

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

Joe Patti Seafood Co. Inc,

Appellant,

v.

Case Number: C0202987

Retailer Operations Division,

Respondent.

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 the initial decision by the Retailer Operations Division to permanently withdraw the authorization of Joe Patti Seafood Co. Inc. (hereinafter “Joe Patti Seafood”) to participate in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(b)(3), § 278.1(k), and § 278.1(l) in its administration of the SNAP, when it permanently withdrew the authorization of Joe Patti Seafood on September 14, 2017.

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 Retailer Operations Division received an FNS-252-R, SNAP Reauthorization Application for Stores, from the Appellant for the SNAP reauthorization of Joe Patti Seafood which **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, store owner, signed on November 3, 2016. The Retailer Operations Division subsequently advised the Appellant by letter dated September 14, 2017 of

its decision to permanently withdraw Joe Patti Seafood's authorization to participate in the SNAP. The regulatory citations for that withdrawal were 7 CFR § 278.1(b)(3)(i)(A), § 278.1(k)(3)(i), and § 278.1(l)(1)(iv). By letter dated September 22, 2017, the Appellant, through counsel, requested an administrative review of this action. FNS granted the Appellant's request for administrative review by letter dated October 2, 2017 and implementation of the permanent SNAP withdrawal was held in abeyance pending completion of this review.

STANDARD OF REVIEW

In appeals of adverse actions, 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 which 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, 7 U.S.C. § 2018 and § 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2018, 7 CFR § 271.2, § 278.1(b)(3), § 278.1(k)(3), and § 278.1(l) establish the authority upon which a retail food store's or wholesale food concern's authorization to participate in the SNAP may be denied/withdrawn on the basis of a lack of business integrity.

7 CFR § 271.2 states, inter alia: "Retail Food Store means: An establishment or house-to-house trade route that sells food for home preparation and consumption normally displayed in a public area, and either offers for sale, on a continuous basis, a variety of foods in sufficient quantities in each of the four categories of staple foods including perishable foods in at least two such categories (Criterion A) as set forth in § 278.1(b)(1) of this chapter, or has more than 50 percent of its total gross retail sales in staple foods (Criterion B) as set forth in § 278.1(b)(1) of this chapter as determined by visual inspection, marketing structure, business licenses, accessibility of food items offered for sale, purchase and sales records, counting of stock keeping units, or other inventory or accounting recordkeeping methods that are customary or reasonable in the retail food industry as set forth in § 278.1(b)(1) of this chapter. Entities that have more than 50 percent of their total gross retail sales in hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption, either for carryout purposes or on-premises consumption, and require no additional preparation, are not eligible for SNAP participation as retail food stores under § 278.1(b)(1) of this chapter".

7 CFR § 278.1(b)(3)(i) states, inter alia: "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: ... (i) Conviction of or civil judgment against the owners, officers, or managers of the firm for: (A) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private

agreement or transaction; (B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims or obstruction of justice; or (C) Violation of Federal, State and/or local consumer protection laws or other laws relating to alcohol, tobacco, firearms, controlled substances, and/or gaming licenses”.

7 CFR § 278.1(k)(3)(i) states, inter alia ... “Denying authorization. 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: ... (i) Firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers as stipulated in § 278.1(b)(3)(i) shall be denied authorization permanently”.

7 CFR § 278.1(l)(1)(iv) states, inter alia ... “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”.

APPELLANT’S CONTENTIONS

In the written request for administrative review postmarked September 22, 2017, the Appellant, through counsel, provided information in which it was argued that:

- FNS based its conclusion that Joe Patti Seafood lacks the necessary business integrity to participate in the SNAP upon the sole fact that the Appellant was convicted of filing a false tax return and conspiring to defraud the United States. The Appellant’s convictions occurred over fifteen years ago and therefore do not establish that he presently lacks business integrity.
- The Appellant’s convictions are not convictions related to transactions within the SNAP. FNS did not cite any incident which is actually related to the Appellant’s participation in the SNAP.
- The Appellant’s convictions do not meet the business integrity criteria as outlined in the SNAP regulations.
- The Appellant has been authorized to participate in the SNAP for decades and has had no previous incident or allegation of wrongdoing with regard to the SNAP.
- A permanent SNAP authorization withdrawal of Joe Patti Seafood will impose a hardship on the many SNAP customers who rely upon their SNAP benefits at the subject store to purchase fresh seafood.

The preceding may represent only a brief summary of the Appellant’s contentions in this matter. Please be assured, however, that 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

It is important to clarify for the record that the purpose of this review is to validate or to invalidate the initial determination of the Retailer Operations Division, and as such 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 SNAP regulations, as amended; those requirements of law cannot be waived.

The SNAP regulations enunciated at 7 CFR § 278.1(b) provide for the withdrawal of an applicant firm to participate as a SNAP retailer based on a number of reasons and for various timeframes. The statute and regulations specifically address the factors which constitute a lack of business integrity. These considerations are eligibility concerns; a firm either meets all the requirements stipulated in law and regulations or it does not. The regulations at 7 CFR § 278.1(b)(3)(i)(A): “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: (i) Conviction of or civil judgment against the owners, officers, or managers of the firm for: (A) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction”.

With regard to the Appellant’s contentions, 7 CFR § 278.1(b)(3)(A) is specific in its requirement that “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: (i) Conviction of or civil judgment against the owners, officers, or managers of the firm for: (A) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction”. FNS has the discretion from Congress to determine upon what basis an applicant or participating firm will be evaluated to determine whether or not such a firm may accept SNAP benefits. The regulations have clearly set out the position of the agency with regard to the business integrity of participating retailers. 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 § 278.1(b)(3) and § 278.1(l), action to deny or withdraw must be taken accordingly.

The FNS-252-R, SNAP Reauthorization Application for Stores, includes a question which asks retailers “Was any officer, owner, partner, member and/or manager convicted of any crime after June 1, 1999?” When completing the FNS-252-R for Joe Patti Seafood, the Appellant answered this question as “Yes” and stated that he, the store owner, was convicted of tax fraud in April of 2002. Based on the information provided by the Appellant on the FNS-252-R, FNS researched available public records for information related to the Appellant’s convictions. Per the

information provided by the Appellant on the FNS-252-R as well as in available public records, FNS found that in April 2002, the Appellant/store owner was convicted of filing a false income tax return and for conspiring to defraud the United States. The Appellant plead guilty to one count of filing a false income tax return, in violation of 26 U.S.C. 7206(1), and one count of conspiring to defraud the United States, in violation of 18 U.S.C. 371. According to court documents, the Appellant was subsequently sentenced to 79 months of imprisonment and ordered to pay a specified fine, the costs of prosecution, and restitution. 7 CFR § 278.1(k)(3)(i) establishes the authority upon which the application of any firm to participate in the SNAP may be denied because “records of criminal conviction or civil judgment exist that reflect on the business integrity of the owners, officers, or managers as stipulated in § 278.1(b)(3)(i)”. It further states that such firms “shall be denied authorization permanently “.

The Appellant has contended that his convictions are not convictions related to transactions within the SNAP. FNS did not cite any incident which is actually related to the Appellant’s participation in the SNAP. Section 9 of the Food and Nutrition Act, as amended, provides the Secretary of Agriculture with the authority to consider the business integrity and reputation of applicants for authorization to redeem SNAP benefits when determining the qualifications of such applicants for participation in the program. The business integrity of a firm is critically important to the effective operation of the SNAP. Therefore, the criteria outlined in the regulations focus on the business integrity and reputation of the owners, officers and management of firms seeking authorization or reauthorization in the SNAP. Fraudulent activity in the SNAP or other government programs or in business-related activities in general, reflects on the ability of a firm to effectuate the purposes of the SNAP and abide by the rules governing the program. In addition to those firms seeking authorization or reauthorization in the program, the business integrity standards as outlined in the regulations apply to participating firms, and may be the basis for withdrawal from the SNAP as provided in § 278.1(l)(1)(iv).

The Appellant contends that his convictions occurred over fifteen years ago and therefore do not establish that he presently lacks business integrity. **5 U.S.C. § 552 (b)(7)(E)**

The Appellant contends that his convictions do not meet the business integrity criteria as outlined in the SNAP regulations. The business integrity language in § 278.1(b)(3)(i) of the SNAP regulations addresses all relevant criminal convictions and a broad range of civil and/or administrative judgments/decisions. Other than determining (in limited circumstances) whether there have been three or more acts by an owner, officer or manager of a firm which calls into question their business integrity as provided in §278.1(b)(3)(ii), there is no discretion in this area for the Retailer Operations Division or Administrative Review Officers. The fact that someone served their sentence for a business integrity crime listed under § 278.1(b)(3)(i) does not mean that, as a matter of policy, they should be an authorized retailer. The regulations have already taken into account the “seriousness” or “non-seriousness” of business integrity related infractions and an individual’s opinion regarding the nature of the violation is not relevant to the application of the business integrity regulation, as written. As mentioned previously, FNS has the discretion from Congress to determine upon what basis an applicant or participating firm will be evaluated to determine whether or not such a firm may accept SNAP benefits. The regulations have clearly set out the position of the agency with regard to the business integrity of participating retailers. 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 § 278.1(b)(3) and § 278.1(l), action to deny or withdraw must be taken accordingly.

The Appellant contends that he has been authorized to participate in the SNAP for decades and has had no previous incident or allegation of wrongdoing with regard to the SNAP.

5 U.S.C. § 552 (b)(7)(E)

However, even if the Appellant had not been previously cited by FNS for violations of the SNAP, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

The Appellant contends that a permanent SNAP authorization withdrawal of Joe Patti Seafood will impose a hardship on the many SNAP customers who rely upon their SNAP benefits at the subject store to purchase fresh seafood. However, such contentions cannot constitute grounds for reversing the withdrawal decision in the present case. There are no provisions in the Food and Nutrition Act, SNAP regulations or agency policy allowing hardship to retail store owners, SNAP customers, state/Federal organizations, etc. as considerations in determining eligibility for participation in the SNAP. It is added for the record that a withdrawal on the basis of business integrity provisions precludes the firm's eligibility regardless of its other qualifications to participate in the SNAP.

The business integrity provisions of the SNAP regulations do not provide the agency with discretion for reducing the proposed authorization withdrawal period, dismissing any action, or mitigating the impact of those actions on the basis of the seriousness of the violations, a lack of knowledge of the law, or other circumstances under which they occurred. If the matter violates the provisions of Section 278.1(b)(3), action to deny/withdraw must be taken accordingly.

Therefore, based on the information assessed by the Retailer Operations Division regarding the Appellant's criminal convictions, it is determined that in accordance with SNAP regulations specified in 7 CFR § 278.1(l)(1)(iv), the firm has failed to maintain the necessary business integrity to further the purposes of the program and is therefore withdrawn from participation in the SNAP. The withdrawal action shall be permanent in accordance with 7 CFR § 278.1(k)(3)(i) of the SNAP regulations. As such, the imposition of a permanent SNAP withdrawal action on Joe Patti Seafood by the Retailer Operations Division is affirmed as the appropriate sanction for the program violations outlined in the subject case.

CONCLUSION

After review of all the pertinent documentation and based on the discussion herein, the initial decision by the Retail Operations Division to permanently withdraw the authorization of Joe Patti Seafood Co. Inc. to participate as a SNAP retailer is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act (7 U.S.C. 2023) and to Section 279.7 of the Regulations (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, FNS is 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.

LORIE L. CONNEEN
Administrative Review Officer

April 13, 2018