

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

**5 U.S.C. § 552 (b)(6) & (b)(7)(C), Former  
Owner  
Putnam Meat Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0203123**

**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 a finding that a Transfer of Ownership Civil Money Penalty (hereinafter, “TOCMP”) of \$11,000.00 was properly assessed by the Retailer Operations Division against the former owner of Putnam Meat Market (hereinafter, “Putnam Meat Market” and/or “Appellant”), for selling and/or transferring a retail food store that was permanently disqualified from participation in the Supplemental Nutrition Assistance Program<sup>1</sup> (SNAP) effective April 18, 2006.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Federal regulations at 7 U.S.C. § 2021, 7 CFR § 278.6(f)(2),(3) and (4) and 7 CFR § 278.6(g) in its administration of the SNAP when it assessed a TOCMP in the amount of \$11,000.00 against the former owner of Putnam Meat Market, in a letter dated November 6, 2017.

**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.

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<sup>1</sup> Section 4001(b) of the Food, Conservation, and Energy Act of 2008 (P.L. 110-234; 122 Stat. 1092) amended the Food and Nutrition Act of 2008 by striking “food stamp program” and inserting “supplemental nutrition assistance program” effective October 1, 2008

## **CASE CHRONOLOGY**

The materials in the administrative file indicate that in a letter dated January 19, 2006 the owner of record of Putnam Meat Market, doing business at 111 Stillwater Ave, Stamford, CT 06902-4820 was notified that Appellant was being charged with trafficking, as defined in SNAP regulations at 7 CFR § 271.2. The charges were based on an analysis of SNAP benefit transactions conducted by the USDA wherein it was determined that identified transactions were suspicious and more likely than not the result of SNAP violations identified as trafficking. Subsequently, in a letter dated April 12, 2006, the owner of record of Appellant, was notified of the decision to permanently<sup>2</sup> disqualify Putnam Meat Market as an authorized retailer in the SNAP. The determination is documented to have been delivered to Appellant's owner of record on April 13, 2006 and to have been made effective April 18, 2006.

From that time forward, Putnam Meat Market and its owner of record have been subject to the provisions of 7 CFR § 278.6(f)(2),(3), and (4) based on the information included on page 2, in the fourth paragraph of the January 19, 2006 letter; and, on page 2, in the second to the last paragraph of the April 12, 2006 letter. Each of those letters specifically states that "In the event that you sell or transfer ownership of your store subsequent to your disqualification, you will be subject to and liable for a CMP as provided by SNAP regulations Sections 278.6(f)(2) (3), and (4). The amount of this sale or transfer CMP will be calculated based on SNAP regulations at 278.6(g)."

In a letter dated November 6, 2017, the Retailer Operations Division informed the former owner of Appellant that a Transfer of Ownership Civil Money Penalty (TOCMP) in the amount of \$11,000.00, calculated in accordance with 7 CFR § 278.6(f)(2) and (g), was being assessed for the sale or transfer of Putnam Meat Market during a period of disqualification.

In a letter dated November 14, 2017, Putnam Meat Market, through counsel, requested an appeal of the Retailer Operations Division's determination to impose a TOCMP of \$11,000.00. The billing and payment of the TOCMP have been held in abeyance pending final determination of the present administrative review.

## **STANDARD OF REVIEW**

In appeals of adverse actions, an appellant bears the burden of proving 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**

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<sup>2</sup> The permanent disqualification was imposed by Retailer Operations Division and since Putnam Meat Market was already afforded appeal rights regarding the previous action taken to permanently disqualify the store, the circumstances that led to the permanent disqualification are not subject to review in this proceeding.

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended (the “Act”)<sup>3</sup>, 7 USC 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR)<sup>4</sup> at 7 CFR §278.6.

7 U.S.C. 2021(e)(1)Section 12 of the Food and Nutrition Act of 2008, as amended, states, in relevant part:

“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 a period that has not yet expired.” [Emphasis Added]

The regulations at 7 CFR § 278.6 (f)(2) authorize FNS to assess a TOCMP against the owner(s) of a disqualified retail food store that has been sold, or for which the ownership is otherwise transferred stating, in part,

“(2) 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)...

(3) At any time after a civil money penalty imposed under paragraph (2) of this section has become final under the provisions of part 279, 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 for any district in which such person or persons are found, reside, or transact business.

(4) 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 following steps, based on the regulations at 7 CFR § 278.6(g), are used to calculate the amount of this TOCMP:

Step 1: Determine the cumulative redemptions for the 12-month period immediately preceding the issuance of the Retailer Operations Division charge letter.

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<sup>3</sup> Effective October 1, 2008, the Food Stamp Act of 1977 was superseded by the Food and Nutrition Act of 2008, as amended through P.L. 110-246. The Food and Nutrition Act of 2008 was amended by P.L. 113-79, enacted February 7, 2014.

<sup>4</sup> Title 7 of the Code of Federal Regulations may be accessed in its entirety via the Internet at [https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title07/7tab\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title07/7tab_02.tpl)

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 (50 cents or less is rounded down; 51 cents or more is rounded up).

Step 3: Multiply the AMR (as determined in Step 2) by .10. Round this amount to the nearest dollar (50 cents or less is rounded down; 51 cents or more is rounded up).

Step 4: Multiply the amount derived in Step 3 by 240. The number 240 is used for permanent disqualifications in accordance with the Act and the regulations and represents doubling a 10 year penalty. The result is the amount of the TOCMP.

### **APPELLANT'S CONTENTIONS**

In the request for appeal dated November 14, 2017 appeal it is contended that:

- Putnam Meat Market was not sold, instead it ceased operations in 2017; and, several months later the assets of the business were sold.
- The former owner did not personally own Putnam Meat Market as it was owned by the LLC under which Appellant operated. The former owner was not personally responsible
- Putnam Meat Market was permanently disqualified from SNAP on April 18, 2006, which was more than 10 years ago. There is no statute of limitations contained in regulations thus one should be borrowed and applied.

In a subsequent letter dated December 19, 2017 counsel provided copies of a Bill of Sale, a list of equipment sold; and, an assignment of trade name document for consideration. Counsel again contends that the CMP being imposed is improper as all operations had ceased months prior to the sale of the equipment.

The preceding represents only a brief summary of Appellant's contentions in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

### **ANALYSIS AND FINDINGS**

#### **Evidence of Sale:**

The record includes copies of:

- A "Bill of Sale" dated July 1, 2017 by which the former owner of Putnam Meat Market, both as an LLC and individually, sold personal property identified to include refrigeration units, meat machines and other furniture and fixtures for 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

- An “Assignment of Trade Name” by which the former owner assigned and transferred all rights, title and interest in and to the trade name known as “Putnam Meat Market” dated July 1, 2017.
- Copies of three (3) cashier’s checks dated June 30, 2017 for a cumulative amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) made payable to the attorney of record as a trustee.
- A “Commercial Lease Agreement” leasing the property 5 U.S.C. § 552 (b)(6) & (b)(7)(C) monthly to the entity identified as the buyer/purchaser in the bill of sale, assignment of trade name, and cashier’s checks herein listed.

Appellant contends that the documents evidence the sale of equipment together with a sale of a trade name do not constitute the sale of Appellant because operations had ceased several months before the sale of equipment and trade name transaction occurred. However, the documents cited above clearly establish that the former store owner sold both the assets of Putnam Meat Market and its trade name on July 1, 2017, after having been fully advised that the sale of Appellant would result in a TOCMP.

#### **Appellant sold by LLC Not the Former Owner as an Individual:**

FNS, in its administration of SNAP, imposes penalties for SNAP violations against the “firm,” whose operational definition has been the retail food store together with the specific individuals who are responsible for the management, day-to-day operations, and policy decisions of that store. Thus, there is no corporate veil that protects individuals with regards to administrative penalties for SNAP violations. Moreover, the former owner is listed in the SNAP retailer application of record dated December 30, 2003 as the sole proprietor of the firm identified as Putnam Meat Market. Putnam Meat Market participated as a SNAP authorized retailer from December 31, 2003 to April 17, 2006.

In addition, the plain language in subparagraph (e)(1) of Section 12 of the Food and Nutrition Act of 2008, as amended [7 U.S.C. 2021(e)(1)] , is clear that:

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...

The language taken from the Act above makes no accommodation to alleviate any individual acting in his role as an officer in a LLC/corporation from being assessed a TOCMP. This is especially the case if that individual is the sole officer in a privately-owned corporation and was directly involved in the sale of the store. Accordingly, this contention is not a valid basis for a waiver or the reduction of the TOCMP under review.

#### **TOCMP Calculation:**

In a letter dated January 19, 2006 Appellant was charged with having conducted SNAP redemption transactions that supported a decision that suspicious transaction at Appellant were more likely than not the result of SNAP trafficking violations. The record indicates that the Retailer Operations Division notified Appellant of a decision to impose a permanent disqualification against Appellant in a letter dated April 12, 2006, which is documented to have been delivered to Appellant on April 13, 2006.

FNS, through Agency and Departmental regulations at 7 CFR § 278.6(g) and § 3.91(b)(3)(i), established an \$11,000.00 per violation limit as the maximum amount for the TOCMP. For Putnam Street Market, this results in an assessment of \$66,000.00 (\$11,000.00 times 6) based on consideration of the charges leading to the imposition of the permanent disqualification that was effective April 18, 2006. However, because the Retailer Operations Division calculated the amount of the TOCMP as \$11,000 instead of \$66,000 the current administrative review is sustaining the Retailer Operations Division determination in accordance with 7 CFR § 279.5(c).

### **Civil Money Penalty**

As a matter of course in this review, the amount of the TOCMP was recalculated in accordance with the applicable FNS regulations to ensure that the amount assessed by the Retailer Operations Division is the appropriate amount. The calculation of the penalty is based on a formula prescribed within SNAP regulations at 7 CFR § 278.6(g).

The formula for computing the TOCMP does not provide for discretion and is directly related to the **amount of SNAP violations, redemptions, and the length of time in the disqualification period**. The TOCMP amount cannot be reduced.

As indicated in Table 1 below, the amount of the TOCMP has been recalculated to be \$11,000.00 which is the same as the original amount that was assessed against Putnam Meat Market by the Retailer Operations Division in its November 6, 2017 letter.

Table Redacted per 7 U.S.C. 2018 (b)(6) & (b)(7)(c)

### **CONCLUSION**

Based on the discussion above, the decision to impose a TOCMP in the amount of \$11,000.00 against Putnam Meat Market is sustained. The decision will become effective on the 30th day following Appellant's receipt of same.

The instructions regarding arrangements for payment are included in the Retailer Operations Division's letter dated November 6, 2017.

## **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 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.

NANCY BACA-STEPAN  
Administrative Review Officer

March 27, 2018