

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

Abyssinia Market,

Appellant,

v.

Case Number: C0231400

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 assessment of a \$95,736.10 fine against Abyssinia Market for accepting SNAP benefits as an unauthorized firm.

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 assessed a \$95,736.10 fine against Abyssinia Market.

AUTHORITY

7 U.S.C. § 2023 and its implementing regulation at 7 CFR § 279.1 provides 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

Abyssinia Market was authorized to accept SNAP benefits from November 28, 2018 through February 17, 2020. However, the store was involuntarily withdrawn from the SNAP on February 18, 2020 due to lack of response to a non-redeemer letter. Non-redeemer letters are routinely sent to stores who have not been redeeming SNAP benefits for a period of time.

After the store was withdrawn, the Retailer Operations Division determined that the store was continuing to accept SNAP benefits using the authorization number of another store. The

Retailer Operations Division sent a formal cease and desist warning letter on May 29, 2020. The letter warned the Appellant that the unauthorized acceptance of SNAP benefits was a violation of The Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and Federal regulations at 7 CFR § 278.2(a). In addition, the cease and desist letter noted that 7 CFR § 278.6(m) mandated a fine of \$1,000 for each violation **plus** an amount equal to three times the face value of the illegally accepted SNAP benefits. In addition, the Appellant was asked to sign and return an agreement that the store would stop accepting SNAP benefits. The warning letter was delivered by UPS to the Appellant store and was signed for by “5 U.S.C. § 552 (b)(6) & (b)(7)(C)” on June 4, 2020 as documented by a UPS notice in the case record; however, the Appellant did not respond to the warning letter and continued processing SNAP transactions.

After the Appellant failed to respond to the warning letter, the Retailer Operations Division sent a charge letter to the store on August 5, 2020. The letter stated that the store and its owner was charged with the unauthorized acceptance of SNAP benefits. The charge letter again noted that the unauthorized acceptance of SNAP benefits is a direct violation of the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and Federal regulations at 7 CFR § 278.2(a). The charge letter stated that 7 CFR § 278.6(m) mandated a fine of \$1,000 for each violation **plus** an amount equal to three times the face value of the illegally accepted SNAP benefits and that the fine would continue to increase for each daily settlement until the store ceased and desisted from accepting SNAP benefits. The charge letter noted that the Appellant had a right to respond to the charges and to present any information, explanation, or evidence regarding the charges within 10 days of receipt of the charge letter. The charge letter was delivered to both the store address and the owner’s residential address on August 6, 2020 and in both cases was signed for by “5 U.S.C. § 552 (b)(6) & (b)(7)(C)” as documented by UPS delivery notices in the case record. The Appellant did not reply to the charge letter.

After considering the evidence in the case and the Appellant’s continuing lack of response, the Retailer Operations Division issued a determination letter dated s, 2020. The determination letter informed the Appellant it was assessed a fine of \$95,736.10 for the unauthorized acceptance of SNAP benefits under 7 CFR § 278.2(a) and 7 CFR § 278.6(m). The determination letter was delivered to both the store and the owner’s residence on August 31, 2020 and both were signed for by “5 U.S.C. § 552 (b)(6) & (b)(7)(C)” as documented by UPS delivery notifications in the case record.

In a letter postmarked September 1, 2020, the Appellant requested an administrative review of the Retailer Operations Division’s determination. The request for review was granted. Upon acceptance of the administrative review request, the collection of the fine was 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, might 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. § 2021, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and 7 CFR § 278.6(m) establish the authority upon which a fine will be assessed against any unauthorized entity that accepts SNAP benefits in exchange for merchandise.

7 CFR § 278.2(a) states, in part:

Coupons may be accepted by an authorized retail food store only from eligible households ... and only in exchange for eligible food.

7 CFR § 271.2 states that the definition of “coupon” includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the “Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

7 CFR § 271.2 states, in part:

Eligible foods means: ... Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption

7 CFR § 278.6(m) states:

Fines for unauthorized third parties that accept SNAP benefits. FNS may impose a fine against any individual, sole proprietorship, partnership, corporation or other legal entity not approved by FNS to accept and redeem food coupons for any violation of the provisions of the Food and Nutrition Act of 2008 or the program regulations, including violations involving the acceptance of coupons. The fine shall be \$1,000 for each violation plus an amount equal to three times the face value of the illegally accepted food coupons. The fine shall be paid in full within 30 days of the individual's or legal entity's receipt of FNS' notification to pay the fine. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the person to collect the fine. FNS may withdraw the authorization of any firm that is under the same ownership as an unauthorized firm that has failed to pay such a fine, as specified under § 278.1(k). FNS may deny authorization to any firm that has failed to pay such a fine, as specified under § 278.1(j).

SUMMARY OF THE CHARGES

On May 14, 2020, an Administrative Terminal review disclosed that Abyssinia Market, 2525 Telegraph Ave., Oakland, CA 94612, was processing SNAP benefits utilizing the authorization number and one of three (3) terminals assigned to another SNAP authorized store. FNS determined that Abyssinia Market had been accepting SNAP benefits under this other terminal since November 28, 2018; however, the fine assessed by FNS is based on unauthorized redemptions dating from June 5, 2020, the day after Abyssinia Market received the formal cease and desist warning letter, to August 23, 2020.

APPELLANT'S CONTENTIONS

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

- The owner was not aware that the store authorization had apparently elapsed in February 2020. He first learned this when he called the USDA number for clarification following his receipt of the determination letter on August 31, 2020. The owner acknowledges receiving the charge letter in the second week of August 2020, but never got the one of February 2020.
- In a telephone conversation with USDA representatives, the owner was told the reason for cancellation of the store's original authorization was the 'non-use' of SNAP benefits at the store, which was not true. There were (and still are) a few who utilize SNAP at the store.
- The EBT cards were (and still are) processed using the normal credit processing machine contracted with Automatic Data Processing (ADP), without extra charge. Nobody told the owner he could not use the ADP processing machine for EBT cards, and hence the store continued to use that machine to process SNAP benefits.
- The owner is a law abiding citizen, and had absolutely no intention of operating outside the bounds of USDA regulations to defraud the system. The store will stop accepting SNAP benefits at the business immediately.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

ANALYSIS AND FINDINGS

The Appellant store owner states that he was never told that the store authorization had been involuntarily withdrawn in February 2020 due to non-redemption of SNAP benefits at the store. However, even if this is true, the store continued to redeem benefits after receiving the cease and desist warning letter on June 4, 2020 and the charge letter on August 6, 2020. In fact, the store continued to redeem SNAP benefits without authorization, in disregard of FNS' directives, as late as August 23, 2020, a few days before the determination letter was issued.

The Appellant also admits in its request for administrative review that the owner received both the charge letter dated August 5, 2020 and the determination letter dated August 28, 2020. Both letters were successfully delivered to, and signed by, the store owner at both his residence and place of business as documented by UPS delivery notices in the case record.

SNAP regulations at 7 CFR § 278.6(m) permit FNS to issue a fine to unauthorized parties that accept SNAP benefits. The regulation states that “the fine shall be \$1,000 for each violation plus an amount equal to three times the face value of the illegally accepted food coupons.” Please note that coupons are defined in 7 CFR § 271.2 to include “... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the “Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.”

The Retailer Operations Division determined that the Appellant store continued to redeem SNAP benefits after receiving the cease and desist warning letter for a total of 79 days from June 5, 2020 through August 23, 2020. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Using the formula in 7 CFR § 278.6(m), the Retailer Operations Division appropriately determined the fine for unauthorized acceptance of SNAP benefits as following.

5 U.S.C. § 552 (b)(7)(E)

Therefore, the Retailer Operations Division appropriately calculated the fine for unauthorized acceptance of SNAP benefits in this case as \$95,736.10. Please noted that 7 CFR § 278.6(m) also states that “the fine shall be paid in full within 30 days of the individual's or legal entity's receipt of FNS' notification to pay the fine. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the person to collect the fine.”

CONCLUSION

It is established that the unauthorized acceptance of SNAP benefits as described in the letter of charges did in fact occur at Abyssinia Market warranting a fine of \$95,736.10 in accordance with 7 CFR § 278.6(m). In accordance with the Act and regulations, the assessment of the fine shall become effective thirty (30) days after receipt of this letter.

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. Please note that the judicial filing timeframe is specified in the Act, and this office cannot grant an extension.

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

December 4, 2020