

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

Seaport Food Mart,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0252589

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Office of Retailer Operations and Compliance to levy a Transfer of Ownership Civil Money Penalty of \$11,000 against the former ownership of Seaport Food Mart (“Appellant”) for having sold a store during a period of disqualification from the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The purpose of this review is to determine whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(f)(2), when it levied a Transfer of Ownership Civil Money Penalty (TOCMP) against Appellant on April 26, 2022.

AUTHORITY

According to 7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1, “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

In a letter received by the former owner on September 8, 2020, Appellant was notified that it was permanently disqualified as a SNAP-authorized retailer. A purchase agreement dated April 2, 2021 established Appellant sold Seaport Food Mart. In the Office of Retailer Operations and Compliance’s letter dated April 26, 2022, Appellant was assessed a lump sum Transfer of Ownership Civil Money Penalty (TOCMP) of \$11,000 in accordance with 7 CFR § 278.6(f)(2) for the sale or transfer of ownership of Seaport Food Mart during a period of disqualification.

On May 5, 2022, Appellant appealed the Office of Retailer Operations and Compliance's assessment and requested an administrative review of this action. The appeal was granted and implementation of the sanction has been on hold pending completion of this review.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(f)(2) establishes the authority upon which a civil money penalty may be imposed against a disqualified retail food store or wholesale food concern in the event that it has been sold or the ownership is otherwise transferred.

7 CFR § 278.6(f)(2) reads, in part:

In the event any retail food store . . . 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

APPELLANT'S CONTENTIONS

Appellant's responses regarding this matter are essentially as follows:

- The disqualification was due to the acts of a rogue employee.
- The employee was terminated.
- None of the owners were aware of, involved in, or profited from the violations.
- Appellant requests a CMP because the disqualification poses a hardship to SNAP participants.
- Appellant requests a TOCMP based on its training program.
- The owners were forced to sell the store at a huge loss.
- The penalty is too large and unfair.

These explanations may represent only a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any others that have not been specifically listed here.

ANALYSIS AND FINDINGS

The former owners contend that disqualification was due to the acts of a rogue employee who was terminated. Appellant further contends that none of the owners were aware of, involved in, or profited from the violations. Appellant requests a CMP or a TOCMP. This appears to be an attempt to demonstrate that the earlier permanent disqualification imposed on the firm may have been improper. In this regard, no findings or conclusions on the merits of the specific arguments presented will be made. Appellant was permanently disqualified from participation in SNAP based on trafficking violations in a previous determination letter. Those matters dealing with the firm's permanent disqualification are not subject to this particular administrative review process but are included in other review processes of which Appellant was made aware, but which were not pursued.

The matter of the permanent disqualification imposed cannot properly be re-addressed in this context. The issue in this review is solely whether the Office of Retailer Operations and Compliance took appropriate action, consistent with 7 CFR § 278.6(f)(2) of the SNAP regulations, when it assessed a \$11,000 Transfer of Ownership Civil Money Penalty against Appellant.

Evidence of Transfer of Firm

Appellant contends that the firm was sold at a severe loss. While Appellant may have made little or no profit from the transfer, the Bill of Sale, which includes the conveyance of business assets (i.e., fixtures and inventory) to a new owner, indicates that this is still a legitimate business transfer subject to a TOCMP. Neither the Food and Nutrition Act of 2008 nor its implementing regulations allow for factoring in the loss of a lease when determining whether a TOCMP is warranted. The aforementioned Bill of Sale and other documentation in the Office of Retailer Operations and Compliance file verify the business's transfer on April 2, 2021. This evidence supports Office of Retailer Operations and Compliance's determination that a transfer of a business occurred, making Appellant subject to the TOCMP as outlined in the regulations at 7 CFR § 278.6(f)(2).

Basis of Amount of TOCMP

Appellant contended that the TOCMP is too high. The calculation of the amount of a CMP is based on regulations that delineate the exact formula to be used when calculating a CMP. These regulations at 7 CFR § 278.6(g) state, in relevant part:

FNS shall determine the amount of the civil money penalty as follows:

- (1) Determine the firm's average monthly redemptions of coupons 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 under paragraph (e) of this section. The civil money penalty may not exceed an amount specified in §3.91(b)(3)(i) of this title for each violation.

REDACT 5 U.S.C. § 552 (b)(6) & (b)(7)(C)

As stated above, the formula for the calculating the CMP is specific per 7 CFR § 278.6(g) and does not allow for any reductions. However, the regulations do provide the option of an installment plan for paying the CMP over the period of disqualification. The regulations at 7 CFR § 278.6(h), state the following:

A firm has 15 days from the date the FNS regional office notifies the firm in writing in which to pay the civil money penalty or to notify the regional office in writing of its intent to pay in installments as specified by the regional office . . . The civil money penalty must be paid in full by the end of the period for which the firm would have been disqualified.

Appellant can contact Financial Management at 703-305-2830 to discuss payment of this penalty in installment payments or online in one lump sum.

Modifications to the civil money penalty may occur only when there is an error in the calculation or the civil money penalty exceeds the agency limit. In this case, the calculated civil money penalty for transferring ownership of Appellant did exceed the agency limit, which is \$11,000 per violation. Therefore, the transfer of ownership civil money penalty warranted in this matter has been assessed at \$11,000, the agency limit.

Summary

Based on a review of the evidence, Seaport Food Mart was, indeed, sold following its disqualification from SNAP on September 8, 2020. Therefore, 7 CFR § 278.6(f)(2) of the SNAP regulations is applicable in this case as it pertains to a civil money penalty for the sale or transfer of a disqualified firm.

CONCLUSION

Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to levy a Transfer of Ownership Civil Money Penalty of \$11,000 against Appellant for selling Seaport Food Mart during a period of disqualification from SNAP is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If Appellant desires a judicial review, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

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.

RICH PROULX
ADMINISTRATIVE REVIEW OFFICER

August 16, 2022