

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

Big House Liquors,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0252445

FINAL AGENCY DECISION

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Office of Retailer Operations and Compliance to deny the application of Big House Liquors (hereinafter Appellant) to participate in the Supplemental Nutrition Assistance Program (SNAP) for a period of three years.

ISSUE

The issue accepted for review is whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.1(b)(3)(iii) and 278.1(k)(3)(iii), when it denied the application of Appellant to participate in SNAP for a period of three years by letter dated January 27, 2022.

AUTHORITY

According to 7 U.S.C. § 2023 and the 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 January 27, 2022, the Office of Retailer Operations and Compliance informed Appellant that its request to participate as an authorized retailer in SNAP was denied for a period of three years because, “...it is the determination of FNS that sufficient evidence exists that you have been found to be circumventing a period of disqualification . . . based on information you submitted to FNS . . . in connection with your SNAP application”. Specifically, the Office of Retailer Operations and Compliance determined that Appellant’s application to participate in SNAP is an attempt to circumvent a disqualification on the basis that the applicant’s spouse is

serving an active SNAP disqualification as the former owner of another firm. SNAP regulations at Section 278.1(b)(3)(iii) require FNS to deny the authorization of any firm from participation in the program for an attempt by the firm to circumvent a period of disqualification. Per SNAP regulations at 278.1(k)(3)(iii), these firms shall be denied for a period of three years from the effective date of denial.

By letter dated February 5, 2022, Appellant appealed the Office of Retailer Operations and Compliance's decision and requested an administrative review of this action. The appeal was granted. No subsequent correspondence was received.

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. § 2018), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR Part 278.1(b)(3)(iii) and 278.1(k)(3)(iii) establish the authority upon which an application to participate as a SNAP retailer may be denied for a period of three years if FNS determines there is evidence of an attempt by the firm to circumvent a period of disqualification.

7 U.S.C. §2018 Sec. 9 (a)(1) states, inter alia: Regulations issued pursuant to this Act shall provide for the submission of applications for approval by retail food stores and wholesale food concerns which desire to be authorized to accept and redeem benefits under the supplemental nutrition assistance program and for the approval of those applicants whose participation will effectuate the purposes of the supplemental nutrition assistance program. In determining the qualifications of applicants, there shall be considered among such other factors as may be appropriate, the following: (A) the nature and extent of the food business conducted by the applicant; (B) the volume of benefit transactions which may reasonably be expected to be conducted by the applicant food store or wholesale food concern; (C) whether the applicant is located in an area with significantly limited access to food; and (D) the business integrity and reputation of the applicant."

7 CFR §278.1(b)(3)(iii) reads, in part, "(3) . . . FNS shall deny the authorization of any firm from participation in the program for a period of time as specified in paragraph (k) of this section based on consideration of information regarding the business integrity and reputation of the firm as follows: . . . (iii) Evidence of an attempt by the firm to circumvent a period of disqualification, a civil money penalty, or fine imposed for violations of the Food and Nutrition Act of 2008 and program regulations . . ."

7 CFR §278.1(k)(3)(iii) states, in part, “FNS shall deny the authorization of any firm if it determines that: . . . (3) The firm has been found to lack the necessary business integrity and reputation to further the purposes of the program. Such firms shall be denied authorization for the following period of time: . . . Firms for which evidence exists of an attempt to circumvent a period of disqualification . . . shall be denied for a period of three years from the effective date of denial . . .”

7 CFR § 278.1(k)(6) states, in part, FNS shall deny the application of any firm if it determines that “[t]he firm has been found to be circumventing a period of disqualification through a purported transfer of ownership.”

APPELLANT’S CONTENTIONS

The following may represent a 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:

- This marks the most recent rejection of Applicant's request to participate in SNAP. Applicant's prior application to participate in the SNAP EBT benefits program was rejected on March 23, 2017, for the reason that Nawal, Inc. d/b/a Stadium Party Shoppe (the previous owner of a business operated at the location), had been permanently disqualified from the SNAP program and that Ghassan Georges (spouse of Wassan Georges, the owner of Applicant) was considered an associated person with Applicant. The decision to deny Applicant's request is both arbitrary and capricious, devoid of any factual support;
- The Applicant, which is wholly owned by Wassan Georges, is being punished for the "alleged" bad prior actions of Ghassan Georges, Wassan Georges husband. The punishment is wholly unwarranted and without justification. It would be inequitable to deny a license to Applicant solely because Wassan Georges' husband previously had been permanently disqualified from participation in SNAP. Appellant cited *Warren V. United States*. The stated reason for the denial is pretextual and without any basis in fact. The Applicant has been solely owned by Wassan Georges since 2015 and there has been no change in ownership. After being wrongly disqualified from the SNAP program in 2017, Applicant patiently waited the 3-year disqualification period and reapplied in 2021. There has been no change in the structure of the Applicant since 2015 and no evidence of a "purported transfer" or of any attempted circumvention;
- Punishing Ghassan Georges is not warranted under the circumstance. He was a minority owner of a company that was managed by his brother Janan. He was not employed by Nawal, Inc. at the time of the alleged violations and denies even knowing that there had been violations until several years after the fact. Punishing Ghassan Georges is similar to punishing a shareholder of Kroger because a clerk committed a violation. That is unjust. Appellant cited *Ghassan Georges v. Nawal, Inc., and Janan Georges*; and,
- Applicant was denied in 2017 and waited out the 3-year disqualification period. There has been no change in circumstance since then. The sanction of disqualification is a harsh penalty in these circumstances, considering that applicant has already fulfilled its original 3-year disqualification period. The goal of deterrence is not served by imposing

sanctions on Ghassan's wife, who had no knowledge of and did not participate in the predicate violations. Please kindly consider these factors in reconsidering Stadium SDD, LLC's application to participate in the SNAP program.

Appellant submitted real estate, tax, loan, licensure, and other documents in support of these contentions.

ANALYSIS AND FINDINGS

It is important to clarify for the record that the purpose of this review is to evaluate the evidence regarding Appellant's current application to become an authorized retailer in the SNAP and as such it is limited to consideration of the relevant facts and circumstances at the time of the decision. The Food and Nutrition Act of 2008, as amended and SNAP regulations are specific with regard to the business integrity of a SNAP applicant and provide no discretion to any party involved in the determination of eligibility or the determination of an administrative review regarding the seriousness of a business integrity violation. The authorization of a store to participate in the SNAP must be in accord with the Act and the regulations, as amended; those requirements of law cannot be waived.

The applicant's sworn affidavit dated November 17, 2021, and letter dated November 22, 2021, state that Ghassan Georges was an owner of a firm that had been disqualified from SNAP, is currently working at the same applicant store location, and is related to the applicant by marriage. Mr. Georges is the former owner of a firm at the same location that was permanently disqualified as a SNAP retailer effective November 7, 2005. The former owner was serving an active SNAP permanent disqualification at the time of the current application and permanent disqualifications do not have an end date as they are permanent. SNAP regulations do not discern between the levels of involvement an owner has with a firm. These facts and evidence demonstrate that the former owner is involved with the applicant store, is married to the current owner of the applicant store, and is financially benefitting from the applicant store and they therefore constitute evidence of an attempt to circumvent a period of disqualification.

Appellant's claim that the denial action was both arbitrary and capricious is without merit. "A sanction is not arbitrary and capricious if the agency properly adheres to its own regulations and guidelines in imposing a sanction." *Castillo v. United States*, 989 F. Supp. 413, 417 (D. Conn. 1997). The FNS followed its own regulations in determining that the Appellant's application and supporting documents constituted circumvention of a period of disqualification under the business integrity requirements.

CONCLUSION

Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to deny the application of Big House Liquors to participate as an authorized retailer in SNAP for a period of three years is sustained. Denial of a firm's application to participate in the SNAP under the provisions of 7 CFR § 278.1(b)(3)(iii) and 278.1(k)(3)(iii) warrants a denial for a period of three years.

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.

ROBERT T. DEEGAN
ADMINISTRATIVE REVIEW OFFICER

August 8, 2022