

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

**Quick Food Mart,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case C0245637**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), finds that there is sufficient evidence that a Transfer of Ownership Civil Money Penalty (CMP) in the amount of \$55,000.00 was properly levied by the Retailer Operations Division (Retailer Operations) against the former owner of Quick Food Mart (Appellant) for selling and/or transferring a store that was permanently disqualified from participation as a retail food store in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether Retailer Operations 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 CMP against Appellant.

**CASE CHRONOLOGY**

The record supports that the USDA notified the owner in 2013 that Appellant was permanently disqualified from participation as an authorized retail food store due to violations detailed by five data Attachment patterns. The Determination letter states that in the event the owner sold or transferred the store subsequent to the permanent disqualification, Appellant would be subject to and liable for a transfer of ownership civil money penalty pursuant to the SNAP regulations at Sections 278.6(f)(2), (3), and (4).

Retailer Operations informed the former store owner by letter dated June 29, 2021, that a transfer of ownership CMP in the amount of \$55,000.00, calculated in accordance with 7 CFR § 278.6(f)(2) and (g), was being assessed against him for the sale or transfer of the firm during a period of disqualification. By letter misdated July 13, 2020, counsel requested review of the imposed sanction. The appeal was granted by letter dated August 10, 2021. Counsel provided a brief dated August 31, 2021.

## **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. 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 argument asserted is more likely to be true than not true.

## **CONTROLLING LAW AND REGULATIONS**

7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1 provide that a food retailer 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.

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). Section 278.6(f)(2) establishes the authority upon which a civil money penalty may be imposed against a SNAP 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) states: “In the event any retail food store 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 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).”

7 CFR § 278.6(f)(3) states: “the Food and Consumer Service may request the Attorney General institute a civil action to collect the penalty from the person or persons subject to the penalty in a district court of the United States.”

7 CFR § 278.6(f)(4) states: “A bona fide transferee of a retail food store shall not be required to pay a civil money penalty imposed on the firm prior to its transfer.”

The regulations at 7 CFR § 278.6(g) describes how to calculate the amount of a transfer of ownership CMP: Step 1: Determine the cumulative redemptions for the 12-month period immediately preceding the issuance of Retailer Operations’ 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); and 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.)

7 CFR § 278.6(g) and § 3.91(b) (3)(i) establish an \$11,000.00 per violation limit as the maximum amount for a transfer of ownership CMP. The Act, at Section 12, on the subject of transfer of ownership, supports the responsibility of ownership of the firm to the penalty as follows: Section 12 (5) Hearing – In the event any retail food store or wholesale food concern that has been disqualified under subsection (a) is sold or the ownership thereof is otherwise transferred to a

purchaser or transferee, the person who sells or otherwise transfers 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 retailer food store 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.

### **APPELLANT'S CONTENTIONS**

All contentions have been considered prior to rendering a decision.

- Following the June 19, 2013, permanent disqualification of the Appellants from SNAP as authorized retailers, on September 13, 2020, Quick Food Mart and S K & F, LLC via Faheem Siddiqui, entered into a contract with 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for the lease and use of the inventory (known in legal terms as personal property) located at 325 N. Dr. Martin L King Jr. Dr., Mobile, AL for \$1,950.00 a month for 18 years with the option to purchase. Appellants did not transfer the business as defined or contemplated by the regulation. Instead, the Allegiant entered into an agreement solely for the lease of a portion of the assets, primarily comprised of the merchandise inventory maintained at the property located at 325 N. Dr. Martin L King Jr. Dr., Mobile, AL. Rather than transferred or sold, Quick Food Mart has been legally closed and dissolved in accordance with the laws of Alabama.
- The statute is silent with respect to a retail firm that had closed down and gone out of business. More specifically, Courts have traditionally held that the sale and disposal of company assets, as well as the wrapping up of the business organization indicates that the store was not “transferred,” but rather that the store owner had gone out of business. Accordingly, under such circumstances, the Department should not issue a transfer CMP.
- The courts have determined that a mere transfer of inventory, related to the winding down of a business, does not amount to a transfer or sale of the disqualified firm. Where a retailer sells inventory plus the going concern of the business, such as the name of the business, the goodwill of the business and a covenant not to compete, then there is an argument that the business has transferred. However, in the absence of such circumstances, the Department cannot contend that a transfer penalty is appropriate. In the more recent case, the district court found that where a retailer’s sale agreement mentioned the business as part of the sale, but that the title company’s settlement statements showed only the sale of inventory (and in that case, real property), the absence of other transferred items, such as licensure, bank accounts, tax identification numbers demonstrated that the retailer had not been sold or transferred. The issues of law to be decided herein are: (1) whether the Appellants’ sale of the merchandise inventory (personal property) maintained at the address 325 N. Dr. Martin L King Jr. Dr., Mobile, AL equates to the sale or transfer or ownership of a disqualified firm as set forth in 7 C.F.R. §278.6, thus warranting the issuance of a Transfer of Ownership CMP.
- It is the Appellants’ position that there was no sale or transfer of the disqualified legal entity, Quick Food Mart. Rather, Quick Food Mart was closed and dissolved, and the merchandise inventory maintained at 325 N. Dr. Martin L King Jr. Dr., Mobile, AL, as well as the assets were sold to a third party. Since the agreement was entered, the business was dissolved under the laws of the state of Alabama.
- The Lease Agreement conclusively shows that no sale or transfer of ownership of the business itself took place, but rather, the lease that took place was solely for the merchandise inventory

maintained at the property. This liquidation was utilized to close out the store's business liabilities, in accordance with Alabama law. The Department has overreached in its authority in its determination that the sale of the merchandise inventory maintained at the property equates to the sale or transfer or ownership of a disqualified firm as set forth in 7 C.F.R. §278.6. As such, no Transfer of Ownership CMP should be issued in this matter as no sale or transfer of ownership of the business took place.

- This is a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The USDA continues to issue permanent disqualifications and transfer civil money penalties to primarily minority-owned businesses. This discrimination continues to violate the Constitution as there is no such basis to discriminate on the basis of race and national origin here. This constitutes an unlawful taking under the Fifth and Fourteenth Amendment to the United States Constitution. When the government levies this penalty of over \$50,000, it is basically taking half of the business, based on a suspicion of trafficking on data driven charge.

## ANALYSIS AND FINDINGS

This review is to determine whether Retailer Operations' decision to assess a Transfer of Ownership CMP against the former owner of a previously permanently disqualified firm was in accordance with the applicable regulations. The 2013 permanent disqualification of Appellant as a SNAP retail food store is not under review.

The SNAP regulations at 7 CFR § 278.6(f) authorize FNS to assess a CMP against the owner, or other legal entity, who sells or otherwise transfers ownership of a disqualified retail food store in an amount to reflect that portion of the disqualification period that has not expired. Using the methodology described in 7 CFR § 278.6(g), Retailer Operations determined that the initial calculated amount of the Transfer of Ownership CMP was above the agency limit. Therefore, the CMP was assessed at \$55,000.00, which is the agency limit per violation.

The record contains a Bill of Sale executed and dated September 13, 2020, that states: "THAT Assignor, for and in consideration of the amount of Twenty Five Thousand USD (\$25,000.00), does hereby sell, grant, bargain, convey, transfer, assign, and deliver to Assignee and its successors and assigns all inventory located at 32°5 Martin Luther King Jr Dr Prichard, AL 36610." It should be noted all the documents refer to Prichard, AL not Mobile, AL.

The record also contains an executed Bill of Sale dated September 13, 2020, sold by the former store owner to a buyer during its period of permanent disqualification, wherein the business was sold as per clauses (a) through (f), no (e) noted, for \$100,000, inclusive of inventory. This document states:

"Transfer and Assignment of Trade Name and Goodwill. Seller does hereby grant, bargain, sell, convey, assign, transfer, set over and deliver to Purchaser all of Seller's right, title and interest in and to (collectively, the "Assigned Property"): (a) the trade name Quick Food Mart and all use of this name and in connection with its businesses; (b) all service marks related to or associated with the foregoing; (c) all of the goodwill connected with the use of and symbolized by the foregoing; (d) all business equipment located in 325 Martin Luther King Jr Dr Prichard, AL 36610 owned by Seller, and (f) all

claims and causes of action, known or unknown, matured or unmatured, belonging to Seller arising out of the foregoing and all rights and remedies related thereto.”

“Purchase Price. (a) In consideration of the transfer and assignment by Seller of the Assigned Property and Seller' inventory, the Purchaser agrees to pay to the Seller the sum of **One Hundred Thousand USD (\$100,000.00)**, which is inclusive of the inventory (the "Purchase Price"). Business is sold as-is, where-is. Purchaser and Seller agree that Purchaser shall buy the Seller's inventory at cost on the date of the Closing with cash, based on the terms of the Promissory Note, if any. (b) The actual date of closing shall be the "Effective Date".”

The record also includes a Commercial Purchase and Sale Agreement with a binding agreement date of August 22, 2020, signed by the former store owner that states: “Seller to Lease Purchase the Property with \$100,000 towards the inventory and down payment for the Property, 6% interest rate, amortized over 25 years, with a payoff of the remaining balance within 3 years from the Closing Date. Inventory is separate and shall be paid at cost on the day of Closing from the \$100,000 down payment. Business is sold as-is where is. Seller to maintain the business and all licenses until closing. Purchase Price includes both Business and Property.” The purchase price of the property to be paid by the buyer is listed at “\$375,000 + inventory.”

Therefore, the the lease agreement, also for property in Prichard AL, 36610, apparently signed October 1, 2020, is not the sole document in the record under review. The option to purchase from the former store owner as an authorized member of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), in the lease is stated at “\$75,000 and no/100 Dollars (\$75,000.00).”

Based on the entirety of record, the evidence more supports that Appellant is subject to a CMP under the SNAP regulations cited herein. As noted in an executed Bill of Sale, the trade name Quick Food Mart and all use of this name and in connection with its businesses; all service marks related to or associated with the foregoing; all of the goodwill connected with the use of and symbolized by the foregoing; all business equipment located in 325 Martin Luther King Jr Dr Prichard, AL 36610 owned by Seller, and all claims and causes of action, known or unknown, matured or unmatured, belonging to Seller arising out of the foregoing and all rights and remedies related thereto, were sold by the named former store owner of a permanently disqualified store, in an executed, notarized and bona fide Bill of Sale. As such, Retailer Operations 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 Transfer of Ownership CMP against Appellant. A review of the amount of the CMP supports that it was properly computed.

## CONCLUSION

This review finds that by a preponderance of the evidence, a bona fide sale of a permanently disqualified retail food store occurred. The evidence is sufficient to support Retailer Operations' determination to assess a Transfer of Ownership CMP against Appellant.

## RIGHTS AND REMEDIES

Attention is called to Section 14 of the Food and Nutrition Act of 2008 and to 7 CFR Section 279.7 of the regulations with respect to applicable rights to a judicial review of this determination. 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 former 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.

M. Viens  
ADMINISTRATIVE REVIEW OFFICER

October 21, 2021