

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

**Djj Parkway Holdings LLC,**

**Appellant,**

**v.**

**Case Number: C0204066**

**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 the Retailer Operations Division’s decision to permanently deny the application of Djj Parkway Holdings LLC to participate 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 in its administration of the SNAP, when it permanently denied the application of Djj Parkway Holdings LLC.

**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**

On September 26, 2017, the Retailer Operations Division received an online application from Djj Parkway Holdings LLC to participate in the SNAP as an authorized retail store. In response to question 14 of the application, the Appellant answered “yes” to the question “Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?” The

Retailer Operations Division subsequently confirmed that the owner of the Appellant store pled guilty to Georgia Code § 16-8-2 *Theft by Taking* in 2008.

In a letter dated November 2, 2017, the Retailer Operations Division informed the Appellant that the application of Djj Parkway Holdings LLC to participate in the SNAP was permanently denied under 7 CFR § 278.1(k)(3) because the firm did not have the necessary business integrity under 7 CFR § 278.1(b)(3).

In a letter postmarked November 10, 2017, the Appellant requested an administrative review of the Retailer Operation Division's decision to permanently deny the application of Djj Parkway Holdings LLC. The request for administrative review was granted.

### **STANDARD OF REVIEW**

In appeals of adverse actions, an appellant bears the burden of proving by a 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 AND REGULATIONS**

The controlling law in this matter is covered in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2018, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(k) establishes the authority upon which the FNS shall deny the authorization of any firm authorized to participate in the program.

7 CFR § 278.1(b)(3)(i)(B) states:

*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:*

*(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 ....*

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**

The Appellant made the following summarized contentions in its administrative review request, in relevant part:

- The Appellant store owner honestly disclosed the crime in the SNAP application and has submitted all supporting documents that went with it.
- The crime was committed ten (10) years ago when the store owner was a teenager.
- The Appellant store owner has worked very hard to change his life and has successfully fulfilled all court requirements including probation, community service and restitution.
- A permanent denial will adversely impact the Appellant economically.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

### **ANALYSIS AND FINDINGS**

The case record documents that the Appellant store owner plead guilty to Georgia Code § 16-8-2 *Theft by Taking* in 2008. The state statute reads, in relevant part:

*A person commits the offense of theft by taking when he unlawfully takes or, being in lawful possession thereof, unlawfully appropriates any property of another with the intention of depriving him of the property, regardless of the manner in which the property is taken or appropriated.*

This review finds that the above language of § 16-8-2 falls within the scope of a business integrity violation as contemplated by 7 CFR § 278.1(b)(3)(i) which 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:*

*(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 .... [Emphasis added.]*

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

*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** .... [Emphasis added.]*

### **Scope of Business Integrity Regulations**

The Retailer Operations Division does not dispute that the Appellant store owner has completed probation, restitution and other conditions related to his conviction in 2008. However, the USDA holds that the business integrity and reputation of a firm is critically important to the effective operation of the SNAP. Therefore, the criteria outlined in the regulations focuses on the business integrity and reputation of the owners, officers and management of firms seeking authorization or reauthorization in the SNAP. Prior convictions relating to business integrity, reflects on the ability of a firm to effectuate the purposes of, and abide by the rules governing, the program.

Under such circumstances, the agency regulations grant **no discretion** to the Retailer Operations Division or to the administrative review officer during an administrative review. 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 not be debarred from other government programs does not mean that the Appellant can now be authorized as a SNAP retailer.

### **Hardship to Owner or Firm**

The Appellant store owner contends that he will suffer an economic hardship if the firm is permanently denied for the SNAP. With regard to this contention, there is no provision in the SNAP statute or regulations that would allow a permanently denied firm to be authorized for the SNAP on the basis of possible economic hardship to either the owner personally or the firm. To allow a permanently denied firm to be authorized for the SNAP based on a purported

economic hardship would render virtually meaningless the eligibility provisions of the Food and Nutrition Act of 2008.

### **CONCLUSION**

The case record documents by a preponderance of the evidence that the Appellant pled guilty to Georgia Code § 16-8-2 *Theft by Taking* in 2008. Based on the analysis above, the decision by the Retailer Operations Division to permanently deny the application of Djj Parkway Holdings LLC to participate in the SNAP as is sustained.

### **RIGHTS AND REMEDIES**

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses 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, FNS is 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.

RONALD C. GWINN  
Administrative Review Officer

February 2, 2018