

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

**Calkins Road Liquor,**

**Appellant,**

**v.**

**Office of Retailer Operations and  
Compliance,**

**Respondent.**

**Case Number: C0250561**

**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 withdraw the application of Calkins Road Liquor (hereinafter Appellant) to participate as a retail food store in the Supplemental Nutrition Assistance Program (SNAP).

**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) Part 278, when it denied the application of Appellant to participate as a SNAP retail store.

**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**

The record shows that Appellant applied to participate as a SNAP retailer food store on September 20, 2021. Firms that are considered to be at higher risk for compliance issues are required to submit a larger amount of documentation than firms without a high risk designation. This is to ensure that the high risk firm is compliant with all SNAP eligibility requirements and to ensure that there are no business ties to other persons or firms that have been permanently disqualified from SNAP or have committed other program violations. In this case, the high risk designation was due to the previous owner of the firm being permanently disqualified for trafficking SNAP benefits. Accordingly, on October 13, 2021, the Office of Retailer Operations

and Compliance, via email, requested additional documentation in support of Appellant's SNAP application to be submitted within 30 days of receipt of the request. The October 13, 2021, request for information contained a very detailed listing of required documents and further specified that all documents should be uploaded first and submitted as one complete package. Subsequently, via email on November 3, 2021, the Office of Retailer Operations and Compliance sent a reminder letter to the Appellant that the required documentation was due in 10 calendar days and that this was a final request. The FNS letter contained a detailed list of both missing documents and submitted documents that were incomplete, illegible, or expired. This letter also stated that "numerous documents were submitted partially and in incomplete multiple submissions" and reminded Appellant that documents were to be submitted in one complete submission. The letter further cautioned Appellant that if the documentation or information submitted was inadequate (i.e., unclear or incomplete) to determine the firm's eligibility, that work will be suspended on the application and a new application required. On November 19, 2021, the FNS tracking system withdrew Appellant's SNAP application after the Office of Retailer Operations and Compliance had reviewed the information submitted in response to the October 13, 2021, and the November 3, 2021, FNS letters and determined that the documentation provided was incomplete.

In an email dated November 19, 2021, the Office of Retailer Operations and Compliance informed Appellant that its application to participate as an authorized retailer in SNAP had been withdrawn because FNS had not received the information to complete the application file.

By email dated November 23, 2021, Appellant appealed the Office of Retailer Operations and Compliance's decision and requested an administrative review of this determination. The appeal was granted. Subsequent correspondence was received from Appellant.

## **STANDARD OF REVIEW**

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

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2018, and § 278 of Title 7 of the Code of Federal Regulations (CFR). In particular, 7 CFR § 278.1(b)(1) establishes the authority upon which FNS shall deny the application of any firm which fails to meet established eligibility requirements.

7 CFR § 278.1(m) reads in part: Refusal to accept correspondence or to respond to inquiries. FNS may withdraw or deny the authorization of any firm which: (2) Fails to respond to inquiries from FNS within a reasonable time.

## 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:

- The store has applied to accept SNAP at least four times and every time FNS requests additional information. The deadlines are arbitrary and would not be extended upon request. For application number 0778827, all information was uploaded, but the owner was told he had to mail the information which was sent by next day mail. All the information in this situation was uploaded and/or sent by mail, but FNS made no response as to exactly what was missing;
- The business is being treated differently than other applicants and we believe it could be because of the nationality of the applicants, being East Asian. In any event, while the USDA website states that information should be uploaded, we were told it had to be mailed, thereby cutting our time as compared to other applicants. The reason it had to be mailed was apparently because the FNS asked for a large amount of extra documentation that is not normally requested;
- This process and the denial is appealed as the applicant has been trying to obtain the right to accept SNAP benefits for well over a year and has been continuously denied. The FNS action should be reversed and the application granted. It is obvious, because of the failure of the FNS to inform the application of what exactly is missing, that this constant denial is an arbitrary denial and is intended to prevent the applicant from ever being approved;
- The current store owner purchased the store from a person whom FNS had disqualified. FNS made the assumption that the current owner was a nominee of the previous owner and requested additional information that was beyond the normal application materials;
- The current owner purchased the inventory and equipment and rented the space from the previous owner's mother. Rent was paid to the mother and the previous owner did not receive any money derived from the store's operation other than the purchase price. There is no relationship between the current owner and the previous owner. The current owner is East Asian while the previous owner's heritage is Middle Eastern. There is no family relationship or business relationship between the seller and the buyer;
- The owner was denied every time he applied for SNAP authorization. The first two times, FNS said it sent emails, but it did not. Eventually FNS started sending emails to the owner's attorney. There was never an explanation for the denial other than the application was incomplete. It appears that FNS was looking for ways to deny the application because it unreasonably believed that the seller still had some control over the buyer. This is completely false;
- There also appears to be some hostility towards the owner as he was told to submit documents over the USDA website and then told to mail the documents, but not allowed an extension from Saturday to Monday. It appears that every excuse is being made to obtain a denial of the application; and,
- It is understood that FNS has a policy of review of applications from retailers designated as being high risk "due to any previous permanent disqualification occurring at the retailer's location." In the present situation there is no evidence that the sellers are

attempting to circumvent a period of disqualification. It is believed that the FNS is using the claim that the owner did not send in information timely as a way to disqualify him because FNS, without any evidence, thinks that there is some attempt to circumvent a period of disqualification. There is no evidence that the Appellant lacks business integrity. There is no evidence that the seller is attempting to benefit by the current owner's ownership of the store. There is no evidence whatsoever that the seller participates or participated in the current business at the store. Due process requires that the owner be given notice why it was denied.

Appellant submitted no evidence or other rationales in support of these contentions.

### **ANALYSIS AND FINDINGS**

With regards to Appellant's contentions listed above, it is important to clarify for the record that the purpose of this review is to validate or to invalidate the determination of the Office of Retailer Operations and Compliance, and as such it is limited to consideration of the relevant facts and circumstances that existed at the time of the decision. It must also be made clear that the objective of this review is not to determine the firm's eligibility for SNAP participation. Rather it is solely to determine whether or not the firm failed to cooperate with the application process which is the basis for the Office of Retailer Operations and Compliance's application withdrawal determination. Failure to cooperate may include non-response to a request for information, failure to submit information timely, or the submission of unclear or incomplete information in response to a request.

Information provided by the Office of Retailer Operations and Compliance for this review shows that incomplete and partial submissions were received.

Appellant is correct that FNS requires enhanced verification procedures for high risk store locations such as a store that had previously been disqualified. These procedures apply equally to all applicants applying for a SNAP permit at a previously disqualified location and are not used to single-out particular owners or owners of certain nationalities. It should also be noted that FNS does not collect data that identifies an applicant's ethnicity or nationality. While the high risk procedures require additional verification, owners of previously disqualified stores are routinely able to satisfactorily complete the requirements and become SNAP retailers.

Contrary to Appellant's claims, the October 13, 2021, FNS request for information contained a very detailed listing of required documents and further specified that all documents should be uploaded first and submitted as one complete package. Subsequently, the November 3, 2021, FNS letter also contained a detailed list of both missing documents and submitted documents that were incomplete, illegible, or expired. This letter also stated that "numerous documents were submitted partially and in incomplete multiple submissions".

Appellant has claimed that he may have been denied by FNS due to his nationality. With regards to this allegation; Appellant offered no evidence and none was evident in the record to support the claim. However, Appellant has the right to pursue any such allegations of discrimination directly with the USDA office which handles such matters. Information on filing a Civil Rights

program complaint of discrimination with USDA, the USDA Program Discrimination Complaint may be found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint>.

## **CONCLUSION**

Based on a review of all of the evidence in this matter, the determination by the Office of Retailer Operations and Compliance to withdraw the application of Appellant to participate as a retailer in the SNAP is sustained. The Appellant is required to submit a new SNAP retailer application. Questions regarding the application process can be answered by the FNS Retailer Service Center at 877-823-4369.

## **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

May 25, 2022