

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

Chepe Deli Grocery, Inc,

Appellant,

v.

Case Number: C0212312

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Retailer Operations Division to permanently deny the application of Chepe Deli Grocery, Inc (“Appellant”) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program.

ISSUE

The purpose of this review is to determine whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.1(k)(4), in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it permanently denied the application of Appellant to participate in SNAP on August 28, 2018.

AUTHORITY

According to 7 U.S.C. § 2023 and its 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

On August 9, 2018, the Retailer Operations Division sent Appellant a letter requesting additional information regarding its application to become a SNAP retailer. Appellant provided additional information to the Retailer Operations Division. In a letter dated August 28, 2018, the Retailer Operations Division permanently denied the application of Appellant to participate as an authorized retailer in SNAP in accordance with 7 CFR § 278.1(e)(1) and 7 CFR § 278.1(k). In concluding that Appellant should be permanently denied authorization, the Retailer Operations Division determined that Appellant provided false information on a SNAP application.

On September 4, 2018, Appellant appealed the Retailer Operations Division decision and requested an administrative review of this action. The appeal was granted.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that 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 untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(e)(1) establishes the authority upon which a firm may be permanently disqualified from participating in SNAP because the firm's application contains false information of a substantive nature.

7 CFR § 278.6(e)(1) states, in part:

FNS . . . shall [d]isqualify a firm permanently if . . . [i]t is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program, such as, but not limited to, information related to . . . ownership of the firm

7 CFR § 278.1(k) states, in part:

FNS shall deny the application of any firm if it determines that . . . The firm has filed an application that contains false or misleading information about a substantive matter, as specified in § 278.6(e). Such firms shall be denied authorization for the periods specified in § 278.6(e)(1) or § 278.6(e)(3)

APPELLANT'S CONTENTIONS

Appellant's responses regarding this matter are essentially as follows:

- Appellant does not understand the basis for the determination;
- Appellant purchased the corporation and is the president of the corporation; and,
- Appellant does not have a relationship with the previous owner.

These explanations may represent only a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any others that have not been specifically listed here.

ANALYSIS AND FINDINGS

Some of the facts of this case are not in dispute. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). located at 5 U.S.C. § 552 (b)(6) & (b)(7)(C)., in Philadelphia was a SNAP-authorized store under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). from December 18, 2012 until May 24, 2018. Chepe Deli Grocery, Inc opened on February 19, 2016. Owner 5 U.S.C. § 552 (b)(6) & (b)(7)(C). formed a corporation “Chepe Deli Grocery Inc” (5 U.S.C. § 552 (b)(6) & (b)(7)(C).) with 5 U.S.C. § 552 (b)(6) & (b)(7)(C). at Appellant’s location (5 U.S.C. § 552 (b)(6) & (b)(7)(C).) on March 28, 2016. On August 30, 2017, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). was permanently disqualified at a firm at another location.

Regarding Appellant’s contentions, the record includes a variety of inconsistencies. According corporate records, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). was the president of the firm. According to the 2017 corporate tax return, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). was the president of the firm and the firm had a gross income of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 2017 personal tax return does not include the income from the firm, and instead shows a loss 5 U.S.C. § 552 (b)(6) & (b)(7)(C). On March 9, 2018, an online reauthorization application was completed by someone who stated 5 U.S.C. § 552 (b)(6) & (b)(7)(C). was the only owner. Additional information was requested of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). on March 12, 2018, such as current business licenses. The Bill of Sale submitted by Appellant states that 5 U.S.C. § 552 (b)(6) & (b)(7)(C). purchased the firm from 5 U.S.C. § 552 (b)(6) & (b)(7)(C). on March 15, 2018, but 5 U.S.C. § 552 (b)(6) & (b)(7)(C). told a store reviewer on March 18, 2018 that he was the manager of the store. (Some of the information on the Bill of Sale calls into question the legitimacy of this document.) Appellant provided information to show 5 U.S.C. § 552 (b)(6) & (b)(7)(C). was no longer associated with Appellant, including a document signed by 5 U.S.C. § 552 (b)(6) & (b)(7)(C). and documents showing the creation of a new corporation “Chepe Deli Grocery Inc” (5 U.S.C. § 552 (b)(6) & (b)(7)(C).). This new corporation has 100 shares of stock, but there is no record provide of who owns that stock. The earlier corporation “Chepe Deli Grocery Inc” (5 U.S.C. § 552 (b)(6) & (b)(7)(C).) still shows as active with the Pennsylvania Dept. of State – Corporation Bureau.

In sum, based upon the contradictory information regarding the ownership of Appellant, the discrepancies in the tax filing information, the evidence which implies Appellant may have been operating under another firm’s authorization, and the ambiguity regarding 5 U.S.C. § 552 (b)(6) & (b)(7)(C). role in the firm and whether 5 U.S.C. § 552 (b)(6) & (b)(7)(C). continues to be involved with the firm, it appears more likely than not that the firm’s application included false of a substantive nature on a SNAP application that could affect the eligibility of the firm for authorization in the program.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to deny the application of Chepe Deli Grocery, Inc to participate as an authorized retailer in SNAP is

sustained. Denial of a firm's authorization to participate in the SNAP under the provisions of 7 CFR § 278.1(e)(1) is permanent.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If Appellant desires a judicial review, 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.

RICH PROULX
Administrative Review Officer

October 23, 2018