

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

Halal Way Market,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0232708

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that FNS’s Retailer Operations Division appropriately denied the application of Halal Way Market (hereinafter “Appellant”) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP). The denial period shall be for six months from the date of denial.

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, in its administration of SNAP when it denied the application of Halal Way Market for a period of six months.

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 originally applied to participate as a retailer in SNAP on April 14, 2020. As part of the Appellant’s SNAP application, it provided evidence which showed that the firm’s current owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), took over ownership of the store in August 2018. At the time of the ownership change, the previous owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was an authorized SNAP retailer. Although this change of ownership was required to be reported to FNS, it was not reported and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) continued to use 5 U.S.C. § 552 (b)(6) & (b)(7)(C) SNAP authorization number to accept SNAP benefits. Because 5 U.S.C. § 552 (b)(6) &

(b)(7)(C) had not been authorized by FNS as a SNAP retailer, his firm's acceptance of SNAP benefits was a violation of program regulations.

The ownership information in this case is critical because of an undercover investigation which took place at the store prior to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) SNAP application, but after the change of ownership. The investigation in question took place between December 2, 2019 and December 4, 2019, and was conducted by FNS in an effort to ascertain the firm's compliance with Federal SNAP laws and regulations. The investigation report documented that personnel at Halal Way Market accepted SNAP benefits in exchange for expensive ineligible merchandise on three consecutive occasions, including two kettles and a two-piece coffee pot set. The sale of such items is a violation of program regulations.

In a letter dated December 17, 2019, the Retailer Operations Division charged Halal Way Market with violating SNAP regulations at 7 CFR § 278.2(a). The charge letter stated that the acceptance of SNAP benefits in exchange for ineligible merchandise warranted a disqualification from SNAP for a period of six months pursuant to 7 CFR § 278.6(e)(5). The letter further stated that under certain conditions and in accordance with § 278.6(f)(1), FNS may impose a civil money penalty (CMP) in lieu of disqualification. Because FNS had not been made aware that an ownership change had occurred at the store, the letter was addressed to the previous owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Agency records show that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) did not reply to the charge letter.

After further evaluating the evidence in the case, the Retailer Operations Division determined that SNAP violations did occur as outlined in the letter of charges and that a CMP in lieu of a six-month disqualification should be imposed. In a letter dated January 16, 2020, the Retailer Operations Division informed 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of this sanction determination. By April 8, 2020, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) had not made any kind of response to the agency's letters or made any effort to pay the CMP. Accordingly, the Retailer Operations Division withdrew received the firm's SNAP authorization. The next day, April 9, 2020, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) contacted the Retailer Operations Division by telephone and informed them that he had sold the store a few years earlier and that he was not the owner when the violations occurred. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) provided FNS with a copy of a Bill of Sale dated August 21, 2018, as evidence of this transaction. A short time later, on April 14, 2020, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) submitted his SNAP application.

Upon receiving proof that a change of ownership had occurred prior to the investigation at the store, the Retailer Operations Division determined that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) unauthorized acceptance of SNAP benefits and subsequent program violations during the investigation constituted a lack of business integrity in accordance with SNAP regulations at 7 CFR § 278.1(b)(3)(iv). As a result, the Appellant's SNAP application was denied for a period of six months pursuant to 7 CFR § 278.1(k)(3)(iv) and § 278.6(e)(5). A denial letter, dated June 30, 2020, was delivered to the Appellant on July 7, 2020. A copy of the December 2019 investigation report was included with the denial letter.

In a letter postmarked July 14, 2020, the Appellant requested an administrative review of the Retailer Operations Division's decision. The request was granted.

STANDARD OF REVIEW

In an appeal of adverse action, such as an application denial, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that 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 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(k) and § 278.1(b)(3) provide the authority upon which FNS shall deny the authorization of any firm applying for participation in SNAP if it fails to meet established business integrity criteria.

7 CFR § 278.1(k) reads, in relevant 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:

(iv) Firms for which evidence exists of prior SNAP violations by owners, officers, or managers of the firm for which a sanction had not been previously imposed and satisfied shall be denied for a period of time equivalent to the appropriate disqualification period for such previous violations, effective from the date of denial.

7 CFR § 271(b)(3) states, in relevant part:

(3) 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:

(iv) Previous SNAP violations administratively and/or judicially established as having been committed by owners, officers, or managers of the firm for which a sanction had not been previously imposed and satisfied.

7 CFR § 278.2(a) states, in part:

[SNAP benefits] may be accepted by an authorized retail food store only from eligible households...only in exchange for eligible food.

7 CFR § 271.2 states, in part:

Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot food and hot food products prepared for immediate consumption...

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.... Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for [a] period of 12 months to 10 years for a firm's second sanction; and disqualification shall be permanent for a disqualification based on paragraph (e)(1) of this section. [Emphasis added.]

7 CFR § 278.6(e) states, in part:

FNS shall take action as follows against any firm determined to have violated the Act or regulations...The FNS regional office shall:

(5) Disqualify the firm for 6 months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as but not limited to the sale of common nonfood items due to carelessness or poor supervision by the firm's ownership or management.

APPELLANT'S CONTENTIONS

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

- Appellant contests the denial decision because there are incorrect facts associated with the undercover investigation.
- There are multiple Middle Eastern markets around Snohomish County. It is highly possible that the investigator visited a store different than Halal Way Market.
- FNS is mistaken in its claim that the firm sold ineligible items through EBT. Appellant always makes sure to never sell products such as kettles through EBT. When the owner's son works at the store, he will call the owner to verify that he is processing an EBT transaction correctly.
- The information in the investigation report does not match the actual circumstances at the store. For instance, the age and weight of the clerk as described by the investigator do not match the description of the owner's sons, who are the only people besides the owner who work at the store.
- The items purchased by the investigator are either not sold at the store or are sold at different prices than what is listed in the investigation report. For example, the report says that a 17-ounce package of Al Madina dates was purchased. But the store only sells the 36-ounce package. The prices of items such as biscuits, coffee, black pepper, and bulgur are different than what the investigator reported.
- Appellant owner would like full transparency in the investigation and requests copies of the receipts of the transactions so that he can verify that what was stated in the report is true and correct.

In support of its contentions, the Appellant submitted seven undated photographs of kettles and other merchandise at various prices.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a final decision, full attention was given to all contentions presented, including any not specifically summarized or explicitly referenced herein.

With regard to the Appellant's request for copies of the receipts from the investigation, it should be noted that this review has no authority to provide such information. Such a request must be made in accordance with the Freedom of Information Act (FOIA). On July 24, 2020, the administrative review officer contacted the Appellant by e-mail and explained that a request for information must be made directly with the agency FOIA office. It was further explained to the Appellant that if it pursued a FOIA request, the administrative review would be held in abeyance pending the agency's response to the FOIA request. Accordingly, the Appellant elected to not pursue a FOIA request.

ANALYSIS AND FINDINGS

The purpose of this review is to either validate or invalidate the denial determination made by the Retailer Operations Division. The decision made by this review is based on the relevant facts as they existed at the time the Retailer Operations Division rendered its decision.

The primary issue under consideration is whether or not the Appellant has the necessary business integrity and reputation, in accordance with regulation, to further the purposes of SNAP. The USDA holds that the business integrity of a firm is critically important to the effective operation of SNAP. Therefore, the criteria outlined in the regulations focus on the business integrity and reputation of the owners, officers, and managers of firms seeking SNAP authorization. Prior actions relating to business integrity reflect on the ability of a firm to effectuate the purposes of SNAP and abide by the rules governing the program.

A review of the record in this case clearly shows that program violations did occur at Halal Way Market during an undercover investigation that took place in December 2019. The record shows that the Appellant firm sold two stainless steel kettles priced at \$16.99 each, and a two-piece coffee pot set priced at \$15.00 – all of which are ineligible for purchase with SNAP benefits. The investigator took photographs of these items moments after purchase and the price tags are clearly visible. Further the receipts from the transactions plainly identify the name of the store as Halal Way Market and the address on the receipts match the store address. Based on a preponderance of the evidence, this review finds it highly unlikely that the investigator visited the wrong store during this investigation.

The Appellant has argued that the investigator's description of the store clerk does not match the actual employees of the firm and claims that prices listed in the report are different than the actual prices.

Regarding the investigator's physical description of the clerks, the Appellant has offered no counterevidence to support its assertions that the investigator's descriptions were inaccurate. It should also be noted that physical descriptions of store personnel are based on an investigator's recollection following a brief interaction with a clerk and are unlikely to be exact. Estimating one's age or weight is particularly subjective and can vary from investigator to investigator. For

example, in this case the investigator estimated that the clerk was around 30 to 35 years old, but the Appellant claims that one son is in his early twenties and the other is in high school. The investigator estimated that the clerk weighed between 170 and 180 pounds, while the Appellant claims that each of his sons weigh less than 160 pounds.

In this case, the investigator's estimates were off by only a few years and a few pounds. This review finds such differences to be insignificant and of little overall relevance to this matter.

As to inventory pricing, the Appellant has offered no evidence to show what products were available in the store in December 2019 when the investigation occurred and has offered no pricing evidence from that time period. The Appellant did submit a few undated photographs, but these pictures were almost certainly taken after the Appellant received the denial letter in July 2020, and thus cannot be considered an accurate representation of inventory and pricing conditions as they existed in December 2019.

In this case, the preponderance of the evidence leans decidedly in the agency's favor. As such, it is the determination of this review that SNAP violations did occur as charged and a penalty is warranted.

It is important to note that SNAP authorization may not be transferred between owners. Every new owner who wishes to participate in SNAP must apply for authorization for each location he or she owns. The Appellant owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), has not, at any time, denied that his store was accepting SNAP benefits during a period of time when it was not authorized to do so. Between August 2018 and April 2020, the Appellant was using the prior owner's authorization number as its own. This is expressly prohibited by regulation at 7 CFR § 278.2(a) and § 278.4(a) and a firm that engages in this activity is subject to fines and/or administrative sanctions. Further, the investigation described above shows that at least some of the SNAP benefits received by the firm were accepted in exchange for ineligible non-food items, which is also prohibited by regulation. These actions call into question the business integrity of the owner, and a penalty is warranted. The regulations at 7 CFR § 271(b)(3) and (k)(3) state that if there is evidence of prior SNAP violations by owners, officers, or managers of the firm for which a sanction had not been previously imposed and satisfied, the SNAP application shall be denied for a period of time equivalent to the appropriate disqualification period for such a violation. Regulations at 7 CFR § 278.6(e)(5) state that this first-time violation of exchanging ineligible items for SNAP benefits requires a sanction of six months.

Accordingly, it is the finding of this review that a denial of the firm's SNAP application for a period of six months was appropriate and fully complies with program regulations.

CONCLUSION

The documentation in the case record clearly shows that the Appellant committed program violations during a time when the firm's ownership was not authorized to accept SNAP benefits. These violations included the sale of expensive, ineligible non-food items in exchange for SNAP benefits. These offenses show a lack of business integrity and reputation to such a degree that the Appellant does not presently further the purposes of the program. Accordingly, the decision by

the Retailer Operations Division to deny the application of Halal Way Market to participate as a retailer in SNAP is sustained.

In accordance with regulations at 7 CFR § 271(b)(3) and § 278.6(e)(5), the denial period in this case shall last for six months from the date of denial, which is July 1, 2020 – the date the denial decision was approved by Retailer Operations Division officials. At the end of the six-month period, the Appellant may reapply for program authorization.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt of this decision. The judicial filing timeframe is mandated by the Act, and this office cannot grant an extension.

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.

JON YORGASON
Administrative Review Officer

August 25, 2020