

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

**186 Grocery Corp,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0214848**

**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 Retailer Operations Division to levy a Transfer of Ownership Civil Money Penalty of \$33,000 against the former ownership of 186 Grocery Corp. (“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 Retailer Operations Division 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 March 4, 2019.

**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 July 17, 2015, Appellant was notified that it was permanently disqualified as a SNAP-authorized retailer. A purchase agreement dated September 17, 2018 established Appellant sold 186 Grocery Corp. In the Retailer Operations Division’s letter dated March 4, 2019, 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 186 Grocery Corp. during a period of disqualification.

On April 25, 2019, Appellant appealed the Retailer Operations Division'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 former owner contends that he understands SNAP regulations and how small delis operate. This explanation 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 he understands SNAP regulations and how small delis operate. Regarding the assessment of a \$33,000 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. The Bill of Sale and other documentation in the Retailer Operations Division file verify the business's transfer on September 17, 2018. This evidence supports Retailer Operations Division's determination that a transfer of a business occurred, making Appellant subject to the TOCMP as outlined in the regulations at 7 CFR § 278.6(f)(2).

### **Summary**

Based on a review of the evidence, 186 Grocery Corp. was, indeed, sold following its disqualification from SNAP on July 17, 2015. 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 Retailer Operations Division to levy a Transfer of Ownership Civil Money Penalty of \$33,000 against Appellant for selling 186 Grocery Corp. 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

July 8, 2019