

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Center for Tobacco Products,

Complainant

v.

Safeway Inc.  
d/b/a Safeway Fuel Station 2640,

Respondent.

Docket No. C-14-1108  
FDA Docket No. FDA-2014-H-0618

Decision No. CR3286

Date: July 10, 2014

**INITIAL DECISION AND DEFAULT JUDGMENT**

The Center for Tobacco Products (CTP) filed an Administrative Complaint (Complaint) against Safeway Inc. d/b/a Safeway Fuel Station 2640 (Respondent), which alleges facts and legal authority sufficient to justify imposing a \$500 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 civil money penalty of \$500.

CTP initiated 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's staff impermissibly sold regulated tobacco products to minors and failed to verify that a cigarette purchaser was of sufficient age, 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. Part 1140 (2012). CTP seeks a civil money penalty of \$500.

On May 21, 2014, CTP served the Complaint on Respondent by United Parcel Service, pursuant to 21 C.F.R. §§ 17.5 and 17.7.<sup>1</sup> In the Complaint and accompanying cover letter, CTP explained that within 30 days, Respondent must take one of the following three actions: pay the 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 issue an initial decision ordering Respondent to pay the full amount of the proposed penalty. 21 C.F.R. § 17.11.

Pursuant to 21 C.F.R. § 17.11(a), I am required to “assume the facts alleged in the complaint to be true, and, if such facts establish liability under [the Act],” issue an initial decision and impose a civil money penalty. Accordingly, I must determine whether the allegations in the Complaint establish violations of the Act.

Specifically, CTP alleges that:

- Respondent owns Safeway Fuel Station 2640, an establishment that sells tobacco products and is located at 13308 Meridian East, Puyallup, Washington 98373. Complaint ¶ 3.
- On September 27, 2012, CTP issued a Warning Letter to Respondent regarding alleged violations of 21 C.F.R. Part 1140 that occurred at Respondent’s establishment on July 16, 2012. The letter stated that failure to correct the violations may result in a civil money penalty action, or other regulatory action by the FDA. August 12, 2013 Complaint ¶ 10.
- On August 16, 2013, CTP initiated a civil money penalty action dated August 12, 2013, against Respondent, CRD Docket Number C-13-1145, “for [multiple] violations of 21 C.F.R. Part 1140 within a twelve-month period.” Those violations included a violation of 21 C.F.R. § 1140.14(a) and (b)(1) on July 16, 2012, and one violation of 21 C.F.R. § 1140.14(a) for selling tobacco products to a minor on January 17, 2013. Complaint ¶ 10; August 12, 2013 Complaint ¶ 1
- Rick Whidden settled the claims on Respondent’s behalf when “[he] admitt[ed] that the violations described in the Complaint filed in FDA Docket Number FDA-2013-H-0940, CRD Docket Number C-13-1145 occurred, waiv[ed] his ability to contest the violations in the future, and stat[ed] that he understood that the

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<sup>1</sup> CTP initiated a previous action against Respondent by filing an Administrative Complaint for civil money penalties with CRD dated August 12, 2013 (August 12, 2013 Complaint). CTP attached the August 12, 2013 Complaint to the Complaint it filed when it initiated the present matter.

