

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

Mr. Swiss Imports,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0232185

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 decision made by FNS's Retailer Operations Division to permanently withdraw the authorization of Mr. Swiss Imports (hereinafter "Appellant") from participation as a 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 withdrew the authorization of Mr. Swiss Imports.

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

During its Fiscal Year 2020 SNAP reauthorization, the Appellant informed the Retailer Operations Division that it had changed locations. The store moved to a different building just around the corner. The Appellant also notified FNS that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) had been added to the store's ownership. This information was confirmed on the Appellant's reauthorization application dated October 28, 2019, and subsequent supporting documentation, including an updated business license and the firm's 2018 Federal business income tax return.

On its reauthorization application form, the Appellant indicated on Question #14 that one of the owners had been convicted of a crime after June 1, 1999. According to the Appellant, 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

In a letter dated November 20, 2019, the Retailer Operations Division sent the firm a letter asking for “court documentation showing the initial charge and final resolution” of the case. In response to this letter, the Appellant provided evidence which showed that 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

In a letter dated June 16, 2020, the Retailer Operations Division informed the Appellant that its authorization to participate as a retailer in SNAP would be permanently withdrawn due to its failure to maintain the necessary business integrity to further the purposes of the program. Specifically, the letter stated that Appellant owner 5 U.S.C. § 552 (b)(6) & (b)(7)(C) lacks the necessary business integrity for program authorization based on a prior criminal conviction. The letter stated that the permanent withdrawal action was taken in accordance with SNAP regulations at 7 CFR § 278.1(b)(3)(i) and § 278.1(k)(3)(i).

In a letter postmarked June 26, 2020, the Appellant requested an administrative review of the Retailer Operations Division’s decision. The request was granted and implementation of the permanent withdrawal has been held in abeyance pending the outcome of this review.

STANDARD OF REVIEW

In an appeal of adverse action, such as an authorization withdrawal, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that 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 found in the Food and 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(l) and (k) provide the authority upon which FNS shall withdraw the SNAP authorization of any firm if it fails to meet established business integrity criteria.

7 CFR § 278.1(l)(1) reads, in part:

FNS may withdraw the authorization of any firm authorized to participate in the program for any of the following reasons:

(iv) The firm fails to maintain the necessary business integrity to further the purposes of the program, as specified in paragraph (b)(3) of this section. Such firm shall be withdrawn for lack of business integrity for periods of time in accordance with those stipulated in paragraph (k)(3) of this section for specific business integrity findings.

7 CFR § 278.1(k)(3) reads:

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

(3) 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:

(i) 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.

7 CFR § 271(b)(3) states, in relevant part:

(3) The business integrity and reputation of the applicant. 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;

(B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(C) Violation of Federal, State and/or local consumer protection laws or other laws relating to alcohol, tobacco, firearms, controlled substances, and/or gaming licenses.

APPELLANT'S CONTENTIONS

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

- In September 2010, the firm changed locations and attempted to transfer the SNAP license to the new location. Upon doing so, it was instructed by FNS to complete a new application for the address change and due to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) obtaining a 10 percent ownership share in the firm in 2016.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) has earned the ownership due to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) hard work, dedication, and integrity toward fellow vendors and customers. Over the last 13 years, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) has turned the company into a reputable, profitable, and successful staple in the community. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) has always made sure the company is in compliance with USDA and the FDA, and ensures food and workplace safety and provides exceptional customer service as a business owner.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C) has since risen above all of the challenges in 5 U.S.C. § 552 (b)(6) & (b)(7)(C) life to become 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The firm's other owner (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) has faith that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) will maintain 5 U.S.C. § 552 (b)(6) & (b)(7)(C) integrity as 5 U.S.C. § 552 (b)(6) & (b)(7)(C) has for the past 13 years.
- Appellant requests that the firm's withdrawal from SNAP be reconsidered and the firm's authorization be reinstated so that it can continue to serve its customers.

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

ANALYSIS AND FINDINGS

The primary issue under consideration is whether or not the Appellant has the necessary business integrity and reputation, in accordance with regulation, to further the purposes of the Supplemental Nutrition Assistance Program. The USDA holds that the business integrity of a firm is critically important to the effective operation of SNAP. Therefore, the criteria outlined in the regulations focus on the business integrity and reputation of the owners, officers, and managers of firms seeking SNAP authorization. Criminal convictions relating to business integrity reflect on the ability of a firm to effectuate the purposes of SNAP and abide by the rules governing the program.

A review of the Appellant owner's criminal record from **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

FNS policy officials have determined that such an offense violates the business integrity provisions of the SNAP regulations, specifically that which is found in 7 CFR § 278.1(b)(3)(i)(A), which reads: "FNS shall deny the authorization of any firm from participation in the program for...conviction of or civil judgment against the owners, officers or managers of the firm for 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).

Regulations at 7 CFR § 278.1(k)(3)(i) state that firms lacking appropriate business integrity and reputation as described in the above paragraph shall have their SNAP authorization denied permanently.

It must be noted that the Appellant has not submitted any evidence or documentation to show that **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** criminal conviction did not occur. Without such evidence, this review has little option but to find for the Respondent in this case. Because the criminal conviction occurred after June 1, 1999 – which is when the business integrity provisions of the SNAP regulations took effect – the firm must be permanently withdrawn. The personal changes **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** has made since **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** conviction and the integrity **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** has allegedly shown since that time unfortunately have no bearing on this matter, as the regulations do not take into consideration whether a criminally convicted individual has fulfilled his or her probationary obligations or made corrections or improvements in his or her life. The regulations simply ask whether or not a person was convicted of one of the criminal activities listed in 7 CFR § 278.1(b)(3)(i). If the answer is yes, and if that conviction occurred after June 1, 1999, then FNS has little option but to deny the application or withdraw the firm's SNAP authorization.

CONCLUSION

The documentation in the case record clearly shows that the Appellant store owner, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** was criminally convicted of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Present

SNAP regulations conclude that this criminal offense shows a lack of business integrity and reputation to such a degree that the Appellant does not further the purposes of the program. Accordingly, and based on the analysis above, the decision by the Retailer Operations Division to permanently withdraw the authorization of Mr. Sweiss Imports from participation as a retailer in SNAP is sustained.

In accordance with the Food and Nutrition Act of 2008, as amended, and SNAP regulations, the authorization withdrawal of Mr. Sweiss Imports shall become effective 30 days after receipt of this decision.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt of this decision. The judicial filing timeframe is mandated by the Act, and this office cannot grant an extension.

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.

JON YORGASON
Administrative Review Officer

August 13, 2020