

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

Euclid Market,	)	
	)	
Appellant,	)	
	)	
v.	)	<b>Case Number: C0191183</b>
	)	
Retailer Operations Division,	)	
	)	
Respondent.	)	
_____	)	

**FINAL AGENCY DETERMINATION**

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 determination to permanently deny the application of Euclid Market to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, in its administration of SNAP when it denied the application of Euclid Market in a letter dated May 25, 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**

The Appellant firm applied to participate as a retailer in SNAP on March 31, 2016. On the application, Question #14 asks, “Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?” The Appellant marked “yes,” and explained that owner 7 U.S.C. 2018 (b)(6) & (b)(7)(c) had been “convicted of conspiracy” in February 2013.

In a letter dated May 4, 2016, the Retailer Operations Division requested additional information from the Appellant in regard to the conviction. The letter stated, "Please provide the court records on this conviction."

In response to this letter, the Appellant provided the following documentation:

- A copy of the February 8, 2013 complaint written by the Federal Bureau of Investigations (FBI) in which charges of Conspiracy and Federal Program Bribery were recommended against [7 U.S.C. 2018 (b)(6) & (b)(7)(c)].
- A copy of the "Judgment in a Criminal Case," from U.S. District Court, Southern District of California, dated July 19, 2013, indicating that [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] pleaded guilty to one count of conspiracy under Title 18 of the United States Code, Section 371. This document also indicated that [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] was sentenced to five years of probation, and was ordered to pay a fine of \$200.00.
- A copy of an "Order Terminating Probation," signed by U.S. District Court Judge [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], dated March 9, 2016, indicating that [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] probation was terminated early for good cause.

After reviewing this documentation, the Retailer Operations Division determined that [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] conviction constituted a lack of business integrity as provided by SNAP regulations at 7 CFR § 278.1(b)(3)(i)(A). As a result, the Appellant's application was permanently denied. A letter of denial was sent to the Appellant on May 25, 2016.

In a letter postmarked June 6, 2016, the Appellant requested an administrative review of the Retailer Operations Division's decision to permanently deny the firm's SNAP application. The appeal was considered timely and was therefore granted.

### **STANDARD OF REVIEW**

In an appeal of adverse action, such as an application denial, 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, 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 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 FNS shall deny the authorization of any firm applying to participate in SNAP if it fails to meet established eligibility requirements.

7 CFR § 278.1(k) reads, in relevant part:

*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.*

7 CFR § 278.1(b)(3) states, in relevant part:

*(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.*

### **APPELLANT'S CONTENTIONS**

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

- More than 60 percent of the Appellant store's patrons receive SNAP benefits. The community relies heavily on vendors such as Euclid Market to provide them with quality, well-rounded food as outlined by USDA. The community served by the Appellant is well below the poverty line with limited transportation to larger food chains. The store provides fresh dairy and market items.
- Appellant owner is aware that he was charged with and convicted of conspiracy to commit federal bribery and produce unauthorized identification documents.
- Appellant owner successfully completed the five years of probation that was mandated.
- The charge was not related in any way to the Appellant owner's association with Euclid Market.
- The Appellant owner has been a pillar in the community and has repaid the debt handed down by the judicial system.

- Appellant requests an additional review of the denial determination so that it can provide the needed services to the under-represented population that the market serves.
- Since the 2013 conviction, Appellant owner has continued to pay taxes and has been a law-abiding citizen.

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

## ANALYSIS AND FINDINGS

### Business Integrity

It is important to clarify for the record that the purpose of this review is to either validate or invalidate the earlier 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.

The primary issue under consideration is whether or not the Appellant firm has the necessary business integrity and reputation, in accordance with regulation, to further the purposes of the Supplemental Nutrition Assistance Program.

The USDA holds that the business integrity 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 SNAP authorization or reauthorization. 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.

As noted earlier, Question #14 of the SNAP application asks, "Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?" The Appellant marked "yes," and explained that owner [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], had been "convicted of conspiracy" in February 2013.

After reviewing this explanation, the Retailer Operations Division requested additional information from the Appellant in regard to [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], conviction. In response, the Appellant submitted to the Retailer Operations Division three documents, as noted earlier: a copy of the criminal complaint against [7 U.S.C. 2018 (b)(6) & (b)(7)(c)]; a copy of the judgment and sentence; and a copy of [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], probation termination order.

In making its denial determination, the critical document for the Retailer Operations Division was the judgment decision dated July 19, 2013, indicating that [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], pleaded guilty to one count of conspiracy under 18 U.S.C. § 371, which states:

**§ 371. Conspiracy to commit offense or to defraud United States**

*If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.*

In accordance with 7 CFR § 278.1(b)(3)(i)(A) and § 278.1(k)(3)(i), FNS shall deny the authorization of any firm that lacks the necessary business integrity and reputation to further the purposes of the Supplemental Nutrition Assistance Program. Specifically, permanent denial is the required penalty for firms in which there is a conviction or civil judgment against the owners, officers or managers of the firm for “commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction.”

According to the documents provided by the Appellant, the conspiracy charge to which [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] pled guilty included conspiring to commit “Federal Program Bribery, in violation of Title 18, United States Code, Section 666; and Production of an Unauthorized Identification Document, in violation of Title 18, United States Code, Section 1028(a)(1).”

Specifically, [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] conspired to produce a fraudulent Class A commercial driver license.

It is the determination of this review that such a conspiracy conviction is equivalent to “a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction.” As such, the appropriate penalty is permanent denial in accordance with 7 CFR § 278.1(k)(3)(i). The regulations do not give FNS any latitude to consider a shorter denial period; neither do the regulations take into consideration whether or not the convicted individual has fulfilled his probationary obligations. The fact that a convicted party has fulfilled the terms of any sentencing for a business integrity conviction under 7 CFR § 278.1(b)(3)(i) does not mean that the convicted party can be authorized as a SNAP retailer. Additionally, the business integrity provisions at 7 CFR § 278.1(b)(3)(i) make no mention of whether or not the conviction was connected in any way to the firm that is applying for SNAP authorization.

The regulations have clearly set out the position of USDA with regard to the business integrity of participating retailers. Therefore, there is no discretion available to any party involved in the determination of eligibility or the determination of an administrative review regarding the seriousness of a business integrity violation. If the matter violates the provisions of 7 CFR § 278.1(b)(3), action to permanently deny an application must be taken accordingly. Therefore, the Appellant’s request to overturn the permanent denial cannot be granted.

**Service to the Community**

The Appellant has argued that the local, impoverished community relies on stores such as Euclid Market to provide it with fresh, quality foods. The Appellant also argues that some

community members have limited transportation options and are unable to easily get to larger chain stores. The Appellant further contends that the owner is a pillar in the community, that he has repaid his debt, that he has been a law-abiding citizen since the conviction, and that he desires to provide a needed service to his community through authorization in the Supplement Nutrition Assistance Program.

With regard to these contentions, this review can neither confirm nor refute such arguments. However, these contentions have no bearing on the Appellant's eligibility for SNAP authorization. A store may only accept SNAP benefits if it meets the required criteria for authorization, including demonstrating that it has the necessary business integrity and reputation to further the purposes of the program. As noted above, the Appellant does not meet these regulatory requirements.

### CONCLUSION

The case record clearly documents that the Appellant store owner 7 U.S.C. 2018 (b)(6) & (b)(7)(c), pled guilty to conspiracy under 18 U.S.C. 371 in 2013. Based on the analysis above, the decision by Retailer Operations to permanently deny the authorization of Euclid Market to participate as a SNAP retailer is sustained.

### RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 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 such a request is received, FNS will seek to protect, to the extent provided by law, personal information that if released could constitute an unwarranted invasion of privacy.

/S/

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JON YORGASON  
ADMINISTRATIVE REVIEW OFFICER

October 12, 2016  
DATE