



### Closing – Case Activity Report

Case Number:	0855-343-2024	Case Name:	Fagon, Damian
Case Type:	NYSIG	Agency:	Office of Cannabis Management
Investigator:	Frangella	Date of Report:	September 3, 2024
Electronic Case File Only:	<input checked="" type="checkbox"/>		
Other:			

#### ALLEGATIONS

The Inspector General received three complaints related to Damian Fagon.

On or about March 14, 2024, the Inspector General received a complaint from Jenny Argie, an Adult-Use Conditional Cannabis Processor Licensee, alleging that the Office of Cannabis Management (OCM), specifically Damian Fagon, OCM's Chief Social Equity Officer, was retaliating against her for criticizing OCM in the press. In her complaint, Argie cited an article published on March 12, 2024, by NY Cannabis Insider titled "'Terrified to criticize': Accusations of hostility and retaliation surface against NY's Office of Cannabis Management" for reference. Also on March 14, OCM referred Argie's retaliation allegations to the Inspector General, citing the above-mentioned article.

On March 17, 2024, the Inspector General received a complaint from a cannabis dispensary applicant, alleging that Fagon was improperly targeting and interfering with their conditional adult use retail dispensary (CAURD) license application.

In June of 2024, the Inspector General also received notice from OCM of an allegation made by an OCM employee during an internal investigation that Fagon improperly communicated with OCM's Deputy Director of Licensing and interfered with various license applications.



## SUMMARY OF INVESTIGATIONS/FINDINGS

### Retaliation Allegations

On March 12, 2024, NY Cannabis Insider published an article titled "Terrified to criticize": Accusations of hostility and retaliation surface against NY's Office of Cannabis Management."<sup>1</sup> The article alleged that OCM uses "enforcement powers to retaliate against those who speak out about its part in the flawed rollout of the new marketplace." The article alleged that Fagon retaliated against Argie for using information from a private recorded phone call between them to criticize OCM at a NYS Senate hearing and then subsequently leaking the communications to NY Cannabis Insider. This retaliation claim primarily centers around two events, first, OCM's issuance of a recall of Argie's product, Jenny's Zee-Zee Gummies, in December of 2023, and second, a partial "stop work order" issued against Argie's processing facility in February of 2024 due to the use of R-134A, an unapproved solvent.

To investigate the claims made in the article and also submitted to the Inspector General's Office, the Inspector General interviewed Argie, as well as numerous members of OCM staff, and reviewed various documentary evidence, including the recorded telephone call between Argie and Fagon referenced in the NY Cannabis Insider article, internal OCM communications, including emails, Argie's testimony before the NYS Senate, and other media reports.

In October of 2023, Argie testified before the NYS Senate that NY cannabis retailers were importing illegal out-of-state products, and OCM was failing to initiate crackdowns. Following the NYS Senate hearing, Argie revealed the source of her knowledge as a recorded phone call between Argie and Fagon and shared the call with NY Cannabis Insider.

NY Cannabis Insider used the recording and, on November 15, 2023, published an article titled "New York's cannabis regulators know out-of-state brands are breaking the rules – but agency won't enforce until 2024."<sup>2</sup> The article stated that in a recorded phone call, Fagon acknowledged that OCM was aware that brands were illegally sourcing out-of-state product, and that out-of-state companies were offering dispensaries unlimited time to pay back invoices, actions that are contrary to NYS regulations. The article further alleged that Fagon confirmed that OCM was not prepared to enforce against the bad actors due to fear that a crackdown would cripple the market and half of the licensed dispensaries would be out of business. While the article did not name the source of the

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<sup>1</sup> "Terrified to criticize": Accusations of hostility and retaliation surface against NY's Office of Cannabis Management - syracuse.com

<sup>2</sup> New York's cannabis regulators know out-of-state brands are breaking the rules – but agency won't enforce until 2024 - syracuse.com



recorded phone call, it referenced the same concerns raised by Argie during her NYS Senate testimony.

The recorded telephone call, a copy of which was provided to the Inspector General by Argie, took place on August 28, 2023, and primarily involved Argie alleging that OCM was not properly enforcing regulations, including that NYS licensees were sourcing product from out-of-state and those out-of-state brands were providing terms that in-state brands could not compete with due to regulations. On the call, Fagon acknowledged that OCM was aware of the issues but was unable to actively enforce against it at that time. Although Fagon's remark on the call may have been imprudent, in the absence of any clear agency guidelines regulating OCM staff contact with licensees, the Inspector General was unable to conclude that the conversation or the statements made by Fagon therein, were violative of any OCM policy or procedure.<sup>3</sup>

In December of 2023, OCM issued its first ever product recall, recalling Jenny's Zee-Zee Gummies, Argie's product, for product mislabeling and lack of testing. Investigation revealed that on November 29, 2023, OCM inspectors attended a Cannabis Grower Showcase ("CGS") that featured products from various licensees. OCM inspectors attended the CGS because it came to their attention via promotional material that the CGS was featuring a product, produced by a different brand and unrelated to Argie, that was the subject of a quarantine order. OCM became aware of the promotional material during a routine desk audit, where staff review media postings for various cannabis related events. At the CGS, Inspectors determined that, despite the advertisements on promotional material, the quarantined product was not available for sale. Once the potential violation was inspected, inspectors also took pictures of various products, including Argie's product, Jenny's Zee-Zee Gummies.

Inspection of Jenny's Zee-Zee Gummies revealed that the label contained a number of deficiencies and that the certificate of analysis for testing, provided via the QR code on the label, did not match the certificate of analysis that was submitted to OCM. Therefore, a product quarantine was issued on December 5, 2023. In a follow-up phone call that took place between Argie and OCM, Argie stated that Jenny's Zee-Zee Gummies had recently been reformulated and had not been tested since the reformulation. As a result of the labeling deficiencies and the lack of product testing, OCM issued a recall of Jenny's Zee-Zee Gummies on December 11, 2023. The issues cited by OCM were subsequently corrected and on December 28, 2023, the recall was lifted, and Argie was permitted to resume sale of the product.

Notably, Jenny's Zee-Zee Gummies label contained the statement "Processing type: Hydrocarbon free processing e.g. R-134A." OCM communication revealed that OCM inspectors interpreted that statement to mean that Argie was *not* using R-134A. However,

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<sup>3</sup> See [https://www.governor.ny.gov/sites/default/files/2024-05/OCM\\_Assessment\\_Final\\_Report.pdf](https://www.governor.ny.gov/sites/default/files/2024-05/OCM_Assessment_Final_Report.pdf) (Page 29 OGS Recommending Improved Communications) C-CAR (06/2021)



the statement is ambiguous. It could be read as representing that Argie used R-134A as part of a hydrocarbon free process. It could also be read as representing that R-134A is a hydrocarbon, Argie's brand uses hydrocarbon-free processing, and therefore the product was not processed using R-134A. OCM's interpretation weighs against Argie's retaliation claims since OCM interpreted the labeling language in her favor. OCM emails corroborate that OCM incorrectly erred on the side of trusting that Argie was not using an unapproved and untested solvent.

Regarding the partial stop work order, in February of 2024, OCM commenced inspections of processing facilities such as Argie's. The Inspector General reviewed the inspection schedule which contained the inspection dates for each licensed processing facility. OCM records, inspection notes, and sworn court affidavits reveal that during a routine inspection of a processing facility, a licensee mentioned to the OCM inspector that the licensee was interested in using R-134A solvent and had heard that Argie was already using the solvent. The OCM inspector informed the licensee that the use of R-134A was not approved and made note that Argie may be using the solvent.

On March 5, 2024, Argie's facility was inspected, inspectors discovered that Argie was using the R-134A solvent, and OCM issued Argie a partial stop work order pertaining solely to the use of R-134A. OCM personnel and records confirm that the partial stop work order was issued because Argie had not sought approval to use R-134A and, because labs were unable to test for R-134A solvent, OCM was unable to determine whether use of the solvent made a product unsafe. OCM records further indicate that on May 15, 2024, OCM granted the first approval for a lab to conduct R-134A testing. On May 17, 2024, Argie's partial stop work order was lifted for the production of oral products, and on May 23, 2024, the partial stop work order was completely lifted.

It is uncontested that Argie was using R-134A, an unapproved solvent. While the information received from the licensee regarding Argie's use of R-134A expedited the inspection of Argie's facility, OCM was in the process of conducting routine inspections of all processing facilities and Argie's facility was set to be inspected by the end of the schedule. The Inspector General was unable to find evidence of foul play or ulterior motive.

Both the recall and partial stop work order were appropriate and initiated entirely independent of Damian Fagon. Therefore, the Inspector General determined that the retaliation allegations are unsubstantiated.

#### Interference with a CAURD Application

Regarding the complaint received on March 17, 2024, from a CAURD applicant, the Inspector General was unable to investigate the allegation because the complainant declined to be interviewed and refused to provide any additional information.



Improper Communication and Application Interference

Regarding the allegation that Fagon improperly communicated with the Director of Licensing, the Inspector General spoke to the Director, and the Director denied any improper communications. The Director further stated that Fagon never asked them to expedite or manipulate an application and, to their knowledge, while Fagon was able to view the status of an application he did not have the ability to manipulate it.

**CONCLUSION**

Accordingly, the Inspector General directed that this investigation be closed.



Investigator



Investigative Attorney

Chief Investigator



MB

(initials)

Chief of Investigations/  
Executive Management Approval

Check any box and complete any section that applies to this case:

Unsubstantiated

Other

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RECOMMENDATIONS AND ACTIONS

Refer for Prosecution

- Arrest
- Conviction
- Fine
- Restitution

Prosecutorial Agency:

Number Arrested:  
Number Convicted:  
Total Amount:  
Total Amount:

Prosecution Declined

Refer to Ethics Commission

Refer for Discipline

- Discipline Initiated
- Discipline Imposed
- Fine
- Restitution
- Other Savings

Number of Subjects:  
Number of Subjects:  
Total Amount:  
Total Amount:  
Total Amount:

Disciplinary Action Declined

Refer for Administrative Action / Corrective Action Recommended & Accepted

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Number of Subjects Left State Service as a Result of Investigation:

Posted Report      Date:

Posted Press Release      Date:

Other Comments:

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