

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

**Gooddeal Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0188949**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS) that, with respect to the Supplemental Nutrition Assistance Program (SNAP), the transfer-of-ownership-civil-money-penalty (TOCMP) in the amount of \$10,098.00 imposed upon the former Owners of Gooddeal Market (hereinafter “Appellant”) by the ROD Office (Retailer Operations Division, Investigations and Analysis Branch, hereinafter “ROD Office”), is hereby sustained.

**ISSUE**

The issue accepted for review is whether the ROD Office took appropriate action, consistent with 7 U.S.C. § 2021, 7 CFR § 278.6(a), 7 CFR § 278.6(f), 7 CFR § 278.6(g) and 7 CFR § 278.6(h) in its administration of the SNAP when it imposed a TOCMP upon Appellant.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 C.F.R. § 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**

Gooddeal Market under the ownership of the persons referenced in the cover letter was disqualified from the SNAP for a period of three years on July 15, 2015. The ROD obtained documentation which it viewed as evidence that the firm was sold or the ownership thereof otherwise transferred on or about November 1, 2015. By a letter dated July 12, 2016, Appellant was informed that it was ordered to pay a TOCMP in the amount of \$10,098.00. On July 22, 2016, Appellant requested an administrative review of the ROD Office’s decision; the request was granted.

## STANDARD OF REVIEW

In appeals of adverse actions an appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed. That means 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 statute in this matter is contained in the Food & Nutrition Act of 2008, as amended, at 7 U.S.C. § 2021 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6 (f), (g) and (h) of the Regulations establish the authority upon which a firm that has been disqualified, and subsequently transfers ownership but has not yet fully served that disqualification period, may be assessed a civil money penalty to reflect the unexpired portion of that disqualification. **7 U.S.C. 2018 (b)(7)(e)**.

7 U.S.C. § 2021(e)(1) states, inter alia:

(e)(1) 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 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 sub-section.

7 CFR § 278.6(a) states, inter alia:

FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food & Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system.... (Emphasis added.) FNS may, in lieu of a disqualification, subject a firm to a civil money penalty of up to an amount specified in §3.91(b)(3)(i) of this title for each violation if FNS determines that a disqualification would cause hardship to participating households. FNS may impose a civil money penalty of up to an amount specified in §3.91(b)(3)(ii) of this title for each violation in lieu of a permanent disqualification for trafficking, as defined in §271.2 of this chapter, in accordance with the provisions of paragraphs (i) and (j) of this section.

7 CFR §278.6(f)(2) states:

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). 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. The disqualification shall continue in effect at the disqualified location for the person or other legal entity who transfers ownership of the retail food store or wholesale food concern notwithstanding the imposition of a civil money penalty under this paragraph.

7 CFR §278.6(f)(4) states:

A bona fide transferee of a retail food store shall not be required to pay a civil money penalty imposed on the firm prior to its transfer. A buyer or transferee (other than a bona fide buyer or transferee) may not be authorized to accept or redeem coupons and may not accept or redeem coupons until the Secretary receives full payment of any penalty imposed on such store or concern.

7 CFR §278.6(g) states:

FNS shall determine the amount of the civil money penalty as follows:

- (1) Determine the firm's average monthly redemptions of coupons 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 under paragraph (e) of this section. The civil money penalty may not exceed an amount specified in §3.91(b)(3)(i) of this title for each violation.

7 CFR §278.6(h) states:

A firm has 15 days from the date the FNS regional office notifies the firm in writing in which to pay the civil money penalty, or to notify the regional office in writing of its intent to pay in installments as specified by the agency.

### **SUMMARY OF THE CHARGES**

The record reflects that the Appellant firm was permanently disqualified from the SNAP effective July 15, 2015 and that the firm was subsequently sold, as documented by the following:

- A copy of a Promissory Note dated November 9, 2015, signed as “Maker” by the new Owner of the business formerly known as Gooddeal Market of and the prior Owner as “Payee,” establishing that the Maker promises to the Payee a particular sum of money

- by means of consecutive monthly installments of a lesser amount until the greater sum is paid. Payment is made “For Value Received.”
- A copy of a Schedule of Assets sold via an Asset Purchase Agreement naming the new Owner as “Buyer” and the prior Owner as “Seller” and the individual Owners thereof (the document lists 10 individual Owners) and listing the following Assets:
    - Walk-in cooler and freezer.
    - Two cash registers.
    - Three long shelves.
    - One counter.
    - Self-contained cooler and freezer.
    - Three compartment sink and hand sink.
    - One meat cutter (grinder, tenderizer and saw).
    - Two scales.
    - Cargo Van (Year 2000).
    - Inventory.
  - A copy of a Schedule of Assets sold via an Asset Purchase Agreement naming the new Owner as “Buyer” and the prior Owner as “Seller” and the individual Owners thereof (the document lists 10 individual Owners), subtitled “Asset Allocation Agreement And Asset Acquisition Statement,” and listing the following Business Assets:
    - Furniture/fixtures/equipment.
    - Inventory.
    - Intangible Assets.
    - Goodwill.
  - A copy of a Bill of Sale dated November 9, 2015 between the above-referenced Buyer, named as “Grantee,” and signed by said Owner thereof and the above-referenced Seller, named as “Grantor,” and signed by said Owner thereof, documenting that all of the business assets of the Grantor are bargained, sold and conveyed to the Grantee for a specified sum.
  - A copy of a Lease Agreement entered into on November 1, 2015 (and extending for a period of two years) by the above referenced Buyer/Grantee, named as “Lessee” and a third business entity, named as “Lessor” and “Landlord” pertaining to the premises at which the store is/was located, and stipulating the terms thereof, including the nature of the business to be conducted at said premises (Grocery and Butcher Shop) and that the sole relationship between the signatories is that of Lessor and Lessee and not to otherwise be deemed, held or construed as creating a joint venture or partnership between the parties. Said Lessor/Landlord is a former Owner of the business at issue.
  - A copy of a Deposit Account Balance Summary reflecting a bank account held by said Buyer/Grantee/Lessee opened on November 12, 2015.
  - Copies of tax documents related to said Buyer/Grantee/Lessee.
  - A copy of a screen print from the Ohio Secretary of State dated October 10, 2016 reflecting a corporation noting the above-referenced Seller/Grantor/Lessor was at that time an “active” corporation and filed articles on September 15, 2003.
  - A IRS notice assigning an employer identification number to the above-referenced Buyer/Grantee/Lessee.

- A copy of a State of Ohio certification that Articles of Incorporation for the above-referenced Seller/Grantor/Lessor had been filed on September 15, 2003.
- A copy of the Articles of Incorporation of the above-referenced Seller/Grantor/Lessor.

### **APPELLANT'S CONTENTIONS**

In Appellant's written request for review dated July 22, 2016, and in subsequent correspondence, it was argued that:

1. It is Appellant's understanding that Gooddeal Market is still owned by the same individuals that operated the firm when it was disqualified from the WIC and SNAP programs. Gooddeal Market is still listed as an "active" entity with the Ohio Secretary of State. Appellant provides a screen print of the Secretary of State's web site showing Gooddeal Market as an "active" entity.
2. The above-referenced new Owner is an Owner of a business entity distinct from Gooddeal Market. Appellant provides a copy of an IRS employer identification number in support thereof. Documents provided to Appellant in response to its FOIA request show that that new Owner on behalf of his company purchased assets from Gooddeal Market; Appellant provides copies of said documentation. The new Owner entered into a loan agreement with Gooddeal Market whereby payments are made to Gooddeal Market on a monthly basis; Appellant provides a copy of the promissory note.
3. USDA is either ignoring or refusing to respect invalid asset sale between unrelated entities. Such treatment obviates the distinction between stock sales and asset sales.

### **ANALYSIS AND FINDINGS**

In regard to contention 1 above, the screen print and/or the web listing is not reliable evidence that the business at issue was not sold or the ownership thereof otherwise transferred; in fact the bulk of the evidence in the case points toward such a sale/transfer, despite the Secretary of State's online information. It is also quite possible, likely in fact, that while the corporation may remain active on the State's web site the business at issue has nonetheless been sold/transferred. The documentation reflected on the State's web site indicates that corporate documents were filed in 2003 and accepted by the State of Ohio; no further information about the corporation is provided. The web site does not appear to be an accurate reflection of the operational or sales/transfer status of businesses owned, or no longer owned, by the corporation.

Moreover, FNS, in its administration of SNAP, considers a SNAP-authorized "firm" to be comprised of the facilities/equipment/inventory and other assets, together with the specific individuals who are responsible for the management, day-to-day operations and policy decisions of that location. While a "business" may cease to exist, as may any value attributable to its name or other intangible assets, the saleable remnants of said business continue to constitute the "firm" or establishment for the purposes of the SNAP. There is no indication in the record of the existence of any business assets other than those sold by the former Owner to the current Owner. The current Owner now operates a SNAP-authorized firm which occupies the same premises as that occupied by the former Owner.

There is clear indication in the record that the Appellant firm was in fact sold during its period of disqualification, which, in this case was a three-year WIC reciprocal disqualification. The fact is that the retail food business at the stated address is now owned and operated by another entity; that there is a new owner at the same location indicates that this is a legitimate business transfer subject to a TOCMP under the SNAP rules. As such, there is sufficient evidence to support the SNAP Office's determination that a TOCMP as outlined in the Federal regulations at 7 CFR § 278.6(f)(2) was correctly and appropriately imposed.

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...

There is no indication in the record that the current owner was involved in any of the violative activity which formed the basis of the firm's previous disqualification and there is no indication in the record that the new owner is in any way related to the previous owners. There is no indication in the record that the sale is illegitimate in any relevant respect. **7 U.S.C. 2018 (b)(7)(e)**.

Regarding contention 2 above, Appellant's contentions support the conclusion that a sale or transfer of ownership of the business did in fact occur. Appellant notes that the new owner is a separate and distinct entity from the prior owner, that all business assets of the firm were sold by the former owner to the new owner and that the new owner paid or is paying the former owner for said business along with its assets. Neither the applicable statute nor the implementing regulations contemplate whether the new owner assumes the old owner's operations or begins operations anew; it is common that a new firm establishes its own identity independent of the old firm, with new licenses, permits, etc.

With regard to contention 3 above, as noted in the foregoing, FNS considers the sale of a business's assets, which in this case included, furniture, fixtures, equipment, inventory, goodwill and intangible assets, as the sale of the firm for the purposes of the SNAP. As noted, all saleable assets of said business were in fact sold and/or the ownership thereof otherwise transferred.

### **CIVIL MONEY PENALTY**

The Retailer Operations Division determined that the calculated amount of the TOCMP far exceeded the agency limit, which is \$11,000 per violation. The record indicates the WIC State agency identified one pattern of violations of the WIC regulations; therefore, the TOCMP agency limit was correctly assessed at \$11,000.00.

The ROD Office then reduced the agency limit in order to extend credit for three-month's disqualification time served (of the 36 imposed), as the firm was sold approximately three months following the disqualification. The amount was calculated to be \$10,098.00, or a reduction of \$902.00. However, applying the reduction to the agency limit is not supported by policy and the correct amount would have been \$11,000.00. Nonetheless, 7 C.F.R. § 289.5 does

not extend latitude to increase a TOCMP amount (from \$10,098 to \$11,000.00) as a result of an administrative review.

### **CONCLUSION**

In view of the above, the decision of the ROD Office to impose a TOCMP in the amount of \$10,098.00 is hereby sustained. Please contact the Centralized Receivables Service at 1-855-549-4285 to discuss payment options, or follow the instructions in the Retailer Operations Division's letter dated July 12, 2017 regarding online or check payment options. This decision will become effective upon the 30th day following Appellant's receipt of this document.

### **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 a judicial review is desired, 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 provisions of 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.

DANIEL S. LAY  
Administrative Review Officer

April 18, 2017