

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Center for Tobacco Products,

Complainant

v.

Zimfa Incorporated  
d/b/a Albany Avenue Shell,

Respondent.

Docket No. C-14-753  
FDA Docket No. FDA-2014-H-0266

Decision No. CR3218  
Date: May 5, 2014

**INITIAL DECISION AND DEFAULT JUDGMENT**

The Center for Tobacco Products (CTP) filed an Administrative Complaint (Complaint) against Zimfa Incorporated d/b/a Albany Avenue Shell (Respondent), which alleges facts and legal authority sufficient to justify imposing a \$5,000 civil money penalty.

CTP initiated this case by serving a Complaint on Respondent and filing a copy of the Complaint with the Civil Remedies Division (CRD) and the Food and Drug Administration's (FDA) Division of Dockets Management. The Complaint alleges that Respondent's staff unlawfully sold regulated tobacco products to minors on three occasions, and during each transaction, Respondent's staff failed to verify that the cigarette purchasers were of sufficient age, thereby violating the Federal Food, Drug, and Cosmetic Act (Act), codified at 21 U.S.C. §§ 301 – 399d, and its implementing regulations found at 21 C.F.R. Part 1140. CTP seeks a civil money penalty of \$5,000.

On March 11, 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 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 Albany Avenue Shell, an establishment that sells tobacco products and is located at 949 Albany Avenue, Hartford, Connecticut 06112. Complaint ¶ 3.
- On August 19, 2013, CTP initiated a civil money penalty action against Respondent for three violations of 21 C.F.R. Part 1140 within a 24-month period. Complaint ¶ 10. Specifically, on February 27, 2012, an FDA-commissioned inspector observed that Respondent “[sold] tobacco products to a minor . . . [and] the minor’s identification was not verified before the sale . . . on February 27, 2012, at approximately 11:08 AM EST.” August 19, 2013 Complaint ¶ 10.
- During a subsequent two-part inspection conducted on January 29, 2013 and January 31, 2013, FDA-commissioned inspectors documented violations of 21 C.F.R. Part 1140 when “a person younger than 18 years of age was able to purchase a package of Maverick Box cigarettes on January 29, 2013, at approximately 1:01 PM EST; and . . . the minor’s identification was not verified before the sale, as detailed above, on January 29, 2013, at approximately 1:01 PM EST.” August 19, 2013 Complaint ¶ 1.
- “Syed I. Bokharl identified himself as being authorized to settle claims on behalf of Zimfa Incorporated d/b/a Albany Avenue Shell” and settled CRD Docket Number C-13-1147. The CRD closed the case on October 18, 2013. Complaint ¶ 11.
- During an additional two-part inspection, FDA-commissioned inspectors documented a violation of 21 C.F.R. § 1140.14(a) and (b)(1) at

