

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

**Master Food Market Inc,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0217193**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that the Retailer Operations Division properly denied the authorization of Master Food Market Inc. (Master Food Market or Appellant) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, in its administration of SNAP when it permanently denied the authorization of Master Food Market.

**AUTHORITY**

7 USC § 2023 and the 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**

On April 10, 2019, the Retailer Operations Division informed Appellant that its authorization to participate as an authorized retailer in the SNAP was being permanently denied, in accordance with 7 CFR § 278.6(e)(1)(iii) and 7 CFR § 278.1(k)(4) because Appellant provided false or misleading information about a substantive matter in its application for SNAP authorization. The Retailer Operations Division determined that the store owner intentionally falsified affidavits submitted as part of the SNAP authorization process when it answered “No” to questions 3, 4, and 6. The Retailer Operations Division determined that Appellant should have answered “yes” to these questions.

By letter postmarked April 16, 2019, Appellant appealed the Retailer Operations Division decision and requested an administrative review of this action. The appeal was granted.

### **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a clear 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 2008, as amended, 7 USC § 2021 and Section 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.1(k)(4) establishes the authority upon which a firm may be denied from participating in SNAP because the firm's application contains false information of a substantive nature.

7 CFR § 278.1(k) states, in part:

“FNS shall deny the application of any firm if it determines that . . . The firm has filed an application that contains false or misleading information about a substantive matter, as specified in § 278.6(e). Such firms shall be denied authorization for the periods specified in § 278.6(e)(1) or § 278.6(e)(3) . . . .”

7 CFR § 278.6(e) specifies the penalties and action as follows against any firm determined to have violated the Act or regulations. “The FNS regional office shall:

(1) Disqualify a firm permanently if... (iii) It is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program, such as but not limited to, information related to: (A) Eligibility requirements under §278.1(b), (c), (d), (e), (f), (g) and (h); . . . (F) Ownership of the firm; (G) Food Stamp Program History, business practices, business ethnics. . . (H) Food Stamp Program history, business practices, business ethnics...or (I) Any other information of a substantive nature that could affect the eligibility of a firm.”

### **APPELLANT'S CONTENTIONS**

Appellant made the following summarized contentions in its April 16, 2019, administrative review request, and subsequent correspondence dated May 8, 2019, in relevant part:

- Appellant had to amend its lease agreement due to it not being approved for SNAP and not being able to make payments.
- Appellant has to pay the previous owner rent and there is a balance outstanding for the purchase of the business.

- Getting approved for SNAP has taken so long that it has made meeting the payment arrangement tough and for that reason it had to amend the agreement so it would not be delinquent.
- The only relationship with the previous owner is a business relationship.

Applicant provided a copy of all of the information that it submitted with its original application, as well as its lottery license, and recent checks paid for May's rent and an additional payment for the purchase of the store.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced.

### ANALYSIS AND FINDINGS

The record reflects that the owner of Master Food Market submitted two notarized Affidavits dated September 5, 2018, and December 21, 2018, as part of the SNAP authorization process. The Retailer Operations Division determined that the store owner falsified these affidavits when it answered "No" to questions 3, 4, and 6. These questions include the following:

3. Persons who were owners, managers, or employees of any form that is or is or has been disqualified from SNAP or WIC are working in this in any capacity.
4. Persons who were owners or managers of any store that has been permanently disqualified from SNAP or WIC are financially involved or have other operational interest in this store.
6. One or more owners or managers of the firm are related by birth or marriage to an owner or manager of a firm that is or has been disqualified by SNAP or WIC.

The Retailer Operations Division determined that Appellant should have answered "yes" to these three questions because the current manager of the Appellant store, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, was an owner/manager of the previously disqualified store located at the same location. The record shows that **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** signed the store visit form as the store owner for the permanently disqualified store on February 21, 2018, and then signed the store visit form for Master Food Market as the manager on October 23, 2018. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** is also the husband of the previous owner of the Appellant store who was permanently disqualified.

The issue in this case is whether a preponderance of the evidence indicates that Appellant knowingly provided false information of a substantive nature that could affect Master Food Market's eligibility for the SNAP. Appellant has the ultimate responsibility to guarantee the accuracy and honesty of all information submitted to FNS. The regulations at 7 CFR § 278.6(e)(1)(iii) state that permanent denial is warranted if "it is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program." There is no agency discretion in the matter of what sanction is to be imposed when a false statement of a substantive nature is involved.

## **CONCLUSION**

Based on a preponderance of the evidence, it is more likely true than not true that Appellant knowingly submitted an application containing false information of a substantive nature that could affect the eligibility of the firm. Therefore, the decision to permanently deny the authorization of Master Food Market to participate as an authorized retailer in SNAP is sustained.

## **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. 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 Appellant's 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.

Mary Kate Karagiorgos  
ADMINISTRATIVE REVIEW OFFICER

August 13, 2019