

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review
Alexandria, VA 22302**

Cypress Mini Mart,)	
)	
Appellant,)	
)	
v.)	Case Number: C0187331
)	
Retailer Operations Division,)	
)	
Respondent.)	
_____)	

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that the initial decision by the Retailer Operations Division (hereinafter “ROD”) to permanently withdraw the authorization of Cypress Mini Mart (hereinafter “Mini Mart”) to participate in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed.

ISSUE

The issue accepted for review is whether ROD took appropriate action, consistent with 7 CFR § 278.1(l) and § 278.1(k)(3)(i), in its administration of the SNAP when it permanently withdrew the authorization of Mini Mart on February 16, 2016.

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

In a letter dated February 16, 2016, the Retailer Operations Division informed the Appellants that the authorization of Mini Mart to participate as an authorized retailer in the SNAP was being withdrawn, in accordance with 7 CFR § 278.1(l) and 278.1(k)(3)(i) of the business integrity rules of the SNAP regulations. Specifically, the store owner, 7 U.S.C. 2018 (b)(6) & (b)(7)(c), plead guilty in the Superior Court of the State of Washington 7 U.S.C. 2018 (b)(6) & (b)(7)(c), in August 27, 2015 to three counts of

trafficking of food stamps at another authorized SNAP store that he owns, 7 U.S.C. 2018 (b)(6) & (b)(7)(c), 7 U.S.C. 2018 (b)(6) & (b)(7)(c), as sentenced to 16.5 months imprisonment and was ordered to pay \$5,600.00 in fines.

Therefore, based on a review of the rules and regulations that govern the SNAP, FNS has determined that the nature of 7 U.S.C. 2018 (b)(6) & (b)(7)(c), actions renders the subject firm ineligible for continued authorization in the SNAP. According to 7 CFR § 278.1(l)(1)(iv)... “*Withdrawing authorization.* 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 the 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”. In addition, Section 278.1(k)(3)(i) requires that 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 Section 278.1(b)(3)(i) shall be denied/withdrawn authorization permanently.

In a letter postmarked February 26, 2016, the Appellants appealed the Retailer Operations Division’s decision and requested an administrative review of this action. The appeal was granted and implementation of the withdrawal was held in abeyance pending completion of this review.

STANDARD OF REVIEW

In appeals of adverse actions, an Appellant bears the burden of proving by a clear 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

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. 2018 and 278 of Title 7 of the Code of Federal Regulations (CFR).

7 CFR § 278.1(l)(1)(iv) states, *inter alia*... “*Withdrawing authorization.* FNS shall withdraw the 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 the 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, *inter alia* ... “*Denying authorization.* FNS shall deny the application of any firm if it determines that : ... 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 time: 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”.

APPELLANTS’ CONTENTIONS

In the written request for administrative review, the Appellants provided information in which it was argued that [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], as not actively involved in managing Mini Mart as he was working full time at the other SNAP authorized store that he owns and where he was convicted of trafficking SNAP benefits.

The preceding may represent only a brief summary of the Appellants’ contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

With regards to the Appellants’ contention, 7 CFR § 278.1(l)(1)(iv) stipulates that “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 the 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”. The Retailer Operations Division noted that the store owner, [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], plead guilty in the Superior Court of the State of Washington (Criminal Case No. 14-1-01532-6) on August 27, 2015 to three counts of trafficking of food stamps at another authorized SNAP store that he owns, [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], [U.S.C. 2018 (b)(6) & (b)(7)(c)], as sentenced to 16.5 months imprisonment and was ordered to pay \$5,600.00 in fines. Furthermore, 7 CFR § 278.1(k)(3)(i) establishes the authority upon which the application of any firm to participate in the SNAP may be denied/withdrawn because “records of criminal conviction or civil judgment exist that reflect on the business integrity of the owners, officers, or managers as stipulated in § 278.1(b)(3)(i).” It further states that such denials/withdrawals “shall be denied/withdrawn authorization permanently.” In their request for administrative review the Appellants stated that [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], as not actively involved in managing Mini Mart as he was working full time at the other SNAP authorized store that he owns and where he was convicted of trafficking SNAP benefits. However, even if [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], as not actively involved in managing/working at Mini Mart, he is listed on the SNAP application for the subject store as an owner. [7 USC 2018 (b)(7)(e)]. In accordance with Section 278.1(k)(3)(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 Section 278.1(b)(3)(i) shall be denied/withdrawn authorization permanently.

CONCLUSION

On the basis of the discussion above, it is the decision of the USDA that the initial decision to withdraw Cypress Mini Mart from participation in the SNAP is sustained.

Withdrawal of a firm's authorization to participate as an authorized retailer in the SNAP under the provisions of 7 CFR § 278.1(l)(1)(iv) and 7 CFR § 278.1(k)(3)(i) is permanent.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to 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 (FOIA), it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.

LORIE L. CONNEEN
ADMINISTRATIVE REVIEW OFFICER

December 13, 2016
DATE