

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

**5 U.S.C. § 552 (b)(6) & (b)(7)(C), former
owners of Galati Brothers Food Market,**

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0213773

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a Transfer of Ownership Civil Money Penalty (TOCMP) in the amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was properly imposed by the Retailer Operations Division against 5 U.S.C. § 552 (b)(6) & (b)(7)(C), former owners of Galati Brothers Food Market (hereinafter “Appellant”), 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 5 U.S.C. § 552 (b)(6) & (b)(7)(C) 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 April 26, 2018, FNS’s Retailer Operations Division charged Galati Brothers Food Market, under the ownership 5 U.S.C. § 552 (b)(6) & (b)(7)(C), with 5 U.S.C. § 552 (b)(6) & (b)(7)(C) violations of trafficking in SNAP benefits. FNS sent a determination to the firm on May 16, 2018, informing the owners that FNS found that the violations cited in the charge letter occurred. As a result, Galati Brothers Food Market was permanently disqualified from SNAP effective May 22, 2018.

The determination letter also notified the Appellant of the right to seek administrative review of the decision; the Appellant did not file a request for review.

The determination letter stated that in the event that the firm's ownership sold or transferred ownership of 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). The letter also noted that the amount of the TOCMP would be calculated based on regulations at 7 CFR § 278.6(g).

Documentation in the case record shows that on October 23, 2018, a SNAP application was submitted to FNS for a new store at the same location where Galati Brothers Food Market had previously operated. According to the application, this new store, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), owned by 5 U.S.C. § 552 (b)(6) & (b)(7)(C), began its operations effective June 16, 2018.

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 owners to verify that the disqualified owners were not affiliated with the new store in any way and to ascertain whether or not the transfer of ownership from the Appellant to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was bona fide. In response to this request, the new store owners submitted a number of documents, including a signed Bill of Sale and Commercial Lease, both dated June 13, 2018, verifying that a bona fide change of ownership had occurred.

In a letter dated November 8, 2018, the Retailer Operations Division informed the Appellant that because the store was sold or transferred during its disqualification period, a TOCMP in the amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was being assessed against the former owners of Galati Brothers Food Market in accordance with SNAP regulations at 7 CFR § 278.6(f)(2), (3) and (4), and § 278.6(g).

In a letter postmarked November 19, 2018, the Appellant, through counsel, appealed the Retailer Operations Division's assessment of the TOCMP by requesting an administrative review. The request was granted and implementation of the TOCMP has been held in abeyance pending completion of this review.

STANDARD OF REVIEW

In an appeal of an adverse action, 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 AND REGULATIONS

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 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. If the retail food store or wholesale food concern has been disqualified permanently, the civil penalty shall be double the penalty for a ten-year disqualification period, as calculated under regulations issued by the Secretary. The disqualification period imposed under subsection (b) shall continue in effect as to the person or persons who sell or otherwise transfer ownership of the retail food store or wholesale food concern notwithstanding the imposition of a civil penalty under this subsection.

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.

5 U.S.C. 2018 (b)(7)(e). It is also important to note that in Step 3 of § 278.6(g), above, 240 is the number of months used to calculate the civil money penalty for permanent disqualifications. This is in accordance with 7 U.S.C. § 2021(e)(1) and SNAP regulations at 7 CFR § 278.6(f)(2).

APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions as part of its request for administrative review, in relevant part:

- On Sunday, December 2, 2018, Appellant suffered a fire at the store location and all documents and receipts that could support their case were destroyed. The Fire Marshall said it would take 2-3 weeks to complete his report;
- Appellant former owners feel helpless and devastated by the obstacles they are encountering and seek leniency with their case;
- Appellant former owners were taught to respect others, and each other, from the time they were children and as adults took their beliefs to another level 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and are inspired to be better people, knowledgeable, religious, and respectful of other;
- Appellant former owners were just two Freemasons trying to help needy families;
- Appellant seeks compassion and understanding; and
- Appellant requests review of the case.

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 summarized or explicitly referenced herein.

ANALYSIS AND FINDINGS

The primary issue for review in this case is whether or not it was lawful for the Retailer Operations Division to impose a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) transfer of ownership civil money penalty against the Appellant firm. Applicable law, at 7 U.S.C. § 2021, and SNAP regulations, at 7 CFR § 278.6(f)(2), specify that a TOCMP **shall be** assessed if a store which has been disqualified is subsequently sold or the ownership of the firm is transferred prior to the end of the disqualification period. This review has no authority to dismiss or modify the penalty for any reason except in those cases where it is shown that a transfer of ownership did not occur, a monetary penalty was assessed in a manner not in accordance with regulation, or when there was an error in calculating the TOCMP amount.

Based on a review of the sales documents in this case it is the determination of this review that a sale or transfer of the business did, in fact, occur. Evidence provided by the owners of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) clearly shows that a transfer of ownership occurred on June 13, 2018, which is after Galati Brothers Food Market was permanently disqualified from SNAP participation.

Specifically, the Bill of Sale, which was signed by Appellant and former owners, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), as "Sellers" and by the new owners, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), as "Buyers" states the following: "the Sellers have agreed to sell, assign, and transfer to the Buyers and Buyers have agreed to purchase from the Sellers the business known as GALATI BROTHERS DELI & FOOD MARKET located at 5 U.S.C. § 552 (b)(6) & (b)(7)(C) (PHILADELPHIA County), PA 19135." The Bill of Sale says the agreement was made as of June 13, 2018. The Commercial Lease, signed by the same parties on the same date, likewise, supports the finding that a sale or transfer of the business did occur.

All documentation of new ownership appears to be legitimate and proof of a bona fide sale. Furthermore, there does not appear to be any dispute from the Appellant that a sale of the store took place subsequent to the firm's permanent disqualification from SNAP. Therefore, it is the determination of this review that the assessment of a TOCMP against Galati Brothers Food Market, under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is wholly appropriate and was imposed in accordance with established statute and regulation.

Contentions Regarding Original Trafficking Allegations

In the request for administrative review, the Appellant seeks compassion and understanding, and explains that the owners are 5 U.S.C. § 552 (b)(6) & (b)(7)(C) who are respectful of others and that what occurred happened because they were trying to help a few needy families. This contention appears to be in reference to the permanent disqualification of the firm due to the trafficking violations.

It is critical to note that this review cannot reevaluate the decision to permanently disqualify Galati Brothers Food Market from SNAP participation. At this point, the Appellant has exhausted all avenues of appeal in that case. The permanent disqualification took effect on May 22, 2018. In accordance with regulation, the firm had 10 days from the date of receipt of the determination letter to file a request for administrative review. Appellant did not do so. Because the window of time for reviewing the merits of the disqualification has passed, the permanent disqualification decision is final and this review has no authority to revisit it.

The sole issue for review in this case is whether or not the Retailer Operations Division appropriately imposed a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) transfer of ownership civil money penalty.

Loss of Evidence

The Appellant contends that a fire at the store location destroyed all documents and receipts in support of the case. The Appellant seeks compassion and understanding.

While it is regretful that the Appellant's documents and receipts may have been destroyed in a fire at the store location, the Appellant offered no contentions or other evidence in support of their case regarding the transfer of ownership civil money penalty. Further, the Appellant did not seek an extension of time to submit any evidence, such as the Fire Marshall's report, which the Appellant said would take 2-3 weeks to obtain after requesting administrative review. There is no provision in statute or in SNAP regulations for waiver or reduction of an administrative penalty in this circumstance, where evidence is lost. The Appellant still has the burden of proving, by a preponderance of the evidence, that a TOCMP was improperly assessed.

Given the evidence available, this administrative review cannot find any reason to doubt the legitimacy of the signed Bill of Sale and Commercial Lease provided by 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is the determination of this review that a preponderance of

the evidence shows that a bona fide sale of the firm has occurred, as contended by the Retailer Operations Division, and a transfer of ownership civil money penalty is warranted due to 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 derived from the firm's SNAP redemption volume 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 modify a TOCMP amount for any other reason.

The calculation of the TOCMP in this case is as follows:

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

In this case, the calculated 5 U.S.C. § 552 (b)(6) & (b)(7)(C) 5 U.S.C. § 552 (b)(7)(E). Based on regulations cited at 7 CFR § 278.6(g), it is the determination of this review that a TOCMP in the amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was properly assessed in this matter.

CONCLUSION

The permanent disqualification of Galati Brothers Food Market took effect on May 22, 2018. A review of the evidence in this case clearly indicates that the store was sold to a buyer on June 13, 2018. 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 decision by the Retailer Operations Division to impose a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) civil money penalty against 5 U.S.C. § 552 (b)(6) & (b)(7)(C), former owners of Galati Brothers Food Market, is sustained.

To arrange payment, the Appellant must contact FNS's Financial Management Accounting Division at (703) 605-0483 within 30 days of receipt of this decision.

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, 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.

MICHELLE WATERS
Administrative Review Officer

March 27, 2019