

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

7th St Deli & Grill Corp,

Appellant,

V.

Retailer Operations Division,

Respondent.

Case Number: C0244821

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 7th St Deli & Grill Corp. (hereafter Appellant) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 Code of Federal Regulations (CFR) Part 278, when it withdrew Appellant's authorization to participate as a retailer in SNAP on March 23, 2021.

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 March 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Division informed Appellant that its application to participate as an authorized retailer in the SNAP was being withdrawn, in accordance with 7 CFR § 278.1(l)(1)(v) because the owner failed to pay in full a Transfer of Ownership Civil Money Penalty (TOCMP) assessed under 278.6(f). Specifically, the Retailer Operations Division stated that **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, under your ownership, was permanently disqualified from the SNAP effective August 22, 2019. On August 20, 2020, you were assessed a TOCMP in the amount of \$22,000. This decision was upheld through Administrative Review and you were notified to pay the CMP in full or to set up an acceptable

payment plan. The record reflects that to date, no plan has been established and no payments have been made. Accordingly, the Retailer Operations Division withdrew the authorization of 7th St Deli & Grill Corp.

In correspondence dated March 28, 2021, Appellant, through counsel, appealed Retailer Operations Division's decision 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 contention in its request for administrative review, in relevant part:

1. The alleged sale or transfer of ownership was during the period when a review of the administrative decision to permanently disqualify the firm had been stayed as a result of the timely filing of the request for administrative review. As a result of such filing, there was no final determination as stated in your letter of determination dated August 22, 2019. In reliance thereon, it is submitted that there can be no "transfer of ownership civil money penalty" as there had been no final decision from the agency which would have permanently disqualified this owner and firm at the time of the alleged transfer.
2. The USDA has wrongfully concluded that his firm and enterprise have transferred ownership of the firm after being assessed a Civil Money Penalty.
3. My client denies that he ever personally ever received notification that a Transfer of Ownership Civil Money Penalty was ever imposed and denies that he willfully refused to set up an acceptable payment plan.

4. It is submitted that a permanent disqualification from participation in the SNAP for any period of time will so adversely affect his ability to conduct further business that it would cause irreparable injury and damage to the owner by forcing him out of business.

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

With regard to Appellant's contentions in this case, no findings, or conclusions on the merits of the specific arguments presented are rendered. The matter of Appellant's TOCMP and the correspondence between Appellant's attorney and USDA regarding the TOCMP, are not subject to this particular administrative review process but are included in a previous administrative review decision of which Appellant was notified and provided with further instructions regarding the decision.

The only issue in the current review is whether the Retailer Operations Division properly withdrew authorization of Appellant to participate as an authorized retailer in SNAP for failure to pay a TOCMP. The record reflects that Appellant was assessed a TOCMP of \$22,000 and that the TOCMP has not been paid. In addition, Appellant was properly notified in the Final Agency Decision dated January 27, 2021 and received on January 28, 2021, to please contact the Financial Management Accounting Division at (703) 605-0483 to discuss payment options within 30 days of receipt of the decision. Accordingly, the Retailer Operations Division withdrew authorization of Appellant as required under 7 CFR § 278.1(l)(1)(v) of SNAP regulations.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to withdraw the authorization of 7th St Deli & Grill Corp. 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.

Monique Brooks
ADMINISTRATIVE REVIEW OFFICER

June 1, 2021