

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

7 Swami, LLC,

Appellant,

v.

Case Number: C0216648

Retailer Operations Division,

Respondent.

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 permanently deny the application of 7 Swami, LLC (“Appellant”) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program.

ISSUE

The purpose of this review is to determine whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.1(k)(4), in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it permanently denied the application of Appellant to participate in SNAP on March 12, 2019.

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

On February 4, 2019, the Retailer Operations Division sent Appellant a letter requesting additional information regarding its application to become a SNAP retailer. Appellant provided additional information to the Retailer Operations Division. In a letter dated March 12, 2019, the Retailer Operations Division permanently denied the application of Appellant to participate as an authorized retailer in SNAP in accordance with 7 CFR § 278.1(e)(1) and 7 CFR § 278.1(k). In concluding that Appellant should be permanently denied authorization, the Retailer Operations Division determined that Appellant provided false information on a SNAP application.

On March 27, 2019, Appellant appealed the Retailer Operations Division decision and requested an administrative review of this action. The appeal was granted.

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. § 2018), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(e)(1) establishes the authority upon which a firm may be permanently disqualified from participating in SNAP because the firm's application contains false information of a substantive nature.

7 CFR § 278.6(e)(1) states, in part:

FNS . . . shall [d]isqualify a firm permanently if . . . [i]t is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program, such as, but not limited to, information related to . . . ownership of the firm

7 CFR § 278.1(k) states, in part:

FNS shall deny the application of any firm if it determines that . . . The firm has filed an application that contains false or misleading information about a substantive matter, as specified in § 278.6(e). Such firms shall be denied authorization for the periods specified in § 278.6(e)(1) or § 278.6(e)(3)

APPELLANT'S CONTENTIONS

Appellant's responses regarding this matter are essentially that the owner did not submit the additional information and the owner's family were out of the country at the time that the additional information was submitted. Appellant provided a letter from the manager of a nearby store regarding the use of that store's stamp.

This explanation 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 alleged that the additional information was not submitted by the owner, and owner and the owner's family were out of the country when the additional information was submitted. Appellant did not provide any evidence in support of this contention. The evidence indicates that on February 4, 2019, the Retailer Operations Division sent Appellant a letter requesting additional information regarding its application to become a SNAP retailer. This letter stated that Appellant's inventory was insufficient for authorization, and requested invoices or receipts from the three-week period prior to the store visit to support that Appellant normally stocked additional dairy products. In response to this letter, Appellant submitted two receipts. These receipts were received on February 12, 2019. The typed dates on one of these receipts were erased and replaced with handwritten dates. This supports that Appellant falsified information in support of its application to become a SNAP retailer.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to deny the application of 7 Swami, LLC to participate as an authorized retailer in SNAP is sustained. Denial of a firm's authorization to participate in the SNAP under the provisions of 7 CFR § 278.1(e)(1) is permanent.

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, 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.

RICH PROULX
Administrative Review Officer

May 13, 2019