

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

Fonte Food,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0203632

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 a permanent denial of authorization to participate as a retailer in the Supplemental Nutrition Assistance Program¹ was properly imposed against Fonte Food, (hereinafter “Fonte Food” or “Appellant”), and you as its owner of record, by the FNS Retailer Operations Division.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(b)(3) in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it permanently denied the retailer authorization of Fonte Food in a letter dated October 11, 2017.

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.

¹ Section 4001(b) of the Food, Conservation, and Energy Act of 2008 (P.L. 110-234; 122 Stat. 1092) amended the Food and Nutrition Act of 2008 by striking “food stamp program” and inserting “supplemental nutrition assistance program” effective October 1, 2008

CASE CHRONOLOGY

The administrative record includes a Form FNS-252 *Supplemental Nutrition Assistance Program Application for Stores* (application) filed on behalf of Fonte Food for authorization to participate as a SNAP retailer signed by you as the self-reported owner, documented to have been received on July 1, 2017.

On the application, in response to Question 14, on page 2, you answered “Yes” to “*Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?*” In answer to Question 14a requesting explanation, the materials indicate “*2007 felony H; 2009 Disorderly Conduct, a class B misdemeanor.*”

The Retailer Operations Division requested evidence of the court materials supporting the response to Question 14a in a letter dated July 20, 2017. The record includes a packet of materials annotated to have been received by the Retailer Operations Division on July 28, 2017 that includes Wisconsin Circuit Court materials relative to a criminal case filed on October 25, 2007 that was disposed as “Guilty Due to No Contest Plea” entered on November 1, 2007; and, Wisconsin Circuit Court materials relative to a criminal case filed on April 28, 2009 that was disposed as “Guilty Due to Guilty Plea” entered on April 28, 2009.

In a letter dated October 11, 2017, the Retailer Operations Division informed you that Fonte Food, and you as its owner of record, was being permanently denied authorization as a retailer in SNAP because there was evidence of a lack of the necessary business integrity to further the purposes of SNAP.

In a letter dated October 24, 2017, Appellant, through you, its owner of record, submitted an appeal of the Retailer Operations Division decision, requesting an administrative review of the action.

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 statute in this matter is contained in the Food and Nutrition Act of 2008, as amended (the “Act”)², 7 USC 2018 and 278 of Title 7 of the Code of Federal Regulations (CFR).³

7 U.S.C. § 2018(a)(1) states, in relevant part, “...*In determining the qualifications of applicants, there shall be considered among such other factors as may be appropriate, the following: (A) the nature and extent of the food business conducted by the applicant; (B) the volume of benefit transactions which may reasonably be expected to be conducted by the applicant food store or wholesale food concern; (C) whether the applicant is located in an area with significantly limited access to food; and (D) **the business integrity and reputation of the applicant...***”[Emphasis added]

7 CFR §278.1(b) – “...*In determining whether a firm qualifies for authorization, FNS shall consider all of the following...(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: (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;*”

7 CFR §278.1(k) – “*Denying authorization. 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...(i) Firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officer, or managers **as stipulated in § 278.1(b)(3)(i) shall be denied authorization permanently.***”
[Emphasis added]

APPELLANT’S CONTENTIONS

Appellant, through you as its self-reported new owner of record disagrees with the determination of the Retailer Operations Division citing that there is no valid reason to determine there is a lack of necessary business integrity. It is stated that the actions of the Retailer Operations Division resulted from prejudice, dislike and distrust and represents an inequitable action.

The preceding represents only a brief summary of Appellant’s contentions in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

² Effective October 1, 2008, the Food Stamp Act of 1977 was superseded by the Food and Nutrition Act of 2008, as amended through P.L. 110-246, further amended effective February 7, 2014 through PL 113-79.

³ Title 7 of the Code of Federal Regulations may be accessed in its entirety via the Internet at https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title07/7tab_02.tpl

ANALYSIS AND FINDINGS

The administrative record indicates that Retailer Operations Division received and reviewed evidentiary documentation provided directly by you as Appellant's owner. The documentation clearly evidences your conviction of the charges as previously listed.

Retailer Operations Division determined that the evidence as provided demonstrated a lack of business integrity as specified in 7 CFR § 278.1(b)(3)(i)(C); and, that in accordance 7 CFR § 278.1(k)(3)(i) the period of denial would be permanent.

On review there is no evidence found to establish that the Retailer Operations Division applied the SNAP regulations as cited inequitably or as the result of any prejudice, dislike, or distrust. Nonetheless, you have the right to pursue any such allegations of discrimination directly with that office of the Department which handles such matters. In that regard, if you wish, you may direct such complaint to: USDA – Director, Office of Adjudication, 1400 Independence Ave, SW, Washington, DC 20250-9410. Any such allegations of discrimination will be handled by that office independently of this administrative review.

CONCLUSION

Based on the discussion above, the Retailer Operations Division has provided a preponderance of evidence that its decision to permanently deny the application of Fonte Food on the business integrity regulations as recounted is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

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.

NANCY BACA-STEPAN
Administrative Review Officer

November 29, 2017