

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

Cloverdale Market,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0222001

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 Retailer Operations Division to withdraw the authorization of Cloverdale Market (hereinafter Appellant) to participate as a retail food store in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278, when it permanently withdrew the authorization of Appellant to participate as a SNAP retail store on August 13, 2019.

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

The record shows that Appellant applied for reauthorization on November 13, 2018, and answered “yes” to question 15 on the application, “Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?” Appellant also explained in question 15a on the application that the owner “has a misdemeanor on his record regarding a 2004 case where he was charged with not disclosing all business partners. He never went to jail and served 3 years probation, which he successfully completed. There have been no other crimes or penalties against him since then.”

The Retailer Operations Division requested additional information in regards to the criminal conviction. In response, Appellant provided documentation showing a felony conviction for making a false statement to a government agency pursuant to 10 USC § 101.

After reviewing Appellant's documentation, the Retailer Operations Division determined that the owner's criminal conviction constituted a lack of business integrity under SNAP regulations at 7 CFR § 278.1(b)(3)(i)(B). As a result, Appellant's SNAP authorization was permanently withdrawn pursuant to 7 CFR § 278.1(l)(1)(iv) and 278.1(k)(3)(i). A withdrawal letter was sent to Appellant on August 13, 2019, and was received on August 14, 2019.

By letter dated August 23, 2019, Appellant appealed the Retailer Operations Division's decision and requested an administrative review of this determination. The appeal was granted and implementation of the withdrawal held in abeyance pending completion of this review. 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 § 278 of Title 7 of the Code of Federal Regulations (CFR). In particular, 7 CFR § 278.1(b)(3)(i)(B) and § 278.1(l)(1)(iv) establish the authority upon which a retail food store's authorization to participate in the SNAP may be permanently withdrawn on the basis of a lack of business integrity.

7 CFR § 278.1(b)(3) states: "(3) The business integrity and reputation of the applicant. 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(l)(1)(iv) states, in part: “Withdrawing authorization. (1) FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons: (iv) The firm fails to maintain the necessary business integrity to further the purposes of the program, as specified in paragraph (b)(3) of this section. Such firms shall be withdrawn for lack of business integrity for periods of time in accordance with those stipulated in paragraph (k)(3) of this section for specific business integrity findings;

7 CFR § 278.1(k)(3)(i) states, in part: “Denying authorization. (k) 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 is a native of India. He and 11 other immigrants were involved with another individual who led each of them to enter into a partnership to purchase a convenience store. The bulk of the purchase price for each store was provided by a SBA bank loan, but the loan application did not disclose the other individual’s partnership interest. The other individual assured the owner that this was a common American business practice;
- In 2004, the other individual, the owner, and the other 11 immigrants were arrested by the FBI for loan fraud in connection with the SBA loan for failing to disclose the other individual’s partnership interest. In 2006, the owner accepted a plea arrangement offered by the US Attorney that included a \$5,000 fine and three years probation as well as the dismissal of all charges against the owner’s wife;
- Because of this, the owner had to sell his store as he could not maintain a license to sell beer and wine; and,
- The owner was unable to locate his original application to see if he disclosed the conviction at that time, but if he failed to do so, it was inadvertent. Reconsideration is requested since this matter arose 15 years ago and was completely resolved 10 years ago.

Appellant submitted copies of court documents 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 Retailer Operations Division, and as such it is limited to consideration of the relevant facts and circumstances at the time of the decision. 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 reauthorization application asking “Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?”

The owner provided court documents as part of the application process. These documents provide sufficient information to conclude that the charge Making False Statements to a Government Agency fall under 7 CFR § 278.1(b)(3)(i)(B). 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 Making a False Statement to a Government Agency. 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 Retailer Operations Division to permanently withdraw Appellant’s authorization 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

November 27, 2019