

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Center for Tobacco Products,

Complainant

v.

Ralph Baskerville  
d/b/a 4744 Corner Store,

Respondent.

Docket No. C-12-1037  
FDA Docket No. FDA-2012-H-0792

ALJ Ruling No. 2013-1

Date: November 19, 2012

**RULING DENYING MOTION  
TO REOPEN DEFAULT JUDGMENT**

I deny the motion of Respondent, Ralph Baskerville d/b/a Corner Store to reopen the default judgment that Administrative Law Judge (ALJ) Scott Anderson issued in this case because Respondent has not shown that extraordinary circumstances prevented him from answering the administrative complaint that was served by the Center for Tobacco Products (CTP).

Respondent operated a business that sold tobacco products. On August 8, 2012, CTP issued an administrative complaint charging that Respondent had sold tobacco products to a minor under the age of 18 and had failed to verify the age of a minor by means of photographic identification. CTP sought a civil money penalty of \$500. The administrative complaint was sent to Respondent's place of business at 4744 Alhambra Avenue, Baltimore, Maryland. An individual named "Price" signed a United Parcel Service receipt for the document.

The administrative complaint advised Respondent that he had 30 days within which to file an answer, if Respondent desired a hearing to challenge the allegations and the proposed civil money penalty. Respondent failed to file an answer within the 30-day period. On October 2, 2012, ALJ Anderson issued an initial decision and default judgment against Respondent. The initial decision and default judgment was sent to Respondent's 4744 Alhambra Avenue address by certified mail, return receipt requested, and, as was the case with the administrative complaint, an individual named "Price" signed the receipt for the document.

On October 8, 2012, Respondent contacted the Appellate Division of the Departmental Appeals Board to inquire about his appeal rights. On November 1, 2012, Respondent filed a motion with the Board's Civil Remedies Division that effectively asked me to reopen the initial decision and default judgment that I had entered against him. CTP opposed the motion.

In his motion, Respondent asserts that he dissolved his business in May 2012 and that "there were documents and/or letters that I did not receive because I was no longer physically in the store." Respondent does not explain why he failed to receive the administrative complaint but received the initial decision and default judgment on or about the date that it was delivered to his now-former business. Respondent gives no explanation of the mechanism – if any – that he put into place to assure that documents of importance relating to his dissolved business be transmitted to him.

A motion to reopen an initial decision and default judgment is governed by regulations at 21 C.F.R. § 17.11(d). The regulation precludes reopening, unless the Respondent can establish the presence of "extraordinary circumstances excusing the failure to file an answer in a timely manner." The term "extraordinary circumstances" is not defined. However, in the context of the regulation, the term clearly means circumstances that are beyond a party's ability to control that prevent it from discharging the duty to file a timely answer.

"Extraordinary circumstances" describes circumstances that are analogous to what constitutes "good cause" pursuant to regulations published at 42 C.F.R. Part 498 that govern hearings in cases involving the Centers for Medicare and Medicaid Services (CMS). The CMS regulations have always been interpreted to mean that good cause for an untimely filing must constitute events that are beyond an individual's ability to control that preclude an individual from filing something timely. "Good cause" has never been defined so generously as to include ordinary negligence.

Respondent has not shown that circumstances that were beyond his ability to control prevented him from filing an answer in this case. Even if he had dissolved his business, he had a duty to assure that documents of importance were transmitted to him timely. I take notice of the fact that a business that is dissolved still is responsible for acts that it committed, or that were committed on its behalf, before the dissolution. The proprietor of any business is legally required to answer for, and be responsible for, pre-dissolution events.

In this case, that meant that Respondent was obligated to assure that a document such as the administrative complaint would be brought to his attention. Accepting Respondent's assertion as true, the fact that he did not see the administrative complaint because he was no longer physically present at his former place of business is no explanation of extraordinary circumstances for his failure to receive it. At best, Respondent's explanation amounts to an assertion that he was negligent in assuring that he be given documents of importance. As I have stated, ordinary negligence can never constitute "extraordinary circumstances."

/s/

---

Steven T. Kessel  
Administrative Law Judge