

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

**Double Apple Discount, Inc. #2,**

**Appellant,**

**v.**

**Case Number: C0203005**

**Retailer Operations Division,**

**Respondent.**

**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 \$11,000 against the former ownership of Double Apple Discount, Inc. #2 (“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 October 10, 2017.

**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 dated June 29, 2017, Appellant was notified that it was permanently disqualified as a SNAP-authorized retailer. A bill of sale dated July 5, 2017 established Appellant sold Double Apple Discount, Inc. #2. In the Retailer Operations Division’s letter dated October 10, 2017, Appellant was assessed a lump sum Transfer of Ownership Civil Money Penalty (TOCMP) of

\$11,000 in accordance with 7 CFR § 278.6(f)(2) for the sale or transfer of ownership of Double Apple Discount, Inc. #2 during a period of disqualification.

On October 23, 2017, 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 as follows:

- The store was not sold, but was closed and went out of business; and,
- The sale and disposal of company assets is not a transfer of ownership according to *Huggins v. U.S.*

These explanations 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.

In support of its position, Appellant provided the following documents:

- A one-page letter from its bank;
- A one-page bill of sale; and,
- Five pages of tax documents.

## ANALYSIS AND FINDINGS

Appellant contends that this transaction does not constitute a transfer of ownership; Appellant sold only the old store's inventory and assets. When determining whether a TOCMP is warranted, neither the Food and Nutrition Act of 2008 nor its implementing regulations allow for factoring in whether the new owner assumed the old business liabilities (or independently established their own name and identity in a store transfer). The aforementioned Bill of Sale and other documentation in the ROD file verify that the retail food business was transferred on July 5, 2017.

The retail food business at Appellant's former address is now owned and operated by another entity; the fact that there is a new owner at the same location also supports that this is a legitimate business transfer subject to a TOCMP under the SNAP rules. As such, there is enough evidence to support the ROD's contention that this does constitute a transfer of a store, making Appellant subject to the TOCMP as outlined in the Federal regulations at 7 CFR § 278.6(f)(2):

*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 or persons who sell or otherwise transfer ownership of the retail food store or wholesale food concern shall be subjected to a civil penalty...*

The language taken from the Act above makes no accommodation to insulate any individual acting in the role of officer in a corporation from being assessed a TOCMP. This is especially true if that individual is the sole officer in a privately-owned corporation and was directly involved in the sale of the store's assets and inventory. Accordingly, this contention is not a valid basis for a waiver or the reduction of the TOCMP under review.

Appellant contends that the sale and disposal of company assets is not a transfer of ownership according to *Huggins v. U.S.* Appellant is incorrect that *Huggins v. U.S.* concerned the sale and disposal of company assets. In *Huggins*, both FNS and the plaintiff agreed that the firm had not been sold to a purchaser; the firm's equipment and inventory were not sold to a successor owner. Rather, *Huggins* concerned whether the plaintiff could lease its building, which formerly housed its disqualified store, without incurring a TOCMP. Accordingly, this case law is not applicable to the TOCMP applied in this case.

## Summary

Based on a review of the evidence, Double Apple Discount, Inc. #2 was, indeed, sold following its disqualification from SNAP on June 29, 2017. 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 \$11,000 against Appellant for selling Double Apple Discount, Inc. #2 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

January 29, 2018