

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

**Danakil,**

**Appellant,**

**v.**

**Case Number: C0230760**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) finds there is insufficient evidence to support the determination of the Retailer Operations Division to permanently deny the application of Danakil (“Appellant”) to participate as an authorized retailer 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 Code of Federal Regulations (CFR) Part 278, when it permanently denied the application of Danakil to participate as an authorized SNAP retailer.

**AUTHORITY**

7 U.S.C. § 2023 and 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 May 14, 2020, the Retailer Operations Division informed the Appellant that its authorization to participate as a retailer in SNAP would be permanently denied due to its failure to maintain the necessary business integrity to further the purposes of the program. Specifically, Appellant owner **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** pled guilty in 2010 to violating the District of Columbia Code § 22–3216: Taking Property without Right and § 22–1803: Attempts to Commit Crime. The Retailer Operations Division determined that such a conviction falls within the

business integrity provisions of the regulations at 7 CFR § 278.1(b)(3)(i)(B), which states that FNS shall permanently deny the authorization of any firm from participation in SNAP if any owners of the firm have been convicted of a criminal offense for “commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice.”

The letter further stated that in accordance with 7 CFR § 278.1(k)(3)(i), permanent denial from SNAP authorization is the appropriate penalty.

In a letter postmarked May 19, 2020, Appellant requested an administrative review of the Retailer Operation Division’s permanent denial of its SNAP application. The request for review was granted.

### **STANDARD OF REVIEW**

In an appeal of adverse action, such as permanent denial of an application, the appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means the 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 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 is promulgated through regulation under Title 7 CFR Part 278. Specifically, 7 CFR § 278.1(k) establishes the authority upon which FNS shall deny the authorization of any firm applying for participation in SNAP for failing to meet business integrity criteria.

7 CFR § 278.1(b)(3) states, in part:

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... [Emphasis added.]

7 CFR § 278.1(k)(3)(i) states, in part:

- (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**

Appellant, through counsel, submitted the following summarized contentions for administrative review, in relevant part:

- Taking property without right under District of Columbia law is not a disqualifying offense under 7 CFR § 278.1(b)(3)(i)(B) and therefore the denial was improper.
- The enumerated offenses under 7 CFR § 278.1(b)(3)(i)(B) does not include taking property without right, let alone the lesser offense of attempted taking property without right and does not include words such as “similar offenses” that would indicate that the enumerations are merely examples.
- The regulatory history indicates that USDA made a deliberate decision to identify enumerated offenses in response to comments to a rule amending the business integrity provisions and noted in the rule “that the proposed business integrity standards were too broad, too vague and offer too much discretion to FNS Officers in Charge to interpret.”.
- Taking property without right is not an offense which relates to the business integrity and reputation of the ownership and management of those firms seeking authorization or to fraudulent activity in the FSP or other government programs, or in business-related activities in general.
- The D.C. law offense of taking property without right means only that the defendant took and carried away the property of another without the right to do so, and differs from larceny-type crimes because specific intent does not have to be proven and it is not necessary that the defendant had any intent to deprive the owner of the property.
- The lack of any requirement that a conviction for taking property without right involve a specific intent to deprive the owner of their property makes this misdemeanor offense fundamentally different from the enumerated offenses which relate to the ability of a firm to operate business-related activities with integrity.
- Even if there was uncertainty as to whether taking property without right is a disqualifying offense, the uncertainty should be construed in favor of Danakil.

The preceding may represent only a summary of Appellant’s contentions presented in this matter. However, in reaching a final decision, full attention was given to all contentions presented, including any not specifically summarized or referenced here.

### **ANALYSIS AND FINDINGS**

The purpose of this review is to either validate or invalidate the permanent denial determination of the Retailer Operations Division. Thus, this review is limited to consideration of the relevant facts and circumstances as they existed at the time the Retailer Operations Division rendered its decision.

A review of the Office of Retailer Operations and Compliance's case file indicates the determination cannot be supported based on the evidence. Accordingly, it is unnecessary to address Appellant's contentions in this matter. However, in reaching a decision, full attention and consideration have been given to all contentions presented.

### **CONCLUSION**

Based on the analysis above, the determination by the Retailer Operations Division to permanently deny the application of Danakil to participate as a retailer in SNAP is reversed. The application must be approved if the firm is otherwise eligible for program authorization under all other applicable provisions and requirements of SNAP program regulations.

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.

MICHELLE WATERS  
ADMINISTRATIVE REVIEW OFFICER

August 18, 2020