

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

**Former Store Owner,
Hong Cheng Inc,**

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0233391

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), finds that there is sufficient evidence that a transfer of ownership Civil Money Penalty (CMP) was properly levied in the amount of \$44,000.00 by the Retailer Operations Division (Retailer Operations) against the former owner of Hong Cheng Inc. (Appellant) for selling and/or transferring a store that was disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.6(f)(2), (3), and (4) and 7 CFR § 278.6(f)(2) and (g), in its administration of the SNAP when it assessed a transfer of ownership civil money penalty against the former store owner.

CASE CHRONOLOGY

The record supports that the USDA notified the owner by letter dated April 19, 2018, that Appellant was permanently disqualified from participation in SNAP as an authorized retail food store. The April 2018 Determination letter states that in the event the owner sold or transferred ownership of the store subsequent to the disqualification, he would be subject to and liable for a transfer of ownership civil money penalty pursuant to the SNAP regulations at Sections 278.6(f)(2), (3), and (4).

Retailer Operations informed the former store owner by letter dated August 26, 2020, that a transfer of ownership CMP in the amount of \$44,000.00, calculated in accordance with 7 CFR § 278.6(f)(2) and (g), was being assessed against him for the sale or transfer of the firm during a

period of disqualification. By hand written letter dated August 28, 2020, the former store owner requested review. The appeal was granted by letter dated September 9, 2020.

STANDARD OF REVIEW

In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. That means the Appellant has the burden of providing credible, relevant evidence which 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 not true.

CONTROLLING LAW AND REGULATIONS

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1 provide that a food retailer 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.

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Section 278.6(f)(2) establishes the authority upon which a civil money penalty may be imposed against a SNAP 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) states: “In the event any retail food store 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 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).”

7 CFR § 278.6(f)(3) states: “the Food and Consumer Service may request the Attorney General institute a civil action to collect the penalty from the person or persons subject to the penalty in a district court of the United States.”

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.”

The regulations at 7 CFR § 278.6(g) describes how to calculate the amount of a transfer of ownership CMP. Step 1: Determine the cumulative redemptions for the 12-month period immediately preceding the issuance of Retailer Operations’ Charge letter. Step 2: Determine the firm’s average monthly redemptions (AMR) by dividing the amount derived in Step 1 by 12. (Round this amount to the nearest dollar). Step 3: Multiply the AMR (as determined in Step 2) by .10, and round this amount to the nearest dollar. Step 4: Multiply the amount derived in Step 3 by the number of months for which the firm would have been disqualified under paragraphs (e) of this section.

7 CFR § 278.6(g) and § 3.91(b) (3)(i) establish an \$11,000.00 per violation limit as the maximum amount for a transfer of ownership CMP. The Act, at Section 12, on the subject of transfer of ownership, supports the responsibility of ownership of the firm to the penalty as follows: Section 12 (5) Hearing – 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 who sells or otherwise transfers 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 retailer food store 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.

APPELLANT’S CONTENTIONS

All contentions as presented have been considered prior to rendering a decision.

- On April 20, 2018 USDA permanently disqualified my snap for no reason.
- I called USDA and give all my proof.
- My business is they can order meat, fruits or vegetables and I go to supermarket to buy them. Come back with receipt. I add a little money and they can used snap card to pay me. And I have to delivery to them. I make like **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** a month.
- USDA disqualified me for non-proof. None listening. Non response back to me.
- On May 2018 someone ask me to sell the store to her. I sold to her for **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. But I didn’t sell my company. I just sell the lease of agreement of property to her.
- I didn’t transfer my company or firm or sold my firm.
- So I still keeping my firm, the company address is my home address and still waiting to close my business because last year I did some business for travel agency.
- I promise I didn’t sold or transferred my firm to anyone, the business owner have never change.

ANALYSIS AND FINDINGS

This review is to determine whether Retailer Operations’ decision to assess a transfer of ownership CMP against the former owner of a previously permanently disqualified firm was in accordance with applicable regulations. Appellant was already afforded the opportunity to appeal that permanent disqualification determination. The owner availed himself of the administrative review process, and requested review April 30, 2018. The agency granted the review, and sustained the permanent disqualification of Appellant by Final Agency Decision dated June 12, 2018.

The SNAP regulations at 7 CFR § 278.6(f) authorize FNS to assess a transfer of ownership CMP against the owner(s), or other legal entity, who sells or otherwise transfers ownership of a disqualified retail food store in an amount to reflect that portion of the disqualification period that has not expired. Using the methodology described in 7 CFR § 278.6(g), Retailer Operations properly computed the CMP amount.

Among other documents, the record contains an executed store lease dated December 1, 2018, signed by the former store owner with a realty company during Appellant's period of permanent disqualification. There is also a signed and dated closing statement on December 5, 2018, for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for a grocery store at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), Brooklyn, NY 11223. The record includes a copy of minutes from a board of directors meeting dated December 5, 2018, that resolve that the firm would be sold, and that the Bill of Sale and other necessary documents would be executed for the consummation of the sale.

On review it is determined that Appellant is subject to a CMP under the SNAP regulations cited herein. The retail food store was disqualified from SNAP. The owner later sold or the ownership thereof was otherwise transferred to a purchaser or transferee. The person or other legal entity who sells or otherwise transfers ownership of the retail food store shall be subjected to and liable for a civil money penalty. Retailer Operations took appropriate action, consistent with 7 CFR § 278.6(f)(2), (3), and (4), and 7 CFR § 278.6(f)(2) and (g), in its administration of the SNAP when it assessed a CMP against Appellant.

CONCLUSION

This review finds that by a preponderance of the evidence, a bona fide sale of a permanently disqualified retail food store occurred. The evidence thus supports by a preponderance that Retailer Operations' determination to assess a transfer of ownership CMP in the amount of \$44,000.00 was proper. The effective date of this decision is 30 days after delivery to the former store owner.

Payment information was relayed in the August 26, 2020, letter to the owner. Please direct any operations questions to Rayan Raymond at (212) 520-7623.

RIGHTS AND REMEDIES

Attention is called to Section 14 of the Food and Nutrition Act of 2008 and to 7 CFR Section 279.7 of the regulations with respect to the applicable rights to a judicial review of this Decision. 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's former owner resides or is 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 delivery 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.

M. Viens
ADMINISTRATIVE REVIEW OFFICER

October 9, 2020