

United States
Department of
Agriculture



Food and
Nutrition
Service

September 20, 2021

Retailer and
Issuance Policy
and Innovation
Division

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Administrative
Review Branch

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RE: Mohammad Motasem Billah Siraji, Zashim Uddin Ahmed,
Md Kamrul Islam
Liberty Supermarket & Halal Meat Inc
1075 Liberty Ave.
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Phone:
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Dear Counselor:

Enclosed is the Final Agency Decision of the U.S. Department of Agriculture, Food and Nutrition Service in response to your July 6, 2021 request for administrative review. Also included is a statement regarding applicable rights to a judicial review.

The U.S. Department of Agriculture, Food and Nutrition Service finds that there is sufficient evidence to support the determination by the Office of Retailer Operations and Compliance to impose a one-year disqualification against Liberty Supermarket & Halal Meat Inc from participating as an authorized retailer in the Supplemental Nutrition Assistance Program. However, the determination is modified to permit a civil money penalty in the amount of \$33,000 as an option in lieu of the one-year disqualification.

Sincerely,

A handwritten signature in dark ink that reads "Rich Proulx". The signature is written in a cursive, slightly slanted style.

RICH PROULX
Administrative Review Officer

Enclosure: Final Agency Decision

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

Liberty Supermarket & Halal Meat Inc,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0239996

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 Office of Retailer Operations and Compliance to impose a one-year disqualification against Liberty Supermarket & Halal Meat Inc (“Appellant”) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP). However, the determination is modified to permit a civil money penalty in the amount of \$33,000 as an option in lieu of the one-year disqualification.

ISSUE

The purpose of this review is to determine whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of Code of Federal Regulations (CFR) § 278.6(e)(5) in its administration of SNAP when it imposed a one-year period of disqualification against Appellant on June 25, 2021.

AUTHORITY

According to 7 U.S.C. § 2023 and its 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

USDA conducted an investigation of Appellant’s compliance with federal SNAP law and regulations during the period of April 7, 2021 through April 21, 2021. The investigation reported that personnel at Appellant accepted SNAP benefits in exchange for ineligible merchandise on three separate occasions. These items sold during the impermissible transactions are best described in regulatory terms as “common ineligible nonfood items.” The investigation revealed that two unidentified clerks were involved in the impermissible transactions. As a result of

evidence compiled from this investigation, the Office of Retailer Operations and Compliance informed Appellant, in a letter dated June 10, 2021, that the firm was charged with violating the terms and conditions of the SNAP regulations, 7 CFR § 278.2(a). The letter states, in part, that the violations “. . . warrant a disqualification period of six months (Section 278.6(e)(5)). Under certain conditions, FNS may impose a civil money penalty (CMP) in lieu of a disqualification (Section 278.6(f)(1)).”

Appellant replied to the Office of Retailer Operations and Compliance’s charges in writing. The record reflects that the Office of Retailer Operations and Compliance received and considered the information provided prior to making a determination.

The Office of Retailer Operations and Compliance notified Appellant in a letter dated June 25, 2021 that the firm was being disqualified for one year from participation as an authorized retailer in SNAP. This determination letter also stated that Appellant’s eligibility for a hardship civil money penalty (CMP) according to the terms of Section 278.6(f)(1) of the SNAP regulations was considered. However, the letter stated to Appellant that “. . . you are not eligible for the CMP because there are other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.”

On July 6, 2021, Appellant appealed the Office of Retailer Operations and Compliance’s decision to impose a one-year disqualification, and requested an administrative review of the action. The appeal was granted and implementation of the sanction has been on hold pending completion of this review.

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. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(5 and 6) establish the authority upon which a one-year disqualification may be imposed against a retail food store or wholesale food concern.

Section 278.6(e)(5 and 6) of the SNAP regulations states, in part, when a firm is to be disqualified for one year:

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.(6) Double the appropriate period of disqualification prescribed in paragraphs (e)(2) through

(5) of this section as warranted by the evidence of violations if the same firm has once before been assigned a sanction.

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, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system

APPELLANT'S CONTENTIONS

Appellant's responses regarding this matter are essentially as follows:

- Appellant requests a CMP.
- Appellant meets the requirements for a Trafficking CMP.
- Staff were trained in the proper handling of SNAP transactions.
- Appellant does not dispute the findings of the alleged violations.
- The clerks who committed the violations were terminated.

In support of its contentions, Appellant provided the following documentation:

- Two letters signed by the owner;
- Two termination letters signed by the owner; and,
- Two hiring letters signed by the owner.

These explanations may represent only a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any others that have not been specifically listed here.

ANALYSIS AND FINDINGS

Appellant does not dispute the findings of the alleged violations, and states the staff were trained in the proper handling of SNAP transactions. When ownership signed the FNS application to become a SNAP authorized retailer, this included a certification and confirmation that Appellant would "accept responsibility on behalf of the firm 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 violations listed on this certification document include selling ineligible non-food items. Regardless of whom the ownership of a store may use to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions.

This review is limited to considering the circumstances at the time the Office of Retailer Operations and Compliance's decision was made. It is not within this review's scope to consider actions that Appellant may have taken subsequent to this decision to begin to comply with

program requirements. There is no provision in SNAP regulations for reducing an administrative penalty on the basis of corrective actions implemented subsequent to investigative findings of program violations. Therefore, Appellant's termination of the offending employees do not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

Appellant contends that it should receive a CMP because it meets the requirements of a Trafficking Civil Money Penalty (TCMP). A TCMP is not applicable in this case because Appellant was not charged with trafficking. Had Appellant been charged with trafficking, the information provided by Appellant would not have been sufficient to establish eligibility for a TCMP. For example, Appellant did not provide any signed employee agreements or dates that when this training allegedly occurred.

The investigation report shows that of the four times that nonfood violations were attempted, store personnel permitted them three times. The Office of Retailer Operations and Compliance attributed violations to "carelessness, or poor supervision by the firm's ownership or management," pursuant to 7 CFR § 278.6(e)(5) of the SNAP regulations which provides for a disqualification of six months. This is consistent with Appellant's contention that violations were committed in error. As the firm had been previously subjected to a six-month disqualification, pursuant to 7 CFR § 278.6(e)(6) of the SNAP regulations this time period is doubled. Therefore, a one-year disqualification for the violations committed, the minimum, is the appropriate sanction in this case.

Investigative Record

Based on a review of the evidence, it appears that the program violations at issue did, in fact, occur as charged. As noted previously, the charges of violations are based on the findings of a formal USDA investigation. All transactions cited in the letter of charges were conducted under the supervision of a USDA investigator and all are fully documented. The investigative record is specific and accurate with regard to the dates of the violations, the specific ineligible merchandise sold in exchange for SNAP benefits, and in all other critically pertinent detail.

CIVIL MONEY PENALTY

A review of the Office of Retailer Operations and Compliance's case file found insufficient evidence to support the denial of a civil money penalty. A civil money penalty in the amount of \$33,000 is assessed as an option in lieu of the one-year disqualification. Therefore, it is unnecessary to address Appellant's contentions regarding the civil money penalty.

CONCLUSION

Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to impose a disqualification of one year against Liberty Supermarket & Halal Meat Inc from participating as an authorized retailer in SNAP is modified. Consistent with 7 CFR § 278.6(f), a civil money penalty shall be imposed as an option in lieu of completion of the one-year disqualification period. In accordance with 7 CFR § 278.6(g), this civil money penalty shall be in the amount of \$33,000. Appellant may also be required to post a collateral bond of \$5,681.

The Office of Retailer Operations and Compliance will be informed of this decision. Appellant may expect to hear from that office in the near future with respect to the arrangements for payment of this civil money penalty and posting of a collateral bond.

In accordance with the Food and Nutrition Act, and the regulations thereunder, this penalty shall become effective thirty (30) days after receipt of this letter. Should Appellant choose to accept disqualification rather than pay the civil money penalty, a new application for participation in SNAP may be submitted ten (10) days prior to the expiration of the one-year disqualification period.

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 Appellant desires a judicial review, 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 (FOIA), it may be necessary to release this document and related correspondence and records upon request. If such a request is received, FNS will seek to protect, to the extent provided by law, personal information that if released could constitute an unwarranted invasion of privacy.

RICH PROULX
ADMINISTRATIVE REVIEW OFFICER

September 20, 2021