

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

Hacienda Navarro Carnisseria LLC,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0185673

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 disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Hacienda Navarro Carnisseria LLC (Appellant) by the Retailer Operations Division (Retailer Operations).

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 U.S.C. § 2021, 7 CFR § 278.6(a), 7 CFR § 278.6(e)(1)(i) and 7 CFR § 278.6(i) in its administration of the SNAP when it imposed a permanent disqualification against Appellant.

AUTHORITY

7 U.S.C. § 2023, and the implementing regulations at 7 CFR § 279.1, provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6, or § 278.7, may file a written request for review of the administrative action with the Food and Nutrition Service (FNS).

CASE CHRONOLOGY

By Charge letter dated March 26, 2019, Retailer Operations informed the owners that Appellant was charged with violating the terms and conditions of the SNAP regulations based on eight enumerated violations determined as the result of a USDA investigation, USDA, Office of Inspector General (OIG) investigation, with the Arizona Department of Economic Security, OIG, and the Phoenix Police Department. The owners did not reply to the Charge letter.

By Determination letter dated April 15, 2019, Retailer Operations informed Appellant that it was permanently disqualified from participation as a retail store in the SNAP in accordance with

Section 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter states that the store was not eligible for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) because the firm failed to submit evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

A letter dated April 23, 2019, was sent under the name of the store, that appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated May 2, 2019.

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 that 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 (the Act), 7 U.S.C. § 2021, and § 278 of Title 7 of the Code of Federal Regulations (CFR).

7 U.S.C. § 2021(b)(3)(B) states: "...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."

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." Trafficking is defined, in part, in 7 CFR § 271.2, means: "(1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;"

7 CFR § 278.6(b)(2)(ii) states: "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 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)."

7 CFR § 278.6(i) states: "FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking if the firm timely submits to FNS substantial evidence which

demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.”

SUMMARY OF THE CHARGES

The USDA, USDA, OIG and cooperating agencies conducted a compliance investigation of Appellant. The investigative report gives details the results of multiple compliance visits at the store. Appellant was charged with trafficking on eight enumerated dates as listed on the Charge letter of March 26, 2019, delivered per the record on March 28, 2019. The penalty for trafficking is permanent disqualification.

APPELLANT’S CONTENTIONS

The following may represent a summary of the contentions presented. However, in reaching a decision, full attention and consideration have been given to all contentions presented, including any not specifically recapitulated.

- I apologize for not being able to answer the previous letter.
- The business was an opportunity for me. My time of work was four half days or when I was needed for catering or making a special order. My husband had the rest of the time with other employees and was responsible for the account, banks, expenses, etc.
- When he was detained it was very difficult, I had to take full control of a business, and solve many problems and situations. I had to work 11 hours a day.
- I’ve been asked to write a manual of what I could do to avoid situation of risk or mismanagement which at that moment I would not have known how to answer.
- Now, I’m working seven days a week and keep track of the accounts.
- I would love for you to reconsider and in the future allow me to apply again for SNAP.
- My primary language is Spanish.

ANALYSIS AND FINDINGS

It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the decision of Retailer Operations. This review is limited to the facts at the basis of Retailer Operations’ determination at the time it was made.

The regulations establish that an authorized retail food store may be disqualified from participating in the program when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf. The Charge letter gives details of the violative exchanges of cash for SNAP benefits on eight different dates from 2016 through 2018. The regulations stipulate “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in §271.2.”

The respondent who requested administrative review, presumably an owner of the store, did not dispute that the trafficking took place. No evidence advanced to refute the charges of trafficking on eight enumerated dates. As such, the preponderance of evidence in the record supports that trafficking did occur at Appellant as charged.

CIVIL MONEY PENALTY

The regulations at Section 278.6(i) specify the criteria for a firm's eligibility for a civil money penalty in lieu of permanent disqualification for trafficking. A firm must submit a timely request for a civil money penalty that shows substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

The record supports that Appellant did not submit any evidence for a CMP in lieu of trafficking. As noted, the owners did not reply to the Charge letter. As such, Retailer Operations properly applied the applicable regulations, and denied a trafficking CMP.

CONCLUSION

The preponderance of the evidence supports that program violations did occur at Appellant. The investigative record is specific and accurate with regard to the dates of the violations. The exchange on eight occasions, by an owner and store personnel, of cash for SNAP benefits are clear violations of the regulations at 7 CFR § 271.2. These trafficking violations carry a sanction of permanent disqualification. The permanent disqualification of Appellant as a SNAP retail food store is therefore sustained.

RIGHTS AND REMEDIES

Attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023), and to 7 CFR § 279.7 of the regulations with respect to applicable rights to judicial review of this decision. 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 where Appellant's owners 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.

M. Viens
ADMINISTRATIVE REVIEW OFFICER

June 6, 2019