

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

**Nixaco LLC,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0203857**

**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 (Retailer Operations) decision to permanently deny the application of Nixaco LLC (Appellant) to participate as a retail food store in the Supplemental Nutrition Assistance Program (SNAP).

**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) of the SNAP regulations, when it permanently denied the application of Appellant to participate in the SNAP as an authorized retailer.

**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**

By letter dated October 24, 2017, Retailer Operations permanently denied Appellant's application to participate as an authorized retailer in the SNAP in accordance with 7 CFR § 278.1(b)(3)(i)(A) based on the business integrity and reputation of the applicant. Per 7 CFR § 278.1(k)(3)(i) of the SNAP regulations, "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.”

One owner appealed Retailer Operations’ decision by undated letter and requested administrative review. The appeal was granted by letter dated November 6, 2017.

## **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). Section 278.1(b)(1) establishes the authority upon which the application of any firm to participate in the SNAP may be denied if it fails to meet established eligibility requirements.

7 CFR § 278.1 (b)(3) provides, in relevant part: “*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 judgement against 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) *Denying authorization* reads, in part, “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 the owners, officers or managers as stipulated in § 278.1(b)(3)(i) shall be denied authorization permanently;”

## **APPELLANT’S CONTENTIONS**

In the written request for review the owner contends:

- A field agent requested documents from a 2006 conviction. They were sent 5/18/17. After that date it was impossible to communication with the agent.
- She has an issue returning calls, messages and texts. Our application was rejected from the system due to her not replying timely.

- The first time we were contacted was about notarized documents pertaining to the 2006 conviction.
- The decision supposedly stimulates from a conviction in 2006 “Possessing Counterfeit Labels” in the state of Louisiana.
- Do regular SNAP benefit consumers have the same requirements as far as convictions as retailers?

## **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, and 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.

This review offers no comment on the contented difficulties that the owners reportedly had with the representative from Retailer Operations who was designated to review the eligibility of the applicant firm. The review of the record supports that in 2006 **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** pled guilty to the rental or sale of improperly labeled articles, or counterfeiting or possessing counterfeit labels in the state of Louisiana. The SNAP regulations enunciated at 7 CFR § 278.1(k) provide for the denial of applicant firms to participate in the SNAP based on 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.

The regulations regarding participation as a SNAP benefit recipient differ from the regulations applicable to the eligibility requirements for retailers that seek SNAP authorization as a retail food store.

## **CONCLUSION**

The conviction of an owner by a state court is documented in the record. After review of all the pertinent documentation, and based on the discussion herein, the decision by Retailer Operations to permanently deny the application of Appellant to participate 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. 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 owners 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 (FOIA), it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.

M. Viens  
Administrative Review Officer

December 13, 2017