

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

Los Compis Mini Market Llc,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0219826

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 Los Compis Mini Market Llc (Appellant) was properly denied authorization, for a period of three years, to participate in the Supplemental Nutrition Assistance Program (SNAP) by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(b)(3)(iii) and § 278.1(k)(3)(iii), in its administration of the SNAP when it rendered a three year denial of the application of the Appellant to participate as an authorized SNAP retailer on July 9, 2019.

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 record reflects that on July 9, 2019, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** signed as owner/corporate officer, an application for authorization to participate in the SNAP. The Appellant was subsequently advised in a letter dated July 9, 2019, of the Retailer Operation Division’s decision to deny the application of the Appellant, for a period of three years, to participate as an authorized retailer in SNAP. The determination was based on the following information:

“In accordance with SNAP regulations at 7 CFR 278.1(b)(3)(iii), it is the determination of FNS that sufficient evidence exists that you have been found to be circumventing a period of disqualification through a purported transfer of ownership. This decision was made based on information you submitted to FNS and/or lack of corroborating documentation to support a bona fide transfer of ownership in connection with your SNAP application. Section 278.1(k)(3)(iii) requires that firms for which evidence exists of an attempt to circumvent a period of disqualification shall be denied for a period of three years”.

The Retailer Operations Division determined that the Appellant’s owner is the son of a previously permanently disqualified owner who has a financial or operational interest in Los Compis Mini Market Llc.

In a letter postmarked July 22, 2019, the Appellant appealed the Retailer Operations Division’s decision and requested an administrative review of this action. FNS granted the Appellant’s request for administrative review by letter dated August 8, 2019.

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, 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 1977, as amended, at 7 USC § 2018 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 USC § 2018, § 278.1(b)(3) and § 278.1(k)(3) establishes the authority upon which a retail food store or wholesale food concern may be denied authorization to participate in the SNAP on the basis of a lack of business integrity.

7 CFR § 278.1(b)(3)(iii) states, inter alia:

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:
(iii) Evidence of an attempt by the firm to circumvent a period of disqualification, a civil money penalty or fine imposed for violations of the Food and Nutrition Act of 2008 and program regulations.

7 CFR § 278.1(k)(3) states, inter alia:

FNS shall deny the application of any firm if it determines that 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:

(iii) Firms for which evidence exists of an attempt to circumvent a period of disqualification, a civil money penalty or fine imposed for violations of the Food and Nutrition Act of 2008, as amended, and program regulations shall be denied for a period of three years from the effective date of the denial.

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 request for administrative review, the Appellant stated the following summarized contentions, in relevant part:

- The store owner purchased the business from his mother who was authorized to participate in the SNAP.
- The owner's mother did not have any problems with USDA and the owner could have easily continued to run the business as a manager utilizing his mother's licenses and USDA account; however, he did not. The owner wanted the business under his name and wanted to be responsible for anything that occurred in the business.
- The Appellant provided USDA with all the necessary documentation asked for and the owner was still denied authorization because of what his father had done years ago.
- The owner is not his father and requests that FNS allow him to participate in the SNAP.

ANALYSIS AND FINDINGS

The SNAP regulations at 7 CFR § 278.1(b)(3)(iii) states 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: . . . (iii) Evidence of an attempt by the firm to circumvent a period of disqualification, a civil money penalty or fine imposed for violations of the Food and Nutrition Act of 2008 and program regulations". Based on 7 CFR § 278.1(b)(3)(iii) and 7 CFR § 278.1(k)(3)(iii), an attempt to circumvent a period of disqualification is considered to be a lack of business integrity. The authorization denial period as specified in 7 CFR § 278.1(k)(3)(iii) is three years.

Owners or officers of a previously disqualified store whose sanction has not been satisfied are not eligible to apply for SNAP authorization as the owner, officer or manager of another store. It is common for disqualified store owners to attempt to remain financially or operationally interested in a firm by selling a store to a relative or having a relative apply for authorization at a new location different from where he/she was authorized. This practice is known as "circumvention" and is not allowed under the SNAP regulations.

The July 9, 2019, Determination Letter states that the authorization denial was based on information the Appellant submitted to FNS and/or lack of corroborating documentation to support a bona fide transfer of ownership in connection with the SNAP application. The Retailer Operations Division determined that sufficient evidence exists that the firm is circumventing a period of disqualification through a purported transfer of ownership. An ineligible person who has been permanently disqualified from participating in the SNAP has a financial or operational interest in the firm. This determination was based on the family relationship between the current listed owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and his father, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), a permanently disqualified owner.

The mere fact that there is a relationship with a permanently disqualified owner is not conclusive evidence of an attempt at circumvention. The Retailer Operations Division must consider additional evidence and circumstances beyond whether or not the owner is related to a permanently disqualified owner.

The store owner contends that he purchased the business from his mother who was authorized to participate in the SNAP. The owner's mother did not have any problems with USDA. The owner wanted the business under his name and wanted to be responsible for anything that occurred in the business. The owner is not his father and requests that FNS allow him to participate in the SNAP.

With regard to the Appellant's contentions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) signed as owner/corporate officer, an application for authorization to participate in the SNAP on July 9, 2019. The record indicates that 5 U.S.C. § 552 (b)(6) & (b)(7)(C), father of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was permanently disqualified at the current applicant store location (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) from participating in the SNAP effective March 11, 2010. 5 U.S.C. § 552 (b)(6) & (b)(7)(C), wife of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and mother of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was authorized to participate in the SNAP effective July 2, 2010 at the current applicant store location (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) and was involuntarily withdrawn from the SNAP on December 29, 2018 for non-response to reauthorization.

Documents provided by the Appellant as part of the authorization application indicate that on December 31, 2018, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) sold the business to her son, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and her husband, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), own the building and rent the apartment located upstairs of the Appellant store to 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It should be noted that the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) submitted an affidavit signed and dated May 6, 2019 that falsely stated "no" to the following questions:

- Persons that were owners ... of any store that has been permanently disqualified from SNAP ... are financially involved or have other operational interest in this store.
- One or more owners ... of this firm are related by birth or marriage to an owner ... of a firm that is or has been disqualified from SNAP

The Bill of Sale provided to the Retailer Operations Division notes that the Appellant purchased the store for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) shall be paid by the Appellant at the signing of the contract (dated December 31, 2018) and the balance of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) shall be payable in monthly installments of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) until the balance is paid in full. Upon the Retailer Operations Division's request for documentation in the form of proof of the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) payment from the December 2018 store purchase, the Appellant submitted three checks, each in the amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, each of the checks was dated June 6, 2019, indicating that the Appellant had back-paid the agreed upon amount in the December 2018 Bill of Sale.

Based on the foregoing discussion, it is determined that the Retailer Operations Division correctly determined that the Appellant circumvented a period of disqualification through a purported transfer of ownership. Therefore, the Retailer Operations Division's decision to deny the application of the Appellant to participate in the SNAP for a period of three years was properly imposed in accordance with 7 CFR § 278.1(b)(3)(iii) and 7 CFR § 278.1(k)(3)(iii) of the SNAP regulations.

CONCLUSION

In review of the foregoing, the Retailer Operations Division has provided substantial evidence that the SNAP retailer authorization application and the documentation submitted in support thereof by the Appellant contained sufficient information that the Appellant lacks the business integrity and reputation to further the purposes of the SNAP. Specifically, sufficient evidence exists that the Appellant has been found to be circumventing a period of disqualification through a purported transfer of ownership.

In accordance with 7 CFR § 278.1(b)(3)(iii), FNS shall deny the authorization of any firm from participation in the program based on evidence of an attempt by the firm to circumvent a period of disqualification, a civil money penalty or fine imposed for violations of the Food and Nutrition Act of 2008 and program regulations. Accordingly, the Retailer Operations Division's decision to deny the authorization of Los Compis Mini Market Llc from participation in the SNAP, for a period of three years, is sustained.

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 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

October 15, 2019