

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

Ana Deli Grocery Corp.,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0225605

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 Office of Retailer Operations and Compliance to assess a fine against Ana Deli Grocery Corp. (“Appellant”) in the amount of \$698,801.09 for unauthorized acceptance of Supplemental Nutrition Assistance Program (SNAP) benefits.

ISSUE

The purpose of this review is to determine whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(m), when it assessed a fine in the amount of \$698,801.09 for unauthorized acceptance of SNAP benefits against Appellant on February 25, 2020.

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

On September 28, 2018, Appellant was permanently disqualified from SNAP for trafficking. USDA conducted an investigation of the compliance of Appellant with federal SNAP law and regulations. The investigation reported that personnel at Appellant accepted SNAP benefits despite Appellant not being an authorized SNAP retailer. On March 12, 2019, the Office of Retailer Operations and Compliance sent a letter to Appellant stating that unauthorized acceptance of SNAP benefits was occurring at the firm and warning the firm to immediately cease and desist from accepting SNAP benefits. Appellant ceased accepting SNAP benefits on

March 16, 2019. However, a subsequent investigation revealed Appellant resumed accepting SNAP benefits on July 19, 2019. As a result of evidence compiled from this investigation, the Office of Retailer Operations and Compliance informed Appellant, in a letter dated January 21, 2020, that the firm was charged with violating the terms and conditions of the SNAP regulations, 7 CFR § 278.6(m). The letter states, in part, that the violations “. . . warrant assessment of a fine in the amount of \$698,801.09 for the unauthorized acceptance SNAP benefits as provided in Section 278.6(m) of the SNAP regulations.” Appellant responded to the charges in writing.

The ROD informed Appellant, by letter dated February 25, 2020, that it determined that violations had occurred at the store and that a fine in the amount of \$698,801.09 was warranted.

On February 29, 2020, Appellant appealed the ROD’s decision to impose a fine, and requested an administrative review of the action. The appeal was granted and implementation of the sanction has been held in abeyance 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(m) establishes the authority upon which a fine may be assessed against a firm that accepts SNAP benefits without authorization.

7 CFR § 278.6(m) reads, in part:

Fines for unauthorized third parties that accept food stamps. FNS may impose a fine against any individual, sole proprietorship, partnership, corporation or other legal entity not approved by FNS to accept and redeem food coupons for any violation of the provisions of the Food and Nutrition Act of 2008, as amended, or the program regulations, including violations involving the acceptance of coupons. The fine shall be \$1,000 for each violation plus an amount equal to three times the face value of the illegally accepted food coupons. The fine shall be paid in full within 30 days of the individual's or legal entity's receipt of FNS' notification to pay the fine. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the person to collect the fine. FNS may withdraw the authorization of any firm that is under the same ownership as an unauthorized firm that has failed to pay such a fine, as specified under § 278.1(k). FNS may deny authorization to any firm that has failed to pay such a fine, as specified under § 278.1(j).

APPELLANT'S CONTENTIONS

Appellant's responses regarding this matter are essentially as follows:

- Appellant denies the allegations.
- There is no intent to violate as required under Section 278.6(a).
- No inspections or undercover investigations occurred at Appellant.
- Appellant has no history of non-compliance or unauthorized usage.
- Appellant has trained staff in the proper handling of SNAP transactions.
- The fine would pose a hardship to Appellant and participating SNAP households.
- The review is based on statistical analysis of the EBT transactions.

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

Regarding Appellant's denial of violations, this review examines the relevant information regarding the determination. Once the Office of Retailer Operations and Compliance establishes unauthorized transactions occurred, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole, that it did not engage in unauthorized transactions. If this is not demonstrated, the case will be sustained. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

Many of Appellant's contentions do not appear relevant to the charge. For example, whether Appellant has trained staff in the proper handling of SNAP transactions is not relevant to whether Appellant engaged in unauthorized transactions. There was no statistical analysis of the EBT transactions, as asserted by Appellant. Similarly, while Appellant is correct that no inspections or undercover investigations occurred at Appellant as part of this investigation, these actions were not necessary to determine whether unauthorized transactions occurred at Appellant.

Consideration of Factors for a Sanction

Appellant stated that FNS should consider the factors listed in 7 CFR § 278.6(a) before imposing a sanction. This argument is based on an incorrect understanding of the regulations. The severity of the penalties, set forth in the subsequent paragraph 7 CFR § 278.6(e), are based on the factors listed in 7 CFR § 278.6(d). For example, permitting the sale of cigarettes with SNAP benefits results in a three-year disqualification, but this becomes five years if the firm had been previously warned. Other sanctions consider intent, such as whether false information on an application was "knowingly submitted" or whether the sale of nonfood items were "the firm's practice" (which carries a three-year disqualification) rather than "due to carelessness or poor supervision" (which results in a six-month disqualification). In fining Appellant according to the

criteria set forth in 7 CFR § 278.6(m) for \$698,801.09 for the violations committed the Office of Retailer Operations and Compliance did consider the factors listed in 7 CFR § 278.6(d).

Appellant argues that it has no history of non-compliance or unauthorized usage. Appellant was permanently disqualified from SNAP for trafficking on September 28, 2018. On March 12, 2019, the Office of Retailer Operations and Compliance sent a letter to Appellant stating that unauthorized acceptance of SNAP benefits was occurring at the firm and warning the firm to immediately cease and desist from accepting SNAP benefits.

No Undue Hardship to Appellant

Appellant maintains that disqualification would pose an extreme hardship to the firm and community. Economic hardship is a likely consequence whenever a store is permanently disqualified from SNAP participation. However, there is no provision in the SNAP regulations for reducing an administrative penalty on the basis of possible economic hardship to the firm resulting from such a penalty. To excuse Appellant from an assessed administrative penalty based on purported economic hardship to the firm would render the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA virtually meaningless.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity to competing stores and other participating retailers who are complying fully with program regulations, and also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, Appellant's contention that it will incur economic hardship due to an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the imposed penalty.

CONCLUSION

Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to assess a fine of \$698,801.09 against Ana Deli Grocery Corp. for unauthorized acceptance of SNAP benefits 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

January 10, 2022