

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

**5 U.S.C. § 552 (b)(6) & (b)(7)(C), former
owner of Snappy Food n Gas Mart,**

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0250558

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 \$22,000.00 was properly imposed by the Retailer Operations Division against 5 U.S.C. § 552 (b)(6) & (b)(7)(C), former owner of Snappy Food n Gas Mart (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 \$22,000.00 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 March 5, 2019, FNS’s Retailer Operations Division charged Snappy Food n Gas Mart, under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), with two violations of trafficking in SNAP benefits. FNS sent a determination letter to the firm on March 27, 2019, informing the owners that FNS found that the violations cited in the charge letter occurred. As a result, Snappy Food n Gas Mart was permanently disqualified from SNAP effective March 28, 2019. The determination letter also notified the Appellant of the right to seek administrative review of the decision; the Appellant did not file a request for review.

The determination letter stated that in the event that the firm's ownership sold or transferred ownership of the store after its 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 letter also noted that the amount of the TOCMP would be calculated based on regulations at 7 CFR § 278.6(g).

Documentation in the case record shows that on November 2, 2021, a SNAP application was submitted to FNS for a new store at the same location where Snappy Food n Gas Mart had previously operated. According to the application, this new store, also named Snappy Food n Gas Mart, owned by 5 U.S.C. § 552 (b)(6) & (b)(7)(C), began its operations effective August 23, 2021.

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 owners to verify that the disqualified owners were not affiliated with the new store in any way and to ascertain whether or not the transfer of ownership from the Appellant to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was bona fide. In response to this request, the new store owners submitted a number of documents, including signed copies of a Bill of Sale and Warranty Deed with Vendor's Lien dated August 11, 2021, verifying that a bona fide change of ownership had occurred. The new store owners also submitted an Assumed Name Certificate filed with the Texas Secretary of State and multiple business licenses.

In a letter dated January 4, 2022, 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 \$22,000.00 was being in accordance with SNAP regulations at 7 CFR § 278.6(f)(2), (3) and (4), and § 278.6(g).

On January 11, 2022, the Appellant, through counsel, appealed the Retailer Operations Division's assessment of the 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. After being granted an extension of time, in supplemental correspondence emailed on February 11, 2022, Appellant, through counsel, submitted additional information in support of the request for administrative review.

STANDARD OF REVIEW

In an appeal of an adverse action, the appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means the 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 civil penalty of \$100,000 for each violation, FNS has established an \$11,000 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 as part of its request for administrative review, in relevant part:

- The Department offered no evidence in support of its position that Appellant sold Snappy Food n Gas Mart after being permanently disqualified.
- Appellants did not transfer the business as defined or contemplated by regulation, but instead entered into an agreement solely for the sale of a portion of the assets at the property located at 5700 South Collins Street, Arlington, Texas 76018-2301.
- Rather than transferred or sold, Snappy Food n Gas Mart 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is still owned and operated by 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and will be legally closed and dissolved in accordance with the laws of Texas on August 11, 2022.
- There was no sale or transfer of the disqualified firm, Snappy Food n Gas Mart, but rather 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the assets at 5700 S. Collin Street, Arlington, Texas 76018-2301 were sold to a third party.
- Pursuant to the terms of the Bill of Sale, on or about August 11, 2021, Snappy Food n Gas Mart 5 U.S.C. § 552 (b)(6) & (b)(7)(C), agreed to enter into a sale with a third party for the sell of assets maintained at the property. Glaring absent from the above-referenced agreement is any mention whatsoever of the inclusion of the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in which, if made part of the sale, would have been referenced somewhere therein.
- There is no evidence of a transfer of licensure, tax identification, goodwill, know-how, bank accounts, liabilities, or any of the other know-how of the business or its owners. There was no non-compete agreement as would be expected if it were a sale of the business. There was not a real estate transfer either.
- To further support the Appellant's position, it is without dispute that the business continued under Appellant's ownership and obligation after the sale of the inventory, as is evidenced by a payment on the business' obligations (by way of the business' credit line) after the close of the inventory sale.
- The Department has overreached in its authority in its determination that the sale of the assets equates to the sale or transfer of ownership of a disqualified firm

Appellant did not submit any new evidence in support of these contentions on administrative review.

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 presented, including any not specifically summarized or explicitly referenced herein.

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 \$22,000.00 transfer of ownership civil money penalty against the Appellant firm. Applicable law, at 7 U.S.C. § 2021, and SNAP regulations, at 7 CFR § 278.6(f)(2), specify 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 the disqualification period. This review has no authority to dismiss or modify the penalty for any reason except in those cases where it is shown that a transfer of ownership did not occur, a monetary penalty was assessed in a manner not in accordance with regulation, or when there was an error in calculating the TOCMP amount.

Based on a review of the sales documents in this case this review finds that a sale or transfer of the business did, in fact, occur. Contrary to Appellant's contentions, evidence provided by the new owners of Snappy Food n Gas Mart clearly shows that a transfer of ownership occurred on August 11, 2021, which is after Snappy Food n Gas Mart was permanently disqualified from SNAP participation. The bill of sale indicates that the transfer included the transfer of real estate, equipment, inventory, and goodwill, as described below.

The evidence of sale includes the following documents:

- Bill of Sale and Warranty Deed with Vendor's lien signed by 5 U.S.C. § 552 (b)(6) & (b)(7)(C), dated August 11, 2021. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of Snappy Food Gas Mart at 5700 South Collins Street, Arlington, Texas 76018, for cash and other valuable consideration. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The documents included a purchase price allocation broken down as follows:
5 U.S.C. § 552 (b)(6) & (b)(7)(C)
- An Assumed Name Certificate filed on August 3, 2021, with the Secretary of State for Texas listing 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as the entity using the assumed name Snappy Food N Gas Mart.
- Texas Commission on Environmental Quality Registration dated October 18, 2021, for storage tanks owned by 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and located at Snappy Food N Gas Mart, at the store address.
- A Texas Alcoholic Beverage Commission permit for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) to sell wine at Snappy Food N Gas Mart, at the store address.
- A Texas Sales and Use Tax Permit issued on August 1, 2021, in the name of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for Snappy Food N Gas Mart, at the store address.
- A Texas Lottery Ticket Sales License in the name of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for Snappy Food N Gas Mart, at the store address.

All documentation of new ownership appears to be legitimate and proof of a bona fide sale. The bill of sale, dated August 11, 2021, is after the March 28, 2019, permanent disqualification of the

store. Therefore, it is the determination of this review that the assessment of a TOCMP against Snappy Food n Gas Mart, under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is wholly appropriate and was imposed in accordance with established statute and regulation.

TOCMP Calculation

As noted earlier, regulations at 7 CFR § 278.6(g) outline the steps for calculating the TOCMP amount. The TOCMP 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 may occur only when there is an error in calculation or when the TOCMP 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:

Month	Total SNAP Redemptions	Month	Total SNAP Redemptions
March 2018	\$1,610.24	September 2018	\$1,850.61
April 2018	\$2,985.62	October 2018	\$2,156.36
May 2018	\$1,922.91	November 2018	\$2,069.10
June 2018	\$2,478.76	December 2018	\$2,141.22
July 2018	\$1,841.24	January 2019	\$2,935.46
August 2018	\$1,190.84	February 2019	\$1,285.58

Cumulative SNAP Redemptions for the 12-Month Period Preceding the Charge Letter	\$24,467.94
Average Monthly Redemptions (AMR) – to the nearest dollar	\$2,039.00
Multiply the AMR by 10 percent – to the nearest dollar	\$204.00
Multiply by the number of months of the disqualification (240 is used for permanent disqualification) \$204.00 X 240 months	\$48,960.00
Maximum Limit – Multiply the number of violative transactions (2) by \$11,000	2 X \$11,000 = \$22,000.00

In this case, the calculated TOCMP of \$48,960.00 exceeds the agency sanction limit of \$22,000. Each trafficking pattern identified in the Month 5, 2019, charge letter is considered a single violation of the SNAP regulations. Therefore, the TOCMP was assessed using two 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 \$22,000.00 was properly assessed in this matter.

CONCLUSION

The permanent disqualification of Snappy Food n Gas Mart took effect on March 28, 2019. A review of the evidence in this case clearly indicates that the store was sold to a buyer on August 11, 2021. 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 by the Retailer Operations Division to impose a \$22,000.00 civil money penalty against 5 U.S.C. § 552 (b)(6) & (b)(7)(C), former owner of Snappy Food n Gas Mart, 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.

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.

MICHELLE WATERS
Administrative Review Officer

September 7, 2022