

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

**5 U.S.C. § 552 (b)(6) & (b)(7)(C), owners  
of Willie Hill Top Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0229802**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a Transfer of Ownership Civil Money Penalty (TOCMP) in the amount of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** was properly imposed by FNS's Retailer Operations Division against **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, owners of Willie Hill Top Market (hereinafter "Appellant"), for selling or transferring ownership of a store that was permanently disqualified from the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(f)(2) and 7 CFR § 278.6(g) in its administration of SNAP when it assessed a TOCMP in the amount of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** 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 case record indicates that in a letter dated June 21, 2018, FNS's Retailer Operations Division charged Willie Hill Top Market, under the ownership of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, with **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** counts of trafficking in SNAP benefits – a program violation with a potential penalty of permanent disqualification from SNAP. The record further shows that a determination letter was sent by FNS to the firm on July 23, 2018. Upon receipt of the determination letter, Willie Hill Top Market was permanently disqualified from SNAP effective

July 24, 2018. The Appellant requested an administrative review of this decision, but the sanction was upheld in a Final Agency Decision dated February 13, 2019. The case record indicates that the firm did not file a request for a judicial review. Accordingly, FNS closed its case effective April 4, 2019.

Both the charge and determination letters stated that in the event that ownership of the store was sold or transferred after the firm's 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). The letters also noted that the amount of the TOCMP would be calculated based on regulations at § 278.6(g).

Documentation in the case record shows that on January 6, 2020, a SNAP application was submitted to FNS for a new store at the same location where Willie Hill Top Market had previously operated. According to the application, this new store, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), owned by 5 U.S.C. § 552 (b)(6) & (b)(7)(C), began its business operations effective July 24, 2019.

Upon discovering that a new application had been submitted at a location where SNAP violations had previously occurred, the Retailer Operations Division requested additional documentation from the new store owner to verify that the disqualified owners were not affiliated with the new store in any way and to ascertain whether or not the transfer of ownership from 5 U.S.C. § 552 (b)(6) & (b)(7)(C) to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was bona fide. In response to this request, the new store owner submitted a number of documents, including a Residential Real Estate Sales Agreement dated July 18, 2019, signed by both 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and a Warranty Deed dated December 10, 2019. The sales agreement states: "In so much as this building has a grocery store which will cease to operate upon closing, and the Department of Revenue Services may interpret this transaction as a purchase of a business, Seller will cooperate with Buyer in the obtaining of a clearance of taxes." The agreement further states that, "[t]he buyer shall be allowed to enter and occupy and or renovate the property upon the signing of this contracts [sic]."

In a letter dated May 26, 2020, the Retailer Operations Division informed the Appellant that because the store was sold or transferred during its disqualification period, a TOCMP in the amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was being assessed against the owners of Willie Hill Top Market in accordance with SNAP regulations at 7 CFR § 278.6(f)(2), (3) and (4), and § 278.6(g).

In a letter postmarked June 2, 2020, the Appellant appealed the assessment of a TOCMP by requesting an administrative review. The request was granted and implementation of the TOCMP has been held in abeyance pending completion of this review.

### **STANDARD OF REVIEW**

In an appeal of adverse action, such as the imposition of a civil money penalty, an Appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that 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 law in this matter is found in the Food & Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(f)(2) and (g) establish the authority upon which a TOCMP may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(e)(1) states:

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. 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 subsection.

7 CFR § 278.6(f)(2) reads, in part:

In the event any retail food store or wholesale food concern 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 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...has been permanently disqualified, the civil money penalty shall be double the penalty for a ten year disqualification period...

7 CFR § 278.6(g) outlines the steps for calculating the TOCMP amount, in relevant 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....The civil money penalty may not exceed an amount specified in § 3.91(b)(3)(i) for each violation.

**5 U.S.C. § 552 (b)(7)(E)**. It is also important to note that in Step 3 of § 278.6(g), above, 240 is the number of months used to calculate the civil money penalty for permanent disqualifications. This is in accordance with 7 U.S.C. § 2021(e)(1) and SNAP regulations at 7 CFR § 278.6(f)(2).

## APPELLANT'S CONTENTIONS

The Appellant, through counsel, made the following summarized contentions in its request for administrative review, in relevant part:

- The business in question was not sold; only the real property was sold. The store had been closed prior to the real estate transaction.
- The sales contract allowed the buyer to enter the property prior to closing to repair and renovate the store so that he could reopen it.

In support of its contentions, the Appellant submitted several documents, including a copy of the seller's closing statement, showing that the property was sold for 5 U.S.C. § 552 (b)(6) & (b)(7)(C); a copy of the Warranty Deed; and a copy of the Real Estate Sales Agreement between 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Appellant also submitted an affidavit, dated July 2, 2020, signed by buyer 5 U.S.C. § 552 (b)(6) & (b)(7)(C). In the affidavit, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) states that he "purchased 5 U.S.C. § 552 (b)(6) & (b)(7)(C), Bridgeport, Connecticut," and states that he did not pay for the inventory of any store. According to 5 U.S.C. § 552 (b)(6) & (b)(7)(C), "[t]he store was closed when I took over the building under contract."

Finally, the Appellant submitted a letter dated July 1, 2020, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), a certified public accountant. The letter states that the last sales tax return filed for Willie Hill Top Market was for the period ending June 2019, and that no additional sales taxes were owed or filed after June 2019 due to the business closing in June. The letter references an attached document that apparently confirms this information, but no attachments were included with the letter.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions and evidence presented, including any not specifically summarized or explicitly referenced in this document.

## ANALYSIS AND FINDINGS

The primary issue for review in this case is whether or not it was lawful for the Retailer Operations Division to impose a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) transfer of ownership civil money penalty against the Appellant. To this regard, statute at 7 U.S.C. § 2021 and SNAP regulations at 7 CFR § 278.6(f)(2) are clear that a TOCMP shall be assessed if a store which has been disqualified is subsequently sold or the ownership of the firm is transferred prior to the end of its disqualification period. This review has no authority to dismiss or modify a TOCMP for any reason except in the following circumstances:

- Evidence shows that a sale or transfer of ownership did not occur; or
- The monetary penalty was assessed in a manner not in accordance with regulation; or
- There was an error in calculating the TOCMP amount.

Based on an analysis of the evidence in this case, it is the finding of this review that a sale or transfer of ownership between the Appellant, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and buyer 5 U.S.C. § 552 (b)(6) & (b)(7)(C), did occur as determined by the Retailer Operations Division. Documentation provided by both the Appellant and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) shows that the sale of real property took place on July 18, 2019. According to the sales agreement, the sale included fixtures such as heating, cooling, electrical, and plumbing systems, lighting, carpeting, stove, windows, doors, etc. The sales agreement further states that the property includes a grocery store “which will cease to operate upon closing,” and that upon the signing of the contract, the buyer shall be allowed to enter, occupy, and renovate the property. Such a sale constitutes a sale or transfer of ownership within the meaning of SNAP regulations. That the store may have been closed prior to the sale has no bearing on this matter. Additionally, it is not relevant that the buyer had to purchase his own inventory for the new store or that the seller retained the trade name, Willie Hill Top Market. The key issue is that the property 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in Bridgeport, Connecticut, which includes a grocery store, was formerly owned by 5 U.S.C. § 552 (b)(6) & (b)(7)(C). That property was sold to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on July 18, 2019. The new owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), now operates a grocery store at the same location. This review finds such action to be tantamount to a transfer of ownership. Because the sale occurred after Willie Hill Top Market was permanently disqualified from SNAP participation, a TOCMP is warranted.

### **TOCMP Calculation**

Regulations at 7 CFR § 278.6(g) outline the steps for calculating the TOCMP amount. The TOCMP amount is derived from the firm’s SNAP redemption volume during the 12 months immediately prior to being charged with the violations that led to the store’s disqualification. Modifications to a TOCMP amount may occur only when there is an error in calculation or when the TOCMP amount exceeds the statutory limit. This review has no authority to modify a TOCMP amount for any other reason. The calculation of the TOCMP in this case is as follows:

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

In this case, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Based on regulations cited at 7 CFR § 278.6(g), it is the determination of this review that a TOCMP in the amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was properly assessed in this matter.

### **CONCLUSION**

The permanent disqualification of Willie Hill Top Market took effect on July 24, 2018. A review of the evidence in this case clearly indicates that the store was sold to a buyer on July 18, 2019. Therefore, 7 CFR § 278.6(f)(2) of the SNAP regulations is applicable, and the assessment of a TOCMP is required. A review of the calculation indicates that the amount of the TOCMP as assessed by the Retailer Operations Division is proper as noted in the analysis above. Thus, the decision to impose a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) civil money penalty against 5 U.S.C. § 552 (b)(6) & (b)(7)(C), owners of Willie Hill Top Market, is sustained.

To arrange payment, the Appellant must contact FNS's Financial Management Accounting Division at (703) 605-0483 within 30 days of receipt of this decision.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt of this decision. The judicial filing timeframe is mandated by the Act, and this office cannot grant an extension.

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.

JON YORGASON  
Administrative Review Officer

July 22, 2020