

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

Stop And Save,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0254307

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 Stop And Save (“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 July 21, 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 April 8, 2021, Appellant was notified that it was permanently disqualified as a SNAP-authorized retailer. A purchase agreement dated March 24, 2022 established Appellant sold Stop And Save. In the Office of Retailer Operations and Compliance’s letter dated July 21, 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 Stop And Save during a period of disqualification.

On July 27, 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 that the owner was forced to sell the firm due to financial reasons.

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 owner contends that they were forced to sell the firm due to financial reasons. 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.

Regarding the assessment of a \$11,000 civil money penalty, 7 CFR § 278.6(f)(2) is quite specific in its directive that:

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 civil money penalty is calculated strictly on the basis of the SNAP redemption volume of the store over the 12 months prior to the firm's notification of the violations that led to the store's disqualification.

No Undue Hardship to Appellant

Appellant contends that the penalty would impose a hardship on the former ownership. While the former owner's financial situation may be worthy of sympathy, the transfer of ownership civil money penalty cannot be reduced based on Appellant's personal circumstances.

Economic hardship is a likely consequence whenever a store is permanently disqualified from SNAP participation and is assessed a transfer of ownership civil money penalty in the amount levied in this case. However, there is no provision in the SNAP regulations for reducing an administrative penalty on the basis of possible economic hardship to the firm resulting from imposition of such penalty. To excuse Appellant from an assessed administrative penalty based on purported economic hardship to the firm would render the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA virtually meaningless.

Moreover, giving special consideration to the firm for economic hardship would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, and also to those retailers who have been disqualified from the program in the past for similar violations and also assessed civil money penalties. Therefore, Appellant's contention that it will incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the imposed penalty.

Summary

Based on a review of the evidence, Stop And Save was, indeed, sold following its disqualification from SNAP on April 8, 2021. 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 Stop And Save 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

February 13, 2023