

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

Today Mini Market,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0248105

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is insufficient evidence to support the determination by the Office of Retailer Operations and Compliance to levy a Transfer of Ownership Civil Money Penalty of \$33,000 against the former ownership of Today Mini Market (“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 May 31, 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 August 5, 2015, Appellant was notified that it was permanently disqualified as a SNAP-authorized retailer. A purchase agreement dated August 10, 2015 established Appellant sold Today Mini Market. In the Office of Retailer Operations and Compliance’s letter dated May 31, 2022, Appellant was assessed a lump sum Transfer of Ownership Civil Money Penalty (TOCMP) of \$33,000 in accordance with 7 CFR § 278.6(f)(2) for the sale or transfer of ownership of Today Mini Market during a period of disqualification.

On June 9, 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

ANALYSIS AND FINDINGS

A review of the evidence does not support the Office of Retailer Operations and Compliance's determination in this case. Accordingly, it is unnecessary to address Appellant's contentions in this matter.

This administrative review decision is based on the specific circumstances of this case as documented by materials provided by Appellant and the Office of Retailer Operations and Compliance. In addition, this administrative review decision does not establish policy or supersede federal law or regulations.

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 \$33,000 against Appellant for selling Today Mini Market during a period of disqualification from SNAP is reversed.

RIGHTS AND REMEDIES

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

October 20, 2022