

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,

Complainant

v.

New Hop Poh Kitchen LLC,

Respondent.

Docket No. C-13-516
FDA Docket No. FDA-2013-H-0277

Decision No. CR2767

Date: April 29, 2013

INITIAL DECISION AND DEFAULT JUDGMENT

The Center for Tobacco Products (CTP) filed an Administrative Complaint (Complaint) against Respondent, New Hop Poh Kitchen LLC, alleging facts and legal authority sufficient to justify the imposition of a civil money penalty of \$2,000. Respondent did not timely 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 order that Respondent pay a civil money penalty in the amount of \$2,000.

CTP began this case by serving a 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 impermissibly sold individual cigarettes in its establishment, impermissibly sold cigarettes to a minor in the establishment, and failed to appropriately verify the age of a person purchasing cigarettes, thereby violating the Federal Food, Drug, and Cosmetic Act (Act) and its implementing regulations found at 21 C.F.R. Part 1140. CTP seeks a civil money penalty of \$2,000.

On March 15, 2013, CTP served the Complaint on Respondent by United Parcel Service, pursuant to 21 C.F.R. §§ 17.5 and 17.7. 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 within 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 Respondent to pay the full amount of the proposed penalty. Respondent did not take one of the required actions within the time provided by regulation.

I am required to issue a default judgment if the Complaint is sufficient to justify a penalty, and the Respondent fails to answer timely or to request an extension. 21 C.F.R. § 17.11(a). For that reason, I must decide whether a default judgment is appropriate here, and I conclude that it is merited based on the allegations of the Complaint and Respondent's failure to answer them.

For purposes of this decision, I assume the facts alleged in the Complaint are true. 21 C.F.R. § 17.11(a). Specifically, CTP alleges the following facts in its Complaint:

- Respondent owns New Hop Poh Kitchen, a business that sells tobacco products and is located at 49 Central Avenue, Orange, New Jersey 07050.
- On April 17, 2012, an FDA-commissioned inspector observed a violation at Respondent's establishment for selling individual cigarettes.
- On July 19, 2012, CTP issued a Warning Letter to New Hop Poh Kitchen regarding the inspector's observations from April 17, 2012. The letter stated that Respondent violated 21 C.F.R. § 1140.14(d) by selling individual cigarettes in the establishment. The letter also advised Respondent that if it failed to correct the violation, the FDA may impose a civil money penalty or take other regulatory action.
- On July 27, 2012, Chen Xiu Juan, site manager of Respondent's establishment, responded, in writing, to CTP's Warning Letter on behalf of Respondent. He stated that all tobacco products would be removed immediately from the establishment and that tobacco products no longer would be sold at the establishment.
- On October 23, 2012, CTP acknowledged, in writing, receipt of the establishment's response and reminded Respondent of its continuing obligation to be in compliance with the law.

