

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

**Former Store Owner,
Star Meat Market,**

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0252060

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a Transfer of Ownership Civil Money Penalty (TOCMP) of \$22,000.00 was properly levied by the Retailer Operations Division against the former owner of Star Meat Market (Appellant) for selling and/or transferring a store that was disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(f)(2), (3), and (4) and 7 CFR § 278.6(f)(2) and (g), in its administration of the SNAP when it assessed a TOCMP in the amount of \$22,000.00 against Appellant by letter dated February 2, 2022.

CASE CHRONOLOGY

The Retailer Operations Division permanently disqualified Star Meat Market from participation as a SNAP retailer on March 4, 2021, for trafficking SNAP benefits. On March 8, 2021, Appellant requested an administrative review of the Retailer Operations Division's determination. A Final Agency Decision was issued on April 21, 2021, sustaining the permanent disqualification that was imposed against Appellant.

Both the February 16, 2021, charge letter and the disqualification letter dated March 3, 2021, stated that if the owner(s) sold or transferred 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 letters also noted that the amount of the TOCMP would be calculated based on regulations at 7 CFR § 278.6(g).

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The case record documents the former store owner of Star Meat Market sold the firm to a new owner on or about October 6, 2021. These documents were provided to FNS when the new store owners applied for SNAP retailer authorization at this location. As a result, the Retailer Operations Division, in a letter dated February 2, 2022, notified the former owner of Star Meat Market that it had assessed a TOCMP in the amount of \$22,000.00 in accordance with the SNAP regulations.

By letter dated February 11, 2022, the former owner, through counsel, appealed the Retailer Operations Division's assessment of the TOCMP and requested administrative review of this action. The appeal was granted and implementation of the sanction has been held in abeyance pending completion of this review.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That 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

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). 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 USC § 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 . . . 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 . . .

The following steps, based on the regulations at 7 CFR § 278.6(g), are used to calculate the amount of a TOCMP:

- Step 1: Determine the cumulative redemptions for the 12 month period immediately preceding the issuance of the Retailer Operations Division's Charge letter;
- Step 2: Determine the firm's average monthly redemptions (AMR) by dividing the amount derived in Step 1 by 12. (Round this amount to the nearest dollar);
- Step 3: Multiply the AMR (as determined in Step 2) by .10. (Round this amount to the nearest dollar);
- Step 4: Multiply the amount derived in Step 3 by 240. (The number 240 is used for permanent disqualifications in accordance with the Act and the regulations.) The result is the amount of the TOCMP.

APPELLANT'S CONTENTIONS

In Appellant's February 11, 2022, administrative review request, and subsequent correspondence dated March 31, 2022, Appellant, through counsel, provided the following summarized contentions, in relevant part:

- There was no evidence to support Appellant's permanent disqualification.
- Appellant did not transfer the business as defined by the regulation, but instead entered into an agreement solely for the sale of a portion of the assets at the property location.
- In *Corner Market vs. United States*, the court found the sale of inventory absent other transferred items demonstrated the firm had not been sold.
- According to the terms of the Bill of Sale, on or about October 6, 2021, Star Meat Market and its owner agreed to enter into a sale with a third party for the sale of the assets maintained at the property located at 1941 N. Orange Ave., Sarasota, Florida 34234-8543.
- There is no evidence of a transfer of tax identification, know-how, bank accounts, liabilities, or any of the other know-how of the business or its owners.
- There was not a real estate transfer.
- The sale of these assets during a windup/start-up occurs does not mean that the prior owner has sold or transferred the store or the business.
- There should be no TOCMP imposed.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced.

ANALYSIS AND FINDINGS

Counsel explains that the permanent disqualification that was previously imposed against Appellant was not based on any evidence. The primary issue for review in this case is whether it was lawful for the Retailer Operations Division to impose a \$22,000 TOCMP against the former

owner of Star Meat Market. Thus, any contentions pertaining to the original disqualification action by the Retailer Operations Division are not subject to review.

7 USC § 2021 and SNAP regulations at 7 CFR § 278.6(f)(2) are clear that a TOCMP shall be assessed if a store that 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 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.

The record shows that Appellant was permanently disqualified from the SNAP effective March 4, 2021. Documents in the case file show that Appellant sold and/or transferred the permanently disqualified store to a new owner on or about October 6, 2021, and that this was the basis of the Retailer Operations Division's assessment of a \$22,000.00 TOCMP. The permanent disqualification letter dated March 3, 2021, informed Appellant that "in the event that you sell or transfer ownership of your store subsequent to your disqualification, you will be subject to and liable for a CMP as provided by SNAP regulations Sections 278.6(f)(2), (3), and (4). The amount of this sale or transfer CMP will be calculated based on SNAP regulations at 278.6(g)."

Counsel contends that this transaction does not constitute a transfer of ownership because Appellant only sold the store's inventory. The documentation that was submitted when the new store owner applied for SNAP retailer authorization at this location verify that the retail food business was transferred on October 6, 2021. The retail food business at Appellant's former address is now owned and operated by another entity; the fact that there is a new owner at the same location also supports that this is a legitimate business transfer subject to a TOCMP under the SNAP rules. The Bill of Sale refers to the "Contract for the Purchase and Sale of a **Business** dated September 20, 2021." Moreover, Section(a) of the Bill of Sale makes it clear that there was a sale of the business and not simply a sale of some of the assets as counsel contends. As such, there is enough evidence to support the Retailer Operations Division's determination that this does constitute a transfer of a store, making Appellant subject to the TOCMP as outlined in the Federal regulations at 7 CFR § 278.6(f)(2).

TOCMP Calculation

A review of the case record documents that the Retailer Operations Division correctly calculated the amount of the TOCMP under 7 CFR § 278.6(g). Modifications to the TOCMP may occur only when there is an error in calculation or the amount exceeds the agency limit. That regulation states that the TOCMP is to be calculated on a formula which includes the SNAP redemption volume of the store during the 12 months prior to the firm being notified of the violations that led to the store's disqualification.

The Retailer Operations Division correctly determined that the initial calculated amount of the TOCMP was **\$998,640.00**. However, the Retailer Operations Division further determined that this initial calculated TOCMP was above the agency limit, which is \$11,000 per violation. The February 16, 2021, trafficking charge letter identified two trafficking violations. Therefore, the Retailer Operations Division correctly assessed the final TOCMP at \$22,000.00, which is the agency limit per violation multiplied by the number of trafficking patterns (\$11,000.00 x 2 trafficking violations).

Case Law

Appellant cites some case law in support of its position. The consideration of legal precedent through case law is beyond the scope of this review. Instead, this administrative review is limited to whether the Retailer Operations Division appropriately followed the Food and Nutrition Act of 2008, as amended, and the regulations promulgated under the Act, and whether the action taken is sustainable by a preponderance of the evidence. Therefore, any application of a judicial precedent would be addressed in a judicial review in a court of law.

Summary

In summary, the SNAP regulations at 7 CFR § 278.6(f)(2) authorize FNS to assess a TOCMP against the owner of a disqualified retail food store that has been sold or in which the ownership is otherwise transferred. The Retailer Operations Division determined that a legal sale of Star Meat Market did occur, and this is supported by documents in the case record. Appellant's contentions do not give any legal grounds for vacating or reducing the TOCMP. Furthermore, the regulations at 7 CFR § 278.6(g) outline how to calculate the amount of the TOCMP, as described above, and do not provide any authority to waive or reduce the assessed TOCMP. As such, there is no discretion in the calculation of the TOCMP amount.

CONCLUSION

This review finds that the evidence provided by the Retailer Operations Division as to a bona fide sale of a disqualified retail food store is sufficient to support its determination to assess a transfer of ownership CMP against Appellant in the amount of \$22,000.00.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. 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's owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it 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.

Mary Kate Karagiorgos
ADMINISTRATIVE REVIEW OFFICER

June 30, 2022