

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

AZTECA MARKET 2,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0217633

FINAL AGENCY DECISION

The USDA, Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the decision of the Retailer Operations Division to withdraw the authorization of AZTECA MARKET 2 to participate as a retailer in the Supplemental Nutrition Assistance Program (SNAP) due to its failure to cooperate in the reauthorization process. The Appellant firm may reapply for SNAP authorization at any time.

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 withdrew the authorization of AZTECA MARKET 2.

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

As part of a routine reauthorization process, the Retailer Operations Division sent the Appellant a letter dated March 19, 2019 requesting the following documents necessary to complete the reauthorization process:

- An affidavit stating that the current owners/officers/members are not connected with any previously disqualified persons and also reporting any criminal convictions or license revocations.

- All current business licenses (liquor license, food license, vendor license or any other similar license to do business) in the name of your firm at the store location.
- A letter from your bank or financial institution identifying the authorized signers for the business on any accounts used by the business.
- Federal personal tax returns for the most recent filing year for all owners/officers/LLC members.
- Federal business tax returns for the most recent filing year (if available) for all owners/officers/LLC members.

The letter was successfully delivered to the Appellant store by UPS on March 22, 2019. However, the Appellant firm or its owners never responded to this letter.

On April 23, 2019, the Retailer Operations Division sent the Appellant a letter withdrawing the authorization of AZTECA MARKET 2 for failure to cooperate as the firm did not provide any of the above listed documents. The withdrawal letter was successfully delivered to the Appellant firm on April 26, 2019 as documented by a UPS receipt in the case record.

In a letter postmarked April 29, 2019, the Appellant requested an administrative review of the Retailer Operation Division's decision to withdraw the firm's SNAP authorization. The request for 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 found in the Food and 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(n) establishes the authority upon which FNS shall withdraw the SNAP authorization of any firm that fails to cooperate in the reauthorization process.

7 CFR § 278.1(n) reads:

Periodic reauthorization. At the request of FNS a retail food store or wholesale food concern will be required to undergo a periodic reauthorization determination by updating any or all of the information on the firm's application form. Failure to cooperate in the reauthorization process will result in withdrawal of the firm's approval to participate in the program.

APPELLANT'S CONTENTIONS

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

- The Appellant answered an outstanding question concerning the store manager who is not an owner of the firm.
- Everything else regarding ownership remains the same, but the firm will soon be up for sale.

The preceding may represent only a brief summary of the 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

Along with the administrative review request, the Appellant provided a completed copy of the affidavit requested by the Retailer Operations Division along with a completed copy of the SNAP reauthorization form. No other documents were provided.

To date, the Appellant has not provided the missing business licenses, a letter from the bank/ financial institution identifying authorized signers for the business or the requested Federal business and personal tax returns for the owners. Therefore, a preponderance of the evidence indicates that the withdrawal decision is appropriate.

CONCLUSION

Based on the analysis above, the decision by the Retailer Operations Division to withdraw the SNAP authorization of AZTECA MARKET 2 is sustained. The regulations clearly state that a firm must cooperate in the periodic reauthorization process. There is no exception to this requirement. However, this decision does not impact the firm's ability to reapply for SNAP authorization at any time.

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, 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.

RONALD C. GWINN
Administrative Review Officer

July 2, 2019