

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

Asaram Inc. Country Farm,

Appellant,

v.

Case Number: C0202400

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the USDA that the record indicates that Asaram Inc. Country Farm (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP), and that there is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retail food store in the program, as initially imposed by the Retailer Operations Division (Retailer Operations) was appropriate.

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.2(a), 7 CFR § 278.2(f), 7 CFR § 278.6(c), 7 CFR § 278.6(e)(1), 7 CFR § 278.6(f)(1), and 7 CFR § 278.6(i) in its administration of the SNAP when it imposed a permanent disqualification against Appellant.

AUTHORITY

7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1 provide that a food retailer 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

By Charge letter dated February 8, 2018, Retailer Operations informed the owners that Appellant had been investigated from a period of September 21, 2017 to November 22, 2017, and there was evidence that violations of the SNAP regulations at 7 CFR § 278.2(a) and 7 CFR § 278.6(e)(1) had occurred. The Charge letter details violative transactions that constituted trafficking, as

defined in Section 271.2 of the SNAP regulations. Trafficking warrants a permanent disqualification from SNAP. The letter also lists violations including transacting common and major ineligible items for benefits including beer, alcohol and tobacco. The lesser disqualification penalty for these violations is subsumed in the sanction for trafficking. The letter refers to Section 278.6(i) of the regulations which deals with the criteria for a trafficking civil money penalty (CMP), and the regulatory deadline to provide documentation for CMP consideration.

The record supports that counsel replied to the Charge letter February 14, 2018. Retailer Operations considered this reply and issued a Determination letter dated February 27, 2018, that Appellant was permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1) of the regulations. Further, a fiscal claim was made for payment of 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

By letter dated March 2, 2018, counsel appealed Retailer Operations' determination, and requested administrative review. The appeal was granted by letter dated March 12, 2018.

STANDARD OF REVIEW

In an appeal of an adverse action, the Appellant bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. That means the 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 argument asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

The controlling statute is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Parts 278.6(a), (c) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store in the event that personnel of the firm have engaged in trafficking SNAP benefits.

Trafficking is defined, in part, at 7 CFR § 271.2 as: “(1) The buying, selling or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers, and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly in complicity or collusion with others, or acting alone; ... (4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.”

7 CFR § 278.2(a) specifies: “Coupons [benefits] may be accepted by an authorized retail food store only from eligible households, and only in exchange for eligible food.” Further, the citation specifies that “Coupons may not be accepted in exchange for cash or for any other nonfood use.”

7 CFR § 278.6(a) states: “FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system.”

7 CFR § 278.6(c) states: “The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1), the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination.”

7 CFR § 278.6(e)(1) states: “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in §271.2.”

7 CFR § 278.6(i) states: “FNS may impose a civil money penalty in lieu of permanent disqualification for trafficking as defined in 271.2 if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.”

SUMMARY OF THE CHARGES

The Charge letter in the record details the investigative case that cites instances of trafficking. This case was investigated by the State of New York, Fulton County Sheriff’s Office. The Charge letter enumerates 15 violations of the SNAP regulations including trafficking.

APPELLANT’S CONTENTIONS

All contentions were considered including any not specifically recapitulated here.

- The firm is a small family owned business. The family is solely dependent upon income from the enterprise and has been owned for countless years and there has never been any incident that would require revocation based on the conduct of the owner.
- The retailer had no knowledge or consent of the owner, an employee did certain inappropriate and potentially illegal conduct on the dates listed in charge letter.
- The employee worked approximately six years and would work six hours without the owner being present during that period of time.
- The employee admitted to the owner he had encountered certain financial issues and took advantage of his position as a store clerk for his own benefit, and did so without the

knowledge, consent or approval of the owner. The employee was arrested and charged criminally by the Fulton County Sheriff's Department.

- The criminal case was resolved by a plea in the Johnstown City Court and the matter was closed. The employee was fined 5 U.S.C. § 552 (b)(6) & (b)(7)(C) approved by the District Attorney's Office and approved by the court. Those monies were paid in full on the sentencing date. The employee admitted in court that he had been short of cash and was utilizing a certain scheme for nominal cash payment that included accepting SNAP benefits on certain products.
- The employee admitted to the court that the owner of the store never gave consent to such conduct and never had any knowledge or information as to what he was doing and that there was no one else involved in this undertaking.
- The retailer had no knowledge or evidence that the employee was doing such illegal conduct. The employee was discharged upon the owner being advised to his arrest.
- The retailer relies on the income from the grocery store and was not present during any of the incidents set forth in the charge letter.
- I've explained to the owner that as a general rule he is responsible for the conduct of the employees. Nevertheless, the owner told me that to his knowledge the employee had been a good loyal, faithful, honest employee and there had never been a report of any type of incident of this nature.
- This is the first occasion that there has been any incident of any nature and to disqualify this family is somewhat arbitrary and a bit harsh. I am certain there are other remedies that are available to the USDA to impose.
- The owner is responsible for the conduct of his employee. In many instances some employee at some business commits an act that is outside of his duties for which an employer cannot be held responsible. If the owner had any preconceived notice or knowledge of this conduct he would have taken steps to discharge the employee so that there would be no violation of the regulations.
- Disqualification will likely result in the business being closed and the family will qualify for welfare.
- I am forwarding a copy of the accusatory instrument filed against the employee to provide a statement from that employee as to his wrongdoing and I request a certificate of disposition which will evidence what is set forth.
- I may well be able to persuade the attorney of record for the employee to provide a statement as to his wrongdoing if that would be of any benefit to my client.

ANALYSIS AND FINDINGS

The purpose of this review is to either validate or to invalidate the decision by Retailer Operations, and is limited to what circumstances were the basis of Retailer Operations' determination to impose a permanent disqualification on Appellant and its owners. Official investigations of the compliance of retail food stores are conducted in part to ascertain the nature and extent of violations that may be occurring as to the application of the SNAP regulations agreed to by authorized retailers. The record indicates that in reaching a disqualification determination, Retailer Operations considered information obtained from an investigation conducted by the State of New York, Fulton County Sheriff's Office. The information in the

record indicates that the most egregious violation of the Act and regulations, trafficking, occurred at Appellant on multiple dates as described in the Charge letter. The violations are not contested by Appellant.

The owners of Appellant are liable for all violative transactions handled by either paid or unpaid store personnel. Regardless of whom the ownership of a store may utilize to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions. To allow store ownership to disclaim accountability for the acts of persons whom the ownership chooses to utilize to handle store business would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008, as amended, and the enforcement efforts of the USDA. The regulations establish that an authorized food store may be disqualified from participating in the program when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf. Ownerships' contention that they did not know of or conduct any violations of program regulations themselves cannot be accepted as a valid basis for diminishing the penalty.

The record supports that the USDA issued Appellant an official warning letter on October 12, 2016 for the sale of two ineligible items on March 2, 2016. On that date, the record shows that the clerk asked if the USDA investigator had cash for the two ineligible items and the clerk replied "Okay I can ring up the items on the card it is cool." As such the record under review does not indicate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the program or that this was the first instance of violative activity at Appellant.

Ownership contends that a SNAP disqualification will have a negative financial impact on Appellant's business. It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the regulations for waiver or reduction of a sanction on the basis of possible economic hardship to the firm resulting from imposition of such penalty. To allow ownership to be excused from an assessed administrative penalty based on purported economic hardship to the firm would render the enforcement provisions of the Act and the enforcement efforts of the USDA virtually meaningless. Furthermore, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, the contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the sanction.

CIVIL MONEY PENALTY

As to other remedies in this matter, the regulations allow a civil money penalty in lieu of permanent disqualification for trafficking when a firm can establish, by substantial evidence, its fulfillment of four criteria as specified in Section 278.6(i)(1). The owners did not submit sufficient documentary evidence to prove that Appellant met the trafficking CMP requirements

as stipulated in the regulations. Accordingly, Retailer Operations determined that Appellant did not qualify for a civil money penalty in lieu of a permanent disqualification.

This review finds that Retailer Operations properly denied a trafficking CMP since ownership failed to provide substantial or even basic evidence as required by the SNAP regulations regarding consideration of a CMP as an alternative to permanent disqualification for trafficking.

CONCLUSION

The investigative record is specific with regard to pertinent detail relevant to the trafficking charges. A review of the documentation has yielded no indication of error or discrepancy in the reported findings of trafficking. The evidence in this case supports by a preponderance that the SNAP trafficking violations cited in the Charge letter did occur at Appellant. Thus, based on the discussion herein, the decision by Retailer Operations to impose a permanent disqualification against Appellant is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and to Section 279.7 of the Regulations (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 the owners 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, 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.

M. Viens
Administrative Review Officer

April 26, 2018