

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

**Jerusalem Glatt Meat LLC,**

**Appellant,**

**v.**

**Case Number: C0213381**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Retailer Operations Division to withdraw the authorization of Jerusalem Glatt Meat LLC (hereinafter Appellant) to participate as a retail food store 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 of the Code of Federal Regulations (CFR) Part 278, when it withdrew the authorization of Appellant to participate as a SNAP retail store on October 2, 2018.

**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**

In a letter dated October 2, 2018, the Retailer Operations Division withdrew Appellant’s authorization to participate as a retailer in SNAP because the firm failed to respond to a request for information or documentation related to the firm. Specifically, the withdrawal letter states that SNAP regulations at 7 CFR 278.1(b) and 7 CFR 278.1(m) require that a retail firm provide sufficient data and information on the nature and scope of the firm’s business for FNS to determine whether the firm’s participation will further the purposes of SNAP. Failure to comply

with any request for information, to allow FNS to perform a store visit, to submit adequate records in response to a request for information, to sign a written release for information, or to respond to inquiries from FNS in a reasonable time may result in the denial or withdrawal from SNAP.

By letter dated October 10, 2018, Appellant appealed the Retailer Operations Division's decision and requested an administrative review of this determination. The appeal was granted and implementation of the withdrawal held in abeyance pending completion of this review. No subsequent correspondence was received from Appellant.

### **STANDARD OF REVIEW**

In appeals of adverse actions, Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means 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 and Nutrition Act of 2008, as amended, 7 U.S.C. § 2018 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.1(m) and 278.1(n) establish the authority upon which the authorization of any firm to participate in SNAP may be withdrawn if it fails to cooperate in the reauthorization process.

7 CFR § 278.1(m) reads: Refusal to accept correspondence or to respond to inquiries. FNS may withdraw or deny the authorization of any firm which: (2) Fails to respond to inquiries from FNS within a reasonable time.

7 CFR § 278.1(n) reads: Periodic reauthorization. At the request of FNS a retail food store or wholesale food concern will be required to undergo a periodic reauthorization determination by updating any or all of the information on the firm's application form. Failure to cooperate in the reauthorization process will result in withdrawal of the firm's approval to participate in the program.

### **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 owners received the withdrawal letter without any prior notification or correspondence from FNS;

- Although the information request was sent, it was not received by the owners. The request was received by 5 U.S.C. § 552 (b)(6) & (b)(7)(C), but there is no 5 U.S.C. § 552 (b)(6) & (b)(7)(C) working at this location; and,
- Please take this into consideration and let us know what can be done to continue to accept SNAP.

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

### **ANALYSIS AND FINDINGS**

With regards to Appellant's contentions listed above, it is important to clarify for the record that the purpose of this review is to validate or to invalidate the determination of the Retailer Operations Division, and as such it is limited to consideration of the relevant facts and circumstances at the time of the decision. The authorization of a store to participate in the SNAP must be in accord with the Act and the Regulations, as amended; those requirements of law cannot be waived.

Regarding Appellant's contentions, records show that both the September 18, 2018, request for information and the October 2, 2018, withdrawal letter were delivered to the Appellant firm and both were signed for by the same individual named 5 U.S.C. § 552 (b)(6) & (b)(7)(C). That both FNS letters were signed for by the same individual contradicts Appellant's claim of no individual named 5 U.S.C. § 552 (b)(6) & (b)(7)(C) working at the firm. The case file further shows the requested information was never received by FNS and therefore constitutes a failure to cooperate on the part of the Appellant.

### **CONCLUSION**

Based on a review of all of the evidence in this matter, the determination by the Retailer Operations Division to withdraw the authorization of Appellant to participate as a retailer in the SNAP is sustained. Because evidence has not been provided that would definitively determine the Appellant's eligibility for continued SNAP participation, it is the determination of this review that the decision to withdraw the firm's authorization due to its failure to cooperate was appropriate and was made in accordance with SNAP regulations at 7 CFR § 278.1(n).

In accordance with the Food and Nutrition Act of 2008, as amended, and SNAP regulations, the withdrawal action will become effective 30 days after receipt of this decision. A new application for SNAP participation may be submitted at any time. Questions regarding the application process can be answered by the FNS Retailer Service Center at 877-823-4369.

### **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.

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

April 12, 2019