

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

**Former Owner of Cousins Corner  
Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0212721**

**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 Cousins Corner Market, 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 Cousins Corner Market on October 18, 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 Cousins Corner Market, under the ownership of the Appellant, from the SNAP effective April 4, 2017 for trafficking in SNAP benefits. The permanent Disqualification Letter dated March 31, 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 September 15, 2017, the Appellant sold Cousins Corner Market to a new store owner as agreed upon by both the Seller and the Buyer as documented by an Agreement of Sale and Purchase and a Commercial Lease in the case record. The Agreement of Sale and Purchase notes that the Buyer purchased Cousins Corner Market, located at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), Pittsburg, Pennsylvania 15221, from the Seller (Appellant) for a sum of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). When the new store owner was authorized to participate in the SNAP on September 20, 2018, the Retailer Operations Division discovered that Cousins Corner Market had been sold or otherwise transferred by the former owner/Appellant. As a result, the Retailer Operations Division, in a letter dated October 18, 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 26, 2018, the Appellant, through counsel, requested an administrative review of the assessment of the TOCMP. FNS granted the Appellant's request for administrative review by letter dated November 2, 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) Multiply 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, through counsel, argued that:

- On or about March 28, 2015, the owner incorporated Cousins Corner Market, Inc. in Pennsylvania as a closely held corporation. On or about April 4, 2017, USDA permanently disqualified the owner and his corporation from participation in the SNAP. As a result of the permanent disqualification, the closely held corporation, Cousins Market Inc., operated by the Appellant, was essentially driven out of business, although the corporation is still active.
- On or about May 2, 2017, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was incorporated in Pennsylvania as the business address of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), Pittsburgh, Pennsylvania 15221. On May 5, 2017, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), a Pennsylvania corporation, filed a fictitious name with the Pennsylvania Corporation Bureau indicating that it is doing business as Cousins Market at the above noted address. Neither the owner nor Cousins Market, Inc. has any ownership interest in 5 U.S.C. § 552 (b)(6) & (b)(7)(C) Cousins Market.
- The new owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), did not purchase Cousins Corner Market, Inc. There has been no sale of the shares of stock in Cousins Corner Market, Inc. There has been no sale or consent to appropriate the name Cousins Corner Market given to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) or filed with the Pennsylvania Corporation Bureau. Cousins Corner Market, Inc. is a separate legal entity still active with the Commonwealth of Pennsylvania. Cousins Market is a fictitious name for a separate legal entity, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Also, it is the owner's belief that there is a new and separate lease between the owner of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), Pittsburgh, Pennsylvania 15221 and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as opposed to an assignment of an existing lease between the new owner and Cousins Corner Market, Inc. The former

owner has not sold his stock in its corporation nor has he entered into any transfer or sale of the corporation.

- The Appellant's reading of the applicable SNAP regulations does not bring him to the conclusion that a person or other legal entity is precluded from selling or transferring equipment that he/she/it is no longer using.
- The Appellant requests that FNS provide him with USDA's calculations of how the \$22,000 penalty was arrived.

In support of these contentions, the following documents were submitted to FNS:

- Information printed out from [www.corporations.pa.gov](http://www.corporations.pa.gov) for Cousins Corner Market, Inc., 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and Cousins Market.
- Commercial Lease dated June 1, 2017.
- Pennsylvania Department of State Bureau of Corporations and Charitable Organizations for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) Cousins Market.

## ANALYSIS AND FINDINGS

Cousins Corner Market, under the ownership of the Appellant, was permanently disqualified from the SNAP effective April 4, 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 September 15, 2017, and that this was the basis of the Retailer Operations Division's assessment of a \$22,000.00 TOCMP.

### Appellant's Corporation Not Sold

The Appellant contends that on or about March 28, 2015, the owner incorporated Cousins Corner Market, Inc. in Pennsylvania as a closely held corporation. On or about April 4, 2017, USDA permanently disqualified the owner and his corporation from participation in the SNAP. As a result of the permanent disqualification, the closely held corporation, Cousins Market Inc., operated by the Appellant, was essentially driven out of business, although the corporation is still active. On or about May 2, 2017, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was incorporated in Pennsylvania as the business address of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), Pittsburgh, Pennsylvania 15221. On May 5, 2017, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), a Pennsylvania corporation, filed a fictitious name with the Pennsylvania Corporation Bureau indicating that it is doing business as Cousins Market at the above noted address. Neither the owner nor Cousins Market, Inc. has any ownership interest in 5 U.S.C. § 552 (b)(6) & (b)(7)(C) Cousins Market. The new owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), did not purchase Cousins Corner Market, Inc. There has been no sale of the shares of stock in Cousins Corner Market, Inc. There has been no sale or consent to appropriate the name Cousins Corner Market given to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) or filed with the Pennsylvania Corporation Bureau. Cousins Corner Market, Inc. is a separate legal entity still active with the Commonwealth of Pennsylvania. Cousins Market is a fictitious name for a separate legal entity, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Also, it is the owner's belief that there is a new and separate lease between the owner of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), Pittsburgh, Pennsylvania 15221 and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as opposed to an assignment of an existing lease between

the new owner and Cousins Corner Market, Inc. The former owner has not sold his stock in its corporation nor has he entered into any transfer or sale of the corporation. In support of its contentions, the Appellant provided FNS with information printed out from [www.corporations.pa.gov](http://www.corporations.pa.gov) for Cousins Corner Market, Inc., 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and Cousins Market; Commercial Lease dated June 1, 2017, and Pennsylvania Department of State Bureau of Corporations and Charitable Organizations for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) Cousins Market.

With regard to the Appellant's contentions, FNS, in its administration of SNAP, imposes penalties for program violations against the "firm," whose operational definition has been the retail food store together with the specific individuals who are responsible for the management, day-to-day operations, and policy decisions of that store. Thus, there is no "corporate veil" that protects individuals with regards to administrative penalties for SNAP violations. Moreover, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is the sole officer for the corporation known as Cousins Corner Market, Inc. and signed the application to participate as an authorized SNAP retailer as well as the documents that sold the business. The case record includes an Agreement of Sale and Purchase 5 U.S.C. § 552 (b)(6) & (b)(7)(C), signed on September 15, 2017, by and between 5 U.S.C. § 552 (b)(6) & (b)(7)(C), "Seller", and 5 U.S.C. § 552 (b)(6) & (b)(7)(C), "Buyer" for the purchase of the business located at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), Pittsburgh, Pennsylvania 15221. While 5 U.S.C. § 552 (b)(6) & (b)(7)(C) did not sell his corporation known as Cousins Corner Market Inc., he did sell the business known as Cousins Corner Market which was permanently disqualified from the SNAP on April 4, 2017.

In addition, the plain language in subparagraph (e)(1) of Section 12 of the Food and Nutrition Act of 2008, as amended [7 U.S.C. 2021(e)(1)], is clear that "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). . ."

The language taken from the Act above makes no accommodation to alleviate any individual acting in his role as an officer in a corporation from being assessed a TOCMP. This is especially the case if that individual is the sole officer in a privately-owned corporation and was directly involved in the sale of the store. 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.

### **Selling of Store**

The Appellant contends that his reading of the applicable SNAP regulations does not bring him to the conclusion that a person or other legal entity is precluded from selling or transferring equipment that he/she/it is no longer using.

With regard to the Appellant's contentions, as noted previously, 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**

The Appellant requests that FNS provide him with USDA's calculations of how the \$22,000 penalty was arrived.

As a matter of course in this review, the amount of the TOCMP was recalculated in accordance with the applicable FNS regulations to ensure that the amount assessed by the Operations Division is the appropriate amount. As indicated in Table 1 below, the amount of the TOCMP has been recalculated to be \$22,000.00 which is the same as the original amount that was assessed against Cousins Corner Market by the Retailer Operations Division in its October 18, 2018 letter. The formula for computing the TOCMP does not provide for discretion and is directly related to the amount of SNAP violations, redemptions and the length of time in the disqualification period. Therefore, this amount cannot be reduced. **5 U.S.C. § 552 (b)(7)(E).**

The above calculation conforms to the regulations at 7 CFR §278.6(g) and agency policy and, accordingly, is affirmed as correct and appropriate. It is noted for the record that the Retailer Operations Division has no latitude to calculate TOCMPs by any method other than that described at 7 CFR § 278.6(g). The constitutionality of the sanction has been discussed in the foregoing.

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 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 Cousins Corner Market, formerly owned by the Appellant, was sold on or about September 15, 2017 after it had been permanently disqualified effective April 4, 2017. Therefore, the SNAP regulations 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