

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

7 Eleven Store 23774 E,

Appellant,

v.

Case Number: C0209239

Retailer Operations Division,

Respondent.

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 the Retailer Operations Division's decision to permanently deny the application of 7 Eleven Store 23774 E to participate 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 permanently denied the application of 7 Eleven Store 23774 E.

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

On April 20, 2018, the Retailer Operations Division received an online application from 7 Eleven Store 23774 E to participate in the SNAP as an authorized retail store. In response to question 16 of the application, the Appellant answered "yes" to the question "Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?" The Appellant stated on the application that the conviction was due to "Petty theft in 2009. Misdemeanor - paid fine"

The Retailer Operations Division subsequently confirmed that the owner of the Appellant store was convicted in June 2009 in the Superior Court of California, County of San Bernardino, under California Penal Code PC490.1-1: Petty Theft Under \$50 Without Prior.

As a result, in a letter dated May 7, 2018, the Retailer Operations Division informed the Appellant that the application of 7 Eleven Store 23774 E to participate in the SNAP was permanently denied under 7 CFR § 278.1(k)(3) because the Appellant did not have the necessary business integrity under 7 CFR § 278.1(b)(3).

In a letter postmarked May 14, 2018, the Appellant requested an administrative review of the Retailer Operation Division's decision to permanently deny the application of 7 Eleven Store 23774 E. The request for administrative review was granted.

STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action 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 AND REGULATIONS

The controlling law in this matter is covered in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2018, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(k) establishes the authority upon which the FNS shall deny the authorization of any firm authorized to participate in the program.

7 CFR § 278.1(b)(3)(i)(B) states:

FNS shall deny the authorization of any firm from participation in the program for a period of time as specified in paragraph (k) of this section based on consideration of information regarding the business integrity and reputation of the firm as follows ...

- (i) Conviction of or civil judgment against the owners, officers or managers of the firm for ...
- (B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice

7 CFR § 278.1(k)(3)(i) states:

Firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers as stipulated in § 278.1(b)(3)(i) shall be denied authorization permanently [Emphasis added]

APPELLANT'S CONTENTIONS

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

- In response to a request from the USDA, the Appellant provided the USDA with a report from the Ontario Policy Department stating that he has no record.
- In 2009, the Appellant pleaded guilty to PC490.1-I, a misdemeanor for petty theft under \$50 without prior. He was ordered to pay a fine of \$622.00 and \$100.00 in attorney fees. He completed his payment on May 26, 2010 and the case was closed.
- The event transformed his life and has led to his growth as a person and as a responsible citizen. The Appellant was 19 years old when he accidentally carried a shirt out of a store without paying for it and was returning the shirt when stopped by the store manager who called the police.
- The Appellant requests that the permanent denial decision be reversed.

The preceding may represent only a brief summary of the 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.

ANALYSIS AND FINDINGS

The case record documents that, in 2009, the Appellant store owner pleaded guilty to California Penal Code PC490.1-1: Petty Theft Under \$50 Without Prior. That violation is defined as:

Petty theft, where the value of the money, labor, real or personal property taken is of a value which does not exceed fifty dollars (\$50), may be charged as a misdemeanor or an infraction, at the discretion of the prosecutor, provided that the person charged with the offense has no other theft or theft-related conviction.

This review finds that the misdemeanor violation of the aforementioned state statute falls within the scope of a business integrity violation as contemplated by 7 CFR § 278.1(b)(3)(i) which states, in part:

FNS **shall deny the authorization of any firm** from participation in the program for a period of time as specified in paragraph (k) of this section **based on** consideration of information regarding **the business integrity and reputation of the firm** as follows ...
(i) **Conviction of or civil judgment against the owners**, officers or managers of the firm for: (B) Commission of embezzlement, **theft**, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice[Emphasis added.]

Further, the period of time is mandated by 7 CFR § 278.1(k)(3)(i) which states, in part:

Firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers as stipulated in § 278.1(b)(3)(i) **shall be denied authorization permanently** [Emphasis added.]

Scope of Business Integrity Regulations

The Retailer Operations Division does not dispute that the Appellant store owner has completed restitution and other conditions related to his conviction in 2009. Nor is there any contention in the case that the Appellant has not led a model life since that offense. However, the USDA holds that the business integrity and reputation of a firm is critically important to the effective operation of the SNAP. Therefore, the criteria outlined in the regulations focuses on the business integrity and reputation of the owners, officers and management of firms seeking authorization in the SNAP. Prior convictions relating to business integrity, reflects on the ability of a firm to effectuate the purposes of, and abide by the rules governing, the program.

On this matter, the agency regulations **grant no discretion** to the Retailer Operations Division or to the administrative review officer. Under the strict language of the regulations, the fact that a convicted party has successfully fulfilled the terms of any sentencing, fines or adjudication for a business integrity conviction under 7 CFR § 278.1(b)(3)(i) or that such person may have not since that time committed any violations does not mean that the Appellant can now be authorized as a SNAP retailer. The regulations at 7 CFR § 278.1(k)(3)(i) grant no exceptions to a permanent denial for a business integrity conviction under 7 CFR § 278.1(b)(3)(i).

CONCLUSION

The case record documents by a preponderance of the evidence that the Appellant pleaded guilty to California Penal Code PC490.1-1: Petty Theft Under \$50 Without Prior and paid a fine and attorney fees. Based on the analysis above, the decision by the Retailer Operations Division to permanently deny the application of 7 Eleven Store 23774 E to participate in the SNAP is sustained.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses 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.

RONALD C. GWINN
Administrative Review Officer

July 19, 2018