

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

Rocket Liquor,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0250883

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 Retailer Operations Division to withdraw the authorization of Rocket Liquor (hereafter 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 Federal Regulations (CFR) Part 278, when it withdrew Appellant's authorization to participate as a retailer in SNAP.

AUTHORITY

7 U.S.C. § 2023 and the 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

In a letter dated December 13, 2021, and delivered to the Appellant on December 23, 2021, the Retailer Operations Division informed Appellant that its application to participate as an authorized retailer in the SNAP was being withdrawn, in accordance with 7 CFR § 278.1(l)(1)(v) because the owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), failed to pay a Transfer of Ownership Civil Money Penalty (TOCMP) assessed under 278.6(f) in a separate case. Specifically, the Retailer Operations Division stated that 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the owner of United Market in Hanford, California, was reciprocally disqualified from SNAP for three years effective February 25, 2020, due to a violation committed in the Special Supplemental Nutrition Program

for Women, Infants, and Children (WIC). This decision was upheld through an Administrative Review.

It is noted that the February 25, 2020, disqualification letter stated that, in the event that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) sold or transferred ownership of his store subsequent to the disqualification, he would be subject to and liable for a TOCMP as provided by SNAP regulations. On April 27, 2021, the Retailer Operations Division received evidence showing that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) sold his store shortly after the three-year disqualification took effect.

On September 13, 2021, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was assessed a TOCMP for selling or transferring ownership of United Market prior to the end of its disqualification period and was notified of the requirement to either pay the CMP in full or to set up an acceptable payment plan within 15 calendar days. Tracking records show that the TOCMP determination letter was delivered to 5 U.S.C. § 552 (b)(6) & (b)(7)(C)'s home address on September 16, 2021. The record reflects that to date, no installment plan has been established and no payments have been made. Accordingly, the Retailer Operations Division determined to withdraw the authorization of Rocket Liquor.

In correspondence dated December 27, 2021, the Appellant and its counsel appealed the Retailer Operations Division's determination and requested an administrative review of this action. The appeal was granted, and implementation of the withdrawal has been held in abeyance pending completion of this review.

STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence that the administrative actions should be reversed. That means an 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 Section 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.1(l)(1)(v) establishes the authority upon which the application of any firm to participate in SNAP may be withdrawn if it fails to pay a TOCMP.

7 CFR § 278.1(l)(1)(v) reads, in relevant part, "FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons ... The firm has failed to pay in full any fiscal claim assessed against the firm under § 278.6(l) or § 278.6(m) or a transfer of ownership civil money penalty assessed under § 278.6(f)..."

APPELLANT'S CONTENTIONS

The Appellant, through counsel, made the following summarized contentions in its request for administrative review, in relevant part:

1. To this day 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as well as myself [Counsel] have asserted that we were never given notice of the TOCMP.
2. The December 22, 2021, letter says the assessment took place on October 12, 2021, and again, we had no notice that that was the official date.
3. I submitted letters on October 6, October 8, and October 14, 2021. I never received a response to my letters.

The preceding may represent a brief summary of Appellant's contentions in this matter, however, in reaching a decision, full attention has been given to all contentions presented, including any not specifically recapitulated or referenced herein.

ANALYSIS AND FINDINGS

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

With regard to Appellant's contentions concerning the assessment of a TOCMP against United Market, no findings, or conclusions on the merits of the specific arguments presented are rendered, as the assessment of the TOCMP is not the subject of this administrative review. As noted earlier, the record shows that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) received the TOCMP determination letter on September 16, 2021. At that time, FNS was not aware of counsel's ongoing representation, and the TOCMP letter was only delivered to Appellant. FNS received a letter of representation and notification of counsel from the Appellant after the TOCMP was issued. Appeal rights to that TOCMP determination were given in the letter, but there is no record that an appeal was made within the required timeframe. As such, the TOCMP determination is final and no further findings regarding the issuance of a TOCMP can be rendered.

The only issue in the current review is whether the Retailer Operations Division properly withdrew the SNAP authorization of Rocket Liquor due to failure to pay a TOCMP. As mentioned earlier, the record reflects that 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the owner of Rocket Liquor, was assessed a TOCMP and it has not yet been paid. As noted in SNAP regulations cited earlier, the failure of a firm to pay a required civil money penalty warrants withdrawal of the firm's other SNAP-authorized stores.

The Appellant's contentions reference an October 12, 2021, date for the TOCMP assessment which is also noted on the withdrawal letter. However, the TOCMP letter is dated September 13, 2021. The contentions also reference a December 22, 2021, date for the withdrawal letter. However, the withdrawal letter is dated December 13, 2021, and was delivered on December 23,

2021. It is important to note these minor date discrepancies in the correspondence do not impact the overall determination as the firm was still disqualified for a period of time, and then the store was sold prior to the end of the disqualification period.

The Appellant also contends through counsel he never received a response from FNS to his letters submitted on October 6, October 8, and October 14, 2021. However, such a contention is not relevant to the present case. By the time Appellant's counsel submitted any of the three letters in question in October 2021, the TOCMP for United Market had already been imposed, the time for requesting an administrative review had passed, and the case was closed by FNS. This review has no authority to review any previous actions or circumstances for a case in which the appeal options have expired.

CONCLUSION

Based on a preponderance of the evidence, the determination by the Retailer Operations Division to withdraw the authorization of Rocket Liquor to participate as a retailer in SNAP is sustained. In accordance with the Food and Nutrition Act of 2008, as amended, and the associated regulations, this withdrawal action shall become effective 30 days after delivery of this letter.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (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 (FOIA), 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.

SHANTA SWEZY
Administrative Review Officer

November 23, 2022