

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

Country Butcher Shop-Goldsboro,

Appellant,

v.

Case Number: C0197421

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 withdraw the authorization of Country Butcher Shop-Goldsboro (“Appellant”) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

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)(3)(i), when it permanently withdrew the authorization of Appellant to participate in SNAP on January 13, 2017.

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 January 31, 2014, the Retailer Operations Division informed Appellant that its application to participate as an authorized retailer in the SNAP was being withdrawn, in accordance with 7 CFR § 278.1(l)(1)(iv) and 7 CFR § 278.1(k)(3)(i). In concluding that Appellant should be permanently withdrawn, the Retailer Operations Division relied upon information that owner

5 U.S.C. § 552 (b)(6) & (b)(7)(C) was charged with and pled guilty to Trafficking in Cocaine on August 4, 2008.

On January 23, 2017, 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(k)(3)(i) and (l)(iv) establishes the authority upon which the application of any firm to participate in the SNAP may be denied because “records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers.”

7 CFR § 278.1(l) states, in part:

FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons 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(b)(3) states, in part:

FNS shall deny the application 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: Conviction 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:

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

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

- The owner was convicted of a criminal offense relating to a controlled substance; and,
- According to *Warren*, convictions regarding controlled substances relate only to licenses regarding controlled substances.

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

With respect to Appellant's contentions, SNAP regulations, enunciated at 7 CFR § 278.1(k), and internal agency directives provide for the withdrawal of firms from continued participation in SNAP on the basis of a number of reasons, one of which is lack of business integrity.

Appellant is correct that the owner was convicted of a criminal offense relating to a controlled substance. The evidence indicates that while an owner of Appellant, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was charged with and pled guilty to Trafficking in Cocaine.

Appellant contends that according to the court's findings in *Warren v. United States*, convictions regarding controlled substances relate only to licenses regarding controlled substances. The case cited by Appellant deals with 7 CFR § 278.1(b)(3)(i)(c). However the basis for the Retailer Operations Division's determination is 7 CFR § 278.1(b)(3)(i)(a), "[c]ommission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public or private agreement or transaction."

As previously mentioned, 7 CFR § 278.1(l) is specific in its requirement that "FNS shall withdraw the authorization of any firm authorized to participate in the program" if the firm lacks business integrity. Neither the Food and Nutrition Act of 2008 nor the accompanying regulations cite any cite any number of convictions or degrees of seriousness pertaining to criminal offenses relating to agreements or transactions. Convictions related to business integrity are always considered to be most serious. This is reflected in 7 CFR § 278.1(k)(3)(i) which reads:

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.

There is no agency discretion in the matter of what sanction is to be imposed when a criminal conviction related to business integrity is involved.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to withdraw the application of Country Butcher Shop-Goldsboro to participate as an authorized retailer in SNAP is sustained. Withdrawal of a firm's authorization to participate in the SNAP under the provisions of 7 CFR § 278.1(b)(3)(i) is permanent. In accordance SNAP regulations this withdrawal action shall become effective 30 days after delivery of this letter.

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

December 4, 2017