

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

**Former Owner of Alvin Grocery Deli Corp,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0213023**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a Transfer of Ownership Civil Money Penalty (TOCMP) of \$22,000.00 was properly assessed against **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, the former owner of Alvin Grocery Deli Corp., for selling or transferring a store that has been permanently disqualified from the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(f)(2) in its administration of the SNAP, when it assessed a TOCMP in the amount of \$22,000.00 against Alvin Grocery Deli Corp. on October 11, 2018.

**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 CHRONOLOGY**

The case record documents that FNS permanently disqualified Alvin Grocery Deli Corp., under the ownership of the Appellant, from the SNAP effective June 29, 2017 for trafficking in SNAP benefits. The permanent Disqualification Letter dated June 27, 2017 stated that if the Appellant/owner sold or transferred 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). As noted in the letter, the amount of the TOCMP is calculated based on the SNAP regulations at 7 CFR § 278.6(g).

On or about March 15, 2018, the Appellant sold Alvin Grocery Deli Corp. to a new store owner for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) including all equipment and inventory, and agreed upon by both the Seller and the Buyer as documented by an Asset Sale Agreement and a Lease in the case record. The case record includes a promissory note in which the new owner agreed to make an initial payment of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) to the former store owner/Appellant for the purchase Alvin Deli Grocery Corp. When the new store owner was authorized to participate in the SNAP on October 1, 2018, the Retailer Operations Division discovered that Alvin Grocery Deli Corp. had been sold or otherwise transferred by the former owner/Appellant. As a result, the Retailer Operations Division, in a letter dated October 11, 2018, notified the Appellant that it had assessed a TOCMP in the amount of \$22,000.00 in accordance with the SNAP regulations.

In a letter postmarked October 30, 2018, the Appellant requested an administrative review of the assessment of the TOCMP. FNS granted the Appellant's request for administrative review by letter dated November 6, 2018 and the assessment of the TOCMP was held in abeyance pending completion of this review.

### **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions 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 matter asserted is more likely to be true than not true.

### **CONTROLLING STATUTE AND REGULATIONS**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and Section 278 of Title 7 of the Code of Federal Regulations (CFR).

7 U.S.C. § 2021(e)(1) states, in part:

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. [Emphasis added.]

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 . . . 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.

7 CFR § 278.6(g) which provides the steps for calculating the TOCMP, states, in 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) Multiple the average monthly redemption figure by 10 percent.
- (3) Multiply the [average monthly redemption times 10 percent] by the number of months for which the firm would have been disqualified . . .

Notwithstanding the above, there is an agency limit of \$11,000.00 per violation as the maximum TOCMP amount.

### **APPELLANT'S CONTENTIONS**

The following may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention and consideration have been given to all contentions presented, including any not fully recapitulated or specifically referenced herein.

In response to the Retailer Operations Division's determination via a request for administrative review and in a subsequent correspondence to FNS, the Appellant argued that:

- The Appellant left a person in the store whom it had confidence to manage the store while it was at the doctor's office or going shopping for the store.
- The Appellant gave this person training and instructions regarding which items could and could not be purchased with SNAP benefits. The Appellant told this person to call it if he/she had any questions or issues. The Appellant also called this person several times to make sure everything was running smoothly.
- The Appellant was unaware that this person processed SNAP benefits for anything other than SNAP eligible items.
- The Appellant requests that FNS not impose the assessed TOCMP.

### **ANALYSIS AND FINDINGS**

Alvin Grocery Deli Corp., under the ownership of the Appellant, was permanently disqualified from the SNAP effective June 29, 2017. Documents in the case file show that the Appellant sold and/or transferred the permanently disqualified store to a new store owner on or about March 15, 2018, and that this was the basis of the Retailer Operations Division's assessment of a \$22,000.00 TOCMP.

#### **Trafficking Charges**

The Appellant contends that it left a person in the store whom it had confidence to manage the store while it was at the doctor's office or going shopping for the store. The Appellant gave this person training and instructions regarding which items could and could not be purchased with SNAP benefits. The Appellant told this person to call it if he/she had any questions or issues. The Appellant also called this person several times to make sure everything was running

smoothly. The Appellant was unaware that this person processed SNAP benefits for anything other than SNAP eligible items.

With regard to the Appellant's contentions, the record reflects that the Appellant was provided an opportunity to reply to the June 1, 2017 Charge Letter (which the Appellant received on June 5, 2017 per UPS confirmation) issued by the Section Chief of the Retailer Operations Division. The Appellant responded to the violations outlined in the Charge Letter in responses to the Retailer Operations Division of June 8, 2017, June 9, 2017, and June 13, 2017. The Appellant was also offered administrative review rights via the Retailer Operations Division's Determination Letter dated June 27, 2017 and received by the Appellant on June 29, 2017 (per UPS confirmation). The Appellant did not avail itself of the opportunity to request an administrative review. Therefore, a request for administrative review was not conducted and completed by FNS and the Retailer Operations Division's original determination to permanently disqualify Alvin Grocery Deli Corp. from the SNAP was sustained by FNS. As such, the permanent disqualification imposed upon the firm constitutes the agency's final administrative determination and is not subject to further administrative review. Accordingly, as the sanction is beyond the scope of this review, no further decision is rendered regarding this contention.

### **Reconsideration of Imposed TOCMP**

The Appellant requests that FNS not impose the assessed TOCMP. With regard to the Appellant's contentions, 7 CFR §278.6(f)(2) authorizes FNS to assess a TOCMP against the owner of a disqualified retail food store that has been sold or the ownership is otherwise transferred, stating as follows:

“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). . .” As such, FNS is required to impose a TOCMP against the owner of a retail food store in the event that the retail food store that has been disqualified is sold or the ownership thereof is otherwise transferred to a purchaser or transferee.

### **TOCMP Amount**

A review of the case record documents that the Retailer Operations Division correctly calculated the amount of the TOCMP under 7 CFR § 278.6(g). That regulation states that the TOCMP is to be calculated on a formula which includes the SNAP redemption volume of the store during the 12 months prior to the firm being notified of the violations that led to the store's disqualification. Modifications to the TOCMP may occur only when there is an error in calculation or the amount exceeds the agency limit.

As mentioned above, the formula for the computation for the TOCMP is specific per 7 CFR

§278.6(g) and does not allow for any reductions. However, the regulations do provide that an installment plan be allowed for paying the TOCMP over the period of disqualification. The regulations, 7 CFR §278.6(h), state the following:

A firm has 15 days from the date the FNS Retailer Operations Division notifies the firm in writing in which to pay the civil money penalty or to notify the Retailer Operations Division in writing of its intent to pay in installments as specified by the Retailer Operations Division ... The civil money penalty must be paid in full by the end of the period for which the firm would have been disqualified (emphasis added). FNS shall:

- (1) Disqualify the firm for the period determined to be appropriate under paragraph (e) of this section if the firm refuses to pay any of the civil money penalty;
- (2) Disqualify the firm for a period corresponding to the unpaid part of the civil money penalty if the firm does not pay the civil money penalty in full or in installments as specified by the FNS Retailer Operations Division ...

The Retailer Operations Division correctly determined that, using the methodology described in 7 CFR § 278.6(g), the initial calculated amount of the TOCMP was 5 U.S.C. § 552 (b)(7)(E). The June 1, 2017 Charge Letter identified two (2) patterns of trafficking based on EBT redemption data. Therefore, the TOCMP was correctly assessed at \$22,000.00 which is the agency limit per violation multiplied by the number of trafficking patterns (\$11,000.00 x 2 trafficking patterns).

The FNS Financial Management Accounting Division can be contacted at 1-703-605-0483 to discuss payment options or other related topics.

## Summary

The regulations at 7 CFR § 278.6(f) require FNS to assess a TOCMP against the former owner of a disqualified store that has been sold or otherwise transferred to a new owner. Moreover, the regulations at 7 CFR § 278.6(g) outline how to calculate the amount of the TOCMP utilizing the aforementioned formula. As such, there is no discretion in the calculation of the TOCMP amount.

## CONCLUSION

A review of the evidence in this case indicates by a preponderance of the evidence that Alvin Grocery Deli Corp., formerly owned by the Appellant, was sold on or about March 15, 2018 after it had been permanently disqualified effective June 29, 2017. Therefore, the SNAP regulation at 7 CFR § 278.6(f)(2) applies to this transfer of ownership. A review of the calculations shows that the amount of the TOCMP assessed by the Retailer Operations Division was correct and proper and the decision in this case is hereby sustained. In accordance with the Food and Nutrition Act of 2008, and the regulations thereunder, this penalty shall become effective thirty (30) days after receipt of this letter.

## **RIGHTS AND REMEDIES**

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Regulations, Part 279.7 (7 CFR § 279.7) addresses your right to a judicial review of this determination. Please note that 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 resides or are 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 (FOIA), FNS is 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.

LORIE L. CONNEEN  
Administrative Review Officer

March 18, 2019