

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

Ak's In & Out Mini Market,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0205192

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 uphold the decision by the Retailer Operations Division, to permanently withdraw the authorization of Ak's In & Out Mini Market (hereinafter, "Appellant" and/or "Ak's In & Out Mini Market") to participate in the Supplemental Nutrition Assistance Program (SNAP) as an authorized retailer.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR §§ 278.1(b)(3) and 278.1(l)(1)(iv), in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it permanently withdrew the authorization of Ak's In & Out Mini Market to participate in the SNAP via letter dated December 6, 2017.

AUTHORITY

7 U.S.C. 2023 and its 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

The record indicates that Ak's In & Out Mini Market, located on Santa Clara Street, was authorized as a SNAP retailer effective October 28, 2011 under the sole proprietorship of 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

In a form FNS-252 *Supplemental Nutrition Assistance Program Application for Stores* received on August 2, 2017, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) applied for SNAP Authorization for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) located 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

In answer to Question 14 on the application for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) – “Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?” the material indicates “Yes”; followed by the comment “MISDEMEANOR CHARGES POSSESSION OF STOLEN GOODS”. Based on evidence of a criminal conviction under California Penal Code 664/496(a) Receiving Stolen Property for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was denied SNAP retailer authorization in accordance with 7 CFR § 278.1(b)(3)(i)(B).

Because the record reflects that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) also owns Ak's In & Out Mini Market, located on Santa Clara Street in San Jose, CA an analysis of the appropriateness of the continued SNAP authorization of Ak's In & Out Mini Market was completed. It was determined that the criminal conviction under California Penal Code 664/496(a) Receiving Stolen Property for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) required the withdrawal of SNAP authorization for Ak's In & Out Mini Market in accordance with 7 CFR § 278.1(l)(1)(iv). Therefore, in a letter dated December 6, 2017 Appellant, and its owner, was advised by the Retailer Operations Division that the SNAP authorization of Ak's In & Out Mini Market was being permanently withdrawn.

Via letter dated December 13, 2017, received in the office of the Chief of the Administrative Review Branch on December 20, 2017, Appellant, through its owner requested an administrative review of the action to permanently withdraw Ak's In & Out Mini Market from participation as a SNAP authorized Retailer. The appeal was granted and the implementation of the permanent withdrawal has been held in abeyance, in accordance with 7 CFR § 279.4 (a).

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 AND REGULATIONS

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended (the “Act”)¹, 7 USC 2018 and 278 of Title 7 of the Code of Federal Regulations (CFR).² Part § 278.1(l) establishes the authority upon which the authorization of any firm to participate as a SNAP retailer may be withdrawn.

7 CFR § 278.1(b)(3)(i)(B) provides, in relevant part, that “(3) 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: (B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; “

7 CFR § 278.1(l)(1)(iv) reads, in part, “(l) Withdrawing authorization. (1) 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 (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)(3)(i), reads, in relevant part: “(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.”

APPELLANT’S CONTENTIONS

In the request for administrative review Appellant’s ownership indicates that his misdemeanor conviction, occurring more than 11 years ago, occurred as a result of his being pushed to plead guilty. The presiding judge reportedly considered the situation “an entrapment” and imposed a sentence of work release without fail time was imposed.

In a letter dated January 8, 2018 Appellant’s ownership provided a copy of the court documents involved in the criminal conviction; and, indicated that he is now and has

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 with subsequent amendment enacted February 7, 2014 through P. L. 113-79

² Title 7 of the Code of Federal Regulations may be accessed in its entirety via the Internet at https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title07/7tab_02.tpl

been since the 2006 incident, a law-abiding citizen. A request for reconsideration of the permanent withdrawal is made.

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

The record documents that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) plead "nolo contendere" to the charges of receiving stolen property and was therefore convicted under California Penal Code 664/496(a) for Receiving Stolen Property on June 28, 2007. The record indicates 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was sentenced to serve 30 days on a work release program together with three (3) years of probation. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) indicates that he served his sentence and probation without incidence.

This review finds that the conviction of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) under California Penal Code 664/496(a) demonstrates a lack of business integrity such that falls under the SNAP provisions of 7 CFR § 278.1(b)(3)(i)(B) which requires a permanent withdrawal under 7 CFR § 278.1(l)(1)(iv) as delineated at 7 CFR § 278.1(k)(3)(i). The Retailer Operations Division has appropriately taken action under the specified regulations.

The reported clean criminal history indicated by Appellant's ownership does not support the mitigation or reversal of the determination to permanently withdraw Ak's In & Out Mini Market from participation as an authorized SNAP retailer. Neither the Act nor the pursuant regulations provide for consideration of the age of a criminal conviction or the subsequent record of the individual who was convicted.

CONCLUSION

Based on the discussion above, the decision by the Retailer Operations Division to permanently withdraw Ak's In & Out Mini Market to participate in the SNAP as an authorized retailer is sustained.

The permanent withdrawal will become effective 30 days after receipt of the instant Final Agency Decision in accordance with 7 CFR § 279.5(f).

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.

NANCY BACA-STEPAN
Administrative Review Officer

May 31, 2018