

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

Halsted Groceries Inc,

Appellant,

V.

Retailer Operations Division,

Respondent.

Case Number: C0223489

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 Retailer Operations Division to impose a permanent withdrawal of authorization of Halsted Groceries Inc., (hereafter Appellant) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(l)(1)(iv), § 278.1(b)(3)(i), and § 278.1(k)(3), in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it withdrew Appellant’s authorization to participate as a retailer in SNAP on September 18, 2019.

AUTHORITY

7 U.S.C. § 2023 and the 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 FNS requires that stores be reauthorized on a set schedule. As part of that routine reauthorization process, the Appellant submitted a reauthorization application dated September 10, 2019. In a letter dated September 18, 2019, Retailer Operations Division permanently withdrew Appellant’s authorization to participate as a retailer in SNAP. The record reflects that Appellant answered “No” to question 4 “(Persons who were owners or managers of any store that has been permanently disqualified from SNAP or WIC are financially involved or have other operational interest in this store) and question 6 “(One or more owners or managers of this firm are related by birth or marriage to an owner or manager of a firm that is or has been disqualified

from SNAP or WIC)” on the SNAP application. Retailer Operations Division conducted a review of documentation provided by Appellant and determined that Appellant submitted a SNAP application containing false or misleading information of a substantive nature. The September 18, 2019, determination letter states in part:

“It is the determination of FNS that you knowingly submitted a SNAP application that contained false information of a substantive nature regarding your eligibility to participate in SNAP. SNAP regulations at 278.6(e)(1)(iii) provide that any firm found to have provided false information on their application relating to such matters shall be withdrawn permanently.”

In a letter dated October 2, 2019, Appellant, through counsel, appealed the Retailer Operations Division’s decision and requested an administrative review of this action. The appeal was granted and implementation of the permanent withdrawal has been held in abeyance pending completion of this review.

STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving by a clear 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

The controlling statute in this matter is contained in the Food & Nutrition Act of 2008¹, as amended, 7 U.S.C. § 2018 and Section 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.1(l)(1) establishes the authority upon which the authorization of any firm to participate in SNAP may be withdrawn if it fails to meet established eligibility requirements.

7 CFR § 278.1(l)(1) reads, in part, “FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons.... (iv) The firm fails to maintain the necessary business integrity to further the purposes of the program, as specified in paragraph (b)(3) of this section. Such firms shall be withdrawn for lack of business integrity for periods of time in accordance with those stipulated in paragraph (k)(3) of this section for specific business integrity findings:...”

7 CFR § 278.1(k) reads, in part, “FNS shall deny the application of any firm if it determines that: (4) The firm has filed an application that contains false or misleading information about a substantive matter, as specified in § 278.6(e). Such firms shall be denied authorization for the periods specified in § 278.6(e)(1) or § 278.6(e)(3); ...”

7 CFR § 278.1(o) reads, in part, “*Applications containing false information.* The filing of any application containing false or misleading information may result in the denial of approval for

¹ Effective October 1, 2008, the Food Stamp Act of 1977 was superseded by the Food and Nutrition Act of 2008, as amended through P.L. 110-246

participation in the program, as specified in paragraph (k) of this section, or disqualification of a firm from participation in the program, as specified in § 278.6, and may subject the firm and persons responsible to civil or criminal action.”

7 CFR § 278.6(e)(1)(iii) reads, in part, “(1) Disqualify a firm permanently if; (iii) It is determined that personnel of the firm knowingly submitted information on the application that contained false information of a substantive nature that could affect the eligibility of the firm for authorization in the program, such as, but not limited to, information related to, ... (F) Ownership of the firm...”

FOIA REQUEST

Counsel submitted a FOIA request with its October 2, 2019, administrative review request. It is noted that Counsel previously submitted and received a response from the FOIA office on October 11, 2019, therefore the FOIA request submitted with the administrative review was closed as complete.

APPELLANT’S CONTENTIONS

In response to the Retailer Operations Division permanent withdrawal letter and in the request for administrative review, the Appellant, through counsel, made the following summarized contentions, in relevant part:

1. My client firm does not deny the contents of the noted Affidavit, however, one must note that the probability of intentional submission of false information is mitigated by the passage of 14 years since the Department’s disqualification of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) father and his father’s partner. The son’s knowledge of the action and its significance certainly is somewhat muted by the years passed.
2. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) only connection to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) business was as a secondary signatory on the business checking account. There is no evidence that either participated in the operation of the business or ever received any financial benefit from it.
3. Most importantly my client firm has operated in a responsible and professional manner since its inception and has not been disciplined by FNS in it more than 10 years of existence. I urge you to reconsider reducing the period of disqualification for SNAP participation to a period of three years pursuant to 7 CFR 278.6(e)(3).

The preceding may represent only a brief 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.

ANALYSIS AND FINDINGS

With regards to Appellant’s contentions, through counsel, 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

Retailer Operations Division. That is, the earlier decision was either correct or incorrect at the time it was made. Halsted Groceries Inc., under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is permanently disqualified in accordance with 7 CFR 278.1(o) due to evidence of filing an application containing false or misleading information; specifically, affirming "no" to Statements 4 and 6 on the Reauthorization Affidavit. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) father, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was permanently disqualified in 2005 as an owner of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The record reflects that the other permanently disqualified owner of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is financially involved in the current business, as he is a verified bank account holder for Halsted Groceries Inc. and therefore has access to funds generated by SNAP.

The record also reflects that Appellant provided correspondence received on September 10, 2019, from 5 U.S.C. § 552 (b)(6) & (b)(7)(C), stating that 5 U.S.C. § 552 (b)(6) & (b)(7)(C), Appellant's father, is part owner of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), with 5 U.S.C. § 552 (b)(6) & (b)(7)(C), President, which is also the landlord for Halsted Groceries Inc.

Appellant, through counsel, contends that it is noted that the firm has operated in a responsible and professional manner since its inception and has not been disciplined by FNS in more than 10 years of existence. Counsel requested reconsideration in reducing the period of disqualification for SNAP participation to a period of three years pursuant to 7 CFR 278.6(e)(3). With regard to this contention, 278.6(e)(3) pertains to a firm committing violations of SNAP such as the sale of common nonfood items on SNAP, prior actions taken by FNS to warn firms about the possibility that violations are occurring; or firms that are communal dining facilities, drug addiction or alcoholic treatment and rehabilitation programs, group living arrangements, homeless meal providers, meal delivery services or shelters. The section in questioned by Counsel reads, in part: "(vi) ...false information of a substantive nature related to the ability of FNS to monitor compliance of the firm with FSP requirement, such as, but not limited to, information related to: ... (C) Financial institution information." This refers to FNS' ability to monitor the firm's compliance in the program and does not pertain to a firm knowingly submitting information on the application that contain false information of a substantive nature that could affect the eligibility of the firm for authorization in the program. Therefore this regulatory citation is considered invalid in this case. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is financially involved in the business, as a verified bank account holder for Halsted Groceries Inc., and as a previously permanently disqualified retailer, is therefore ineligible to for SNAP participation.

The regulations have clearly set out the position of the agency with regard to the business integrity of participating retailers. Therefore, there is no discretion available to any party involved in the determination of eligibility or the determination of an administrative review regarding the seriousness of a business integrity violation. If the matter violates the provisions of 7 CFR § 278.1(b)(3) and §278.1(l), action to permanently deny or permanently withdraw must be taken accordingly. Therefore, the Appellant's request to overturn the permanent withdrawal or to reduce the period of disqualification cannot be granted.

CONCLUSION

It is the determination of this review that the Appellant firm does not further the purposes of the program due to its lack of business integrity and reputation as a result of a felony illegal gambling conviction of one of the firm's owners. In accordance with 7 CFR § 278.1(o) and 7 CFR § 278.6(e)(1)(iii), permanent withdrawal is the appropriate action in this case. On the basis of the analysis above, the decision by the Retailer Operations Division to permanently withdraw the authorization of Halsted Groceries Inc. to participate as a retailer in SNAP is sustained.

In accordance with the Food and Nutrition Act of 2008, as amended, and SNAP regulations, the permanent withdrawal of Halsted Groceries Inc. shall become effective 30 days after receipt of this letter.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) with respect to 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 (FOIA), 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.

Monique Brooks
ADMINISTRATIVE REVIEW OFFICER

March 24, 2020