

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

Hajiabbas Market,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0231323

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Office of Retailer Operations and Compliance to impose a hardship civil money penalty (CMP) in lieu of a three year disqualification against Hajiabbas Market (hereinafter Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), § 278.6(e)(2 and 3), and § 278.6(f)(1) in its administration of the SNAP when it imposed a hardship CMP in the amount of \$11,000.00 against Appellant in lieu of a three year disqualification against Appellant.

AUTHORITY

According to 7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1, “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 FNS detected the unauthorized acceptance of SNAP benefits from another firm also owned by Appellant and located at 8048 N 27th Avenue in Phoenix, Arizona. FNS records showed that this firm was not authorized to participate in the SNAP and that transactions from

that firm were being processed using the SNAP license and account number assigned to the Appellant firm.

FNS issued a warning letter dated June 3, 2020, that was received by the Appellant on June 8, 2020. This letter warned the Appellant that the unauthorized firm must immediately cease and desist from accepting SNAP benefits or face fines or additional penalties. The letter also stated that unlawful redemption of SNAP benefits may negatively impact your firm's ability to accept SNAP benefits in the future. FNS records show that, despite the warning letter, Appellant's unauthorized firm continued to accept SNAP benefits in four separate transactions occurring on June 12, 2020, that were processed through the Appellant firm's SNAP license and account number.

As a result of this evidence, the Office of Retailer Operations and Compliance informed Appellant, in a letter dated September 17, 2020, that the firm was charged with violating the terms and conditions of the SNAP regulations, 7 CFR § 278.2. Specifically, that Appellant allowed its unauthorized firm to use the authorized firm's SNAP authorization to illegally accept and process EBT SNAP benefits. The letter states, in part, that the violations warrant a disqualification period of three years (Section 278.6(e)(3)(ii)). The letter also states that under certain conditions, FNS may impose a civil money penalty (CMP) in lieu of a disqualification (Section 278.6(f)(1)).”

Appellant responded to the charges in a phone call on September 21, 2020, to the Office of Retailer Operations and Compliance in which it was explained that the authorized store was redeeming with the unauthorized store in error. A cash register loaded with information from the authorized store had been moved to the unauthorized store and staff were instructed not to use it. Upon receiving the warning letter, Appellant learned that the cash register was being used and he cleared the authorized store's information from it. Appellant also stated that the unauthorized store did have a SNAP application pending.

After giving consideration to the evidence, the Office of Retailer Operations and Compliance notified Appellant in a letter dated November 23, 2020, that it determined that violations had occurred at the firm, and that a three year period of disqualification from participating as an authorized firm in SNAP was warranted. This determination letter also states that Appellant's eligibility for a hardship CMP according to the terms of Section 278.6(f)(1) of the SNAP regulations was considered and that the assessment of a hardship CMP of \$11,000.00 in lieu of a three year period of disqualification was the appropriate penalty for these violations. The hardship CMP was assessed because the Appellant firm sells a substantial variety of staple food items and the firm's disqualification would cause hardship to SNAP households.

By letter postmarked December 3, 2020, Appellant appealed the Office of Retailer Operations and Compliance's decision and requested an administrative review of this action. The appeal was granted and implementation of the sanction has been held in abeyance pending completion of this review. No subsequent correspondence was received.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means 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 untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Section 278. In particular, Sections 278.6(a) and (e)(3) establish the authority upon which a three year disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 278.2(a) states that: Coupons [i.e., SNAP benefits] may be accepted by an authorized retail food store only from eligible households... and only in exchange for eligible food... An authorized retail food store may not accept coupons from another retail food store, except that public or private nonprofit homeless meal providers may redeem coupons for eligible food through authorized retail food stores.

7 CFR § 278.6(e)(3)(ii) states that: FNS shall take action as follows against any firm determined to have violated the Act or regulations. For the purposes of assigning a period of disqualification, a warning letter shall not be considered to be a sanction. A civil money penalty and a disqualification shall be considered sanctions for such purposes. The FNS regional office shall: (3) Disqualify the firm for 3 years if it is to be the first sanction for the firm and the evidence shows that: (ii) Any of the situations described in paragraph (e)(2) of this section occurred. 7 CFR § 278.6(e)(2)(v) states: Personnel of the firm knowingly accepted coupons from an unauthorized firm or an individual known not to be legally entitled to possess coupons.

7 CFR § 278.6(f)(1) states that: FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm's disqualification would cause hardship to SNAP households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices. FNS may disqualify a store which meets the criteria for a CMP if the store had previously been assigned a sanction. A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

APPELLANT'S CONTENTIONS

The following may represent a 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:

The unauthorized store was redeeming in error. A cash register loaded with information from the authorized store had been moved to the unauthorized store and the owner told staff not to use it;

- Upon receiving the cease and desist letter, the owner found that the register was being used and he cleared the stored information from the authorized store from it. The unauthorized store is currently pending authorization as a SNAP retailer;
- The owner was informed that the FNS number was still being used even when the other store is eligible for SNAP and has its own FNS number;
- The owner called his payment processor and was told that the error was made from their part and they did not update the system and remove the FNS number when requested by the owner; and,
- The owner tries to keep his business up and running during these difficult times and asks for help as we all know running a business is difficult and some small errors like this may happen.

Appellant submitted no evidence or other rationales in support of these contentions.

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 earlier decision of the Office of Retailer Operations and Compliance. This review is limited to what circumstances were at the basis of the Office of Retailer Operations and Compliance action at the time such action was made. Both the SNAP retailer application and retailer reauthorization application contain a certification page whereby applicants must confirm their understanding of and agreement with SNAP retailer requirements in order to complete the application/reauthorization process. Store ownership did certify its understanding and agreement to abide by program rules and regulatory provisions when it initially applied to become a SNAP retailer. The ownership remains liable for all violative transactions handled by store personnel, whether paid or unpaid, new, full-time or part-time regardless of the amount of time the owner(s) is present at the subject firm. The certification is clear that store ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP. This certification also states that SNAP authorization may not be transferred to new owners, partners, or corporations and that an unauthorized individual or firm accepting or redeeming SNAP benefits is subject to substantial fines and administrative sanctions.

SNAP regulations specifically prohibit the acceptance of SNAP benefits by unauthorized firms. In addition to this prohibition being stated on the SNAP retailer application certification page, as previously discussed, the “SNAP Retailer Training Guide” is provided to retailers upon their authorization and also specifically states, “You must obtain a SNAP permit for each store location where you want to accept SNAP benefits.” Additionally, the Appellant firm’s SNAP license clearly states, “THIS PERMIT IS VALID ONLY FOR THE OWNER(S)/OFFICER(S) LISTED AND OPERATING AT THE LOCATION ABOVE.” Therefore, it is very unlikely that store ownership would not be aware that its actions were in violation of SNAP regulations. This is further supported by the fact that the store owner previously applied for SNAP authorization for the unauthorized firm.

FNS records show that an unauthorized firm owned by Appellant was accepting and processing SNAP benefits using the SNAP license and account number of Appellant's authorized firm. Appellant was notified of this in a warning letter issued by FNS, but days after receipt, the unauthorized firm was still accepting SNAP benefits. The acceptance of SNAP benefits by unauthorized firms is a violation of SNAP regulations and SNAP regulations explicitly state that FNS shall disqualify a store for a three year period if it is to be the first sanction for the firm.

Based on the discussion above, there is not any valid basis for dismissing the charges or for mitigating the penalty imposed. The regulations do allow SNAP retailers to pay a hardship CMP, if eligible, as explained in the next section.

CIVIL MONEY PENALTY

Appellant is not eligible for a trafficking CMP as these only apply in cases of permanent disqualifications.

A hardship CMP as an optional penalty in lieu of a three year disqualification was considered in this case. Such a finding is appropriate only if a store sells a substantial variety of staple food items and its disqualification would create a hardship to SNAP households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices. FNS records show the Appellant firm is a well-stocked medium grocery store offering specialty and international food items that are not readily available at any of the four comparably sized or larger SNAP retailers located within a one mile radius of Appellant's location. In order to avoid hardship to SNAP households, a hardship CMP was determined to be the appropriate penalty for the violations.

SNAP regulations at 7 CFR § 278.6(g) state that the CMP amount is calculated using a formula which includes the SNAP redemption volume of the store during the 12 months prior to the firm being notified of the violations that led to the store's disqualification. Modifications to the CMP may occur only when there is an error in calculation or the amount exceeds the agency limit. The Office of Retailer Operations and Compliance correctly determined that the initial calculated amount of the CMP was \$102,492.00. The initial calculated CMP amount is greater than the agency limit of \$11,000 per violation therefore, the hardship CMP amount was correctly assessed at \$11,000.00 which is the agency limit per violation multiplied by the number violations (\$11,000.00 x one violation).

CONCLUSION

A review of the evidence in this case supports that the program violations at issue did occur as charged and as admitted to by store ownership. As noted previously, the charges of violations are based on USDA FNS records and a review of this documentation has yielded no indication of error or discrepancy in any of the reported findings. Thus, the determination by the Office of Retailer Operations and Compliance to impose a hardship CMP in the amount of \$11,000.00 in

lieu of a three year period of disqualification from participating as an authorized retailer in SNAP is sustained. In accordance with the Food and Nutrition Act of 2008, as amended, and the regulations there under, this penalty shall become effective thirty (30) days after receipt of this letter. In addition, you must submit a collateral bond or irrevocable letter of credit in the amount of \$2,847.00 to USDA, Food and Nutrition Service, 8030 Excelsior Dr, Ste 300, Madison, WI 53717-1950. Failure to pay the hardship CMP or to comply with the bond/letter of credit requirement will result in your disqualification for a period of three years.

Appellant may contact the FNS Financial Management Retailer Repayment Team at (703) 605-0483 to discuss payment options, including an installment plan, or follow the instructions in the Office of Retailer Operations and Compliance's letter dated November 23, 2020.

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. Please note that the judicial filing timeframe is specified in the Act, and this office is unable to grant extensions.

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.

ROBERT T. DEEGAN
ADMINISTRATIVE REVIEW OFFICER

January 25, 2021