

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

**Nadia’s Market,**

**Appellant,**

**v.**

**Case Number: C0206552**

**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 \$22,000 against the former ownership of Nadia’s Market (“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 March 26, 2018.

**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 August 10, 2017, Appellant was notified that it was permanently disqualified as a SNAP-authorized retailer. A purchase agreement dated August 10,

2017 established Appellant sold Nadia's Market. In the Retailer Operations Division's letter dated March 26, 2018, 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 Nadia's Market during a period of disqualification.

On April 4, 2018, 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 owner did not have any problems with SNAP until he became ill. Appellant provided ~26 pages of medical documents, billing records, and passport records;
- A potential buyer signed the inspection. He should not be penalized; and,

- The former owner will pay the TOCMP in installments.

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**

The former owner contends that the owner did not have any problems with SNAP until became ill. This appears to be an attempt to demonstrate that the earlier permanent disqualification imposed on the firm may have been improper. In this regard, no findings or conclusions on the merits of the specific arguments presented will be made. Appellant was permanently disqualified from participation in SNAP based on trafficking violations in a previous determination letter. Those matters dealing with the firm's permanent disqualification are not subject to this particular administrative review process but are included in other review processes of which Appellant was made aware, but which were not pursued. Similarly, that a potential buyer signed a store visit report with the title of manager prior to the disqualification, and is subsequently having difficulty having his firm become SNAP authorized, is not subject to this particular administrative review process but is included in a separate process.

The matter of the permanent disqualification imposed cannot properly be re-addressed in this context. The issue in this review is solely whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(f)(2) of the SNAP regulations, when it assessed a \$22,000 Transfer of Ownership Civil Money Penalty against Appellant.

### **Installment Plan**

The regulations do provide the option of an installment plan for paying the CMP over the period of disqualification. The regulations at 7 CFR § 278.6(h), state the following:

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 regional office . . . The civil money penalty must be paid in full by the end of the period for which the firm would have been disqualified.

Appellant can contact Financial Management at 703-305-2830 to discuss payment of this penalty in installment payments or online in one lump sum.

Modifications to the civil money penalty may occur only when there is an error in the calculation or the civil money penalty exceeds the agency limit. In this case, the calculated civil money penalty for transferring ownership of Appellant did exceed the agency limit, which is \$11,000 per violation. Each of the two violations reported, involving patterns of SNAP transactions indicative of the exchange of SNAP benefits for cash (trafficking), is considered a single violation. Therefore, the transfer of ownership civil money penalty warranted in this matter has been assessed at \$22,000, the agency limit.

## **Summary**

Based on a review of the evidence, Nadia's Market was, indeed, sold following its disqualification from SNAP on November 6, 2013. 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 \$22,000 against Appellant for selling Nadia's Market 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

May 21, 2018