

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review Branch  
Alexandria, VA 22302**

**New Family Bazaar LLC,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0201858**

**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 a finding that the decision by the Retailer Operations Division (Retailer Operations) to permanently deny the application of New Family Bazaar LLC (Appellant) to participate in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed.

**ISSUE**

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.1(b)(3) and 7 CFR § 278.1(k), in its administration of the SNAP when it permanently denied the application of Appellant to participate in the SNAP as an authorized retailer.

**AUTHORITY**

7 USC § 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**

Retailer Operations received an electronic application from Appellant to participate in SNAP dated

May 2, 2017. Retailer Operations requested additional information by letters dated May 10, May 22, June 1, June 13 June 22, and July 14, 2017. Retailer Operations advised Appellant by letter dated July 28, 2017, of its decision to permanently deny the firm authorization to participate in the SNAP as a retail food store.

By letter dated August 3, 2017, the owner requested administrative review. The request was granted by letter dated August 9, 2017. This office emailed Appellant's request for review to the FOIA office. By email dated August 16, 2017, the agency FOIA office indicated it would process a FOIA request. The record supports that a FOIA reply dated October 4, 2017 was provided to the owner. By email dated October 11, 2017, this office notified the owner that additional information was due October 25, 2017. No additional information was received.

### **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 USC § 2018 and § 278 of Title 7 of the Code of Federal Regulations (CFR).

7 CFR § 278.1(a) states: "FNS shall approve or deny the application within 45 days of receipt of a completed application. A completed application means that all information (other than an on-site visit) that FNS deems necessary in order to make a determination on the firm's application has been received. This information includes, but is not limited to, a completed application form, all information and documentation from the applicant, as well as any needed third-party verification and documentation."

7 CFR § 278.6(e)(1) states: "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 ..."

7 CFR § 278.1(o) states in part: "The filing of any application containing false or misleading information may result in the denial of approval for participation in the program, as specified in paragraph (k) of this section, ... and may subject the firm and persons responsible to civil or criminal action."

7 CFR § 278.1(k) Denying authorization states in part: "FNS shall deny the application of any firm if it determines that: (4) 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 period specified in § 278.6(e)(1) or § 278.6(e)(3);”

### **APPELLANT’S CONTENTIONS**

- I didn’t provide any misleading and false information to FNS.
- I like to know what misleading and false information I have provided.

### **ANALYSIS AND FINDINGS**

It is important to clarify for the record that the purpose of this review is to validate or to invalidate the determination of Retailer Operations; as such, it is limited to consideration of the relevant facts and circumstances at the time of the decision. The authorization of a store to participate in the SNAP must be in accord with the Act and the regulations, as amended; those requirements of law cannot be waived.

Retailer Operations determined that the brother of the owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was charged with trafficking at his authorized store, Family Bazar, located at 11925 Conant Street, Hamtramck, MI on November 4, 2016. By letter dated March 9, 2017, addressed to attorney 5 U.S.C. § 552 (b)(6) & (b)(7)(C), FNS permanently disqualified Family Bazar and 5 U.S.C. § 552 (b)(6) & (b)(7)(C). By electronic application dated May 2, 2017, the store owner applied for SNAP authorization for Appellant, New Family Bazaar LLC, at the same location that was permanently disqualified.

As is noted in the many letters from Retailer Operations to the owner to obtain information to process his SNAP application, he submitted an affidavit indicating five “No” responses and one “Yes” response to six statements signed June 26, 2017. The owner replied “Yes” to the statement, “One or more owners or managers of this firm are related by birth or marriage to an owner or manager of a firm that is or has been disqualified from SNAP or WIC.” The initial affidavit submitted for Appellant and signed May 12, 2017 by a notary, which Retailer Operations rejected for that reason, had all “No” responses.

The record contains documentation from a store visit conducted at 5 U.S.C. § 552 (b)(6) & (b)(7)(C) store dated September 15, 2016. On that date the owner, Nizam Hussain, allowed the FNS contractor to take photographs of his brother’s store and signed a “Store Review Consent Form,” wherein he wrote his title as “manager.” The FOIA reply provided to the owner includes Nizam Hussain’s 2016 W-2 form which lists Family Bazar LLC as his employer. As such the “No” response to statement 2 on the affidavit advanced by the owner with his SNAP application appears to be false or misleading. Statement 2 reads: “One or more owners or managers of this firm has had ownership in or was a manager of a business that is or has been disqualified from SNAP or WIC.”

The regulations are clear that a firm can be permanently denied 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.

### **CONCLUSION**

After review of the record, the decision by Retailer Operations to permanently deny Appellant from participation as a retail food store in the SNAP is sustained.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 USC § 2023) and to Section 279.7 of the regulations (7 CFR § 279.7) with respect to applicable rights 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 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.

M. Viens  
Administrative Review Officer

November 8, 2017