

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

7 USC 2018 (b)(6)&(b)(7)(c),)	
Good Short Stop Inc.,)	
Appellant,)	
)	Case Number: C0194445
v.)	
)	
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 a finding that the initial decision by the Retailer Operations Division (Retailer Operations) to deny the application of Good Short Stop Inc. (Appellant) for three years to participate in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed.

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.1(b)(3)(iii) and 7 CFR § 278.1(k), in its administration of the SNAP when it denied the application of Appellant to participate in the SNAP as an authorized retailer by letter dated September 28, 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

Retailer Operations received an electronic application from Appellant for SNAP authorization dated August 6, 2016. By letter dated August 22, 2016, Retailer Operations requested additional information to process Appellant’s application. Retailer Operations denied Appellant’s application to participate as an authorized retailer in the SNAP, in accordance with 7 CFR § 278.1(b)(3)(iii) because the firm was found to be circumventing a period of disqualification through a purported transfer of ownership. Appellant is the daughter of a permanently disqualified store owner. Per 7 CFR § 278.1(k)(3)(iii) of the SNAP regulations, “Firms for which evidence exists of an attempt to

circumvent a period of disqualification, . . . and program regulations shall be denied for a period of three years from the effective date of denial.”

The owner appealed Retailer Operations’ decision by letter dated October 3, 2016, and requested administrative review of this action. The appeal was granted by letter dated October 11, 2016. The owner provided a copy of the bill of sale, a sales agreement and a New York liquor license.

This office received an email dated October 13, 2016, from [7 USC 2018 (b)(6)&(b)(7)(c)] [7 USC 2018 (b)(6)&(b)(7)(c)]. stating: “My client . . . has not had any adverse action. Please explain this adverse action . . .” An email response was provided October 13, 2016 that [7 USC 2018 (b)(6)&(b)(7)(c)], if counsel, should provide a signed release from the owner allowing communications on this matter with this office.

Current counsel, by email dated October 21, 2016, provided a written designation dated October 14, 2016 from [7 USC 2018 (b)(6)&(b)(7)(c)] to represent her. By email dated October 27, 2016, counsel was provided an extension to reply to this matter to November 10, 2016. On October 27, 2016, by email, this office provided counsel an attachment of the documents submitted by the owner to this office when she requested review. To date, no additional information has been provided.

STANDARD OF REVIEW

In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. That means the 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 argument 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, 7 USC § 2018 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Section 278.1(b)(1) establishes the authority upon which the application of any firm to participate in the SNAP may be denied if it fails to meet established eligibility requirements.

7 CFR § 278.1 (b)(3) provides, in relevant part, “*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: (iii) Evidence of an attempt by the firm to circumvent a period of disqualification . . . and program regulations.”

7 CFR § 278.1(k) *Denying authorization* reads, in 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: (iii) Firms for which evidence exists of an attempt to circumvent a period of disqualification . . . and program regulations shall be denied for a period of three years from the effective date of denial.”

APPELLANT'S CONTENTIONS

In the written request for review the owner contends:

- I have enclosed the bill of sales and sales agreement between All Good Mart Inc. and Good Short Stop Inc. at 720 North Goodman Street, Rochester, NY.
- I need to find out what has happened and, most importantly, what must be done to correct the deficiencies.
- The original application was done by someone else and I have no copies of what was sent to USDA and therefore can't determine what the problem is.

ANALYSIS AND FINDINGS

It is important to clarify for the record that the purpose of this review is to validate or to invalidate the initial determination of Retailer Operations, and as such it is limited to consideration of the relevant facts and circumstances at the time of the decision. The authorization of a store to participate in the SNAP must be in accord with the Act and the Regulations, as amended; those requirements of law cannot be waived.

On review, the record shows that since March 2007, Appellant's father is a permanently disqualified SNAP retailer, his store disqualified at the same store address as Appellant. The record shows that Appellant was bought or transferred from [7 USC 2018 (b)(6)&(b)(7)(c)] on May 18, 2016. The sales agreement advanced by the owner shows that the owner's father [7 USC 2018 (b)(6)&(b)(7)(c)] is the signatory guarantor of the buyer, and that [7 USC 2018 (b)(6)&(b)(7)(c)] is "responsible for past debts including but not limited to Sales tax, lottery, and World Pay. [7 USC 2018 (b)(6)&(b)(7)(c)] is the guarantor and responsible for the above." Furthermore, Appellant submitted a lease showing [7 USC 2018 (b)(6)&(b)(7)(c)] is the landlord of the store property. The lease also shows the landlord and Appellant applicant share the same home address.

The SNAP regulations, enunciated at 7 CFR § 278.1(k) [7 U.S.C. 2018 (b)(7)(e)] provide for the denial of applicant firms to participate in the SNAP on the basis of a number of reasons; one of which is an attempt to avoid or circumvent a period of disqualification. In the matter currently under review, Appellant's owner is the daughter of a previously permanently disqualified store owner and store located at the very same location. Furthermore, the permanently disqualified father, [7 USC 2018 (b)(6)&(b)(7)(c)], is the landlord of the store property and under the terms of the sales agreement and the bill of sale both dated May 18, 2016, he is the guarantor of past debts.

The evidence in the record does not support that Appellant has acquired the store via a bona fide sale or transfer of ownership. Rather the record supports that there is sufficient evidence to determine that Appellant's owner is attempting to circumvent the period of disqualification imposed upon her father. That Appellant has a State liquor license in the name of "GOOD SHORT STOP INC" does not provide sufficient basis for reversing or mitigating the denial action imposed.

CONCLUSION

After review of all the pertinent documentation, and based on the discussion herein, the initial decision by Retailer Operations to deny the application of Appellant to participate in the SNAP for a period of three years from the effective date of denial is sustained. Per 7 CFR § 278.1(k)(3)(iii), Appellant may not reapply for SNAP authorization as a retail food store for a minimum period of three years from the effective date of the denial.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 USC § 2023) and to Section 279.7 of the regulations (7 CFR § 279.7) with respect to applicable rights 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 the Appellant's owner resides or is 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 (FOIA), 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.

/s/

MADELINE VIENS
ADMINISTRATIVE REVIEW OFFICER

November 23, 2016
DATE