

**Department of Health and Human Services  
DEPARTMENTAL APPEALS BOARD  
Appellate Division**

FC and G, Inc. d/b/a Summit Cigar  
Docket No. A-17-111  
Decision No. 2827  
October 26, 2017

**DECISION TO DECLINE REVIEW OF  
ADMINISTRATIVE LAW JUDGE DECISION**

This case is before the Departmental Appeals Board (DAB) on a notice of appeal filed by FC and G, Inc. d/b/a Summit Cigar (Respondent), from an Administrative Law Judge (ALJ) Initial Decision and Default Judgment. *FC and G, Inc. d/b/a Summit Cigar*, DAB TB1671 (July 20, 2017). The ALJ granted the Center for Tobacco Products' (CTP's) motion to impose sanctions, struck Respondent's Answer to CTP's Complaint, and issued a default judgment decision assessing a \$11,002 civil money penalty against Respondent. The ALJ issued the Initial Decision and Default Judgment pursuant to 21 C.F.R. § 17.35(a) after Respondent failed to produce documents in response to CTP's Requests for Production and failed to comply with the ALJ's subsequent Order to Compel Respondent to produce the requested documents. The ALJ had advised Respondent that a failure to produce the documents sought may result in sanctions including the issuance of an initial decision and default judgment.

A respondent may appeal an ALJ's "initial decision" to the DAB, which consists of Board Members supported by the Appellate Division. 21 C.F.R. § 17.47(a). The DAB may "decline to review the case, affirm the initial decision," or "reverse the initial decision . . . , or increase, reduce, reverse, or remand any civil money penalty determined" by the ALJ. *Id.* § 17.47(j).

After reviewing the record, we have determined that we need not render a separate decision. We therefore decline review of and summarily affirm the ALJ's Initial Decision and Default Judgment. Thus, that decision becomes final and binding on the parties "30 days after the declination." 21 C.F.R. §17.47(j).

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/s/  
Constance B. Tobias

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/s/  
Susan S. Yim

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/s/  
Christopher S. Randolph  
Presiding Board Member