

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,

Complainant

v.

AMEN PALC LLC
d/b/a City Food Mart,

Respondent.

Docket No. C-14-1164
FDA Docket No. FDA-2014-H-0664

Decision No. CR3299

Date: July 18, 2014

INITIAL DECISION AND DEFAULT JUDGMENT

The Center for Tobacco Products (CTP) filed an Administrative Complaint (Complaint) against Respondent, AMEN PALC LLC d/b/a City Food Mart, that alleges facts and legal authority sufficient to justify the imposition of a civil money penalty of \$2,000. 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 \$2,000.

CTP began 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 impermissibly sold cigarettes to minors, failed to verify that cigarette purchasers were 18 years of age or older, and sold individual cigarettes, 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. pt. 1140 (2012). CTP seeks a civil money penalty of \$2,000.

On May 29, 2014, 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 proposed 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, pursuant to 21 C.F.R. § 17.11, issue an initial decision ordering Respondent to pay the full amount of the proposed penalty.

Respondent has not filed an answer within the time provided by regulation, nor has it requested an extension. Pursuant to 21 C.F.R. § 17.11(a), I am required to “assume the facts alleged in the [C]omplaint to be true” and, if those facts establish liability under the Act, issue a default judgment and impose a civil money penalty. Accordingly, I must determine whether the allegations in the Complaint establish violations of the Act.

Specifically, CTP alleges the following facts in its Complaint:

- Respondent owns City Food Mart, an establishment that sells tobacco products and is located at 442 Burnside Avenue, East Hartford, Connecticut 06108. Complaint ¶ 3.
- During an inspection of Respondent’s establishment on June 26, 2013, at approximately 10:44 AM, an FDA-commissioned inspector observed that “a person younger than 18 years of age was able to purchase a package of Newport Box 100s cigarettes . . . [.]” The inspector also observed that “the minor’s identification was not verified before the sale” Complaint ¶ 10.
- On October 10, 2013, CTP issued a Warning Letter to Respondent regarding the inspector’s observations from June 26, 2013. The letter explained that the observations constituted violations of regulations found at 21 C.F.R. § 1140.14(a) and (b)(1), and that the named violations were not necessarily intended to be an exhaustive list of all violations at the establishment. The Warning Letter went on to state that if Respondent failed to correct the violations, regulatory action by the FDA or a civil money penalty action could occur and that Respondent is responsible for complying with the law. Complaint ¶ 10.
- Amin Ul Islam responded to the Warning Letter in an October 28, 2013 letter. Mr. Islam “requested time to correct the violation and stated the violation would be addressed with the employee.” Complaint ¶ 11.
- During a subsequent inspection of Respondent’s establishment on December 26, 2013, at approximately 10:44 AM, FDA-commissioned inspectors documented that “a person younger than 18 years of age was able to purchase two individual

