

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

Green Village Meat Farm Corp,

Appellant,

v.

Case Number: C0151907

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the USDA that there is sufficient evidence to support that the Retailer Operations Division properly imposed a permanent disqualification of Green Village Meat Farm Corp as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a permanent disqualification against Green Village Meat Farm Corp.

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 USDA conducted an investigation of the compliance of Green Village Meat Farm Corp with Federal SNAP law and regulations from April 2012 through June 2012. The investigation report documents that a clerk at Green Village Meat Farm Corp exchanged SNAP benefits for cash during two (2) undercover compliance visits. The buying or selling of SNAP benefits for cash or consideration other than eligible food is trafficking as defined under 7 CFR § 271.2.

As a result of the evidence compiled from this investigation, the Retailer Operations Division informed the Appellant, in a letter dated May 30, 2013 that it was charged with violating the terms and conditions of the SNAP regulations. The letter stated, in relevant part, that:

Your firm is charged with trafficking, as defined in Section 271.2 of the SNAP regulations. As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for the trafficking violation(s) ... is permanent disqualification.

The charge letter also stated that:

...under certain conditions, FNS may impose a civil money penalty (CMP) of up to \$59,000.00 in lieu of permanent disqualification of a firm for trafficking. The SNAP regulations, Section 278.6(i), list the criteria that you must meet in order to be considered for a CMP. If you request a CMP, you must meet each of the four criteria listed and provide the documentation as specified within 10 calendar days of your receipt of this letter.

In response to the charge letter, the Appellant, through counsel, requested information under the Freedom of Information Act (FOIA). After receiving the agency's official FOIA response, the Appellant then filed a FOIA appeal. As a result of the FOIA and FOIA appeal, the Retailer Operations Division held any further adverse action in abeyance until the FOIA appeal was completed.

The Appellant, through counsel, responded to the 2013 charges in a faxed letter dated August 3, 2017. The Appellant stated that the store had used all efforts to comply with the SNAP regulations and that any alleged actions of noncompliance were outside the scope of authority for the employees that committed them. The Appellant also stated that the store had no knowledge of any violations and gained no benefit from them and that it would be unfair to permanently disqualify the store under these circumstances.

In a letter dated August 21, 2017, a store owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), stated that Green Village Meat Farm Corp had terminated its lease and was no longer doing business. The letter requested that the store's SNAP authorization be cancelled. It should be noted that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) became an owner of Green Village Meat Farm Corp after the violations and that this permanent disqualification action does not impact his ability to participate in the SNAP as a store owner. In fact, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was subsequently authorized as an owner of a new store at the same location as Green Village Meat Farm Corp.

After giving consideration to the evidence and the Appellant's response, the Retailer Operations Division informed the Appellant, by letter dated August 25, 2017, that Green Village Meat Farm Corp was permanently disqualified from participation in the SNAP. The letter also stated that the Appellant was not eligible for a trafficking CMP as the Appellant did not submit sufficient evidence to demonstrate that the firm had established and implemented

an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked September 1, 2017, the Appellant requested an administrative review of the permanent disqualification determination. The request for administrative review was granted.

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, would 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 and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, in part:

*... a disqualification under subsection (a) shall be ... **permanent upon ... the first occasion** or any subsequent occasion of a disqualification based on the purchase of coupons or **trafficking** in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards [Emphasis added.]*

7 CFR § 278.6(e)(1)(i) states:

FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, in part:

***Trafficking** means the buying or selling of ... [SNAP] benefits for cash or consideration other than eligible food*

7 CFR § 278.6(a) states, in part:

FNS may disqualify any authorized retail food store ... if the firm fails to comply with

the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations

7 CFR § 278.6(b)(2) states, in part:

*(ii) Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence as specified in § 278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). **This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).** [Emphasis added.]*

*(iii) **If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty.** [Emphasis added.]*

SUMMARY OF CHARGES

During an investigation from April 2012 through June 2012, the USDA conducted eight (8) compliance visits at Green Village Meat Farm Corp. A report of the investigation was provided to the Appellant as an attachment to the charge letter dated May 30, 2013. The investigation report included Exhibits A through H which provide full details on the results of each compliance visit. The investigation report documents that SNAP violations occurred during three (3) of the eight (8) compliance visits. During two (2) of the compliance visits, a clerk exchanged cash for SNAP benefits as documented by Exhibits F and H.

APPELLANT'S CONTENTIONS

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

- Any violations committed by the clerk in Exhibits A, F and H of the investigation report were outside the scope of her duties and cannot be attributable to the store or its owner. The confidential informant through a series of interactions with the clerk managed to convince the clerk to commit acts which the clerk knew were violations. A second clerk did not commit any violations and this shows that the store does not engage and did not engage in these transactions knowingly.
- Exhibit A of the investigation report reflects that the clerk exchanged non-food items for SNAP benefits. However, the reported conversation between the confidential informant and the clerk in Exhibit A, as written by the investigator, is not logical for this type of transaction and the Appellant speculates that there was some form of flirtation, threat or other motivating factor for the clerk to conduct such a transaction.

- Exhibit B of the investigation report states that the compliance visit was for familiarization; however, an attempt to purchase ineligible items was made and refused. This illustrates the inaccuracy of the reports.
- In Exhibit F, the clerk exchanged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in cash and neither the clerk nor the store profited from this violation. The Appellant deduces that there was more in the conversation between the clerk and the confidential informant than what was indicated in the investigation report or worksheet notes.
- In Exhibit H, the clerk exchanged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in cash. The worksheet also indicates that the clerk “added an undisclosed amount to the total.” This implies that the store made a profit. This indicates a predisposition on this investigation to write a report and conduct the investigation in such a manner as to compel a charge be brought against the store.

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

Store Owner Accountability

The Appellant states that any violations committed by the clerk in Exhibits A, F and H of the investigation report were outside the scope of her duties and cannot be attributable to the store or its owner. The Appellant further states that the confidential informant through a series of interactions with the clerk managed to convince the clerk to commit certain acts which the clerk knew were violations. A second clerk did not commit any violations and this shows that the store does not engage and did not engage in these transactions knowingly.

Although the owner was allegedly unaware and did not approve of any violations, this cannot be accepted as a valid basis for dismissing any of the charges, or for mitigating the impact of those charges. The Appellant store owner Jose A Garcia Hernandez signed the FNS application to become a SNAP authorized retailer on August 10, 2011. That application included a certification and confirmation that the owner would “accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm’s employees, paid or unpaid, new, full-time or part-time.” The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking.

Regardless of whom the owner of a store may utilize to handle store business, the owners are accountable for the proper training of staff and the monitoring and handling of SNAP benefit transactions. To allow store ownership to disclaim accountability for the acts of persons whom the owner chooses to utilize to handle store business would render virtually meaningless the

enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Lack of Profit

The Appellant states that in both Exhibit F and Exhibit H the clerk exchanged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in cash and neither the clerk nor the store profited from these transactions. Regarding this contention, whether the store or clerk made a profit off the transactions, or benefited from it in any tangible or intangible manner, is not relevant.

The SNAP regulations at 7 CFR § 278.6(e)(1)(i) clearly states that “ FNS **shall disqualify a firm permanently** [emphasis added] if personnel of the firm have trafficked as defined in § 271.2.” Under 7 CFR § 271.2 trafficking is defined as the buying or selling of SNAP benefits for cash or consideration other than eligible food. Neither the statute nor SNAP regulations require that the store must make a profit from trafficking before it can be permanently disqualified. There is no dispute that a clerk at the store exchanged SNAP benefits for cash on two occasions. Therefore, a preponderance of the evidence indicates that the Retailer Operations Division correctly determined that a permanent disqualification was the appropriate penalty in this case.

Reliability of Investigation Report

The Appellant seeks to challenge the reliability of the investigation report based on what it sees as inconsistencies either in the investigation report itself or in the underlying work papers. However, the investigation report clearly documents that cash was exchanged for SNAP benefits on two (2) separate compliance visits and that this was the basis of the permanent disqualification. In conclusion, there is no basis in the evidence to support the Appellant’s contention that the investigation report is fatally flawed.

CIVIL MONEY PENALTY

The Appellant did not timely request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR 278.6(i) even though it was informed of the right to do so in the charge letter. Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program prior to the violations. Therefore, the Retailer Operations Division’s decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

CONCLUSION

As previously stated, 7 CFR § 278.6(e)(1)(i) reads, in part, “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.” Trafficking is defined, in part, in 7 CFR § 271.2, as “the buying or selling of SNAP benefits for cash or consideration other than eligible food.” The law and regulations do not provide for a lesser period of disqualification for this violation.

Based on a review of the evidence in this case, there is no question that program violations did occur during a USDA investigation. All transactions cited in the letter of charges were conducted or supervised by a USDA investigator and all are thoroughly documented. A review of this documentation has yielded no indication of fatal errors in any of the reported findings. Rather, the investigative record is specific and accurate with regard to the dates of the violations, including the exchange of SNAP benefits for cash, and in all other critically pertinent details. Therefore, the decision to impose a permanent disqualification against the Appellant, Green Village Meat Farm Corp, is sustained.

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, 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

January 10, 2018