

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review
Alexandria, VA 22302**

7-eleven 27036c,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0203088

FINAL AGENCY DECISION

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Retailer Operations Division to deny the application of 7-eleven 27036c (hereinafter Appellant) to participate in the Supplemental Nutrition Assistance Program (SNAP) for a period of one year.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.1(b)(3)(ii) and 278.1(k)(3)(ii), when it denied the application of Appellant to participate in SNAP for a period of one year by letter dated August 28, 2017.

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

In a letter dated August 28, 2017, the Retailer Operations Division informed Appellant that its request to participate as an authorized retailer in SNAP was denied for a period of one year. Specifically, the August 28, 2017, letter from the Retailer Operations Division to Appellant stated the following, in relevant part:

“Based upon information provided within your SNAP application dated June 12, 2017, and additional supporting documentation submitted to the Food and Nutrition Service (FNS), FNS has determined that your firm violated SNAP regulation 7CFR 278.1(b)(3)(ii) for the owner’s repeated liquor license violations that evidence a lack of business integrity on the part of the owners, officers or managers of the firm.

In accordance with SNAP regulations in 7CFR 278.1(b)(3)(ii): The firm has been found to lack the necessary business integrity and reputation to further the purposes of the program. FNS determines a pattern exists (3 or more instances) evidencing a lack of business integrity, and that such firm shall be denied for a one year period effective from the date of the denial.”

By letter dated September 6, 2017, Appellant, through counsel, appealed the Retailer Operations Division’s decision and requested an administrative review of this action. The appeal was granted. No subsequent correspondence was received from Appellant.

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 statute 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 Part 278.1(b)(3)(ii) and 278.1(k)(3)(ii) establish the authority upon which an application to participate as a SNAP retailer may be denied for a for a period of one year if FNS determines a pattern exists (three or more instances) evidencing a lack of business integrity on the part of the owners, officers, or managers of the firm.

7 U.S.C. §2018 Sec. 9 (a)(1) states, inter alia: Regulations issued pursuant to this Act shall provide for the submission of applications for approval by retail food stores and wholesale food concerns which desire to be authorized to accept and redeem benefits under the supplemental nutrition assistance program and for the approval of those applicants whose participation will effectuate the purposes of the supplemental nutrition assistance program. In determining the qualifications of applicants, there shall be considered among such other factors as may be appropriate, the following: (A) the nature and extent of the food business conducted by the applicant; (B) the volume of benefit transactions which may reasonably be expected to be conducted by the applicant food store or wholesale food concern; (C) whether the applicant is

located in an area with significantly limited access to food; and (D) the business integrity and reputation of the applicant.”

7 CFR §278.1(b)(3)(ii) reads, 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: . . . (ii) Administrative findings by Federal, State or local officials that do not give rise to a conviction or civil judgment but for which a firm is removed from such a program, or the firm is not removed from the program but **FNS determines a pattern exists (3 or more instances) evidencing a lack of business integrity on the part of the owners, officers or managers of the firm . . .**” [Emphasis added].

7 CFR §278.1(k)(3)(ii) states, in part, that, “Firms which have been officially removed from other Federal, State or local government programs through administrative action shall be denied for a period equivalent to the period of removal from any such programs; or, if the firm is not removed from the program, but **FNS determines a pattern (3 or more instances) exists evidencing a lack of business integrity on the part of the owners, officers or managers of the firm, such firm shall be denied for a one year period effective from the date of denial . . .**” [Emphasis added].

APPELLANT’S CONTENTIONS

In the request for administrative review, Appellant has stated as its position in the matter the following:

- The three liquor license violations occurred at the owner’s first store, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, with the most recent violation being over seven and one-half years old, and the oldest over 13 years old. The owner applied for and was issued SNAP authorization at **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in 2002 and has had no SNAP violations in the 15 years he has been operating the store;
- The subject store is the sixth 7-Eleven franchised store owned and all five of the other stores have liquor licenses, are authorized to accept SNAP, and none have had liquor license violations other than **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**; and,
- The remoteness of the liquor violations which were fully disclosed on SNAP applications since at least 2014 for at least three of these stores which were all subsequently approved combined with the owner’s stellar SNAP record warrant reconsidering the denial set forth in the August 28, 2017, letter.

Appellant submitted copies of: the USDA denial letter; the SNAP retailer application FNS-252 with certification statement for store #27036C; the owner’s June 29, 2017, response to the Retailer Operations Division that included documentation related to the three liquor license violations; the liquor license for store **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**; copies of the liquor licenses, SNAP retailer applications with the three previous violations disclosed, and liquor information showing no violations for three other stores; and copies of the interim liquor permit and information showing no violations for store #27036C.

The preceding may represent a summary of 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

On August 28, 2017, the Retailer Operations Division denied Appellant's application to participate as a SNAP retailer for a period of one year under SNAP regulations at 278.1(b)(3)(ii) and 278.1(k)(3)(ii) as a result of repeated liquor license violations that FNS determined evidence a lack of business integrity on the part of the owners, officers, or managers of the firm.

Appellant contends the violations occurred only at the owners' first store more than seven and one-half years ago and that no subsequent liquor license or other violations, including SNAP Program violations, have occurred since that time at any of the owners' five SNAP-authorized stores. A review of SNAP regulations shows that they do not contain any limitations on the period of time since violations occurred that were determined to comprise a pattern of three or more instances evidencing a lack of business integrity on the part of the owners, officers, or managers of the firm and therefore do not provide any valid basis for dismissing or mitigating the penalty imposed. Additionally, that the owner listed the violations on the SNAP retailer applications for at least three other stores also does not constitute a valid basis for dismissing or mitigating the penalty imposed. It is further noted that on the SNAP Reauthorization Application dated December 24, 2016, for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and on the SNAP Reauthorization Application dated December 23, 2016, for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) that the store owners answered "no" to question #9a "Has any officer, owner, partner, member, and/or manager ever had a license denied, withdrawn or suspended, or been fined for license violations (i.e. Supplemental Nutrition Assistance Program (SNAP), WIC, business, alcohol, tobacco, lottery, or health license)?"

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to deny the application of 7-eleven 27036c to participate as an authorized retailer in SNAP for a period of one year is sustained. Denial of a firm's application to participate in the SNAP under the provisions of 7 CFR § 278.1(b)(3)(ii) and 278.1(k)(3)(ii) warrants a denial for a period of one year.

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 a judicial review is desired, 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, 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.

ROBERT T. DEEGAN
Administrative Review Officer

January 4, 2018