

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

A & B Food Mart,

Appellant,

V.

Retailer Operations Division,

Respondent.

Case Number: C0223421

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 impose a permanent withdrawal of authorization of A & B Food Mart, (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 CFR § 278.1(l)(1)(iv), § 278.1(b)(3)(i), and § 278.1(k)(3), in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it withdrew Appellant’s authorization to participate as a retailer in SNAP on December 11, 2019.

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

As an authorized SNAP retailer **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** signed a certification form, dated September 1, 2009 that was submitted with the FNS 252. There are certain items on the certification form that would apply to taking action of permanent withdrawal based on business integrity against Mr. Salem. During the time that **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** owned and operated A & B Food Mart he was working as an employee in **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, where he committed the trafficking violations at **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** was fully aware for the rules and regulations of the SNAP as the owner of A & B Food Mart and as an employee in **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The record reflects

that 5 U.S.C. § 552 (b)(6) & (b)(7)(C), as an employee in 5 U.S.C. § 552 (b)(6) & (b)(7)(C), conducted trafficking transactions with federal confidential informants under the auspices of federal investigators, in the store during the timeframe of Jun 2014 through Aug 2014.

In a letter dated December 11, 2019, the Retailer Operations Division imposed a permanent withdrawal of Appellant's authorization to participate as a retailer in SNAP. The Determination letter stated, in relevant part:

“On June 13, 2019, in the Circuit Court of Forrest County Mississippi, you, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), plead guilty to one count of SNAP trafficking and were sentenced on the same date to 10 years in imprisonment (suspended), 60 months supervised release, and ordered to pay restitution in the amount of \$3,880.83 and a \$200 special assessment. The trafficking took place during June 2014 through August 2014 when you were employee in 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

- *Section 278.1(l) of the SNAP regulations provides for the withdrawal of any firm that fails to maintain the necessary business integrity to further the purposes of the program as specified in Section 278.1(b)(3) of the SNAP regulations.*
- *In accordance with Section 278.1(l)(1)(iv) and Section 278.1(k)(3)(i) of the SNAP regulations, the authorization of A & B Food Mart, ... is permanently withdrawn.”*

In a letter dated December 23, 2019, Appellant appealed the Retailer Operations Division's decision and requested an administrative review of this action. The appeal was granted and implementation of the permanent 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 clear 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 & Nutrition Act of 2008¹, 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) establishes the authority upon which the authorization of any firm to participate in SNAP may be withdrawn if it fails to meet established eligibility requirements.

7 CFR § 278.1(l)(1) reads, in part, “FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons.... (iv) The firm fails to maintain the necessary business integrity to further the purposes of the program, as specified in paragraph

¹ *Effective October 1, 2008, the Food Stamp Act of 1977 was superseded by the Food and Nutrition Act of 2008, as amended through P.L. 110-246*

(b)(3) of this section. Such firms shall be withdrawn for lack of business integrity for periods of time in accordance with those stipulated in paragraph (k)(3) of this section for specific business integrity findings:...”

7 CFR § 278.1(k) reads, in part, “FNS shall deny the application of any firm if it determines that: (3) The firm has been found to lack the necessary business integrity and reputation to further the purposes of the program. Such firms shall be denied authorization in the program for the following period of time: ... (i) 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...”

7 CFR § 278.1(b)(3) reads, in part, “The business integrity and reputation of the applicant. 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: (A) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;...”

APPELLANT’S CONTENTIONS

In response to the Retailer Operations Division permanent withdrawal letter and in the request for administrative review, the Appellant, through counsel, made the following summarized contentions, in relevant part:

1. The offense for which A & B Food Mart was disqualified was not related to the operation of A & B Food Mart and did not occur in the course of the operation of the business. The fraudulent use of an EBT card was not related to the operation of A & B Food Mart.
2. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) made a personal cash loan to an acquaintance and then took re-payment of the loan by accepting an EBT card from the debtor. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) then used the EBT card 5 U.S.C. § 552 (b)(6) & (b)(7)(C). A & B Food Mart has policies and procedures in place that would continue to prevent fraudulent use of SNAP.

The preceding may represent only a brief 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

With regards to Appellant’s contentions, through counsel, it is important to clarify for the record, that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. That is, the earlier decision was either correct or incorrect at the time it was made. 7 CFR § 278.1(b)(3)(i)(A) states that “FNS shall deny the authorization of any firm from participation in the program . . . based on . . . conviction of or civil judgment against

the owners, officers or managers of the firm for . . . a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction. . . .”

Appellant’s SNAP application indicates that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is the owner of the firm and was charged with and pled guilty to, in the State of Mississippi, Mississippi statute § 97-19-39: Obtaining signature or thing of value with intent to defraud. The record reflects that documentation from the Circuit Court of Forrest County, Mississippi, filed on June 13, 2019 stipulates Appellant’s Criminal Information and Order of Conviction in that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) did unlawfully, willfully, feloniously and knowingly obtain from another by false pretense the following valuable things, to wit: five Electronic Benefits Transfer cards and used said cards for profit in a manner not authorized by law or regulations which was in violation of Mississippi Code Ann. § 97-19-39 (1972, as amended, and against the peace and dignity of the State of Mississippi). Appellant was also ordered to pay restitution totaling \$4,080.83.

As an authorized SNAP retailer 5 U.S.C. § 552 (b)(6) & (b)(7)(C) signed a certification form, dated September 1, 2009 that was submitted with the Retailer SNAP Application. There are certain items on the certification form that would apply to taking action of permanent withdrawal based on business integrity against 5 U.S.C. § 552 (b)(6) & (b)(7)(C). During the time that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) owned and operated A & B Food Mart he was working as an employee in 5 U.S.C. § 552 (b)(6) & (b)(7)(C), where he committed the trafficking violations at 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was fully aware for the rules and regulations of the SNAP as the owner of A & B Food Mart and as an employee in 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The record reflects that 5 U.S.C. § 552 (b)(6) & (b)(7)(C), employee in 5 U.S.C. § 552 (b)(6) & (b)(7)(C) conducted trafficking transactions with federal CIs in the store during the timeframe of Jun 2014 through Aug 2014.

Neither the Food and Nutrition Act of 2008 nor the regulations cite any number of convictions or degrees of seriousness pertaining to criminal convictions. The regulation at 7 CFR § 278.1(k)(3)(i) states that “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.” The business integrity provisions of the SNAP regulations do not provide the agency with discretion for dismissal of any action or for mitigating the impact of those actions on the basis of the seriousness of the violations, time that may have lapsed between conviction and application, circumstances under which they occurred, or whether any required restitutions have been paid.

More importantly, it is important to clarify that the purpose of this review is to evaluate the evidence regarding Appellant’s current authorization as a SNAP retailer. The fact that the violations did not take place in A & B Food Mart does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed against 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The SNAP regulations are specific and in accordance with § 278.1(b)(3)(i)(A) and § 278.1(k)(i) of the SNAP regulations, firms for which records of criminal conviction or civil judgment exists that reflect on the business integrity of owners, officers, or managers shall be denied authorization permanently.

The regulations have clearly set out the position of the agency with regard to the business integrity of participating retailers. Therefore, there is no discretion available to any party involved in the determination of eligibility or the determination of an administrative review regarding the seriousness of a business integrity violation. If the matter violates the provisions of 7 CFR § 278.1(b)(3) and §278.1(l), action to permanently deny or permanently withdraw must be taken accordingly. Therefore, the Appellant's request to overturn the permanent withdrawal cannot be granted.

CONCLUSION

It is the determination of this review that the Appellant firm does not further the purposes of the program due to its lack of business integrity and reputation as a result of a felony illegal gambling conviction of one of the firm's owners. In accordance with 7 CFR § 278.1(b)(3)(i)(A) and (C), § 278.1(k)(3)(i), and § 278.1(l)(1)(iv), permanent withdrawal is the appropriate action in this case.

On the basis of the analysis above, the decision by the Retailer Operations Division to permanently withdraw the authorization of A & B Food Mart to participate as a retailer in SNAP is sustained.

In accordance with the Food and Nutrition Act of 2008, as amended, and SNAP regulations, the permanent withdrawal of A & B Food Mart shall become effective 30 days after receipt of this letter.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 1977, 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

May 14, 2020