

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Center for Tobacco Products,  
(FDA No. FDA-2015-H-0103)

Complainant

v.

East End Kitchen and Market, LLC /  
Tageldin Banaga  
d/b/a East End Kitchen and Market,

Respondent.

Docket No. C-15-904

Decision No. CR3695

Date: March 6, 2015

**INITIAL DECISION AND DEFAULT JUDGMENT**

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, East End Kitchen and Market, LLC / Tageldin Banaga d/b/a East End Kitchen and Market, at 1159 Stratford Avenue, Bridgeport, Connecticut 06607, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that East End Kitchen and Market impermissibly sold cigarettes to minors and failed to verify, by means of photo identification containing a date of birth, that the purchasers were 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, 21 C.F.R. pt. 1140. CTP seeks to impose a \$500 civil money penalty against Respondent East End Kitchen and Market.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on January 14, 2015, CTP served the complaint on Respondent East End Kitchen and Market by United Parcel Service. In the complaint and accompanying cover letter, CTP explained that, within 30 days,

Respondent should pay the penalty, file an answer, or request an extension of time in which to file an answer. CTP warned Respondent that, if it failed to take one of these actions within 30 days, the Administrative Law Judge could, pursuant to 21 C.F.R. § 17.11, issue an initial decision ordering it to pay the full amount of the proposed penalty.

Respondent East End Kitchen and Market failed to file an answer within the time prescribed. I do note that, on February 17, 2015, Respondent filed a request for an extension of time to file an answer. This request for an extension was filed more than 30 days after the complaint was served on Respondent, is consequently untimely, and cannot serve to prevent a default judgment. However, as noted in my March 6, 2015 order, I do treat Respondent's pleading as a timely motion to reopen. I have ordered CTP to respond to Respondent's motion to reopen by March 16, 2015. In the event that Respondent's motion to reopen is ultimately granted, this Initial Decision and Default Judgment will be vacated.

In the meantime, pursuant to 21 C.F.R. § 17.11, I assume that the facts alleged in the complaint (but not its conclusory statements) are true. Specifically:

- At approximately 10:06 a.m. on September 24, 2013, at Respondent's business establishment, 1159 Stratford Avenue, Bridgeport, Connecticut 06607, an FDA-commissioned inspector observed Respondent's staff selling a package of Newport Box cigarettes to a person younger than 18 years of age. The inspector also observed that staff failed to verify, by means of photographic identification containing a date of birth, that the purchaser was 18 years of age or older;
- In a warning letter dated November 27, 2013, CTP informed Respondent of the inspector's September 24, 2013 observations, and that such actions violate federal law, 21 C.F.R. § 1140.14(a) and (b)(1). The letter further warned that Respondent's failure to correct its violations could result in a civil money penalty or other regulatory action;
- At approximately 1:17 p.m. on July 28, 2014, at Respondent's business establishment, 1159 Stratford Avenue, Bridgeport, Connecticut 06607, FDA-commissioned inspectors documented Respondent's staff selling a package of Newport Non-Menthol Box 100s cigarettes to a person younger than 18 years of age. The inspectors also documented that staff failed to verify, by means of photographic identification containing a date of birth, that the purchaser was 18 years of age or older.

These facts establish Respondent East End Kitchen and Market's liability under the Act. The Act prohibits misbranding of a tobacco product. 21 U.S.C. § 331(k). A tobacco product is misbranded if sold or distributed in violation of regulations issued under

