

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

Mediterranean Sea Market,

Appellant,

v.

Case Number: C0199265

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Retailer Operations Division (“ROD”) to assess a civil money penalty against Mediterranean Sea Market (“Appellant”) in the amount of \$23,892 in lieu of a one-year disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) as a result of credit account violations.

ISSUE

The purpose of this review is to determine whether the ROD took appropriate action, consistent with Title 7 of Code of Federal Regulations (CFR) § 278.6(e)(4) and 7 CFR §278.6(f), when it assessed a civil money penalty in the amount of \$23,892 in lieu of a one-year disqualification against Appellant on February 7, 2019.

AUTHORITY

According to 7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1, “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

In a letter dated December 20, 2018, the ROD charged Appellant with maintaining credit accounts. This charge was based on an interview with the store owner while investigating possible trafficking violations. This letter of charges states, “The acceptance of SNAP benefits as payment for items sold to a household on credit is a violation of SNAP regulation 278.2(f). This violation warrants a disqualification period of one year (Section 278.6(e)(4)). Under certain conditions, FNS may impose a civil money penalty (CMP) in lieu of a disqualification (Section 278.6(e)(4)).” Appellant responded to the charges in a subsequent phone call to the ROD.

After giving consideration to the evidence and the firm's reply, the Retailer Operations Division notified Appellant in a letter dated February 7, 2019 that the firm was being disqualified for one year from participation as an authorized retailer in SNAP for maintaining credit accounts. This determination letter also stated that an assessment of a hardship civil money penalty (CMP) was appropriate. Therefore, a civil money penalty in the amount of \$23,892, in lieu of a one-year disqualification, was offered as an option to the Appellant. This is in accord with the Food and Nutrition Act of 2008, as amended, and 7 CFR § 278.6(e)(4) and 7 CFR § 278.6(f)(1) of the SNAP regulations.

On February 22, 2019, Appellant appealed the ROD's decision, and requested an administrative review of the action. The appeal was granted and implementation of the sanction has been held in abeyance pending completion of this review.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing 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 untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(4) establish the authority upon which a one-year disqualification may be imposed against a retail food store or wholesale food concern.

Section 278.6(e)(4) of the SNAP regulations states, in part, when a firm is to be disqualified for one year:

The firm has accepted SNAP benefits in payment for items sold to a household on credit.

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, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system

7 CFR § 278.6(f)(1) 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.

APPELLANT'S CONTENTIONS

Appellant's responses regarding this matter are essentially as follows:

- Appellant was unaware that offering credit accounts was a SNAP violation. Appellant was simply trying to help families in need by offering them credit.
- The owner's English was not good enough to fully understand all the program rules. This was a new business for Appellant.
- The amount of the CMP is not reasonable.
- The CMP could put the business in financial jeopardy.

These explanations may represent only a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any others that have not been specifically listed here.

ANALYSIS AND FINDINGS

Appellant's Responsibilities

Appellant insists that the owner was unaware that offering credit accounts was a SNAP violation. Appellant also contends this was a new business for Appellant, and the owner's English was not good enough to fully understand all the program rules. When ownership signed the FNS application to become an authorized SNAP retailer, this included a certification and confirmation that the owner(s) would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The violations listed on this certification document include maintaining credit accounts. Regardless of whom the ownership of a store may choose to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions.

CIVIL MONEY PENALTY

Appellant contended that the amount of the CMP is not reasonable. The calculation of the amount of a CMP is based on regulations that delineate the exact formula to be used when calculating a CMP. These regulations at 7 CFR § 278.6(g) state, in relevant part:

FNS shall determine the amount of the civil money penalty as follows:

- (1) Determine the firm's average monthly redemptions of coupons for the 12-month period ending with the month immediately preceding that month during which the firm was charged with violations.
- (2) Multiply the average monthly redemption figure by 10 percent.
- (3) Multiply the product arrived at in paragraph (g)(2) by the number of months for which the firm would have been disqualified under paragraph (e) of this

section. The civil money penalty may not exceed an amount specified in §3.91(b)(3)(i) of this title for each violation.

7 U.S.C. 2018 (b)(6) & (b)(7)(c)

As stated above, the formula for the calculating the CMP is specific per 7 CFR § 278.6(g) and does not allow for any reductions. However, the regulations do provide the option of an installment plan for paying the CMP over the period of disqualification. The regulations at 7 CFR § 278.6(h), state the following:

A firm has 15 days from the date the FNS regional office notifies the firm in writing in which to pay the civil money penalty or to notify the regional office in writing of its intent to pay in installments as specified by the regional officeThe civil money penalty must be paid in full by the end of the period for which the firm would have been disqualified.

Appellant can contact Financial Management at 703-305-2830 to discuss payment of this penalty in installment payments or online in one lump sum.

No Undue Hardship to Appellant

Appellant maintains that disqualification would pose an extreme hardship to the firm. Economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for reducing an administrative penalty on the basis of possible economic hardship to the firm resulting from such a penalty. To excuse Appellant from an assessed administrative penalty based on purported economic hardship to the firm would render the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA virtually meaningless.

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, Appellant's contention that it will incur economic hardship due to an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to assess a civil money penalty against Mediterranean Sea Market of \$23,892 in lieu of a one-year disqualification from participating as a retailer in SNAP as a result of credit account program violations is sustained.

In accordance with the Food and Nutrition Act, and the regulations thereunder, this penalty shall become effective thirty (30) days after receipt of this letter. To pay the civil money penalty, Appellant should refer to the information provided in the determination letter dated February 7,

2019. Should Appellant choose to accept disqualification rather than pay the civil money penalty, a new application for participation in the SNAP may be submitted ten (10) days prior to the expiration of the one-year period of disqualification. In accordance with 7 CFR § 278.1(b)(4), at the time of any such new application for program participation, the firm would be advised by the office receiving such an application of the necessity, as a store previously sanctioned for program violations, also to post a collateral bond or irrevocable letter of credit as a condition for again being authorized to participate in the program.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, 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.

RICH PROULX
Administrative Review Officer

April 8, 2019