

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,

Complainant,

v.

Gratiot Gas and Mini Mart, Inc. / Abed Berry
d/b/a Sunoco,

Respondent.

Docket No. C-15-216
FDA Docket No. FDA-2014-H-1734

Decision No. CR3554

Date: January 5, 2015

INITIAL DECISION AND DEFAULT JUDGMENT

The Center for Tobacco Products (CTP) filed an Administrative Complaint (Complaint) against Respondent, Gratiot Gas and Mini Mart, Inc. / Abed Berry d/b/a Sunoco that alleges facts and legal authority sufficient to justify the imposition of a civil money penalty of \$500. Respondent did not answer the Complaint, nor did Respondent request an extension of time within which to file an answer. Therefore, I enter a default judgment against Respondent and assess a civil money penalty of \$500.

CTP began this case by serving the Complaint on Respondent and filing a copy of the Complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The Complaint alleges that Respondent impermissibly sold cigarettes to minors and failed to verify that a cigarette purchaser was 18 years of age or older, thereby violating the Federal Food, Drug, and Cosmetic Act (Act), 21 U.S.C. § 301 *et seq.*, and its implementing regulations, Cigarettes and Smokeless Tobacco, 21 C.F.R. pt. 1140 (2013). CTP seeks a civil money penalty of \$500.

On November 4, 2014, CTP served the Complaint on Respondent by United Parcel Service, pursuant to 21 C.F.R. §§ 17.5 and 17.7. In the Complaint and accompanying cover letter, CTP explained that within 30 days, Respondent should pay the proposed penalty, file an answer, or request an extension of time within which to file an answer. CTP warned Respondent that if it failed to take one of these actions within 30 days, an Administrative Law Judge could, pursuant to 21 C.F.R. § 17.11, issue an initial decision ordering Respondent to pay the full amount of the proposed penalty.

Respondent has not filed an answer within the time provided by regulation, nor has it requested an extension. Pursuant to 21 C.F.R. § 17.11(a), I am required to “assume the facts alleged in the [C]omplaint to be true” and, if those facts establish liability under the Act, issue a default judgment and impose a civil money penalty. Accordingly, I must determine whether the allegations in the Complaint establish violations of the Act.

Specifically, CTP alleges the following facts in its Complaint:

- Respondent owns Sunoco, an establishment that sells tobacco products and is located at 2153 Gratiot Avenue, Detroit, Michigan 48207. Complaint ¶ 3.
- During an inspection of Respondent’s establishment on October 27, 2013, at approximately 10:22 AM, an FDA-commissioned inspector observed that “a person younger than 18 years of age was able to purchase a package of Newport Box 100s cigarettes.” The inspector also observed that “the minor’s identification was not verified before the sale” Complaint ¶ 10.
- On January 9, 2014, CTP issued a Warning Letter to Respondent regarding the inspector’s observations from October 27, 2013. The letter explained that the observations constituted violations of regulations found at 21 C.F.R. § 1140.14(a) and that the named violations were not necessarily intended to be an exhaustive list of all violations at the establishment. The Warning Letter went on to state that if Respondent failed to correct the violations, regulatory action by the FDA or a civil money penalty action could occur and that Respondent is responsible for complying with the law. Complaint ¶ 10.
- Although FDA did not receive a response to the Warning Letter, United Parcel Service records indicate the Warning Letter was received on January 10, 2014 by “Mohammed.” Complaint ¶ 11.
- During a subsequent inspection of Respondent’s establishment on May 3, 2014, at approximately 1:15 PM, FDA-commissioned inspectors documented that “a person younger than 18 years of age was able to purchase a package of Newport Box 100s cigarettes . . . [.]” The inspector also observed that “the minor’s identification was not verified before the sale” Complaint ¶ 1.

