

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Center for Tobacco Products,

Complainant

v.

A and H Investments USA Inc. /  
Ashok Chauhan  
d/b/a Getty,

Respondent.

Docket No. C-15-781  
FDA Docket No. FDA-2014-H-2290

Decision No. CR3674

Date: March 2, 2015

**INITIAL DECISION AND DEFAULT JUDGMENT**

The Center for Tobacco Products (CTP) filed an Administrative Complaint (Complaint) against Respondent, A and H Investments USA Inc. / Ashok Chauhan d/b/a Getty, that alleges facts and legal authority sufficient to justify the imposition of a \$250 civil money penalty. 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 \$250 civil money penalty.

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 sold cigarettes to minors, and failed to verify, by means of photo identification containing a date of birth, that a tobacco 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 \$250.

On January 5, 2015, 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 Getty, an establishment that sells tobacco products and is located at 4 Ocean Avenue, Monmouth Beach, New Jersey 07750. Complaint ¶ 3.
- During an inspection of Respondent’s establishment on October 13, 2013, at approximately 12:24 PM, an FDA-commissioned inspector observed that “a person younger than 18 years of age was able to purchase a package of Newport Box cigarettes . . . [.]” The inspectors also documented that “the minor’s identification was not verified before the sale . . . .” Complaint ¶ 10.
- On December 19, 2013, CTP issued a Warning Letter to Respondent regarding the inspector’s observations from October 13, 2013. The letter explained that the observations constituted violations of regulations found at 21 C.F.R. § 1140.14(a) and (b)(1), 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 United Parcel Service records indicate that an individual named “Chalham” received the Warning Letter, CTP did not receive a response. Complaint ¶ 11.
- During a subsequent inspection of Respondent’s establishment, conducted on September 3, 2014, at approximately 12:46 PM, FDA-commissioned inspectors

