

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

**Kinga Enterprises, LLC,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0236828**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), that there is insufficient evidence to support that the Retailer Operations Division (Retailer Operations) properly imposed a permanent disqualification against Kinga Enterprises, LLC (Appellant), from participation as an authorized retail food store in the Supplemental Nutrition Assistance Program (SNAP). The permanent disqualification determination is reversed.

**ISSUE**

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 U.S.C. § 2021, 7 CFR § 278.6(a), 7 CFR § 271.2, and 7 CFR § 278.6(e)(1)(i), in its administration of the SNAP when it imposed a permanent 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.

**CASE CHRONOLOGY**

By Charge letter dated January 14, 2021, Retailer Operations informed Appellant it was charged with violating the terms and conditions of the SNAP regulations based on trafficking violations noted in Exhibits E and G, determined by a USDA investigation. The investigation was conducted during the period of October 30, 2020, through November 10, 2020, and described in an investigative report dated November 30, 2020. Counsel replied to the Charge letter on January 25, 2021.

By Determination letter dated February 23, 2021, Retailer Operations informed Appellant that it was permanently disqualified from participation as a retail food store in the SNAP in accordance with Section 278.6(c) and 278.6(e)(1) of the regulations. The letter states that the store was not eligible for a trafficking CMP according to the terms of Section 278.6(i) because the firm failed to submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

By letter dated March 2, 2021, counsel appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated March 15, 2021. Counsel provided additional information by email dated April 5, 2021.

### **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 credible, relevant evidence, that 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 (the Act), 7 U.S.C. § 2021, and § 278 of Title 7 of the Code of Federal Regulations (CFR).

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."

7 CFR § 278.6(e)(1)(i) states: FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2. 7 CFR § 271.2 states that trafficking means: "(1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;"... (4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food. (6) Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone."

## SUMMARY OF THE CHARGES

A contracted investigator conducted seven compliance visits at Appellant. Appellant was charged with trafficking in Exhibits E and G, wherein one store clerk exchanged cash with the investigator for energy drinks purchased with SNAP benefits.

## APPELLANT'S CONTENTIONS

In reaching a decision, full consideration has been given to all contentions presented through counsel, including any not recapitulated here.

- Both owners of this business are immigrants to the United States. Kinga Enterprises was established to address food insecurity within the East African community. The store provides a modest selection of imported foods which allows the local immigrant community to have meals with traditional ingredients. It also provides a gathering and informal meeting venue for area residents to share their common immigrant experience.
- The cost of the unlawful acts of Kinga, in the alleged trafficking in EBT benefits, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This occurred over a series of numerous approaches by the undercover agent of the agency; most of which were rejected by Kinga. In the cases in which wrongful conduct is alleged to have occurred, the approaches of the undercover agent were structured in such a way as to make a humanitarian approach. That this individual needed funds for the support of family. With the same motivations that the owners created Kinga, they elected to help this man in need. Truly, no good deed goes unpunished. After repeated approaches, they succumbed to the undercover's humanitarian appeals.
- Kinga has been accepting of responsibility and cooperative in all aspects of this matter. There is absolutely no public policy reason for this draconian imposition of the agency's ultimate sanction - a lifetime bar to SNAP participation.
- New to business, they have only been in business for two years and never before been the target of an investigation. They have a legitimate supply chain for Red Bull and other energy drinks and the purchases cited in this investigation were meant for personal use.
- There are other matters within the investigative reports that are not as suspicious as the investigator writes. For example, the difference between a trade name, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and the corporate name, Kinga Enterprises, LLC, is hardly unusual in business.
- This situation is not systemic. In several of the visits, the clerk's refusal to charge the EBT for non-food products is clear and unequivocal. Moreover, your investigator highlights the fact that the subjects of this investigation had barriers to understanding, English not being their native tongue.
- The origin and payment method of the Red Bull does not appear to have been made clear to the owners. (The report seems to suggest that communication issues made understanding a desire to draw cash off the EBT card impossible; but, would want us to believe that a complex and arguably fraudulent scheme was completely comprehensible on a first attempt.)
- Frankly, the question I see before the Agency is whether its enforcement program is meant to be remedial and educational; or, if it is meant to be entirely punitive. Moreover, the proposed civil penalty appears to be entirely disproportionate to the harm done and is in truth a complete forfeiture.

## **ANALYSIS AND FINDINGS**

This review is to either validate or to invalidate the determination made by Retailer Operations. The regulations establish that an authorized retail food store may be disqualified from participating in the SNAP when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf. The Exhibits recount two exchanges by store personnel of cash for items purchased with SNAP benefits. Upon review, it is decided that there is insufficient evidence to support a permanent disqualification for trafficking as defined under 7 CFR § 271.2 (5). The permanent disqualification determination is herein reversed.

This decision is not precedent setting as it is based on the specific circumstances of this case as documented by the materials in the record. In addition, this final agency decision does not establish policy, or supersede Federal law and regulations.

## **CONCLUSION**

The record does not support, by a preponderance of the evidence, that the exchanges by store personnel of cash for products purchased with SNAP benefits, meet the definition of trafficking. The permanent disqualification determination is therefore reversed.

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

April 29, 2021