

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

Lupin & Tapin LLC,

Appellant,

v.

Case Number: C0202661

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA) that the record supports that Lupin & Tapin LLC (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP) regulations. There is sufficient evidence to sustain a six month disqualification of Appellant from the SNAP as an authorized retail food store as 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), 7 CFR § 278.6(a), and 7 CFR § 278.6(e) in its administration of the SNAP, when it imposed 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 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 June 19, 2018 through June 26, 2018. The investigative report documented that personnel at Appellant accepted SNAP benefits in exchange for ineligible merchandise on multiple separate occasions that warrant a six month disqualification period. The items sold are best described as common nonfood items.

As a result of evidence compiled during this investigation, by letter dated July 17, 2018, Retailer Operations charged the owners with violating the terms and conditions of the SNAP regulations. Misuse of SNAP benefits was noted in Exhibits A, C, and D that warrants a disqualification as a SNAP retail food store for a period of six months. The letter also states that under certain conditions FNS may impose a civil money penalty (CMP) in lieu of a disqualification.

One owner replied to the Charge letter during a phone conversation with Retailer Operations on August 1, 2018. Retailer Operations informed the owners by Determination letter dated August 3, 2018, that the violations cited in the Charge letter occurred at the firm and that a six month period of disqualification was warranted. The letter also stated that eligibility for a hardship CMP was not applicable as there are other authorized retail food stores in the area selling as large a variety of staple foods at comparable prices.

One owner appealed the determination by letter dated August 9, 2018. The review was granted by letter dated August 17, 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)(5) establish the authority upon which a six month 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) provides for civil money penalty assessments in lieu of disqualification in cases where disqualification would cause hardship to SNAP benefit households because of the unavailability of a comparable participating food store in the area to meet their shopping needs. It states: “FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm’s disqualification would cause hardship to SNAP benefit 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

A report of the investigation was provided to the Appellant as Exhibits with the Charge letter. The investigative report provides details on the results of each compliance visit. The investigation report documents that SNAP violations were recorded during three store visits that warrant a six month disqualification. The violations involved the sale of nonfood items for SNAP benefits in violation of 7 CFR § 278.2(a).

APPELLANT’S CONTENTIONS

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

- I never did anything wrong.
- I do not have 10 FL OZ Bottle of Gain fabric softener.
- Exhibit C: All three items add up to 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It did not match with the value on the paper.
- I do not sell Pledge in my store. The price does not match to the paper.
- Please reinvestigate all the prices in my store.
- I am the only one who works in the store. On occasion I have a guest worker who does not speak English well.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

ANALYSIS AND FINDINGS

The purpose of this review is to either validate or to invalidate the determination made by Retailer Operations, and it is limited to the facts at the basis of Retailer Operations’ determination at the time it was made. Upon review, the evidence supports that Appellant established a record of selling nonfood items as defined by Section 271.2 of the regulations on multiple occasions. Exhibits A, C, and D furnished with the Charge letter warrant a disqualification period of six months. 7 CFR § 278.6(e)(5) specifies that FNS shall “disqualify the firm 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 nonfood items due to carelessness or poor supervision by the firm's ownership or management." Three violations are considered evidence of carelessness. Therefore, the violations in this case are not too limited to warrant a disqualification.

Regardless of who the store owner utilizes to handle store business, the owner is accountable for the proper handling of SNAP benefit transactions. The regulations establish that an authorized food store may be disqualified from participating in 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 owner was provided multiple and redundant resources through which a thorough knowledge of Program rules and requirements could readily be obtained. These materials are also readily available on the internet.

The prices for some of the items acquired during the investigation are noted as NPI or no price indicated or illegible. Each of the four Exhibits shows items noted as NPI. Therefore, it may be that the prices do not tally as the owner suggests in his contentions. However, the record by a preponderance of the evidence supports that the ineligible items were sold by Appellant. The photos show Gain and other listed nonfood items with the corresponding store receipts. There is also a donation record of the ineligible items to a charitable organization. Appellant's denials of selling the ineligible items are not supported by a preponderance of the evidence.

The record supports that Appellant sold ineligible items in exchange for SNAP benefits. These are clearly not food items, but ineligible items not allowed to be exchanged for benefits. The investigative documents were reviewed and the record included photographs of items purchased at Appellant and the EBT receipt for each Exhibit. The items identified in the report match the items seen in the photos. The regulations stipulate that FNS shall disqualify the firm 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 the sale of common nonfood items.

CIVIL MONEY PENALTY

Retailer Operations rendered a finding that it was not appropriate to impose a CMP in lieu of a six month period of disqualification. The record documents other authorized stores within a nearby radius of Appellant that stock a variety of comparable staple foods at comparable prices. The evidence does not support that it will cause hardship for SNAP recipients if Appellant is disqualified. Therefore, Appellant was not eligible for a hardship CMP.

CONCLUSION

The record supports by a preponderance of the evidence that the Program violations charged did occur at Appellant. The USDA 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. The record documents that Retailer Operations considered Appellant's eligibility for a hardship CMP according to the terms of

Section 278.6(f)(1) and properly denied it. Therefore, the six month disqualification of Appellant from participation as an authorized retail food store in the SNAP is sustained.

RIGHTS AND REMEDIES

This penalty shall become effective thirty (30) days after receipt of this decision. A new application for participation in the SNAP may be submitted ten (10) days prior to the expiration of the six month period of disqualification. Please contact the Retailer Center at 877-823-4369 with any questions regarding the SNAP application process.

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 decision. 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 owners 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, 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

September 25, 2018