

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

Rania Deli Grocery Corp.,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0225332

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) finds there is sufficient evidence to support the determination by the Retailer Operations Division to impose a six-month disqualification of Rania Deli Grocery Corp. (“Appellant”) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a six-month disqualification against Rania Deli Grocery Corp.

AUTHORITY

7 U.S.C. § 2023 and 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

Rania Deli Grocery Corp. was initially authorized to participate in SNAP on September 17, 2018. Between January 30, 2020, and February 13, 2020, the USDA conducted an undercover investigation of Rania Deli Grocery Corp. to ascertain the firm’s compliance with Federal SNAP law. Agency records show that during the investigation Appellant violated SNAP regulations by accepting SNAP benefits in exchange for ineligible non-food items on five separate occasions.

In a letter dated April 2, 2020, the Retailer Operations Division charged Appellant with accepting SNAP benefits in exchange for ineligible non-food merchandise, in violation of 7 CFR § 278.2(a). The charge letter informed Appellant that the violations warranted a six-month

disqualification period from SNAP, as provided in 7 CFR § 278.6(e)(5). The letter further stated that under certain conditions, and in accordance with § 278.6(f)(1), FNS may impose a civil money penalty (CMP) in lieu of disqualification.

Appellant, through counsel, responded to the charge letter on April 20, 2020. In the response, Appellant said that the owner did not personally engage in illegal activity and prior to receipt of the charge letter, the owner was unaware that anyone else in the store was alleged to engage in such activities. Appellant said the investigative report did not provide sufficient detail about the identities of the clerks or the violative transactions and that the persons described in the investigative report were not employed in the store. Appellant claimed that the alleged sales of ineligible items were for insignificant amounts and that the charges were not supported in the record. Appellant also requested a civil money penalty in lieu of disqualification and requested information pursuant to the Freedom of Information Act (FOIA).

Once the FOIA process was complete, the Retailer Operations Division issued a determination letter, dated December 1, 2021. This letter informed the Appellant that the Retailer Operations Division found that the violations did occur as outlined in the charge letter and that a six-month disqualification would be imposed in accordance with 7 CFR § 278.6(a) and (e). The determination letter also stated that Appellant was considered for a hardship CMP but was ineligible because there were other authorized stores in the area selling as large a variety of staple foods at comparable prices.

On December 2, 2021, Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted and implementation of the six-month disqualification has been held in abeyance pending completion of this review.

STANDARD OF REVIEW

In an appeal of an adverse action, the appellant bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. This means the 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 law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and is promulgated through regulation under Title 7 CFR Part 278. Specifically, 7 CFR § 278.6(a) and (e) establish the authority upon which a six-month disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 278.2(a) states, in part:

[SNAP benefits] may be accepted by an authorized retail food store only from eligible households...only in exchange for eligible food.

7 CFR § 271.2 states, in part:

Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption....

7 CFR § 278.6(a) states, in part:

FNS may disqualify any authorized retail food store...if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations....

Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for [a] period of 12 months to 10 years for a firm's second sanction; and disqualification shall be permanent for a disqualification based on paragraph (e)(1) of this section.[Emphasis added.]

7 CFR § 278.6(e) states, in part:

FNS shall take action as follows against any firm determined to have violated the Act or regulations...

(5) Disqualify the firm for 6 months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as but not limited to the sale of common nonfood items due to carelessness or poor supervision by the firm's ownership or management.

7 CFR § 278.6(f)(1) states, in part:

FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm subject to a disqualification is selling a substantial variety of staple food items, and the firm's disqualification would cause hardship to SNAP households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices.

SUMMARY OF INVESTIGATION

During an undercover investigation conducted between January 30, 2020, and February 13, 2020, FNS completed five compliance visits at Rania Deli Grocery Corp. A report of the investigation was provided to Appellant as an attachment to the charge letter, dated April 2, 2020. The report included Exhibits A through E and provided full details on the results of each compliance visit. SNAP violations documented during each of the five visits included the exchange of ineligible non-food merchandise for SNAP benefits. Two different clerks committed

the violations. The report noted that the following ineligible non-food items were sold in exchange for SNAP benefits: all-purpose cleaner, bathroom tissue, trash bags, kitchen bags, paper towels, and dishwashing liquid.

The report noted that although the investigator was able to purchase an ineligible item in Exhibit C, a different ineligible item was refused by the store clerk. The investigator also attempted to exchange SNAP benefits for cash in Exhibits C and E but was also refused. The charge letter states that the violations that occurred in Exhibits A, B, C, D, and E warrant a disqualification period of six months pursuant to 7 CFR § 278.6(e)(5).

APPELLANT'S CONTENTIONS

Appellant's contentions regarding this matter are summarized as follows:

- There has been no prior non-compliance history against the firm.
- An FNS Contractor conducted a field inspection around the time of the alleged violation. No violations occurred and the store was fully stocked.
- Appellant denied personally engaging in any type of illegal activity and was unaware of such activity prior to the charge letter.
- FNS has not identified the name of the clerk involved in the violative transactions or the clerk's relationship to the owner.
- The owner denies that the clerks who conducted the violative transactions work at the store given their descriptions.
- The amounts involved in the alleged sales are of such an insignificant amount that it raises questions about the appropriateness and credibility of the investigation, particularly given the failed attempt.
- Insufficient information was given about the time of the transactions or how long the transactions took, which would be necessary to determine if the violative transactions could have actually occurred or the identity of the store clerk.
- Surveillance cameras are self-erasing and video of the transactions are no longer available.
- The name of the investigator was never disclosed. The owner is entitled to know whether there was an investigation and who was involved.
- There is no proof that any sale ever occurred, such as receipts. The owner denies that sales were made without receipts or that there was no price indicated on the items purchased.
- There is a major issue as to what was exchanged or purchased.
- There are no reports to indicate this firm ever exchanged cash for an EBT transaction.
- If FNS determines the violations occurred, FNS should impose a civil money penalty as a sanction in lieu of disqualification as it would be a violation of due process to prosecute the owner for alleged transactions that occurred without a warning letter so that the issue with the one employee can be corrected.
- A six-month disqualification would be cruel and unusual punishment as it would have an adverse effect on the owner's future business endeavors that would cause irreparable injury and damage to his reputation in the business community and

cause him to lose a large monetary investment in his purchase and renovation of the store.

- The owner has continuously trained and tested his employees concerning SNAP regulations and requirements.
- The store is well stocked and provides necessary items to the community which is comprised of numerous apartment buildings and other multi-story housing projects within a two-block radius, all with large families. The neighborhood has a large housing project with a high concentration of minority populations and those that live below the poverty line and receive public assistance. There is also a family homeless shelter and other commercial enterprises in the immediate area.
- Due to the store hours (24 hours/7 days per week), the owner relies on the honesty and judgment of employees. It would be irrational and illogical for the owner of a successful business would intentionally jeopardize his business by risking a six-month SNAP disqualification. Seventy-five percent of the store's sales come from EBT transactions in exchange for eligible items.
- FNS has failed to establish intent, which is an essential element for its decision to permanently disqualify this owner from SNAP.

Appellant provided no additional evidence in support of its contentions on administrative review.

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

ANALYSIS AND FINDINGS

If a store has never been sanctioned and its personnel, due to carelessness or poor supervision, sells common nonfood items for SNAP benefits, then the penalty under SNAP regulations is a six-month disqualification of the store's SNAP authorization.

This review examines the relevant information regarding the Retailer Operation Division's determination. Once the Retailer Operations Division establishes a violation occurred, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole, that the disqualification should be reversed. 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.

In this case, the report of investigation, signed by the investigator under penalty of perjury, documents that the charges of violations are based on the findings of a formal USDA investigation. A complete review of this documentation has yielded no known error or discrepancy. The investigation report is specific and thorough regarding the dates of the violations, the critical facts related thereto, and is supported by documentation that confirms details of the transactions. The Retailer Operations Division has thoroughly documented the transactions in which personnel at the store exchanged ineligible items for SNAP benefits.

As described below, Appellant has not provided sufficient credible and convincing evidence to overturn the Retailer Operations Division's determination. This review finds, by a preponderance of the evidence, that program violations did occur as charged by the Retailer Operations Division and a six-month disqualification is warranted. The Retailer Operations Division's decision not to impose a hardship CMP is also sustained.

Sufficiency of the Investigative Report

Appellant contends there are inadequacies in the investigative report, including that the report did not have the entry and departure times of each visit, did not have the names of the employees that committed the violations, and that no cash register receipts were provided to Appellant.

In reviewing the investigative report, the report appears to be wholly credible and fully documented. The transactions identified on the investigative report unquestionably occurred at Appellant's store. The record includes photographs of the items purchased at the store by the investigator, photographs of the EBT receipts provided by the store to the investigator, and a donation certification listing the specific items purchased during the investigation and showing the charitable organization the items were donated to, including a signature of receipt by the charitable organization. The report describes the clerk on duty during each of the violations and specifies the date of each violation. Thus, the contentions that the investigative report did not include certain details do not provide a valid basis for dismissing the charges or for mitigating the penalty imposed. Counsel also explains that its surveillance cameras in the store are self-erasing and any images that were taken at the time of the investigation have since been erased. However, this information is not necessary to determine whether or not the transactions actually took place. Every SNAP transaction that occurs at Appellant's firm appears on agency records along with the store's SNAP authorization number, the date and time of the transaction, the amount of the transaction, and transaction method. Appellant has offered no compelling evidence that any relevant detail on the report is incorrect.

While the investigative report is sufficient in detail, this review finds that Appellant should not have been charged with a violation for the transaction describe in Exhibit C. Although a violation occurred, it was too minor to be sanctionable. Regardless, the violations in Exhibits A, B, D, and E were sanctionable and warrant the six-month disqualification imposed by the Retailer Operations Division.

Applicable Penalty

Appellant contends that the violations were for insignificant amounts and states that a warning letter is the more appropriate sanction rather than a six-month disqualification. Appellant offers that this is the first time the store has been charged with a violation and that there are no reports that the firm exchanged cash for SNAP benefits. Appellant also claims to continuously train and test employees regarding SNAP requirements.

Regarding Appellant's contentions, it should first be noted that although Appellant references trafficking (the exchange of SNAP benefits for cash or other consideration) and the applicable

penalty for trafficking, permanent disqualification, throughout its brief, Appellant has never been charged with trafficking SNAP benefits.

As for the actual charges against Appellant, SNAP regulations specifically provide that the applicable penalty for a first offense of the sale of common nonfood items, due to carelessness or poor supervision by a firm's ownership or management, is a six-month disqualification. SNAP regulations do not require any threshold be met for the six-month disqualification to apply. This is the minimum penalty in this circumstance, and accounts for the elements of 7 CFR § 278.6(d). Although Appellant claims to have taken adequate care in training employees and that the violations committed by Appellant were minor in nature, the facts tell a different story. During the investigation period, two different clerks at Appellant's store sold ineligible items for SNAP benefits on four different sanctionable occasions. During these transactions, store clerks sold 8 ineligible items to the investigator over a two-week period. Given the duration and extent of the violations, and the fact that multiple clerks were involved, it is unlikely that Appellant took adequate care in supervising or training employees.

No Personal Involvement or Intent to Violate

Appellant denies that he personally engaged in any type of illegal activity and was unaware, until receipt of the charge letter, that anyone else in his store or employed by him in his business is alleged to have engaged in such activities.

Although ownership claims to have had no involvement in, or knowledge of, the violations, this cannot be accepted as a valid basis for dismissing any of the charges, or for mitigating the impact of those charges. Regardless of whom the ownership of a store may utilize to handle store business, the owner is accountable for the proper training of staff and the monitoring and handling of SNAP benefit transactions. On September 5, 2018, the store owner signed the store's SNAP authorization application. That application included a certification and confirmation that the owners and officers are responsible for "violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The list of violations on the certification included the exchange of ineligible non-food items for SNAP benefits. By signing the SNAP application, the owner agreed to accept responsibility on behalf of the firm for compliance with all statutory and regulatory requirements associated with participation in SNAP.

Hardship to Appellant

The Appellant contends that SNAP transactions account for approximately 75 percent of the firm's revenue. It further claims that a disqualification from SNAP would be cruel and unusual punishment and would cause irreparable injury and damage to the owner by adversely affecting the owner's future business endeavors and damaging his reputation in the business community. According to the Appellant, the owner would not knowingly jeopardize his business and his livelihood by engaging in the violations outlined in the charge letter. Finally, the Appellant argues that due to the damage a disqualification would cause, a CMP should instead be considered.

With regard to these contentions, SNAP regulations do not permit this review to consider a waiver or modification of a disqualification penalty on the basis of possible hardship – financial or otherwise – to either the ownership personally or to the firm itself. To allow an exemption from penalties based on a purported hardship to the firm or its ownership would render virtually meaningless the provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of USDA. Moreover, giving special consideration to hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program requirements, but also to those retailers who have been disqualified from the program in the past for similar violations.

Hardship Civil Money Penalty (CMP)

The Appellant requests a CMP in lieu of disqualification, alleging disqualification would cause hardship to customers. Appellant notes that the store is well stocked and provides necessary items to the community, which relies on public assistance.

Regarding this contention, regulations at 7 CFR § 278.6(f)(1) do allow, in some circumstances, for a CMP to be imposed in lieu of disqualification when the firm's disqualification would cause hardship to SNAP households. According to this regulation, hardship is defined as "no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices." The Retailer Operations Division had determined that a six-month disqualification of Rania Deli Grocery Corp. would not cause a hardship to SNAP households as there were comparable or larger SNAP authorized stores in the area.

SNAP customers are likely to suffer some degree of inconvenience whenever any SNAP authorized retailer is disqualified, as the normal shopping pattern of SNAP customers may be altered. However, potential inconvenience is not the same as hardship, as defined in SNAP regulations.

It is the determination of this review that a disqualification of Rania Deli Grocery Corp., a convenience store, would not cause hardship to SNAP households because there are other shopping options in the area. According to agency records, there are a number of similarly stocked or larger SNAP authorized retail stores located within a one-mile radius of Rania Deli Grocery Corp., including at least 14 superstores, 14 supermarkets, two large grocery stores, and 33 medium grocery stores. There is also no evidence that Appellant sells its inventory at unusually low prices in comparison to nearby stores. Given that hardship conditions have not been established, this review agrees with the Retailer Operations Division's determination that a hardship CMP may not be assessed in lieu of disqualification.

CONCLUSION

This review finds, by a preponderance of the evidence, that program violations of 7 CFR § 278.2(a) did occur at Rania Deli Grocery Corp. during a USDA investigation. Accordingly, the Retailer Operations Division's determination to impose a six-month disqualification period is sustained. Likewise, the Retailer Operations Division's determination that Appellant is ineligible for a hardship CMP is sustained.

In accordance with the Food and Nutrition Act and SNAP regulations, the six-month period of disqualification shall become effective 30 days after receipt of this decision. Appellant may submit a new application for SNAP authorization 10 days prior to the expiration of the six-month disqualification period.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this determination are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in SNAP regulations, at 7 CFR § 279.7. If 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.

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.

MICHELLE WATERS
Administrative Review Officer

May 27, 2022