

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

Fiesta Supermarket,

Appellant,

v.

Case Number: C0176702

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the USDA that there is insufficient evidence to support the decision of the Retailer Operations Division to permanently disqualify Fiesta Supermarket from the Supplemental Nutrition Assistance Program (SNAP) for knowingly providing false information of a substantive nature. As a result, the decision is **reversed**.

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 imposed a permanent disqualification of Fiesta Supermarket.

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 August 14, 2014, the Retailer Operations Division issued a letter stating its intent to permanently disqualify Fiesta Supermarket under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) (aka 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(6) & (b)(7)(C)) for providing false information in support of the store’s SNAP application. The letter specifically stated that the allegation was based as follows:

“On December 20, 2002, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was permanently disqualified from the SNAP program under the firm, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). On March 9, 2004 FNS received a SNAP application for Fiesta Supermarket under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). On March 24, 2004, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) submitted a disassociation statement in which he stated that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was not related to him and that she had no association with Fiesta Supermarket. On December 18, 2013, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) [sic] 5 U.S.C. § 552 (b)(6) & (b)(7)(C) submitted a copy of his 2012 tax return in which it states that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) [sic] and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) [sic] 5 U.S.C. § 552 (b)(6) & (b)(7)(C) filed a married joined tax return.

Based on the Florida Department of State Division of Corporations, the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) corporation was established on July 18, 1996 and names 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as the owner and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) [sic] 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as the secretary/treasurer. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) knowingly lied in his disassociation statement and falsified the information in his SNAP application.”

The letter further stated that the Appellant could reply to the charges by telephone or in writing within ten (10) days of receipt of the letter. The letter was delivered to the Appellant on August 25, 2014 as documented by a UPS receipt in the case record.

The Appellant, through its former counsel, contacted the Retailer Operations Division on September 3, 2014 and October 28, 2014 and requested information under the Freedom of Information Act (FOIA). As a result of the FOIA request, the Retailer Operations Division held the case in abeyance until the FOIA process was completed.

In a letter dated October 17, 2018, the Retailer Operations Division permanently disqualified Fiesta Supermarket, under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), for “providing false information in regard to the relationship between 5 U.S.C. § 552 (b)(6) & (b)(7)(C) (a permanently disqualified store owner) and you on the store application.” The letter also informed the Appellant of its right to request an administrative review of the decision within ten (10) days of receipt. The permanent disqualification letter was delivered to the Appellant’s former counsel via UPS on October 18, 2018.

In a letter postmarked October 25, 2018, the Appellant, through its former counsel, appealed the Retailer Operations Division’s determination and requested an administrative review of the permanent disqualification. The request for administrative review was granted. Following the acceptance of the administrative review request, the Appellant changed attorneys and is now represented by current counsel.

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. § 2021, and promulgated as regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(e)(1)(iii) establishes the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 278.1(o) states:

Applications containing false information. The filing of any application containing false or misleading information may result in the denial of approval for participation in the program, as specified in paragraph (k) of this section, **or disqualification** of a firm from participation in the program, as specified in § 278.6, and may subject the firm and persons responsible to civil or criminal action. [Emphasis added.]

7 CFR § 278.6(e) states, in part:

... FNS shall take action as follows against any firm determined to have violated the Act or regulations (1) Disqualify a firm permanently if: ... (iii) It is determined that personnel of the firm **knowingly** submitted information on the application that contains false information of a **substantive nature that could affect the eligibility of the firm** for authorization in the program, such as, but not limited to, information related to: ... (F) Ownership of the firm ... or (I) Any other information of a substantive nature **that could affect the eligibility of a firm**. [Emphasis added.]

APPELLANT'S CONTENTIONS

The Appellant, through its former and current counsel, made the following summarized contentions in relevant part:

- The sole basis for the disqualification is the Department's determination that Fiesta Supermarket knowingly provided false information of a substantive nature in a Disassociation Statement dated March 11, 2004. The requirement for disqualification under the regulations is that a false statement must be both knowingly made and be of a substantive nature.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) did not knowingly submit false information of a substantive nature that could affect Fiesta's eligibility for SNAP authorization when he signed the Disassociation Statement.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is an immigrant from Palestine who came to the United States in 1978, originally settling in Puerto Rico, where he spoke Arabic and

Spanish. Subsequently he lived in Florida, and briefly in Texas, and predominantly spoke Arabic and Spanish. In 2004, his ability to read and write in English was limited.

- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) did not prepare the Disassociation Statement. It was completed by the FNS Program Specialist who asked him to sign and return the statement. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) did so, but he had a limited command of the English language and he would not have signed the statement if he had known it would be interpreted to mean that he was not married to 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- The use of the term “related” in the Disassociation Statement is ambiguous as it does not specify what type of degree of relationship is referenced. It is completely accurate that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is not related to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) by consanguinity. The statement provided by Fiesta Supermarket did not say 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were not married which would have been false. It is also accurate that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) has no business relationship with 5 U.S.C. § 552 (b)(6) & (b)(7)(C) regarding Fiesta Supermarket and Florida is not a community property state where the spouse would have an ownership interest.
- There is no evidence that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) willfully or knowingly attempted to circumvent his wife’s disqualification. This is supported by the fact that he did not hide the relationship when responding to the 2013 reauthorization requests.
- The maximum adverse action that FNS can take is a one-year withdrawal from the SNAP under 7 CFR § 278.1(k).

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

A review of the charge letter and the permanent disqualification letter supports the Appellant’s contention that the permanent disqualification is solely based on the Disassociation Statement signed by 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on March 11, 2004. Therefore, the only issue in this case is whether a preponderance of the evidence indicates that the Appellant store owner knowingly provided false information of a substantive nature that could affect Fiesta Supermarket’s eligibility for the SNAP when he signed the Disassociation Statement.

The Appellant claims that the store owner had a limited English proficiency when he signed the Disassociation Statement on March 11, 2004. That may or may not be true; however, it appears to be true that the Disassociation Statement was entirely filled in by the FNS Program Specialist as the handwriting on the document is consistent with the signature of the Program Specialist. The only item that appears to be in the Appellant’s handwriting is his signature which matches that on his driver’s license. This tends to support the Appellant’s contention in this case that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was merely following the instructions provided by the FNS Program Specialist by signing the document. There is nothing in the case record to document any

prior or subsequent discussions that would fully explain the circumstances that surrounded the development and execution of this document. All that can be shown is that the FNS Program Specialist appears to have completely filled in the document along with the date and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) only signed the document; subsequent to that Fiesta Supermarket was authorized for the SNAP.

The Disassociation Statement indicates that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is not related to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) but does not specify whether relationship in this context refers only to consanguinity or includes a relationship by marriage. In addition, a mere familial relationship to a prior disqualified owner of another store, even one at the same location, would not have been enough to deny the application of Fiesta Supermarket in 2004. The case record supports that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) has never been an owner, officer, or manager of Fiesta Supermarket since its inception. In fact, the case record provides no evidence that she has ever been involved with store operations in any capacity.

CONCLUSION

Based on a review of the entire case record, there is insufficient evidence to support that the Appellant knowingly submitted false information regarding a substantive matter which affected the eligibility of the firm. Accordingly, the decision to impose a permanent disqualification against the Appellant, Fiesta Supermarket, is **reversed**.

This decision does not preclude the Retailer Operations Division from taking adverse action based on grounds or facts other than those which form the basis of this case.

RELEASE OF INFORMATION

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.

RONALD C. GWINN
Administrative Review Officer

June 3, 2019