

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

**Gomo's Fish Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0236775**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that the Retailer Operations Division properly withdrew the authorization of Gomo's Fish Market (hereinafter "Gomo's Fish Market" or "Appellant") to participate 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 Regulations (CFR) Part 278 in its administration of the SNAP, when it withdrew the authorization of Gomo's Fish Market as a SNAP retail store.

**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**

FNS regulations require that SNAP retail stores be reauthorized on a set schedule. As part of this process, store owners must complete a reauthorization application and an onsite visit by an FNS contractor is then conducted to determine the Appellant's continued eligibility to participate as a SNAP retailer.

The record shows that the Appellant applied for reauthorization in an application that was signed on November 22, 2019. In a letter dated September 14, 2020, the Retailer Operations Division informed Appellant that it was being withdrawn from the SNAP due to a failure to cooperate in the continued authorization process under 7 CFR 278.1(j) and (n). The letter noted that the Retailer Operations

Division had not received all of the information requested in a previous letter, dated August 9, 2020, which was needed to complete the reauthorization process. The letter noted that the withdrawal would be effective 10 days from the date of the firm's receipt of the letter unless the Appellant submitted the documents requested in the August 9, 2020 letter. The Retailer Operations Division did not receive the information requested by the deadline provided.

In a letter postmarked September 26, 2020, the Appellant, through counsel, requested an administrative review of the Retailer Operation Division's decision to withdraw the firm's SNAP authorization. FNS granted the Appellant's request for administrative review by letter dated October 6, 2020. Upon acceptance of the administrative review request, implementation of the SNAP authorization withdrawal was held in abeyance pending completion of this review.

The record reflects that on October 13, 2020, the Appellant's counsel requested information and documents from FNS with regard to the agency's case against Gomo's Fish Market pursuant to the Freedom of Information Act (FOIA). In a letter dated August 17, 2022, FNS provided counsel with a response to the FOIA request. The Appellant's counsel did not appeal the FOIA request. In a letter dated September 19, 2022, the Appellant, through counsel, submitted additional information in support of the request for administrative review.

### **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That 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 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). Part 278.1(m) and 278.1(n) establish the authority upon which the authorization of any firm to participate in SNAP may be withdrawn if it fails to cooperate in the reauthorization process.

7 CFR § 278.1(a) states in relevant part: "Any firm desiring to participate or continue to be authorized in the program shall file an application as prescribed by FNS. Such an application shall contain information which will permit a determination to be made as to whether such an application qualifies, or continues to qualify, for authorization, under the provisions of the program. FNS may require that a retail food store or wholesale food concern be visited to confirm eligibility for program participation prior to such store or concern being authorized or reauthorized in the program. Required visits shall be conducted by an authorized employee of the Department..."

7 CFR § 278.1(b) states in relevant part: "An applicant shall provide sufficient data and information on the nature and scope of the firm's business for FNS to determine whether the applicant's participation will further the purposes of the program. ...Failure to comply with any request for information or failure to sign a written release form shall result in denial of the application for authorization or withdrawal of a firm or concern from the program."

7 CFR § 278.1(j) states in relevant part: “Upon approval, FNS shall issue a nontransferable authorization card to the firm. The authorization card shall be valid only for the time period for which the firm is authorized to accept and redeem SNAP benefits . . . The specification of an authorization period in no way precludes FNS from periodically requesting information from a firm for purposes of reauthorization in the program or from withdrawing or terminating the authorization of a firm in accordance with this part.”

7 CFR § 278.1(m) states in relevant part: “FNS may withdraw or deny the authorization of any firm which: (1) Refuses to accept correspondence from FNS; (2) Fails to respond to inquiries from FNS within a reasonable time; or (3) Cannot be located by FNS with reasonable effort.”

7 CFR § 278.1(n) states in relevant part: “At the request of FNS a retail food store or wholesale food concern will be required to undergo a periodic reauthorization determination by updating any or all of the information on the firm’s application form. Failure to cooperate in the reauthorization process will result in withdrawal of the firm’s approval to participate in the program.”

### **APPELLANT’S CONTENTIONS**

The following represents a brief summary of the Appellant’s contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the administrative review request and in subsequent correspondence, the Appellant stated the following summarized contentions, in relevant part:

- The Appellant operates as a grocery retailer and stocks a variety of basic grocery foods with a specialty in seafood, plant-based milk, carrots, and beans.
- According to USDA’s Profile of SNAP Households for the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) Congressional District of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), there are approximately 10 percent of the households that receive SNAP benefits.
- As was noted in the April 2016 study conducted by Store News (the April 2016 edition of Single Store Owner magazine), small grocery/convenience store customers are among some of the most loyal customers when it comes to their selection.
- According to USDA’s website, there are 29 participating SNAP retailers within a one mile radius of the Appellant. None of these stores are comparable to the convenient location of the Appellant, the operational hours of the store, nor are they comparable with regard to the quantity and quality of the assortment of foods sold at the subject firm. The Appellant is also more easily accessible to area residents than other area authorized SNAP retailers. A SNAP authorization withdrawal would impose a hardship on area SNAP participants.
- The Appellant has provided extensive documentation verifying a week of actual retail sales from actual sales receipts and multiple Excel spreadsheets that break down the food into the required categories by week and by day for the required period. The Excel spreadsheets show that the store was overwhelmingly selling staple food items and not hot foods. A table with a breakdown of the per week sales was provided in support thereof. According to this spreadsheet, the store was selling between \$9,000.00 and \$10,500.00 in staple food items per week compared to only \$100.00 to \$175.00 a week in hot foods. This shows the store’s hot food sales were 1 percent of total sales for the entirety of the three week period and the store’s cold foods were another 1 percent. Here the sales of hot and cold prepared food items

are on average 2 percent, nowhere near the required greater than 50 percent to be considered a restaurant.

- The submitted sales receipts for the daily sales for each day during the three week period show that the Appellant is a specialty fish market and not a restaurant.
- The Appellant has clearly cooperated providing information as required under the applicable regulations.

In support of its contentions, the Appellant, through counsel, submitted the following information for review:

- Cash register printouts with daily sales totals for July 20, 2020 - July 25, 2020 and July 26, 2020 – August 9, 2020;
- Z-tapes with totals per day for July 20, 2020 - July 25, 2020 and July 26, 2020 – August 9, 2020;
- USPS Tracking information;
- A study entitled “U.S. Grocery Shopping Trends, 2016”, FMI;
- Excel spreadsheet—sales for July 20, 2020 – August 9, 2020;
- Excel spreadsheet--worksheet for July 20 – July 26, 2020; and
- Batch summary.

## **ANALYSIS AND FINDINGS**

It is important to clarify for the record that the purpose of this review is to validate or to invalidate the determination of the Retailer Operations Division, and as such is limited to consideration of relevant facts and circumstances at the time of the decision.

In a letter dated August 9, 2020, the Retailer Operations Division informed the Appellant that it was in the process of reviewing the firm’s authorization to participate in the SNAP and that a determination to continue to participate could not be made at that time. The owner of the addressed store was authorized to accept EBT as of November 14, 2007; however, the Retailer Operations Division requested the following additional needed documents from the Appellant in order to verify the eligibility of the business as an eligible retail food store:

- Verification of actual retail sales for 1 representative week (actual sales receipts).
- An overview document (e.g., an Excel spreadsheet) that you create which totals actual retail sales for 1 representative week, and breaks these actual retail sales down into the following categories: 1) Staple Foods, 2) Accessory Foods, 3) Hot Prepared and Heated Foods, 4) Cold Foods Prepared on Site, 5) Charges for Food Heating Services, and 6) Nonfood items. If a food is both an Accessory Food and a Hot Prepared/Heated Food or both an Accessory Food and a Cold Food Prepared on Site, please count it in the "Hot Prepared and Heated Foods" or "Cold Foods Prepared on Site" categories respectively, and do not count it in the "Accessory Foods" category.

The August 9, 2020 letter also noted that the required documents must be submitted in order for the Appellant to remain authorized to accept SNAP and that the documents must be submitted within 20 days of receipt of the letter. The Appellant was notified that if no response was received, the Retailer Operations Division would consider the application to accept SNAP withdrawn and that a new application may be required. Per UPS confirmation of delivery, the letter was delivered to the

Appellant at the store address of record on August 11, 2020. However, the Retailer Operations Division did not receive all of the documentation requested from the Appellant by the deadline provided.

The SNAP regulations at §278.1(b) are clear that an applicant shall provide sufficient data and information on the nature and scope of the firm's business for FNS to determine whether the applicant's participation will further the purposes of the program. The SNAP regulations at §278.1(m) state that FNS may withdraw the authorization for refusal to accept correspondence or to respond to inquiries. Finally, §278.1(n) makes it clear that failure to cooperate in the reauthorization process will result in withdrawal of the firm's approval to participate in the program. 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.

Via letter of September 14, 2020, the store was withdrawn under 7 CFR § 278.1(n) for failure to cooperate when the Retailer Operations Division requested, as noted above, specific documentation and the Appellant submitted information that was inadequate (i.e., unclear or incomplete) or did not submit the information within the required timeframe thereby rendering the Agency unable to adequately ascertain the Appellant's SNAP eligibility.

Therefore, based on this discussion, the decision by the Retailer Operations Division to withdraw the firm for a six month period for failure to cooperate in the SNAP reauthorization process was the appropriate penalty and there is no valid basis for dismissing the charges or for mitigating the penalty imposed.

With regard to the Appellant's contention that a SNAP authorization withdrawal would impose a hardship on area SNAP customers, unfortunately these contentions do not provide a valid basis for reversal of the Retailer Operations Division's withdrawal determination. A store may only accept SNAP benefits if it currently meets the minimum eligibility criteria for authorization and provides the required documents needed to process its SNAP reauthorization application. The authorization of a store to participate in the SNAP must be in accordance with the Act and the regulations, as amended; those requirements of law cannot be waived. The store was withdrawn under 7 CFR § 278.1(n) for failure to cooperate when the Retailer Operations Division requested additional information to confirm the firm's eligibility for participation in the SNAP.

## CONCLUSION

Based on a review of all of the evidence in this matter, the determination by the Retailer Operations Division to withdraw the authorization of Gomo's Fish Market to participate as a retailer in the SNAP is sustained. It is the determination of this review that the decision to withdraw the firm's authorization due to its failure to cooperate was appropriate and was made in accordance with SNAP regulations at 7 CFR § 278.1(n).

In accordance with the Food and Nutrition Act of 2008, as amended, and the SNAP regulations, the withdrawal action will become effective 30 days after receipt of this decision. **However, there is no waiting period for submitting a new application for authorization that is associated with the particular basis for which the store was withdrawn. Therefore, the Appellant may file a new application for SNAP participation at any time subsequent to receipt of this correspondence.** Questions regarding the application process can be answered by the FNS Retailer Service Center at 877-823-4369.

## **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that 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 you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, FNS is 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.

LORIE L. CONNEEN  
ADMINISTRATIVE REVIEW OFFICER

February 6, 2023