing the procedural history between the Division and Respondent leading to the September 1, 2023, hearing.

50. The Division called compliance officer, Charles Nuanes to testify.

51. Mr. Nuanes verified that exhibits 27 – 34 and 37 – 45 were true and accurate depictions of the information they contained.

52. Exhibits 27 – 34 and 37 – 45 were entered into evidence.

53. Mr. Nuanes testified that he was present during the May 20, 2022, inspection of Respondent’s facility.

54. Mr. Nuanes testified that the facility appeared to be in a construction phase and was not in a state that would have been able to produce cannabis plants.

55. Specifically, Mr. Nuanes pointed out that several of the photographs taken showed the incomplete plywood platforms where cannabis plants were to be grown, with corresponding grow lights over the platforms.

56. Mr. Nuanes testified that because of the state of the facility, the inspection resulted in every category being marked as out of compliance.

57. Mr. Nuanes testified that there was no evidence of cannabis plants growing on-site despite BioTrack reports reflecting that cannabis plants had been growing at the facility.

58. Mr. Nuanes testified that Respondent’s BioTrack reports showed that they reported having grown fully mature cannabis plants, dried them, and converted them to inventory all within the span of a month for the date of issuance of their license.

59. Mr. Nuanes testified that to grow a plant to the point of harvesting alone takes up to several months and that it was impossible for cannabis product to have been grown, harvested, and converted to inventory within the time span reported in Respondent’s BioTrack.

60. Mr. Nuanes testified that Respondent’s BioTrack reported that the first inbound transfer of product occurred on August 9, 2022, so all outbound cannabis product should have originated from Respondent’s production facility.

61. Mr. Nuanes testified that there was no evidence of cannabis or cannabis products having been stored or present on site in any capacity despite BioTrack showing that several hundred pounds of outbound transfers were reported between April 26, 2022, and the date of the inspection on May 20, 2022.

62. Mr. Nuanes testified that Respondent's BioTrack reported that harvested plants were at times losing 3.78% of their original weight during the drying process and other plants were reported as having lost 97.41% of their original weight.

63. Mr. Nuanes testified that a typical amount of water loss percentage during the drying process is about 75%.

64. Mr. Nuanes testified that inaccurate entries of water loss, particularly reported small water loss percentages, provide licensees the opportunity to launder cannabis product through the system that may have unknown and unlicensed origins.

65. Mr. Nuanes testified that Respondent's BioTrack reported that Respondent was making large adjustments to their inventory sometimes totaling 24 pounds worth of adjustments at a time with vague justification for those adjustments, including the word, "bad" or "mistake."

66. Mr. Nuanes testified that inventory adjustments, particularly those with large quantities and vague justification allow the opportunity for cannabis product to leave the traceability system and be sent to unlicensed or illegal persons or locations.

67. The Division next called investigator, William Fresquez to testify.

68. Mr. Fresquez testified that he was present during the May 20, 2022, site inspection of Respondent's facility.

69. Mr. Fresquez corroborated Mr. Nuanes' observations regarding the state of Respondent's facility.

70. Mr. Fresquez testified that the Division decided to inspect Respondent's facility after the Division received a call on May 19, 2022, from the Respondent asking the Division to allow the Respondent to enter fully dried cannabis product into their BioTrack system.

71. Mr. Fresquez testified that Licensing Manager, Odessa Nix, found this request to be suspicious given that Respondent had been licensed for less than a month and that when Ms. Nix addressed her concerns with Respondent, he changed his request asking for seedlings to be entered into the system.

72. Mr. Fresquez also testified that Respondent's employee on site stated that he and Mr. Abbas Alshimery were entering cannabis product into BioTrack despite not knowing the origin of this product.

73. Mr. Fresquez testified that a former partner of Respondent, Mr. Jorge Molina visited the Regulation and Licensing Department's Albuquerque office to distance himself from Respondent's operation and stated that Mr. Alshimery was entering illegal cannabis product into BioTrack.

74. Respondent earned a total of \$298,972.05 from the date of its initial licensure on March 16, 2022, to the date of the inspection on May 22, 2022.

CONCLUSIONS OF LAW

The Department makes these Conclusions of Law:

1. The Division has jurisdiction over Respondent and the subject matter of this proceeding pursuant to the Cannabis Regulation Act, NMSA 1978, §§ 26-2C-1 to -42 (2021), ("CRA"), and in particular, NMSA 1978, § 26-2C-6; NMSA 1978, § 26-2C-8; and the Uniform Licensing Act, NMSA 1978, §§ 61-1-1 to 37 ("ULA").

2. In New Mexico, the standard of proof applied in administrative hearings, with few exceptions, is a preponderance of the evidence. *Foster v. Board of Dentistry of State of New Mexico*, 103 N.M. 776, 714 P.2d 580 citing *State Department of Motor Vehicles v. Gober*, 85 N.M. 457, 513, P.2d 391; *Seidenberg v. New Mexico Board of Medical Examiners*, 80 N.M. 135, 452 P.2d 469 (1969).
3. The Division has the burden of proving the charges against the Respondents by a preponderance of the evidence. See *Foster v. Bd. of Dentistry*, 103 N.M. 776, 777, 714 P.2d 580, 581 (1986).
4. The Division followed all the notice and hearing requirements of the ULA, and in particular the notice and opportunity to be heard requirements at NMSA 1978, §§ 61-1-3, Opportunity for licensee or applicant to have a hearing; § 61-1-4, Notice of contemplated board action; request for hearing; notice of hearing; and § 61-1-8, Rights of persons entitled to hearing.
5. These proceedings were held pursuant to the ULA, as invoked in NMSA 1978, § 26-2C-8 of the Cannabis Regulation Act, and the standard of evidence required under the ULA is that, “the hearing office may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs”, NMSA 1978, § 61-1-11(A).
6. Respondent did not appear at the hearing despite having requested an evidentiary hearing as offered in the Notice of Contemplated Action.
7. By moving cannabis products off-site that could have only been a result of a fully harvested mature cannabis plant within a month of receiving a license, despite having no functional growing facility, Respondent moved illegally obtained plants through

BioTrack and violated 16.8.2.8(J) NMAC, “Inventory and Sales Equipment” and 16.8.7.8(D)(5) NMAC, “Additional recorded information.”

8. By lacking any evidence of proper transport manifest documentation for product entering or exiting the licensed premise and having a facility that was not in a state of functional operation despite reporting that cannabis and cannabis products were being transported to and from Respondent’s facility in the state’s required inventory tracking system, Respondent violated 16.8.2.13 NMAC, “Requirements for the Transportation of Cannabis.”
9. By not having a designated limited access area despite having reported the facility was fully operational in the state’s required inventory tracking system, Respondent violated 16.8.2.10 (J) NMAC, “Limited Access Area.”
10. By having no chain of custody procedures in place, nor evidence that any chain of custody system was being followed despite reporting the facility was fully operational in the state’s required inventory tracking system, Respondent violated 16.8.2.12 NMAC, “Chain of Custody.”
11. By having no proper storage for cannabis or cannabis products despite reporting the facility was fully operational in the state’s required inventory tracking system, Respondent violated 16.8.2.10(P) NMAC, “Vault.”
12. By having no premise diagram on site despite reporting the facility was fully operational in the state’s required inventory tracking system, Respondent violated 16.8.2.24(A) – (E) NMAC, “Producer Premises Diagram.”
13. By having a facility that was not fully prepared to grow a single cannabis plant while reporting that the facility was fully operational in the state’s required inventory tracking

system, Respondent violated 16.8.2.27 NMAC, “Minimum Requirements for the Production of Cannabis.”

14. By not having any employee policies or procedures in place despite reporting the facility was fully operational in the state’s required inventory tracking system, Respondent violated 16.8.2.26 NMAC, “Cannabis Producer Policies and Procedures.”

15. By not having any written procedures on site for the wastage of cannabis, despite reporting the facility was fully operational in the state’s required inventory tracking system, Respondent violated 16.8.2.15 NMAC, “Wastage of Cannabis or Cannabis Products; Permitted Methods.”

16. By not having any written procedures on site for the recall of cannabis, despite reporting the facility was fully operational in the state’s required inventory tracking system, Respondent violated 16.8.2.11 NMAC, “Recall of Cannabis.”

17. In violating 16.8.2.8(J) NMAC; 16.8.7.8(D)(5) NMAC; 16.8.2.13 NMAC; 16.8.2.10 (J) NMAC; 16.8.2.12 NMAC; 16.8.2.10(P) NMAC; 16.8.2.24(A) – (E) NMAC; 16.8.2.27 NMAC; 16.8.2.26 NMAC; 16.8.2.15 NMAC; and 16.8.2.11 NMAC, the Division is authorized to levy fines against Respondent license in accordance with, NMSA 1978, 26-2C-8(B)(3) and 16.8.12.11(A)(1) NMAC.

18. In violating 16.8.2.8(J) NMAC; 16.8.7.8(D)(5) NMAC; 16.8.2.13 NMAC. 16.8.2.10 (J) NMAC; 16.8.2.12 NMAC; 16.8.2.10(P) NMAC; 16.8.2.24(A) – (E) NMAC; 16.8.2.27 NMAC; 16.8.2.26 NMAC; 16.8.2.15 NMAC; and 16.8.2.11 NMAC, the Division is authorized to revoke or suspend Respondent’s license in accordance with, NMSA 1978, 26-2C-8(B)(4), 16.8.12.11(A) NMAC and 16.8.2.13 NMAC.

ORDER

Based on these Findings of Fact and Conclusions of Law, the Division had determined that Respondent's license, CCD-VICE-2022-011 is **REVOKED**, effective fourteen (14) calendar days from receipt of this order via certified mail, and a civil monetary **FINE** will be imposed in accordance with 16.8.12.13(B) NMAC to total the revenue generated by the licensee from the date of the issued license to the date of the division's inspection that gave rise to this action, which shall be **\$298,972.05**. The fine shall be due to the Division no more than 90 calendar days from receipt of this order via certified mail.

IT IS FURTHER ORDERED that the Respondent must comply with the following conditions:

- A. Respondent shall immediately recall all cannabis and cannabis product provided to all licensees and shall inform all consumers and qualified patients who may have purchased cannabis or cannabis product from Respondent.
- B. Respondent shall immediately cease all commercial cannabis activity defined by the Act, except as necessary to recall and waste all cannabis and cannabis product within the remaining fourteen (14) calendar days prior to revocation.
- C. No later than the date of revocation, Respondent shall surrender their license by certified mail to the Division. All certified mail shall be sent to 2550 Cerrillos Rd., P.O. Box 25101, Santa Fe, NM 87504, ATTN: Cannabis Control Division. All email correspondence shall be sent to Division Counsel, Robert Sachs at Robert.Sachs@rld.nm.gov.
- D. This Order constitutes a final decision for purposes of initiating any contemplated judicial review pursuant to the provision of the Uniform Licensing Act, NMSA 1978 61-1-17 and NMSA 1978, 39.3-1.1. An aggrieved party has the right to judicial review of this Order by filing a notice of appeal under Rule 1-074 NMRA within thirty (30) days of the date of filing the final decision. All pleadings filed with the district court must be served on the Division's counsel, Robert Sachs at 1209 Camino Carlos Rey, Santa Fe, NM 87505, ATTN: Cannabis Control Division, and electronically via email at Robert.Sachs@rld.nm.gov.

IT IS FURTHER ORDERED that failure to comply with the terms of this Order may result in additional disciplinary action. If Respondent's non-compliance constitutes acts that are prohibited under the Department's statute or rules, the Department may initiate a new disciplinary action and refer that matter for administrative

prosecution, seek an injunction in District Court, or pursue other remedies as provided by law.

IT IS SO ORDERED.

/s/ Clay Bailey

Superintendent Linda Trujillo
New Mexico Regulation and Licensing Department

10/25/2023

Date

JUDICIAL REVIEW

This Order constitutes a final decision for purposes of initiating any contemplated judicial review pursuant to the provisions of the Uniform Licensing Act, 61-1-17 NMSA 1978, and 39-3-1.1 NMSA 1978. An aggrieved party has the right to judicial review of this Order by filing a notice of appeal under Rule 1-074 NMRA within thirty (30) days of the date of filing of the final decision. Any pleadings filed with the district court must be served on the Division counsel Robert Sachs at 1209 Camino Carlos Rey, Santa Fe, NM 87505, ATTN: Cannabis Control Division, and electronically via email at Robert.Sachs@rld.nm.gov.