

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

Jomow International Market Inc,

Appellant,

v.

Case Number: C0204816

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA) that Jomow International Market Inc. (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP), and that there is sufficient evidence to support a hardship civil money penalty (CMP) in lieu of a six month disqualification from the SNAP, as initially imposed by the Retailer Operations Division (Retailer Operations).

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.6(f)(1) and 7 CFR § 278.6(a) and (e) in its administration of the SNAP, when it imposed a hardship CMP of \$20,556.00 in lieu of a six month period of disqualification against Appellant.

AUTHORITY

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1 provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 may file a written request for review of the administrative action with the Food and Nutrition Service (FNS).

CASE CHRONOLOGY

The USDA conducted an investigation of the compliance of Appellant with federal SNAP law and regulations during the period of August 8, 2018 through September 12, 2018. The investigative report documented that personnel at Appellant accepted SNAP benefits in exchange for ineligible merchandise on three separate occasions in Exhibits A, B, and D. As a result of

evidence compiled during this investigation, by letter dated October 1, 2018, Retailer Operations charged the owner with violating the terms and conditions of the SNAP regulations at 7 CFR § 278.2(a). The Charge letter states that under certain conditions, FNS may impose a civil money penalty (CMP) in lieu of a disqualification.

The record supports that counsel responded to the Charge letter by letter dated October 10, 2018. Per the record, counsel also sent an email to Retailer Operations dated October 15, 2018. Retailer Operations informed Appellant by Determination letter dated October 31, 2018, that the violations cited in the Charge letter occurred at the firm, and that that the assessment of a hardship civil money penalty of \$20,556.00, in lieu of a six months period of disqualification was the appropriate penalty, in accordance with Section 278.6(f)(1) of the regulations. The CMP was imposed because the firm was found to stock a substantial variety of staple food items and the firm's disqualification would cause hardship to SNAP households.

By letter dated November 19, 2018, counsel appealed Retailer Operations' determination and requested administrative review. The review was granted by letter dated November 28, 2018. Counsel provided an additional letter dated December 11, 2018.

STANDARD OF REVIEW

In an appeal of an adverse action, 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. § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Sections 278.6(a) and (e) establish the authority upon which disqualification may be imposed against a retail food store.

7 CFR § 278.2 (a) states: "Coupons may be accepted by an authorized retail food store only from eligible households or the households' authorized representative, and only in exchange for eligible food."

7 CFR § 278.6(e)(5) of the SNAP regulations states that a firm is to be disqualified for six 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."

7 CFR § 278.6(a) states: "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, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system...”

7 CFR §278.6(f)(1) reads, in part, “FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm subject to a disqualification is selling a substantial variety of staple food items, and the firm’s disqualification would cause hardship to food stamp 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.”

SUMMARY OF THE CHARGES

During an investigation, the USDA conducted four compliance visits at Appellant. The investigative report was provided to Appellant as Exhibits attached to the Charge letter. Exhibits A through D provide full details on the results of each compliance visit. The investigative report documents that SNAP violations were recorded during three store visits, and involved the sale of common nonfood items and a major item priced at more than \$10.00, in exchange for SNAP benefits in violation of 7 CFR § 278.2(a). A six month period of disqualification was warranted.

APPELLANT’S CONTENTIONS

Consideration of all contentions was made whether they are recapitulated here or not.

- I request a CMP. My clients have been in business for four years and have had no problems with authority.
- The party who did commit the violations was an employee. After discovery of the violation, my client fired him.
- My client instructed his employee to not misuse the SNAP.
- My client had advised his employee on the nonfood item sale. He is baffled as to why he had violated it.
- My client had posted conspicuous signs detailing SNAP purchases cannot be made with nonfood items.
- The clerk did not exchange cash in the September 12, 2018 violation.
- On September 11, 2018 my clients’ employee told the investigator he could not get ten dollars back in benefits.
- My client has now posted signs detailing SNAP rules in English and Arabic.
- My clients do cater to people from the Somalian community and it would be a hardship to this community if my client was to go out of business because of fines imposed and any disqualification.

ANALYSIS AND FINDINGS

The purpose of this review is to either validate or to invalidate the earlier determination made by Retailer Operations. This review is limited to the facts at the basis of Retailer Operations' determination at the time it was taken. Upon review, Appellant established a record of selling nonfood items as defined by Section 271.2 of the regulations on three chargeable occasions. When the owner signed the FNS application to become a SNAP authorized retailer, this included a certification and confirmation that the owner would "accept responsibility on behalf of the firm for violations of the SNAP regulations." The violations listed on this certification include accepting SNAP benefits as payment for ineligible items.

The SNAP regulations at 7 CFR § 278.6(e)(5) state that a firm is to be disqualified for six 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."

This review encompasses and documents the examination of the primary and relevant information to determine whether the owner demonstrates by a preponderance of the evidence that the disqualification should be reversed. The owner did not provide a preponderance of evidence to support that the charged violations did not occur as documented.

CIVIL MONEY PENALTY

Retailer Operations rendered a finding that it was appropriate to impose a hardship CMP in lieu of a six month period of disqualification. This finding was referenced in the Determination letter which assessed a hardship civil money penalty of \$20,556.00. Review of the CMP calculation shows that it is correct per the regulations for computation of such.

The record supports that Retailer Operations properly applied the standard for consideration of a CMP for hardship. Pursuant to 7 CFR § 278.6(f), Retailer Operations decided that the disqualification of Appellant would create a hardship to SNAP households in the area, and that a civil money penalty in lieu of disqualification was appropriate.

The CMP must be paid in full by the end of the period for which the firm would have been disqualified. Failure to pay the CMP in full will result in the disqualification of Appellant as a SNAP retail food store for a period of six months, or that period corresponding to the unpaid part of the CMP if not paid in full.

CONCLUSION

The charges of violations are based on the findings of a formal USDA investigation. The review finds that the investigative record is specific, thorough, and fully documented with regard to the dates of the violations, the specific ineligible merchandise sold in exchange for SNAP benefits, and in all other critically pertinent detail.

A review of the evidence in this case by a preponderance supports that Retailer Operations' determination to impose a CMP in lieu of a six month disqualification against Appellant was proper. Thus, the CMP amount as imposed, in lieu of the six month disqualification of Appellant from participating as an authorized retailer in the SNAP, is sustained. Please follow the instructions provided regarding payment of the CMP.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to the right to judicial review of this decision. 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 the owner resides or is 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, 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.

M. Viens
Administrative Review Officer

January 29, 2019