

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

**Brother's Mini Market,**

**Appellant,**

**v.**

**Office of Retailer Operations and  
Compliance,**

**Respondent.**

**Case Number: C0226747**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Office of Retailer Operations and Compliance to permanently deny the application of Brother's Mini Market (hereinafter Appellant) to participate in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278, when it permanently denied the application of Appellant to participate in SNAP on January 27, 2020.

**AUTHORITY**

According to 7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1, "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**

Appellant submitted an online application to participate as a SNAP retail food store on October 23, 2019, and answered "yes" to question 16 on the application, "Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?" Appellant also explained in block 16a on the application that, "Yes, but I completed my sentence in 2016."

In a letter dated December 17, 2019, the Office of Retailer Operations and Compliance requested additional information regarding the criminal conviction. In response, Appellant provided documentation showing a conviction for Possession with Intent to Distribute Class A and Class B Drugs under Massachusetts c94C §32(a) Section 32 and Section 32A.

After reviewing Appellant's documentation, the Office of Retailer Operations and Compliance determined that the owner's criminal conviction constituted a lack of business integrity under SNAP regulations at 7 CFR § 278.1(b)(3)(i)(A). As a result, Appellant's SNAP authorization was permanently denied pursuant to 7 CFR § 278.1(k)(3)(i). A denial letter was sent to Appellant on January 27, 2020, and was received on January 30, 2020.

By letter postmarked February 3, 2020, Appellant appealed the Office of Retailer Operations and Compliance's decision and requested an administrative review of this determination. The appeal was granted. No subsequent correspondence was received from Appellant.

### **STANDARD OF REVIEW**

In appeals of adverse actions, Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means 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**

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 USC § 2018), and implemented through regulation under Title 7 CFR § 278. In particular, 7 CFR § 278.1(b)(3)(i)(A) and § 278.1(k)(3)(i) establish the authority upon which a retail food store's authorization to participate in the SNAP may be permanently denied on the basis of a lack of business integrity.

7 CFR § 278.1(b)(3) 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, "FNS shall deny the application of any firm if it determines that: (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**

The following may represent a 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:

- The owner was arrested in 2013 and 2014 on drug possession charges and was in this situation due to being involved in a very difficult economic situation and having relationships with bad people. The three months he spent in jail was enough for him to understand that being on the streets is not good for him or for his family. Since then he has finished his probation and was working with his family in their business before they helped him to start his own business. Since 2016 he is responsible for all the duties as a manager in the mini market and is now the owner and that is the reason he applied for SNAP in order to provide more services to my customers;
- The owner disagrees with the denial of his application as he completed his probation in good manner and has been working after that to support his family and has never been in jail again; and,
- As a business owner, he needs to provide SNAP to his customers for the market to survive

Appellant submitted no evidence or other rationales in support of these contentions.

## **ANALYSIS AND FINDINGS**

It is important to clarify for the record that the purpose of this review is to validate or to invalidate the determination made by Office of Retailer Operations and Compliance, and as such it is limited to consideration of the relevant facts and circumstances at the time the decision was made. The authorization of a store to participate in the SNAP must be in accord with the Act and the regulations, as amended; those requirements of law cannot be waived.

The primary issue under consideration is whether or not Appellant has the necessary business integrity and reputation, in accordance with regulation, to further the purposes of the SNAP. The USDA holds that the business integrity of a firm is critically important to the effective operation of SNAP. Therefore, the criteria outlined in the regulations focus on the business integrity and reputation of the owners, officers, and managers of firms seeking SNAP authorization or reauthorization. Prior criminal convictions reflect on the ability of a firm to effectuate the purposes of SNAP and abide by the rules governing the program. As previously stated, Appellant answered "yes" to the question on the SNAP retailer application asking, "Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?"

The owner provided documents as part of the application process. These documents provide sufficient information to conclude that the charge for the Possession with Intent to Distribute Class A and Class B Drugs falls under 7 CFR § 278.1(b)(3)(i). The age of the conviction is not a factor, provided the conviction occurred after June 1, 1999. The conviction in this case occurred well after 1999.

The Food and Nutrition Act of 2008, as amended and SNAP regulations are specific with regard to the business integrity of a SNAP applicant and provide no discretion to any party involved in the determination of eligibility or the determination of an administrative review regarding the seriousness of a business integrity violation. Under the strict language of the regulations, the fact that a convicted party has successfully fulfilled the terms of any sentencing or adjudication for a business integrity conviction under 7 CFR § 278.1(b)(3)(i) or that the firm may have received business licenses from other governmental agencies does not mean that the Appellant can now be authorized as a SNAP retailer. In fact, SNAP regulations at 7 CFR § 278.1(k)(3)(i) grant no exceptions to a permanent denial for a business integrity conviction under 7 CFR § 278.1(b)(3).

### **CONCLUSION**

The documentation in the case record clearly shows that the store owner was criminally convicted of Possession with Intent to Distribute Class A and Class B Drugs. It is USDA's position that this criminal offense shows a lack of business integrity and reputation to such a degree that the Appellant does not further the purposes of the program. Accordingly, the decision by the Office of Retailer Operations and Compliance to permanently deny Appellant's application to participate as a SNAP retailer is sustained.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 USC § 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.

ROBERT T. DEEGAN  
ADMINISTRATIVE REVIEW OFFICER

March 30, 2020