

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

**Former owner of J Rancho Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0258401**

**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 \$11,000.00 was properly imposed by FNS's Retailer Operations Division against the former owner of J Rancho Market (hereinafter "Appellant"), for selling or transferring ownership of a store that was 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 \$11,000.00 against 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 SUMMARY**

The case record indicates that J Rancho Market, under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was notified in a letter dated February 5, 2020, that it would be disqualified from the SNAP for a period of three years. The letter also informed Appellant that it could request an administrative review of the decision, during the pendency of which the disqualification decision would be held in abeyance. A Final Agency Decision, dated September 1, 2021, was received by Appellant on September 1, 2021. The three-year disqualification of J Rancho Market was made effective October 5, 2021. Appellant filed for a judicial review of the disqualification on October 1,

2021. That judicial review was dismissed on March 8, 2022. Accordingly, FNS closed its case effective March 10, 2022.

The determination letter, dated February 5, 2020, notified Appellant 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 July 15, 2022, a SNAP application was submitted to FNS for a new store at the same location where J Rancho Market 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 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was authorized for SNAP participation effective September 26, 2022.

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 the 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. Chief among them was a document entitled "Bill of Sale," signed by both 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Bill of Sale indicates that the sale was for all rights, titles, and interests in J Rancho Market at 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Bill of Sale further states the sale includes: "To wit: Furniture, Fixtures, Equipments, Tools, Goodwill, ... and Inventory of Stock in Trade" of J Rancho Market.

In a letter dated February 1, 2023, the Retailer Operations Division informed Appellant that because its store was sold or transferred during its disqualification period, a TOCMP in the amount of \$11,000.00 was being assessed against the former owner of J Rancho Market in accordance with SNAP regulations at 7 CFR § 278.6(f)(2), (3) and (4), and § 278.6(g).

On February 8, 2023, Appellant appealed the assessment of a TOCMP by requesting an administrative review. The request was granted and the implementation of the TOCMP has been held in abeyance pending completion of this review.

## **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 to a purchaser or transferee, the person or other legal entity who sells or otherwise transfers ownership of the retail food store or wholesale food concern 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 or wholesale food concern has been permanently disqualified, the civil money penalty shall be double the penalty for a ten year disqualification period. The disqualification shall continue in effect at the disqualified location for the person or other legal entity who transfers ownership of the retail food store or wholesale food concern notwithstanding the imposition of a civil money penalty under this paragraph.

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 \$127,712.00 for each program violation, FNS has established 5 U.S.C. § 552 (b)(7)(E).

### APPELLANT'S CONTENTIONS

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

- Appellant states that the \$11,000.00 civil money penalty is too much as Appellant does not have any source of income.
- Appellant requests that the fee be reduced.

The preceding may represent only a brief summary of 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 an \$11,000.00 transfer of ownership civil money penalty against 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 Appellant, and buyer, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), did occur. The record clearly shows that on 5 U.S.C. § 552 (b)(6) & (b)(7)(C) purchased all right, title, and interest, including the inventory, of J Rancho Market, located at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), who had been previously disqualified from SNAP at that same location.

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 store under a new name. Such a transaction constitutes a sale or transfer of ownership within the meaning of SNAP regulations.

All documentation of new ownership appears to be legitimate and proof of a bona fide sale. Furthermore, there does not appear to be any dispute from Appellant that a sale of the store took place. Because the sale occurred after J Rancho Market was disqualified from SNAP participation, a TOCMP is warranted.

### **Hardship to Appellant**

Appellant stated that the \$11,000.00 civil money penalty is too much. Appellant requests that the penalty be reduced because Appellant has no income source.

With regard to these contentions, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP or when a civil money penalty is imposed. However, there is no provision in statute or SNAP regulations for a waiver or reduction of an administrative penalty on the basis of possible economic hardship to either the ownership personally or to the firm itself resulting from the imposition of such a penalty.

To allow store ownership to be excused from administrative penalties based on a purported financial hardship to Appellant or firm would render virtually meaningless the provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA. Moreover, giving special consideration to economic hardship to Appellant would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with Program regulations, but also to those retailers who have incurred monetary penalties in the past for similar violations. Therefore, Appellant's contention that it will incur financial hardship based on the assessment of a TOCMP does not provide a valid basis for dismissing or modifying the penalty in any way.

As noted earlier, 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. Such circumstances do not exist in this case. Accordingly, a reduction of the TOCMP amount or a dismissal of the case altogether cannot be considered.

### **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).

5 U.S.C. § 552 (b)(7)(E). Based on regulations cited at 7 CFR § 278.6(g), it is the determination of this review that a TOCMP in the amount of \$11,000.00 was properly assessed in this matter.

## CONCLUSION

The notice of a three-year disqualification of J Rancho Market was delivered to the firm on February 6, 2020. The disqualification of J Rancho Market took effect on October 5, 2021. Based on a preponderance of the evidence, this review finds that the store was sold or ownership was transferred to a new owner effective 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 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 an \$11,000.00 civil money penalty against 5 U.S.C. § 552 (b)(6) & (b)(7)(C), former owner of J Rancho Market, is sustained.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). For any questions related to payments, please contact FNS's Financial Management Accounting Division at (703) 605-0483.

## 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.

AMIE CHURCHILL  
Administrative Review Officer

April 19, 2023