

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,

Complainant

v.

Shreeyamuna, LLC
d/b/a Woodside Mini Mart,

Respondent.

Docket No. C-15-3853
FDA Docket No. FDA-2015-H-3084

Decision No. CR4688

Date: August 22, 2016

INITIAL DECISION

I sustain the determination of the Centers for Tobacco Products of the United States Food and Drug Administration (CTP) to impose a civil money penalty of \$11,000 against Respondent, Shreeyamuna, LLC d/b/a Woodside Mini Mart. The preponderance of the evidence establishes that Respondent sold tobacco products to minors, failed to verify the purchaser's identification, and had an open pack of cigarettes intended for the sale of individual cigarettes during a forty-eight month period in violation of 21 C.F.R. §§ 1140.14(a), 1140.14(b)(1), and 1140.14(d). These actions were violations of the Federal Food, Drug, and Cosmetic Act (Act), 21 U.S.C. § 387c(a)(7)(B).

I. Procedural History

Complainant began this matter by serving an administrative complaint on Respondent, Woodside Mini Mart, at 999 Woodside Avenue, Greenville, South Carolina 29611, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. Respondent timely answered the Complaint. In its Answer, Respondent admitted the violations alleged in the Complaint.

On October 15, 2015, I issued an Acknowledgement and Prehearing Order (APHO) that set deadlines for the parties to file their pre-hearing exchanges. Respondent requested a hearing in order to challenge CTP's determination to impose an \$11,000 civil money penalty against it. On December 29, 2015, CTP filed a Notice of Pending Settlement and an Unopposed Motion to Extend Deadlines. The Motion was granted on December 31, 2015. On March 29, 2016, CTP filed a subsequent Notice of Pending Settlement and an Unopposed Motion to Extend Deadlines that was granted on March 30, 2016. On May 17, 2016, CTP filed a third Notice of Pending Settlement and an Unopposed Motion to Extend Deadlines stating that Respondent has partially executed the settlement agreement, but is requesting an additional forty-five (45) days to submit payment. I granted the Motion extending the exchange deadline to July 11, 2016 for CTP and August 1, 2016 for the Respondent. I informed the parties that no further extensions would be granted.

To date, the parties have not submitted a Notice of Settlement Agreement. On July 11, 2016 CTP filed a brief and four proposed exhibits that are identified as CTP Ex. 1- CTP Ex. 4. Respondent did not submit a written brief or any proposed exhibits. Accordingly, I am issuing a decision on the record in this case. I receive CTP Ex. 1- CTP Ex. 4 into the record.

II. Issues, Findings of Fact and Conclusions of Law

A. Issues

The issues are whether:

1. Respondent marketed and sold tobacco products in violation of federal law;
2. A civil money penalty of \$11,000 is reasonable.

B. Findings of Fact and Conclusions of Law

The following facts are undisputed. Respondent does business as Woodside Mini

Mart, located at 999 Woodside Avenue, Greenville, South Carolina 29611. Respondent's business includes the sale of tobacco products, including cigarettes. CTP Informal Brief, at 4.

CTP asserts, and Respondent admits, that Respondent sold tobacco products to minors on three occasions, failed to verify the purchaser's identification on three occasions, and had an open pack of cigarettes intended for the sale of individual cigarettes on one occasion. Respondent's Answer; CTP Informal Brief at 1. Specifically, on December 16, 2013, July 2, 2014, and April 13, 2015, Respondent sold tobacco products (cigarettes) to minor purchasers and failed to verify the minors' identification. CTP Informal Brief at 4-5. Respondent had an open pack of cigarettes intended for the sale of individual cigarettes on April 28, 2015. CTP Informal Brief at 6. The admitted violations add up to a total of six violations of the Act and implementing regulations over a period of about forty-eight months.

Complainant is authorized to impose civil money penalties on individuals or entities that violate the Act and its implementing regulations. Penalties of up to \$11,000 are authorized for six violations that occur within a 48- month period. 21 C.F.R. § 17.2. I find that the penalty that Complainant seeks to impose for Respondent's noncompliance is reasonable pursuant to 21 U.S.C. § 333(f)(5)(B). Respondent egregiously violated the law and did so despite being warned not to. Respondent put the health and safety of minors at risk with its multiple violations. With regards to the proposed penalty, Respondent has not proven that its assets and financial resources are insufficient to pay the penalty amount. On the contrary, Respondent agreed that the proposed penalty of \$11,000 is appropriate. Respondent's Answer.

Order

For these reasons, I enter judgment in the amount of \$11,000 against Respondent Shreyamuna, LLC d/b/a Woodside Mini Mart.

/s/
Steven T. Kessel
Administrative Law Judge