

**Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division**

Khush Family Inc. d/b/a Eastfield Mall – Mall’s Corner News Stand
Docket No. A-19-86
Decision No. 2959
July 29, 2019

**DECISION TO DECLINE REVIEW OF
ADMINISTRATIVE LAW JUDGE DECISION**

This case is before the Departmental Appeals Board (Board) on a notice of appeal filed by Khush Family Inc. d/b/a Eastfield Mall – Mall’s Corner News Stand (Respondent). Respondent appealed an April 23, 2019 Administrative Law Judge (ALJ) initial decision, *Khush Family Inc. d/b/a Eastfield Mall – Mall’s Corner News Stand*, DAB TB3754 (2019). In that initial decision, the ALJ, pursuant to 21 C.F.R. §§ 17.35(a) – (c) and 17.11(a), struck Respondent’s answer to the complaint for failing to comply with judicial orders and respond to the Center for Tobacco Products’s (CTP) request for production of documents. The ALJ entered default judgment against Respondent, imposing an \$11,182 civil money penalty for six violations of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 *et seq.* and its implementing regulations at 21 C.F.R. pt. 1140 within a 48-month period.

Respondent filed a notice of appeal with the Board on May 20, 2019. Respondent’s notice of appeal was not accompanied by a written brief and did not identify specific exceptions to the ALJ Decision. On June 6, 2019, the Board issued an order directing Respondent to show cause on or before July 5, 2019 why the Board should not decline review of Respondent’s appeal because Respondent failed to satisfy the regulation found at 21 C.F.R. § 17.47(c), which provides that “[a] notice of appeal shall be accompanied by a written brief” and “must identify specific exceptions to the initial decision, must support each exception with citations to the record, and must explain the basis for each exception.”

Respondent did not file a response to the Board's order by the July 5, 2019 deadline. We therefore decline review of the ALJ's initial decision. *See* 21 C.F.R. § 17.47(j). Thus, the ALJ's initial decision becomes final and binding 30 days after this declination. *Id.*

_____/s/
Sheila Ann Hegy

_____/s/
Constance B. Tobias

_____/s/
Christopher S. Randolph
Presiding Board Member