

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

Express Stop,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0241153

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 Office of Retailer Operations and Compliance to levy a Transfer of Ownership Civil Money Penalty of \$22,000 against the former ownership of Express Stop (“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 Office of Retailer Operations and Compliance 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 January 7, 2021.

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 August 27, 2020, Appellant was notified that it was permanently disqualified as a SNAP-authorized retailer. A purchase agreement dated October 26, 2020 established Appellant sold Express Stop. In the Office of Retailer Operations and Compliance’s letter dated January 7, 2021, Appellant was assessed a lump sum Transfer of

Ownership Civil Money Penalty (TOCMP) of \$22,000 in accordance with 7 CFR § 278.6(f)(2) for the sale or transfer of ownership of Express Stop during a period of disqualification.

On January 15, 2021, Appellant appealed the Office of Retailer Operations and Compliance'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:

- Appellant closed the firm on October 29, 2020. Appellant provided a three-page change of corporate status form.
- After the business was closed, Appellant liquidated its remaining inventory.
- There was no change of ownership.

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.

ANALYSIS AND FINDINGS

Evidence of Transfer of Firm

Appellant contends that he closed the business on or about October 29, 2020 rather than the business being sold or transferred. Yet the evidence indicates that the retail food store at Appellant's address is now run by another owner. While Appellant may have made little or no profit from the transfer, the Bill of Sale, which includes the conveyance of business assets (i.e., fixtures and inventory) to a new owner, indicates that this is still a legitimate business transfer subject to a TOCMP. Neither the Food and Nutrition Act of 2008 nor its implementing regulations allow for factoring in the loss of a lease when determining whether a TOCMP is warranted. The aforementioned Bill of Sale and other documentation in the Office of Retailer Operations and Compliance file verify the business's transfer on October 26, 2020. This evidence supports Office of Retailer Operations and Compliance'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, Express Stop was, indeed, sold following its disqualification from SNAP on August 27, 2020. 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 Office of Retailer Operations and Compliance to levy a Transfer of Ownership Civil Money Penalty of \$22,000 against Appellant for selling Express Stop 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

March 15, 2021