

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

Franchiany Supermarket Inc,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0213891

FINAL AGENCY DECISION

The USDA, Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the decision of the Retailer Operations Division to withdraw the authorization of Franchiany Supermarket Inc. to participate as a retailer in the Supplemental Nutrition Assistance Program (SNAP) for a lack of business integrity. As a result, the Appellant may not reapply for SNAP authorization for a period of one year.

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 withdrew the authorization of Franchiany Supermarket Inc. for one year.

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 store was authorized by the Food & Nutrition Service on September 27, 2017. On October 24, 2018, the owner of Franchiany Supermarket Inc. was permanently denied for submitting an application for another store (located in Philadelphia) that contained false or misleading information about a substantive matter, resulting in a permanent denial under 7 CFR

§ 278.1(k)(4) and 7 CFR § 278.1(o). The owner did not request an administrative review of the permanent denial of the Philadelphia store.

As a result of the permanent denial at the Philadelphia store, the Retailer Operations Division issued a letter dated October 24, 2018 withdrawing the authorization of Franchiany Supermarket Inc. for a period of one year.

In a letter postmarked November 3, 2018, the Appellant requested an administrative review of the Retailer Operation Division's decision to withdraw the SNAP authorization of Franchiany Supermarket Inc. for a period of one year. The request for review was granted and implementation of the withdrawal was held in abeyance pending completion of this review.

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 found 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(l) provides the authority upon which FNS shall withdraw the SNAP authorization of any firm if it fails to maintain established eligibility criteria.

7 CFR § 278.1(l)(1) states, in part:

FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons:

- (i) The firm's continued participation in the program will not further the purposes of the program
- (iv) The firm fails to maintain the necessary business integrity to further the purposes of the program Such firms shall be withdrawn for lack of business integrity for periods of time in accordance with those stipulated in paragraph (k)(3) of this section for specific business integrity findings

7 CFR § 278.1(k)(3)(vi) states:

Firms for which any other evidence exists which reflects negatively on the business integrity or business honesty of the owners, officers or managers of the firm as specified in § 278.1(b)(3)(vi) shall be denied for a period of one year from the effective date of the denial.

7 CFR § 278.1(b)(3) states:

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 ...

(vi) Commission of any other offense indicating a lack of business integrity or business honesty of owners, officer or managers of the firm that seriously and directly affects the present responsibility of a person.

APPELLANT'S CONTENTIONS

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

- The owner does not agree with the decision of the Retailer Operations Division and requests an administrative review.
- The store needs further details on why its business integrity is being questioned as its name and reputation is indispensable.

The preceding may represent only a brief summary of the 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.

ANALYSIS AND FINDINGS

The case record reflects that the owner of Franchiany Supermarket Inc. also owned another store located in Philadelphia and applied for SNAP authorization. The Retailer Operations Division determined that the application submitted by the owner for the Philadelphia store contained false and misleading information of a substantive manner. As a result, the owner's Philadelphia store was permanently denied in a letter dated October 24, 2018. This action is not subject to further review as the owner did not submit a request for administrative review of the permanent denial of the Philadelphia store.

The Retailer Operations Division determined that the permanent denial of the Philadelphia store due to falsification also negatively impacted the business integrity of the owner at the Appellant store, Franchiany Supermarket Inc. Therefore, in another letter dated October 24, 2018, the Retailer Operations Division withdrew the authorization of Franchiany Supermarket Inc. for a period of one year.

The SNAP regulation at 7 CFR § 278.1(l)(1)(iv) states that FNS shall withdraw the authorization of any firm authorized to participate in the program if that firm fails to maintain the necessary business integrity to further the purposes of the program. Providing false or misleading information in an application for a different store does have a negative impact on the business

integrity of the owner at her authorized store. 7 CFR § 278.1(l)(1)(iv) and 7 CFR § 278.1(k)(3)(vi) require that firms for which any other evidence exists which reflects negatively on the business integrity or business honesty of the owners, officers or managers of the firm, as specified in 7 CFR § 278.1(b)(3)(vi), shall be withdrawn for a period of one year.

A review of the case record documents that the Retailer Operations Division correctly followed SNAP regulations when it withdrew the authorization of Franchiany Supermarket Inc. for one year.

CONCLUSION

Based on the analysis above, the decision by the Retailer Operations Division to withdraw the SNAP authorization of Franchiany Supermarket Inc. is sustained. The regulations clearly state the criteria that a store must meet in order to be authorized for the SNAP. There are no exceptions to these requirements. In accordance with 7 CFR § 278.1(k)(3)(vi), the Appellant is withdrawn for a period of one year.

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, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.

RONALD C. GWINN
Administrative Review Officer

February 27, 2019