

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

**Abdalmalik Saleh Alkabsh, Former  
Owner,  
New Look Convenience Store  
Incorporated #1,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0204082**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support that a Transfer of Ownership Civil Money Penalty (TOCMP) of \$33,000 was properly assessed against Abdalmalik Saleh Alkabsh, the former owner of New Look Convenience Store Incorporated #1, for selling or transferring a store that has been permanently disqualified from the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(f)(2) in its administration of the SNAP when it assessed a TOCMP in the amount of \$33,000 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 Retailer Operations Division permanently disqualified New Look Convenience Store Incorporated #1, under the ownership of Abdalmalik Saleh

Alkabsh, from the SNAP effective April 21, 2017 for trafficking in SNAP benefits. The permanent disqualification letter dated April 20, 2017, stated that if the owner sold or transferred 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). As noted in that letter, the amount of the TOCMP is calculated based on the SNAP regulations at 7 CFR § 278.6(g).

On August 10, 2017, Abdalmalik Saleh Alkabsh sold New Look Convenience Store Incorporated #1 to a new owner as documented by a bill of sale in the case record. When the new owner applied for the SNAP, the Retailer Operations Division discovered that the store had been sold or otherwise transferred by the former owner. As a result, the Retailer Operations Division, in a letter dated November 16, 2017, notified Abdalmalik Saleh Alkabsh that it had assessed a TOCMP in the amount of \$33,000 in accordance with the SNAP regulations.

In a letter postmarked November 21, 2017, the Appellant, through counsel, requested an administrative review of the assessment of the TOCMP. The administrative review was granted and the assessment of the TOCMP was held in abeyance pending completion of this review.

### **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the 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 STATUTE AND REGULATIONS**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and Section 278 of Title 7 of the Code of Federal Regulations (CFR).

7 U.S.C. § 2021(e)(1) states, in part:

*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. [Emphasis added.]*

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 .... **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.** [Emphasis added.]*

7 CFR § 278.6(g) provides the steps for calculating the TOCMP and states, in 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 ....*

Notwithstanding the above, there is an agency limit of \$11,000 per violation as the maximum TOCMP amount.

### **APPELLANT'S CONTENTIONS**

The Appellant, through counsel, made the following summarized contentions, in relevant part:

- The Appellant did not sell or transfer ownership of the business but rather closed it. Subsequently, another individual entered into a new lease with the landlord.
- The Appellant did not receive any sums of money from any kind of transfer of ownership. When the store lost its ability to have the SNAP it could not survive economically and therefore chose to close.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

### **ANALYSIS AND FINDINGS**

The SNAP regulations at 7 CFR § 278.6(f)(2) require FNS to assess a TOCMP against the owner of a disqualified store that has been sold or otherwise transferred to a new owner. In addition, the regulations at 7 CFR § 278.6(g) outline how to calculate the amount of the TOCMP and allows no discretion in the calculation of the TOCMP amount.

## **Bill of Sale**

Contrary to the Appellant's contention that he simply walked away from the store and did not sell the business, the case record documents that he sold the store to a new owner after it was permanently disqualified for trafficking in SNAP benefits on April 21, 2017. The case record contains a bill of sale dated August 10, 2017 between the Appellant and the new store owner in which the Appellant sold the store equipment and fixtures for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and grocery items for 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

## **Proper Notice Given**

The permanent disqualification letter dated April 20, 2017, stated that if the owner sold or transferred 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). As noted in the letter, the amount of the TOCMP is calculated based on the SNAP regulations at 7 CFR § 278.6(g). The permanent disqualification letter was delivered to the Appellant's counsel on April 21, 2017 as documented by a UPS delivery notice in the casefile. In summary, the Appellant was given proper notice that a TOCMP would be assessed if New Look Convenience Store Incorporated #1 was sold or otherwise transferred after it was permanently disqualified from the SNAP.

## **TOCMP Calculation**

The case record documents that the Retailer Operations Division correctly calculated the amount of the TOCMP under 7 CFR § 278.6(g). That regulation states that the TOCMP is to be calculated on a formula which includes the SNAP redemption volume of the store during the 12 months prior to the firm being notified of the violations that led to the store's disqualification. Modifications to the TOCMP may occur only when there is an error in calculation or the amount exceeds the agency limit.

The Retailer Operations Division correctly determined, using the methodology described in 7 CFR § 278.6(g), that the initial calculated amount of the TOCMP was \$161,040.00. However, the Retailer Operations Division properly determined that the initial calculated TOCMP of \$161,040.00 is above the agency limit, which is \$11,000 per violation. The March 27, 2017 trafficking charge letter identified three (3) patterns of trafficking based on irregular SNAP transaction data. Therefore, the Retailer Operations Division correctly assessed the final TOCMP at \$33,000.00 which is the agency limit per violation multiplied by the number of trafficking patterns (\$11,000.00 x 3 trafficking patterns).

## **Summary**

The regulations at 7 CFR § 278.6(f)(2) require FNS to assess a TOCMP against the former owner of a disqualified store that has been sold or otherwise transferred to a new owner. Moreover, the regulations at 7 CFR § 278.6(g) outline how to calculate the amount of the TOCMP utilizing the aforementioned formula. As such, there is no discretion in the calculation of the TOCMP amount.

## **CONCLUSION**

A review of the evidence in this case indicates by a preponderance of the evidence that New Look Convenience Store Incorporated #1, formerly owned by Abdalmalik Saleh Alkabsh, was sold on or about August 10, 2017 after it had been permanently disqualified effective April 21, 2017. Therefore, the SNAP regulation at 7 CFR § 278.6(f)(2) applies to this transfer of ownership. A review of the calculations shows that the amount of the TOCMP assessed by the Retailer Operation Division was correct and proper and the decision in this case is hereby sustained. In accordance with the Food and Nutrition Act of 2008, and the regulations thereunder, this penalty shall become effective thirty (30) days after receipt of this letter.

## **RIGHTS AND REMEDIES**

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses your right to a judicial review of this determination. Please note that 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 you reside or are 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 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.

RONALD C. GWINN  
Administrative Review Officer

February 2, 2018