

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review Branch**

**5 U.S.C. § 552 (b)(6) & (b)(7)(C), owner of  
Aziz Station,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0225959**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a Transfer of Ownership Civil Money Penalty (TOCMP) in the amount of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** was properly imposed by FNS's Retailer Operations Division against **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, owner of Aziz Station (hereinafter "Appellant"), for selling or transferring ownership of a store that was permanently disqualified from the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(f)(2) and 7 CFR § 278.6(g) in its administration of SNAP when it assessed a TOCMP in the amount of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** against the Appellant.

**AUTHORITY**

7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1 provide that "[A] food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS."

**CASE CHRONOLOGY**

The case record indicates that in a letter dated April 25, 2017, FNS's Retailer Operations Division charged Aziz Station, under the ownership of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, with two counts of trafficking in SNAP benefits – a program violation with a penalty of permanent disqualification from SNAP. The record further shows that a determination letter was sent by FNS to the firm on June 6, 2017. Upon receipt of the determination letter, Aziz Station was permanently disqualified from SNAP effective June 7, 2017. The Appellant requested an administrative review of the

determination, but the sanction was upheld in a Final Agency Decision dated August 21, 2017. The case record indicates that the firm did not file a request for a judicial review. Accordingly, FNS closed its case effective October 12, 2017.

Both the charge and determination letters stated that in the event that ownership of the store was sold or transferred after the firm's disqualification, it would be subject to and liable for a TOCMP as provided by SNAP regulations at 7 CFR § 278.6(f)(2), (3) and (4). The letters also noted that the amount of the TOCMP would be calculated based on regulations at § 278.6(g).

Documentation in the case record shows that on August 1, 2017, a SNAP application was submitted to FNS for a new store at the same location where Aziz Station had previously operated. According to the application, this new store, P & F Marathon LLC #1, owned by 5 U.S.C. § 552 (b)(6) & (b)(7)(C), began its business operations on July 2, 2017. P & F Marathon was authorized for SNAP participation effective November 5, 2019.

Upon discovering that a new application had been submitted at a location where SNAP violations had previously occurred, the Retailer Operations Division requested additional documentation from the new store owner to verify that the disqualified owner was not affiliated with the new store in any way and to ascertain whether or not the transfer of ownership from 5 U.S.C. § 552 (b)(6) & (b)(7)(C) to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was bona fide. In response to this request, the new store owner submitted a number of documents, including a Bill of Sale and a Purchase Agreement, both dated August 2, 2017 and signed by both 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(6) & (b)(7)(C); copies of three checks as payment toward the overall sales amount; and a lease agreement between the new store owner and the property landlord. The Bill of Sale indicates that the sale was only for inventory valued at 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Purchase Agreement states: "All inventory is sold "as is-where is" without any warranty express[ed] or implied." It further states: "Buyer assumes responsibility for all packing, crating, and removal of the Inventory."

In a letter dated February 14, 2020, the Retailer Operations Division informed the Appellant that because the store was sold or transferred during its disqualification period, a TOCMP in the amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was being assessed against the owners of Aziz Station in accordance with SNAP regulations at 7 CFR § 278.6(f)(2), (3) and (4), and § 278.6(g).

In a letter postmarked February 25, 2020, the Appellant, through counsel, appealed the assessment of a TOCMP by requesting an administrative review. The request was granted and implementation of the TOCMP has been held in abeyance pending completion of this review.

It is noted that simultaneous to its request for administrative review, the Appellant submitted a request for case file information in a request made under the Freedom of Information Act (FOIA). As a result of the FOIA request, this administrative review was held in abeyance pending FNS's response to this additional request. On March 16, 2020, the administrative review officer in this case sent a letter to the Appellant stating that upon receipt of the agency's FOIA response, the Appellant would have 21 days to submit any additional information or documentation to support its request for administrative review.

On September 1, 2021, FNS completed the FOIA process and sent its response to Appellant's counsel via e-mail that same day. As noted above, the firm then had 21 days to submit any additional information to support its request for administrative review. On September 3, 2021, the administrative review officer sent the Appellant an e-mail as a reminder that the firm had a deadline of September 22, 2021 to submit any additional data it wanted considered in this matter. On September 7, 2021, Appellant's counsel submitted a short e-mail outlining its contentions.

### **STANDARD OF REVIEW**

In an appeal of adverse action, such as the imposition of a civil money penalty, an Appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

### **CONTROLLING LAW AND REGULATIONS**

The controlling law in this matter is found in the Food & Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(f)(2) and (g) establish the authority upon which a TOCMP may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(e)(1) states:

In the event any retail food store or wholesale food concern that has been disqualified under subsection (a) of this section is sold or the ownership thereof is otherwise transferred to a purchaser or transferee, the person or persons who sell or otherwise transfer ownership of the retail food store or wholesale food concern shall be subjected to a civil penalty in an amount established by the Secretary through regulations to reflect that portion of the disqualification period that has not yet expired. If the retail food store or wholesale food concern has been disqualified permanently, the civil penalty shall be double the penalty for a ten-year disqualification period, as calculated under regulations issued by the Secretary. The disqualification period imposed under subsection (b) shall continue in effect as to the person or persons who sell or otherwise transfer ownership of the retail food store or wholesale food concern notwithstanding the imposition of a civil penalty under this subsection.

7 CFR § 278.6(f)(2) reads, in part:

In the event any retail food store or wholesale food concern which has been disqualified is sold or the ownership thereof is otherwise transferred...the person or other legal entity who sells or otherwise transfers ownership...shall be subjected to and liable for a civil money penalty in an amount to reflect that

portion of the disqualification period that has not expired, to be calculated using the method found at § 278.6(g). If the retail food store...has been permanently disqualified, the civil money penalty shall be double the penalty for a ten year disqualification period...

7 CFR § 278.6(g) outlines the steps for calculating the TOCMP amount, in relevant part:

- 1) Determine the firm's average monthly redemptions...for the 12-month period ending with the month immediately preceding that month during which the firm was charged with violations.
- 2) Multiply the average monthly redemption figure by 10 percent.
- 3) Multiply the product arrived at in paragraph (g) (2) by the number of months for which the firm would have been disqualified....The civil money penalty may not exceed an amount specified in § 3.91(b) (3) (i) for each violation.

Although regulations at 7 CFR § 3.91(b)(3)(i) provide for a maximum penalty of \$120,231.00 for each program violation, FNS has established an **5 U.S.C. § 552 (b)(7)(E)**. It is also important to note that in Step 3 of § 278.6(g), above, 240 is the number of months used to calculate the civil money penalty for permanent disqualifications. This is in accordance with 7 U.S.C. § 2021(e)(1) and SNAP regulations at 7 CFR § 278.6(f)(2).

### **APPELLANT'S CONTENTIONS**

The Appellant, through counsel, made the following summarized contentions in its request for administrative review, in relevant part:

- The business in question was not sold or transferred to another party; instead, it closed down and ceased operations. So the assessment of a civil money penalty does not apply in this case.
- The mere sale of inventory does not arise to a sale of the business any more than the owner liquidating his inventory prior to permanent closure.
- There was no sale or transfer of fixtures, equipment, goodwill, or trade name.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions and evidence submitted, including any not specifically summarized or explicitly referenced in this document.

### **ANALYSIS AND FINDINGS**

The primary issue for review in this case is whether or not it was lawful for the Retailer Operations Division to impose a **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** transfer of ownership civil money penalty against the Appellant. To this regard, statute at 7 U.S.C. § 2021 and SNAP regulations at 7 CFR § 278.6(f)(2) are clear that a TOCMP shall be assessed if a store which has been disqualified is subsequently sold or the ownership of the firm is transferred prior to the end

of its disqualification period. This review has no authority to dismiss or modify a TOCMP for any reason except in the following circumstances:

- Evidence shows that a sale or transfer of ownership did not occur; or
- The monetary penalty was assessed in a manner not in accordance with regulation; or
- There was an error in calculating the TOCMP amount.

Based on an analysis of the evidence in this case, it is the finding of this review that a sale or transfer of ownership between the Appellant, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and buyer 5 U.S.C. § 552 (b)(6) & (b)(7)(C), did occur as determined by the Retailer Operations Division. Documentation provided by 5 U.S.C. § 552 (b)(6) & (b)(7)(C) shows that a sale of inventory took place effective August 2, 2017. While the Appellant has claimed that it did not sell any fixtures or equipment, the record shows that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was leasing the store from the property owner, and thus, the fixtures and equipment attached to the property were very likely not his to sell. The only remaining physical component available to sell was the firm's inventory. The record further suggests that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) did not package the purchased inventory and transport it elsewhere; rather, he immediately reopened the business under a new name. Such a transaction constitutes a sale or transfer of ownership within the meaning of SNAP regulations. That the Appellant retained its goodwill and trade name has no bearing on this matter. It is not necessary for such intangibles to be included in a sale in order to be considered a valid sale or transfer of ownership. The key issue is that the inventory which made up the convenience store located at 3416 W. Pierson Road, in Flint, Michigan, was formerly owned by 5 U.S.C. § 552 (b)(6) & (b)(7)(C). That inventory was then sold to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on August 2, 2017. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) immediately used that same inventory to open a new convenience store at the same location. This review finds such action to be tantamount to a transfer of ownership. Because the sale occurred after Aziz Station was permanently disqualified from SNAP participation, a TOCMP is warranted.

### **TOCMP Calculation**

Regulations at 7 CFR § 278.6(g) outline the steps for calculating the TOCMP amount. The TOCMP amount is derived from the firm's SNAP redemption volume during the 12 months immediately prior to being charged with the violations that led to the store's disqualification. Modifications to a TOCMP amount may occur only when there is an error in calculation or when the TOCMP amount exceeds the statutory limit. This review has no authority to modify a TOCMP amount for any other reason. The calculation of the TOCMP in this case is as follows:

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

In this case, the calculated TOCMP of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) exceeds the agency sanction limit, which is 5 U.S.C. § 552 (b)(7)(E). The April 25, 2017 charge letter identified two violations of trafficking. Therefore, the TOCMP was assessed on the basis of two violations at a maximum amount of 5 U.S.C. § 552 (b)(7)(E) each. Based on regulations cited at 7 CFR § 278.6(g), it is the determination of this review that a TOCMP in the amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was properly assessed in this matter.

## **CONCLUSION**

The permanent disqualification of Aziz Station took effect on June 7, 2017. Based on a preponderance of the evidence, this review finds that the store was sold or ownership was transferred to a new owner effective August 2, 2017. Therefore, 7 CFR § 278.6(f)(2) of the SNAP regulations is applicable, and the assessment of a TOCMP is required. A review of the calculation indicates that the amount of the TOCMP as assessed by the Retailer Operations Division is proper as noted in the analysis above. Thus, the decision to impose a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) civil money penalty against 5 U.S.C. § 552 (b)(6) & (b)(7)(C), owner of Aziz Station, is sustained.

To arrange payment, the Appellant must contact FNS's Financial Management Accounting Division at (703) 605-0483 within 30 days of receipt of this decision.

## **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. If a judicial review is desired, the complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt of this decision. The judicial filing timeframe is mandated by the Act, and this office cannot grant an extension.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

JON YORGASON  
Administrative Review Officer

October 19, 2021