

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

**5 U.S.C. § 552 (b)(6) & (b)(7)(C), owner of
Bilal Enterprise LLC,**

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0240936

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 Bilal Enterprise LLC (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 July 27, 2016, FNS's Retailer Operations Division charged Bilal Enterprise LLC, under the ownership of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, with **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** 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 August 31, 2016. Upon receipt of the determination letter, Bilal Enterprise LLC was permanently disqualified from SNAP effective

September 6, 2016. The Appellant, through counsel, requested an administrative review of the determination, but the sanction was upheld in a Final Agency Decision dated October 28, 2016. The case record indicates that the firm did not file a request for a judicial review. Accordingly, FNS closed its case effective December 5, 2016.

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 February 6, 2020, a SNAP application was submitted to FNS for a new store at the same location where Bilal Enterprise LLC had previously operated. According to the application, this new store, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), began its business operations on January 1, 2020. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was authorized for SNAP participation effective October 20, 2020.

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 dated December 5, 2019 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). The new owner also submitted copies of six rent payments made to Bluff Road Enterprises LLC (owned by 5 U.S.C. § 552 (b)(6) & (b)(7)(C)) and six "business" payments, which appeared to be payments for inventory sold by 5 U.S.C. § 552 (b)(6) & (b)(7)(C) to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) (as noted in the Bill of Sale). Additionally, the new owner submitted a written statement from 5 U.S.C. § 552 (b)(6) & (b)(7)(C) (under the business heading of Bluff Road Enterprises, LLC), which indicated that she was leasing the property to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) effective January 1, 2020. A copy of the lease agreement, signed by 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was also provided.

In a letter dated January 14, 2021, the Retailer Operations Division informed the Appellant that because its 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 owner of Bilal Enterprise LLC in accordance with SNAP regulations at 7 CFR § 278.6(f)(2), (3) and (4), and § 278.6(g).

In a letter postmarked January 25, 2021, the Appellant, through counsel, appealed the assessment of a TOCMP by requesting an administrative review. The request was granted and the case was assigned to an administrative review officer. Implementation of the TOCMP has been held in abeyance pending completion of this review. On July 15, 2021, the case was reassigned to administrative review officer Jon Yorgason.

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 \$11,000.00 limit per violation. 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 firm was disqualified from SNAP on September 6, 2016, but the firm was not disqualified by FNS to operate a convenience store.
- The firm continued to operate the store under a commercial lease with Bluff Road Enterprises, LLC, and under state and local business licenses. The store's inventory was purchased and owned by Bluff Road Enterprises, LLC.
- In December 2019, a new tenant, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), entered into a new lease with Bluff Road Enterprises, LLC, to operate the store. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) purchased the existing inventory under a Bill of Sale.
- There has been no sale or transfer of ownership of Bilal Enterprises, LLC, the firm permanently disqualified from SNAP.

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 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. The record clearly shows that in December 2019, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) purchased the inventory of the convenience store located at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), from 5 U.S.C. § 552 (b)(6) & (b)(7)(C), who had been previously disqualified from SNAP at that same location. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is the also property owner/landlord where the convenience store is located. When 5 U.S.C. § 552 (b)(6) & (b)(7)(C) operated the convenience store, she did so under the business name Bilal Enterprise LLC. After the SNAP disqualification, she retained the property, but leased the convenience store to new business owners. This leasing activity is conducted under the name Bluff Road Enterprises, LLC. But 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is plainly the owner of both Bilal Enterprise LLC and Bluff Road Enterprises, LLC.

Appellant's counsel has attempted to distance Bilal Enterprise from Bluff Road Enterprises by claiming that after the SNAP disqualification took effect, Bilal Enterprise sold its inventory to Bluff Road Enterprises. Counsel then claims that a new tenant purchased the inventory from Bluff Road Enterprises, as though Bilal Enterprise had no involvement in this secondary transaction. This review, however, finds that for SNAP purposes, this separation of Bilal Enterprise and Bluff Road Enterprises is a distinction without a difference, as both firms are owned by 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Essentially, when 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was disqualified from SNAP (under the business name Bilal Enterprise LLC), she sold the store's inventory to herself (under the business name Bluff Road Enterprises, LLC). No matter the business name, the inventory still belonged to 5 U.S.C. § 552 (b)(6) & (b)(7)(C). She then sold the inventory to 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The record further suggests that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) did not take his newly purchased inventory and transport it elsewhere; rather he immediately reopened the same convenience store under a new name. Such a transaction constitutes a sale or transfer of ownership within the meaning of SNAP regulations. That the trade name or goodwill was not included in the Bill of Sale is irrelevant. 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. Neither is it necessary for the property itself to be included in the sale. Many business owners do not own the property on which their store is located, but are rather tenants who lease space from a property owner. But leasing a portion of a property does not mean that the lessee is not a business owner. Thus, for SNAP purposes, it is not uncommon for a sale or transfer of ownership to involve little more than inventory.

Because the sale of inventory in this case occurred after Bilal Enterprise LLC 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 detailed in the table on the following page:

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 \$11,000 per violation. The July 27, 2016 charge letter identified 5 U.S.C. § 552 (b)(6) & (b)(7)(C) violations of trafficking. Therefore, the TOCMP was assessed on the basis of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) violations at a maximum amount of \$11,000 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 Bilal Enterprise LLC took effect on September 6, 2016. Based on a preponderance of the evidence, this review finds that the store was sold or ownership was transferred to a new owner effective December 5, 2019. 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 Bilal Enterprise LLC, 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

January 19, 2022