

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review Branch
Alexandria, VA 22302**

Zeki A. Sulaiman, Former Owner)	
Cambrey Food Store)	
)	
Appellant,)	
)	
v.)	Case Number: C0192109
)	
Retailer Operations Division,)	
)	
Respondent.)	
_____)	

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 that a Transfer of Ownership Civil Money Penalty (TOCMP) in the amount of \$33,000.00 was properly imposed by the Retailer Operations Division against Zeki A. Sulaiman (hereinafter “Appellant”), former owner of Cambrey Food Store, for selling or transferring ownership of a store that was permanently disqualified from the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(f)(2) and 7 CFR § 278.6(g) in its administration of SNAP when it assessed a TOCMP in the amount of \$33,000.00 against the Appellant.

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 indicates that in a letter dated November 9, 2015, the Retailer Operations Division charged Cambrey Food Store with three violations of trafficking in SNAP benefits. The record further shows that the Appellant firm was permanently disqualified from SNAP effective December 2, 2015. The determination letter dated December 1, 2015, stated that in the event that firm ownership 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),

(3) and (4). As noted in the letter, the amount of the TOCMP is calculated based on the SNAP regulations at 7 CFR § 278.6(g).

Documentation in the case record shows that on April 7, 2016, a new SNAP application was submitted to FNS for a convenience store at the same location where Cambrey Food Store had previously operated. This new store, Cambrey Party Store, owned by [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], reportedly opened for business on January 7, 2016.

Upon discovering that a new application had been submitted at a location where SNAP violations had previously occurred, the Retailer Operations Division requested additional documentation from the new store owner to verify that the disqualified owner was not affiliated with the new store in any way and to ascertain whether or not the transfer of ownership from the Appellant to [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] was bona fide. In response to this request, [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] submitted a number of documents, including a bill of sale, a Closing Statement, a Promissory Note, and a lease agreement, all dated January 7, 2016.

In a letter dated August 22, 2016, the Retailer Operations Division informed the Appellant that because the store had been sold during the disqualification period, a TOCMP in the amount of \$33,000 was being assessed against the former owner of Cambrey Food Store in accordance with SNAP regulations at 7 CFR § 278.6(f)(2), (3) and (4), and § 278.6(g).

In a letter postmarked August 26, 2016, the Appellant, through counsel, appealed the Retailer Operations Division's assessment of the TOCMP by requesting an administrative review. The requested was granted and implementation of the TOCMP has been held in abeyance pending completion of this review.

It is noted that on September 12, 2016, the Administrative Review Officer received a letter from Appellant's counsel stating that from that point forward the Appellant would be handling this matter without counsel.

STANDARD OF REVIEW

In an appeal of adverse action, such as the imposition of a civil money penalty, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an 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 LAW

The controlling law in this matter is found in the Food & Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(f)(2) and (g) establish the authority upon which a TOCMP may be imposed against a retail food store or wholesale food concern.

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.

7 CFR § 278.6(f)(2) reads, in part,

In the event any retail food store or wholesale food concern 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 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). If the retail food store...has been permanently disqualified, the civil money penalty shall be double the penalty for a ten year disqualification period...

7 CFR § 278.6(g) outlines the steps for calculating the TOCMP amount, in relevant 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) Multiply the average monthly redemption figure by 10 percent.*
- (3) Multiply the product arrived at in paragraph (g)(2) by the number of months for which the firm would have been disqualified The civil money penalty may not exceed an amount specified in § 3.91(b)(3)(i) for each violation.*

Although regulations at 7 CFR § 3.91(b)(3) provide for a maximum civil penalty of \$32,000 for each trafficking violation (maximum penalty of \$59,000 per investigation), 7 USC 2018 (b)(7)(e). It is also important to note that in step 3, above, 240 is the number of months used to calculate the civil penalty for permanent disqualifications. This is in accordance with Section 12(e)(1) of the Act and in regulations at 7 CFR § 278.6(f)(2).

APPELLANT'S CONTENTIONS

In a letter from Appellant's counsel dated August 26, 2016, and in subsequent letters from the Appellant dated September 1, 2016 and September 26, 2016, the Appellant made the following summarized contentions in its request for administrative review, in relevant part:

From Appellant's Counsel:

- The sale of the store commenced on June 8, 2015, which was five months prior to the charge letter dated November 9, 2015. The transfer request was mailed to the Michigan Liquor Control Commission on June 8, 2015.
- The sale commenced six months prior to the December 2, 2015 permanent disqualification.
- The closing on the sale took place on January 7, 2016.
- The Final Agency Decision was dated February 17, 2016, which was 41 days after the closing of the sale.

- Due to the sale being commenced without knowledge of the possible SNAP charges, the sections of 7 CFR § 278.6 are inapplicable.
- The sale of the store was completed before any final decision had been reached on the appeal.
- Appellant requests termination of the assessment of a penalty as there is no basis for the application of the penalty.
- In support of these contentions, Appellant’s counsel provided the following documentation:
 - Letter from Appellant’s counsel to the Michigan Liquor Control Commission dated June 8, 2015, showing the Appellant’s intent to transfer ownership of the firm.
 - Document entitled “Agreement to Buy Assets, Fixtures and Equipment with Covenant not to Compete,” dated June 8, 2015.
 - Real Estate Purchase Agreement dated June 8, 2015.
 - Closing Statement dated January 7, 2016.

From Appellant:

- Appellant requests review of the decision for several reasons, including the fact that the owner had sold and was not operating the business at the time of the claimed violations.
- The person to whom the store was sold provided the Appellant with copies of documents, which were previously sent to the agency, indicating that there was no substantive violation.
- Store provided eight separate arguments regarding why the previous permanent disqualification decision was not appropriate. Appellant claims that the only violation committed by the firm was permitting credit accounts, not trafficking.
- Appellant begs FNS’s serious consideration for reversal of the previous disqualification decision, particularly in light of the fact that there was no previous notice or warning of suspected violations, nor was the firm given an opportunity for correction.
- Since the Appellant is no longer operating the store, it can accept a disqualification, but believes that a disqualification plus a \$33,000 fine is draconian.
- In support of these contentions, the Appellant provided 16 color photographs of the store to show current conditions and characteristics.

The preceding may represent only a brief summary of the Appellant’s contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

ANALYSIS AND FINDINGS

It is critical to note at this stage of the review that a request for reevaluation of the decision to permanently disqualify Cambrey Food Store from SNAP participation cannot be granted. The Appellant has exhausted all avenues of appeal in that case, including an administrative review which resulted in a Final Agency Decision dated February 17, 2016. That Final Agency Decision sustained the earlier determination of the Retailer Operations Division that the firm was likely engaging in trafficking violations. As a result, the permanent disqualification remained in effect. The Appellant elected not to pursue an appeal at the judicial level.

Therefore, the permanent disqualification decision against Cambrey Food Store is final and this review will not address any contentions or evaluate any additional documentation related to that decision.

The sole issue for review in this case is whether or not the Retailer Operations Division appropriately imposed a \$33,000 transfer of ownership civil money penalty against the Appellant firm.

Regulations at 7 CFR § 278.6(f)(2), cited above, are specific in that a TOCMP shall be assessed if a store has been disqualified and is subsequently sold or the ownership of the firm is transferred prior to the end of the disqualification period. The dispute in this case stems from the Appellant's claim that the transfer of ownership occurred prior to the Appellant's receipt of the charge and determination letters.

As stated earlier, the permanent disqualification of Cambrey Food Store, under the ownership of Zeki A. Sulaiman, took effect on December 2, 2015. Documentation in the case record shows that on April 7, 2016, a new SNAP application was submitted for a convenience store at the same location where Cambrey Food Store had operated. This new store, Cambrey Party Store, owned by [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], reportedly opened for business under the new ownership on January 7, 2016.

When the Retailer Operations Division discovered that this new application was for the same location where SNAP violations had previously occurred, it requested additional documentation from the new store owner to verify that Mr. Sulaiman was not affiliated with the new store in any way and to determine whether or not the transfer of ownership was bona fide. In response to this request, [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] submitted a number of documents, including a bill of sale, a Closing Statement, a Promissory Note, and a lease agreement, all dated January 7, 2016. This documentation clearly indicated that the sale of the business took place *after* the permanent disqualification of Cambrey Food Store took effect.

The Appellant claims, however, that the store was sold prior to the trafficking violations. Appellant's counsel claims that the sale of the store "commenced" on June 8, 2015. In support of this claim, the Appellant submitted the following documentation:

- Letter from Appellant's counsel to the Michigan Liquor Control Commission dated June 8, 2015, showing the Appellant's intent to transfer ownership of the firm.
- A document entitled "Agreement to Buy Assets, Fixtures and Equipment with Covenant not to Compete," dated June 8, 2015.
- Real Estate Purchase Agreement dated June 8, 2015.

Unfortunately, the documentation provided by the Appellant does not indicate that a sale had been finalized on June 8, 2015, only that the process of selling of the store had begun. By all indications, the Appellant simply turned management of the store over to [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] on approximately June 8, 2015, with an intent to finalize the sale once the transfer of the liquor license had been approved by the State of Michigan. But the sale of the store was not completed until January 7, 2016, which is more than a month after the Retailer Operations Division made its disqualification determination. This change of management or "commencement" of a sale is not equivalent to an actual sale, which is typically finalized with a bill of sale and other closing documents. In this case, all of the closing documentation

indicates that the official transfer of ownership occurred on January 7, 2016 – after the Appellant’s store was permanently disqualified. This review cannot find any reason to doubt the legitimacy of the closing documentation, which has the signatures of both parties.

It should be noted that even though 7 U.S.C. 2018 (b)(6) & (b)(7)(c) may have assumed management of the store prior to the Appellant’s receipt of the charge and determination letters, Mr. Sulaiman was still, in fact, the owner. As owner, Mr. Sulaiman was ultimately responsible for the proper handling of SNAP benefit transactions and for complying with all laws and regulations relating to the Program. To allow store ownership to disclaim accountability based on a pending change of ownership would render virtually meaningless the provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

It is noted that the store, under Mr. Sulaiman’s SNAP authorization, continued to accept SNAP benefits until the store was disqualified in December 2015. It should also be noted that the date of the administrative review officer’s Final Agency Decision has no bearing on this case. The Final Agency Decision, dated February 17, 2016, was simply upholding the earlier disqualification determination, which took effect on December 2, 2015.

It is the determination of this review, therefore, that a bona fide sale of the firm has occurred as contended by the Retailer Operations Division and that the sale did not take place until January 7, 2016, more than a month after the determination letter. The Appellant’s contention that the store was sold prior to the violations is not supported by any evidence. Therefore, in accordance with the regulations cited above, a transfer of ownership civil money penalty must be imposed as a result of the Appellant selling the store during a period of disqualification.

TOCMP Calculation

As noted earlier, regulations at 7 CFR § 278.6(g) outline the steps for calculating the TOCMP amount. The TOCMP is calculated on the basis of SNAP redemption volume of the store during the 12 months immediately prior to being charged with the violations that led to the store’s disqualification. Modifications to a TOCMP may occur only when there is an error in calculation or when the TOCMP exceeds the statutory limit. This review has no authority to reduce or lessen a TOCMP amount for any other reason. The calculation of the TOCMP in this case is as follows:

7 USC 2018 (b)(7)(e)

In this case, the calculated TOCMP of \$157,440 exceeds the sanction limit, which is \$33,000. Each of the three trafficking patterns identified in the November 9, 2015 charge letter is considered a single violation of the SNAP regulations at 7 CFR § 278.6(e)(8). Therefore, the TOCMP was assessed using three violations at a maximum amount of \$11,000 each. Based on the information above in connection with the regulations cited at 7 CFR § 278.6(g), it is the determination of this review that a TOCMP in the amount of \$33,000 was properly assessed in this matter.

CONCLUSION

The decision to permanently disqualify Cambrey Food Store for trafficking violations took effect on December 2, 2015. A review of the evidence in this case clearly indicates that the firm was sold to a buyer on January 7, 2016. Therefore, 7 CFR § 278.6(f)(2) of the SNAP regulations is applicable, and the assessment of a TOCMP is required. A review of the calculation indicates that the amount of the TOCMP as assessed by the Retailer Operations Division is proper as noted in the analysis above. Thus, the action by the Retailer Operations Division to impose a \$33,000 civil money penalty against Zeki A. Sulaiman, former owner of Cambrey Food Store, is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt of this decision.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If such a request is received, FNS will seek to protect, to the extent provided by law, personal information that if released could constitute an unwarranted invasion of privacy.

JON YORGASON
ADMINISTRATIVE REVIEW OFFICER

February 28, 2017
DATE