

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

Mil-mart LLC,

Appellant,

v.

Case Number: C0207559

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 the Retailer Operations Division's decision to permanently deny the application of Mil-mart LLC to participate in the Supplemental Nutrition Assistance Program (SNAP).

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 permanently denied the application of Mil-mart LLC.

AUTHORITY

7 U.S.C. § 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 January 24, 2018, the Retailer Operations Division received an online application from Mil- mart LLC to participate in the SNAP as an authorized retail store. In response to question 16 of the application, the Appellant answered "yes" to the question "Was any officer, owner, partner, member, and/or manager convicted

of any crime after June 1, 1999?” The Appellant stated on the application that the conviction was related to “misdemeanor charges 8 years ago for selling copyrighted shoes and dvd’s.” The Retailer Operations Division subsequently confirmed that the owner of the Appellant store pleaded guilty in the Circuit Court for the City of Lynchburg on October 20, 2009 to misdemeanor charges of selling counterfeit DVDs and CDs resulting in two violations of Code of Virginia § 59.1-41.3 and counterfeit shoes and purses resulting in one violation of Code of Virginia § 59.1-92.12.

In a letter dated March 13, 2018, the Retailer Operations Division informed the Appellant that the application of Mil-mart LLC to participate in the SNAP was permanently denied under 7 CFR § 278.1(k)(3) because the Appellant did not have the necessary business integrity under 7 CFR § 278.1(b)(3).

In a letter postmarked March 23, 2018, the Appellant requested an administrative review of the Retailer Operation Division’s decision to permanently deny the application of Mil-mart LLC. The request for administrative review was granted.

STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. That means an 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 AND REGULATIONS

The controlling law in this matter is covered in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2018, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(k) establishes the authority upon which the FNS shall deny the authorization of any firm authorized to participate in the program.

7 CFR § 278.1(b)(3)(i)(A) states:

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 ... (i) Conviction of or civil judgment against the owners, officers or managers of the firm for:

(A) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement

or transaction;

7 CFR § 278.1(k)(3)(i) states:

Firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers as stipulated in § 278.1(b)(3)(i) **shall be denied authorization permanently** [Emphasis added]

APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions in its administrative review request, in relevant part:

- Eight years ago, the Appellant pled guilty to misdemeanor charges for selling copyrighted shoes and DVDs and was sentenced to a total of three (3) years with all but three (3) months suspended. The Appellant served his three (3) months and was released.
- The Appellant has since been a model citizen and has met all legal and financial obligations including paying taxes and child support. He is committed to properly, legally and professionally operating a business utilizing and implementing legal and acceptable business practices.
- The SNAP authorization of Mil-mart LLC will benefit the community in which the store is located. The store plans to offer fresh fruits and vegetables to support healthy living.
- The store has received approval for all other required licenses with the single exception of SNAP approval.
- The Appellant requests that the permanent denial decision be reversed.

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

ANALYSIS AND FINDINGS

The case record documents that, in 2009, the Appellant store owner pleaded guilty to selling counterfeit DVDs and CDs a misdemeanor violation of **Code of Virginia, § 59.1-41.3**. The state statute reads, in relevant part:

It shall be unlawful for any person to knowingly sell, rent, cause to be sold or rented, or possess for the purpose of selling or renting any recorded device that has been produced, manufactured, distributed, or acquired in violation of any provision of this chapter.

The case record also documents that the Appellant store owner pleaded guilty to selling counterfeit shoes and purses a misdemeanor violation of **Code of Virginia, § 59.1-92.12**. The state statute reads, in relevant part:

Subject to the provisions of § 59.1-92.15, any person who (i) uses in a manner likely to cause a consumer confusion, mistake, or deception as to the source or origin of any goods or services, without the consent of the owner of a registered mark, any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of such goods or services or (ii) reproduces, counterfeits, copies or colorably imitates a registered mark and applies such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, advertisements, or any item intended to be used in a manner likely to cause a consumer confusion, mistake, or deception as to the source or origin of any goods or services in connection with the sale, offering for sale, distribution, or advertising of such goods or services shall be liable in a civil action by the owner of a registered mark for any and all of the remedies provided in § 59.1-92.13, except that under this subdivision the owner shall not be entitled to recover profits, damages, or attorney fees unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive.

This review finds that misdemeanor violations of the aforementioned state statutes falls within the scope of a business integrity violation as contemplated by 7 CFR § 278.1(b)(3)(i) which states, in part:

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 ...

(i) **Conviction of or civil judgment against the owners**, officers or managers of the firm for: (A) Commission of **fraud or a criminal offense** in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; [Emphasis added.]

Further, 7 CFR § 278.1(k)(3)(i) states, in part:

Firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers as stipulated in § 278.1(b)(3)(i) **shall be denied authorization permanently** [Emphasis added.]

Scope of Business Integrity Regulations

The Retailer Operations Division does not dispute that the Appellant store owner has completed probation, restitution and other conditions related to his conviction in 2009. However, the USDA holds that the business integrity and reputation of a firm is critically important to the effective operation of the SNAP. Therefore, the criteria outlined in the regulations focuses on the business integrity and reputation of the owners, officers and management of firms seeking authorization or reauthorization in the SNAP. Prior convictions relating to business integrity, reflects on the ability of a firm to effectuate the purposes of, and abide by the rules governing, the program.

Under such circumstances, the agency regulations **grant no discretion** to the Retailer Operations Division or to the administrative review officer during an administrative review. Under the strict language of the regulations, the fact that a convicted party has successfully fulfilled the terms of any sentencing or adjudication for a business integrity conviction under 7 CFR § 278.1(b)(3)(i) or that the firm may have received business licenses from other governmental agencies does not mean that the Appellant can now be authorized as a SNAP retailer. In fact, the regulations at 7 CFR § 278.1(k)(3)(i) grant no exceptions to a permanent denial for a business integrity conviction under 7 CFR § 278.1(b)(3)(i).

Benefit to Local SNAP Community

The Appellant states that the SNAP authorization of Mil-mart LLC will benefit the community in which the store is located as the store plans to offer fresh fruits and vegetables to support healthy living. With regard to this contention, there is no provision in the SNAP statute or regulations that would allow a permanently denied firm to be authorized for the SNAP on the basis of possible benefit to the local SNAP community.

CONCLUSION

The case record documents by a preponderance of the evidence that the Appellant pleaded guilty to misdemeanor violations of Code of Virginia, § 59.1-41.3 and Code of Virginia, § 59.1-92.12 in 2009 and served a three (3) month sentence. Based on the analysis above, the decision by the Retailer Operations Division to permanently deny the application of Mil-mart LLC to participate in the SNAP is sustained.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses 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.

RONALD C. GWINN
Administrative Review Officer

June 1, 2018