

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

Realms Distributors, Llc/Krauszer's,

Appellant,

v.

Case Number: C0204593

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 a six month disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Realms Distributors, Llc/Krauszer's (hereinafter "Krauszer's") by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a six month period of disqualification against Krauszer's on March 23, 2018.

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 Department of Agriculture conducted an investigation of the compliance of Krauszer's with Federal SNAP law and regulations during the period January 8, 2018 through January 18, 2018. In a letter dated February 21, 2018, the Retailer Operations Division charged the Appellant with accepting SNAP benefits in exchange for merchandise which included ineligible nonfood items in violation of 7 CFR § 278.2(a). These SNAP violations occurred on four out of four

compliance visits. The letter further informed the Appellant that the violations warranted a disqualification period of six months as provided in 7 CFR § 278.6(e)(5).

In a letter received by the Retailer Operations Division on March 7, 2018, the Appellant replied to the charges therein indicating that the violative SNAP transactions were committed by a newly hired store employee who unintentionally allowed ineligible items to be purchased with SNAP benefits without the firm's knowledge, consent, or approval.

After considering the Appellant's reply and the evidence of this case, the Retailer Operations Division issued a Determination Letter dated March 23, 2018. The Determination Letter informed the Appellant that Krauszer's was disqualified from the SNAP for a period of six months in accordance with 7 CFR § 278.6(a) and (e). The Determination Letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a hardship civil money penalty (CMP) under 7 CFR § 278.6(f)(1). The Retailer Operations Division determined that the Appellant was not eligible for the hardship CMP in lieu of the six month disqualification because there were other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

In a letter postmarked March 29, 2018, the Appellant, through counsel, appealed the Retailer Operations Division's assessment and requested an administrative review of this action. FNS granted the Appellant's request for administrative review by letter dated April 13, 2018. Upon acceptance of the administrative review request, implementation of the six month disqualification 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 actions should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter 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 promulgated through regulations under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e) establish the authority upon which a disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 278.2(a) states, inter alia:

Coupons may be accepted by an authorized retail food store only from eligible households . . . only in exchange for eligible food.

7 CFR § 271.2 states, inter alia:

Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption.

7 CFR § 278.6(a) states, inter alia:

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)(5) states, inter alia:

Disqualify the firm for 6 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(f)(1) states, inter alia:

FNS may impose a civil money penalty as a sanction in lieu of disqualification when . . . the firm's disqualification would cause hardship to Food Stamp [SNAP] 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 conducted from January 8, 2018 through January 18, 2018, USDA conducted four compliance visits at Krauszer's. A report of the investigation was provided to the Appellant as an attachment to the Charge Letter dated February 21, 2018. The investigation report included Exhibits A through D which provide full details on the results of each compliance visit. The investigation report documents that SNAP violations were recorded during four of the four compliance visits and involved the sale of a variety of items best described in regulatory terms as "common nonfood items". The exchange of these ineligible items for SNAP benefits is in violation of 7 CFR § 278.2(a).

APPELLANT'S CONTENTIONS

The following represents a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the Appellant's reply to the Charge Letter and in the administrative review request postmarked March 29, 2018 and in a subsequent e:mail message dated April 12, 2018, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The violative SNAP transactions were committed by a newly hired store employee who unintentionally allowed ineligible items to be purchased with SNAP benefits without the firm's knowledge, consent, or approval.
- The Appellant believes that FNS' decision to disqualify Krauszer's from participation in the SNAP for six months is arbitrary and capricious and is punitive and contrary to law and justice. As such, the Appellant requests that FNS dismiss the SNAP disqualification action against Krauszer's.
- A six month SNAP disqualification will impose a financial hardship on Krauszer's and will effectively put the store out of business.
- The Appellant requests that FNS impose a civil money penalty (CMP) in lieu of a six month SNAP disqualification as Krauszer's had a compliance program in place and in operation at the time that the SNAP violations occurred. The Appellant had implemented personnel training on the SNAP rules and he was no aware of, did not approve of, and was not involved in the conduct of the alleged SNAP violations. The Appellant also requests that FNS provide evidence of the investigation conducted to make its determination that a CMP should not be imposed in lieu of a six month SNAP disqualification.

ANALYSIS AND FINDINGS

SNAP Violations Unintentional

The Appellant contends that the violative SNAP transactions were committed by a newly hired store employee who unintentionally allowed ineligible items to be purchased with SNAP benefits without the firm's knowledge, consent, or approval. This contention cannot be accepted as a valid basis for dismissing any of the charges, or for mitigating the impact of those charges. As owner of the store, the Appellant is liable for all violative transactions that occur at Krauszer's. Regardless of whom the ownership of a store may utilize to handle store business (i.e., regardless of whether a store owner, store manager, store clerk, friend, family member, etc. was involved in the violative transactions), ownership is accountable for the proper handling of SNAP benefit transactions. Prior to becoming authorized to participate in the SNAP on December 15, 2014, the Appellant completed and submitted a SNAP Application for Retail Stores. The SNAP Application contained a section indicating that the person(s) signing the Application understood and agreed to ensure that store employees follow the SNAP rules and regulations and that the person(s) accepts responsibility for any SNAP violations that may occur at the store that were committed by any of the store's employees---paid, unpaid, new, temporary, full-time, part-time, etc. The SNAP Application also included a section that contained a statement which acknowledged that the person(s) signing the Application was aware that violations of program rules could result in fines, legal sanctions, withdrawal, or disqualification of the store. In addition, the Appellant was provided with program training and reference materials which reinforced the statements included in the SNAP Application.

The regulations establish that an authorized food store may be disqualified from participating in the program 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. In this case, the individual

who committed the SNAP violations was not specifically identified during the investigation. A six month disqualification is the appropriate sanction for violations which result from employees not being fully aware of the SNAP rules, the carelessness of employees, or due to inadequate supervision by the store owner. As 7 CFR § 278.6(e)(5) of the SNAP regulations states, “Disqualify the firm for six months if ... the evidence shows that personnel of the firm have committed violations ... due to the carelessness or poor supervision by the firm’s ownership or management”. The Appellant’s implied contention that the SNAP violations were unintentionally committed by a new store employee without his knowledge, consent, or approval cannot be accepted as a valid basis for diminishing the penalty. To allow store ownership to disclaim accountability for the acts of persons whom the ownership chooses to utilize to handle store business would render virtually meaningless the enforcement provisions of the Food and Nutrition Act and the enforcement efforts of the USDA.

Reconsideration of Disqualification

The Appellant believes that FNS’ decision to disqualify Krauszer’s from participation in the SNAP for six months is arbitrary and capricious and is punitive and contrary to law and justice. As such, the Appellant requests that FNS dismiss the SNAP disqualification action against Krauszer’s. However, 7 CFR § 278.6(e)(5) of the SNAP regulations is specific in that FNS shall “Disqualify the firm for 6 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 by employees or poor supervision by the firm’s ownership or management”. As such, the Retailer Operations Division’s decision to impose a six month SNAP disqualification for Krauszer’s is appropriate for the SNAP violations that occurred during the investigation period.

Financial Hardship

The Appellant contends that a six month SNAP disqualification will impose a financial hardship on Krauszer’s and will effectively put the store out of business. However, there is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm resulting from imposition of such penalty. To allow store ownership from being excused from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, the Appellant’s contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

CIVIL MONEY PENALTY

The Appellant requests that FNS impose a civil money penalty (CMP) in lieu of a six month SNAP disqualification as Krauszer's had a compliance program in place and in operation at the time that the SNAP violations occurred. The Appellant had implemented personnel training on the SNAP rules and he was no aware of, did not approve of, and was not involved in the conduct of the alleged SNAP violations. The Appellant also requests that FNS provide evidence of the investigation conducted to make its determination that a CMP should not be imposed in lieu of a six month SNAP disqualification.

The Appellant requests that FNS impose a CMP in lieu of a six month SNAP disqualification as Krauszer's had a compliance program in place and in operation at the time that the SNAP violations occurred as well as having implemented personnel training on the SNAP rules. With regard to this request/contention, there is a provision at 7 CFR § 278.6(i) of the SNAP regulations for the imposition of a CMP in lieu of a **permanent** SNAP disqualification for **trafficking** if the retail store establishes that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. However, this case involves a proposed six month SNAP disqualification of Krauszer's resulting from an on-site investigation of the store that occurred during the timeframe January 8, 2018 through January 18, 2018. SNAP violations were recorded during four of the four compliance visits and involved the sale of a variety of items best described in regulatory terms as "common nonfood items". The exchange of these ineligible items for SNAP benefits is in violation of 7 CFR § 278.2(a). This case is not a proposed **permanent** SNAP disqualification for **trafficking** SNAP benefits. As such, the Appellant's request for the imposition of a CMP in lieu of a six month SNAP disqualification due to his claim that there was a compliance program in place and in operation is not germane in this case.

The Retailer Operations Division determined that the Appellant was not eligible for a hardship civil money penalty under 7 CFR § 278.6(f)(1). That regulation reads, in part, "FNS may impose a civil money penalty as a sanction in lieu of disqualification when . . . the firm's disqualification would cause hardship to [SNAP] 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." [Emphasis added]. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

Based on the evidence, the disqualification of Krauszer's would not cause a hardship to SNAP recipients in the area, as opposed to a mere inconvenience; therefore, the Retailer Operations Division's decision not to assess a hardship CMP in lieu of a six month disqualification is sustained as appropriate under 7 CFR § 278.6(f)(1).

CONCLUSION

It is therefore established that the violations as described in the letter of charges did in fact occur at Realms Distributors, Llc/Krauszer's warranting a disqualification of six months in accordance with 7 CFR § 278.6(e)(5). That regulation states that FNS shall "disqualify the firm for 6 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". Therefore, the decision to impose a six month disqualification, the least severe penalty allowed by regulation, against Realms Distributors, Llc/Krauszer's, the Appellant firm, is appropriate and the action is sustained.

In accordance with the Food and Nutrition Act of 2008 and the regulations there under, the six month period of disqualification shall become effective thirty (30) days after receipt of this letter. A new application for participation may be submitted by the firm ten (10) days prior to the expiration of this six month period.

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

July 5, 2018