

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

Albuquerque Rescue Mission,)	
)	
Appellant,)	
)	
v.)	Case Number: C0194461
)	
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 Retailer Operations Division’s determination to permanently deny the application of Albuquerque Rescue Mission to participate in the Supplemental Nutrition Assistance Program (SNAP).

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 in its administration of the SNAP, when it permanently denied the application of Albuquerque Rescue Mission.

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

On August 1, 2016, the FNS received an application from Albuquerque Rescue Mission to participate in the SNAP as a homeless meal provider. In the application under *Part 5 – Business Information*, the Appellant answered “yes” to the question “Has any individual involved in the ownership or management of the meal service ever been convicted of any crime?” In a supplemental response, the Appellant noted that he had been convicted of several felonies in the past, but had completed all probation without any further violations.

The Retailer Operations Division followed up on the response and confirmed that in November 2006, the Appellant was charged and convicted of possession with intent to distribute a controlled substance, forgery, and receiving/transferring a stolen vehicle, in

addition to other charges. The Appellant was sentenced to 14 years; 6 years suspended; with a probation period of 5 years which was completed in May 2015.

In a letter dated September 26, 2016, the Retailer Operations Division informed the Appellant that the application of Albuquerque Rescue Mission to participate in the SNAP was permanently denied under 7 CFR § 278.1(k)(3)(i) because the firm did not have the necessary business integrity under 7 CFR § 278.1(b)(3)(i).

In a letter dated October 3, 2016, the Appellant requested an administrative review of the Retailer Operation Division's decision to permanently deny the application of Albuquerque Rescue Mission. The request for administrative review was granted.

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. § 2018, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(k) establishes the authority upon which the FNS shall deny the authorization of any firm authorized to participate in the program.

7 CFR § 278.1(b)(3)(i) states:

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;

(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; or

(C) Violation of Federal, State and/or local consumer protection laws or other laws relating to alcohol, tobacco, firearms, controlled substances, and/or gaming licenses;

7 CFR § 278.1(k)(3)(i) states, in part:

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 ... [Emphasis added.]

APPELLANT'S CONTENTIONS

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

- [7 USC 2018 (b)(6)&(b)(7)(c)] is the Executive Chef of the Albuquerque Rescue Mission a non- profit homeless shelter.
- [7 USC 2018 (b)(6)&(b)(7)(c)] is not the owner, but instead works under the Chief Executive Officer [7 USC 2018 (b)(6)&(b)(7)(c)] and several other people.
- All of the SNAP transactions require a pre-approval from CEO Hill and Financial Director [7 USC 2018 (b)(6)&(b)(7)(c)].
- Albuquerque Rescue Mission is audited yearly and maintains financial records for three-years.
- [7 USC 2018 (b)(6)&(b)(7)(c)] has worked at Albuquerque Rescue Mission for five (5) years with no reprimands. [7 USC 2018 (b)(6)&(b)(7)(c)] conviction happened ten (10) years ago and he has completed all sentencing and probation without any further criminal convictions.

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

Application History

Albuquerque Rescue Mission applied for authorization in the SNAP as a homeless meal provider on July 27, 2016. The application was received by the FNS on August 1, 2016. In the application under *Part 5 – Business Information*, the Appellant answered “yes” to the question “Has any individual involved in the ownership or management of the meal service ever been convicted of any crime?” In a supplemental response, the Appellant noted that he had been convicted of several felonies in the past, but had completed all probation without any further violations.

Following internal agency guidance, the Retailer Operations Division appropriately followed up on the response and determined that the felony convictions of [7 USC 2018 (b)(6)&(b)(7)(c)] in 2006 required that the application be permanently denied under the authority of 7 CFR § 278.1(k)(3)(i) due to a lack of business integrity under the provisions of 7 CFR § 278.1(b)(3)(i).

Responsible Person

The Appellant indicates that [7 USC 2018 (b)(6)&(b)(7)(c)] is the Executive Chef of the Albuquerque Rescue Mission a non-profit homeless shelter. The Appellant further states that [7 USC 2018 (b)(6)&(b)(7)(c)] is not the owner, but instead works under the Chief Executive Officer [7 USC 2018 (b)(6)&(b)(7)(c)] and several other people. In addition, the Appellant alleges that all of the SNAP transactions require a pre-approval from CEO [7 USC 2018 (b)(6)&(b)(7)(c)] and Financial Director [7 USC 2018 (b)(6)&(b)(7)(c)].

The Appellant's contentions may be true in that there may be other persons responsible for the operation and management of Albuquerque Rescue Mission. However, none of these individuals are listed in the application received by the FNS on August 1, 2016. Instead the application solely names [7 USC 2018 (b)(6)&(b)(7)(c)] as the person responsible for the operation of the meal service under the sponsoring organization and the person responsible for onsite operations. As such, the Retailer Operations Division correctly relied upon the information supplied by the Appellant in its application and determined that [7 USC 2018 (b)(6)&(b)(7)(c)], an individual with a felony conviction, is involved in the operation of the meal service.

Business Integrity

The USDA holds that the business integrity of a firm is critically important to the effective operation of the SNAP. Therefore, the criteria outlined in the regulations focuses on the business integrity and reputation of the owners, officers and management of firms seeking authorization or reauthorization in the SNAP. Prior convictions relating to business integrity, reflects on the ability of a firm to effectuate the purposes of, and abide by the rules governing, the program.

FNS has noted in internal [7 USC 2018 (b)(7)(e)] guidance that the business integrity language in 7 CFR § 278.1(b)(3)(i) addresses all relevant criminal convictions and a broad range of civil and/or administrative judgments/decisions. Under such circumstances, the agency regulations grant no discretion to the Retailer Operations Division or to the administrative review officer during an administrative review. The fact that a convicted party has fulfilled the terms of any sentencing for a business integrity conviction under under 7 CFR § 278.1(b)(3)(i) does not mean that the convicted party can be authorized as a SNAP retailer or meal provider.

The regulations have clearly set out the position of the agency with regard to the business integrity of participating retailers or meal providers. Therefore, there is no discretion available to any party involved in the determination of eligibility or the administrative review regarding a business integrity violation. If the matter violates the provisions of 7 CFR § 278.1(b)(3) and § 278.1(k), action to permanently deny must be taken accordingly. Therefore, this administrative review does not have the authority to grant the Appellant's request for reconsideration of the permanent denial.

CONCLUSION

The case record documents by a preponderance of the evidence that the Appellant was convicted of multiple felonies in 2006. The fact that the Appellant has fully served any sentencing or successfully completed any probation has no relevance under the regulations. Based on the analysis above, the decision by the Retailer Operations Division to permanently deny the application of Albuquerque Rescue Mission to participate in the SNAP as a homeless meal provider is sustained.

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.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.

/S/

RONALD C. GWINN
ADMINISTRATIVE REVIEW OFFICER

November 29, 2016
DATE