

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

Alsalam Brothers Inc #1,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0243074

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 \$59,901.42 fine against Alsalam Brothers Inc #1 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 \$59,901.42 fine against Alsalam Brothers Inc #1.

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

Alsalam Cuisine Inc. located at 1615 Kenmore Ave., Buffalo, NY 14217, under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) , was authorized to accept SNAP benefits on June 20, 2018.

On October 12, 2020, Alsalam Brothers Inc #1 submitted an application for SNAP authorization at the same location. The application indicated that the store was opening under new ownership on October 15, 2020 and that the corporate contact was 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The application was withdrawn by the system on November 2, 2020 as the store had not submitted its required business licenses in order to complete the application.

On December 1, 2020, the Retailer Operations Division determined that Alsalam Brothers Inc #1 was continuing to run SNAP transactions under the authorization number of the former owner in violation of SNAP regulations. On that same day, the Assistant Deputy Administrator, Retailer Operations and Compliance sent a cease and desist letter to the corporate contact 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the store address. That letter stated, in part:

The unauthorized acceptance of SNAP is a direct violation of the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and § 278.2(a) of Title 7 of the CFR. Section 278.6(m) establishes the authority upon which a fine may be assessed against a firm that accepts SNAP benefits without authorization. Specifically, FNS may impose a fine against any individual, sole proprietorship, partnership, corporation or other legal entity not approved by FNS to accept and redeem SNAP benefits. The fine shall be \$1,000 for each violation plus an amount equal to three times the face value of the illegally accepted SNAP benefits. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the person to collect the fine. This letter is a formal warning that your firm must immediately cease and desist from accepting SNAP benefits.

The cease and desist letter further stated:

Please confirm to us that you will desist from the aforementioned activity by signing and returning the enclosed agreement within 10 days of receipt of this letter. We also require you to provide us with the name and contact information of the processing company you use for SNAP EBT transactions. If we do not hear from you within 10 days, we will take appropriate administrative action.

The cease and desist letter was delivered to the Appellant store on December 4, 2020 and was signed for by "OHSAD" as documented by a UPS delivery notice in the case record. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) contacted the Retailer Operations Division by telephone and stated that he had a Bill of Sale and that the sale took place in October 2020 but the old owner was still working at the store. However, the Retailer Operations Division informed him that it did not matter if the old owner was working in the store as Alsalam Brothers Inc #1 was not authorized by FNS to process SNAP transactions.

Alsalam Brothers Inc #1 continued to redeem SNAP benefits under the authorization of Alsalam Cuisine Inc. from December 5, 2020 (the day after receipt of the cease and desist letter) through December 13, 2020. Therefore, the Retailer Operations Division in a letter dated February 4, 2021, charged the Appellant with the unauthorized acceptance of SNAP benefits. The charge letter stated, in part:

These violations warrant a fine and assessment of a fiscal claim for the unauthorized acceptance of SNAP benefits, as provided for in Sections 278.6(m) and 278.7(a) of the SNAP regulations. In addition, transactions involving Pandemic EBT (P-EBT) benefits also violate P-EBT regulations at 7 CFR part 284 Violations of SNAP regulations which involved P-EBT benefits also violate corresponding P-EBT regulations at 7 CFR part 284....

The Appellant store was informed it could reply to the charges within ten (10) days of receipt in order to provide any information, explanation or evidence. The Appellant was also informed it could reply by phone or in writing and could have legal counsel assist in replying. The charge letter was delivered to the Appellant store on February 17, 2021 and was signed for by “Alsum” as documented by a UPS delivery notification in the case record. However, the Appellant did not reply to the charge letter.

After considering the evidence in the case and the Appellant’s lack of response to the charge letter, the Retailer Operations Division issued a determination letter dated March 1, 2021. The determination letter informed the Appellant store it was assessed a fine of \$59,901.42 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 the store and was signed for by “Osamah” as documented by UPS delivery notifications in the case record.

In a letter postmarked March 5, 2021, the Appellant, through counsel, 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).

7 CFR § 284.1 states in part:

Pandemic Electronic Benefits Transfer (P-EBT).

(a) Overview. Section 1101 of the Families First Coronavirus Response Act (FFCRA; Pub. L. 116-127), as amended, authorized supplemental allotments to certain households. These benefits shall be referred to as Pandemic Electronic Benefits Transfer (P-EBT) benefits throughout this section. This section establishes the retailer integrity regulations for P-EBT for retailers in any State as defined in Section 3(r) of the Food and Nutrition Act....

(c) Participation of retail food stores and wholesale food concerns, and redemption of P-EBT benefits. Requirements and restrictions on the participation of retail food stores and wholesale food concerns and the redemption of coupons described at §§ 278.2, 278.3 and 278.4 of this chapter, including the acceptance of coupons for eligible food at authorized firms, also apply to activities involving P-EBT benefits....

(e) Penalties. For firms that commit certain violations described at §§ 278.6 and 278.2 of this chapter where such violations involve P-EBT benefits, FNS shall take the corresponding action prescribed at § 278.6 or § 278.2 for that violation....

(g) Administrative and Judicial review. Firms aggrieved by administrative action under paragraphs (d), (e), and (f) of this section may request administrative review of the administrative action with FNS in accordance with part 279, subpart A, of this chapter.

Firms aggrieved by the determination of such an administrative review may seek judicial review of the determination under 5 U.S.C. 702 through 706.

SUMMARY OF THE CHARGES

Alsalam Brothers Inc #1 through its corporate contact, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), submitted an application for SNAP authorization on October 12, 2020. That application was withdrawn by FNS on November 2, 2020. However, Alsalam Brothers Inc #1 continued to run SNAP transactions under the authorization number of the former owner in violation of SNAP regulations. Specifically, the store continued to run SNAP transactions for a nine-day period after receiving a cease and desist letter on December 4, 2020. This warrants a fine and assessment of a fiscal claim of \$59,901.42 for the unauthorized acceptance of SNAP benefits.

APPELLANT'S CONTENTIONS

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

- The Appellant's tax and accounting firm provided various bank and tax records in an effort to show that Alsalam Brother Inc #1 was not receiving the funds from the SNAP transactions. In addition, the documents showed that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) resigned as President of Alsalam Brothers Inc #1 on January 27, 2021 and sold his shares of stock to 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- The Appellant's counsel has been unable to ascertain any unauthorized acceptance of SNAP benefits.
- The Appellant's counsel is willing to discuss a resolution as the Appellant store owners did not personally benefit from any transactions.

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 claims that the old owner was continuing to work at the store after it was sold and that the funds from the SNAP transactions did not flow to Alsalam Brothers Inc #1 or its owners. Regarding this contention, Alsalam Brothers Inc #1 was not authorized to process SNAP transactions because it was not approved by FNS to be a SNAP authorized store. Whether or not Alsalam Brothers Inc #1 received the funds from the SNAP transactions or the funds were transferred to another party is not relevant.

What is relevant is that the store continued to redeem benefits after receiving the cease and desist letter on December 4, 2020. The Appellant does not dispute that it received the cease and desist letter, the charge letter and the determination letter. All of these letters were successfully

delivered to the store location and were signed for 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 letter for a total of nine (9) days from December 5, 2020 to December 13, 2020. During that time period the store had transactions (equal or greater than \$10) for a total amount of 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)(6) & (b)(7)(C)

This review finds that the Retailer Operations Division appropriately calculated the fine for unauthorized acceptance of SNAP benefits in this case as \$59,901.42. The administrative review officer does not have the authority to waive the fine or negotiate a reduced amount.

CONCLUSION

It is established that the unauthorized acceptance of SNAP benefits as described in the letter of charges did in fact occur at Alsalam Brothers Inc #1 warranting a fine of \$59,901.42 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

September 16, 2021