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

Ocala Meat and Produce Market,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0224891

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that FNS's Retailer Operations Division properly permanently denied the application of Ocala Meat and Produce Market (hereinafter "Appellant") to participate as an authorized 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 denied the retailer application of Ocala Meat and Produce Market.

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

The Appellant firm, Ocala Meat and Produce Market, located in Ocala, Florida, under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was initially authorized for SNAP participation on June 23, 2014. On October 23, 2018, as part of a routine reauthorization, the Appellant submitted an application for continued SNAP authorization. This application was not signed by 5 U.S.C. § 552 (b)(6) & (b)(7)(C), but rather by authorized representative 5 U.S.C. § 552 (b)(6) & (b)(7)(C), a former SNAP-authorized store owner who was permanently disqualified from SNAP in April 2011 due to his ownership in a St. Petersburg, Florida store that committed trafficking violations.

On May 31, 2019, FNS's Retailer Operations Division requested additional information from the Appellant in order to complete the reauthorization. Because Ocala Meat and Produce Market is at the same location where a previous store had been permanently disqualified from SNAP, the Appellant was required to submit several documents to verify current ownership and to prove that permanently disqualified persons were not involved in the operation of Ocala Meat and Produce Market in any way. Requested documents included a notarized affidavit; business licenses; state business filings; articles of incorporation; bill of sale; property lease, bank account information; business and personal tax returns, etc. The Retailer Operations Division also asked for clarification of 5 U.S.C. § 552 (b)(6) & (b)(7)(C)'s connection with the store, as he was not listed on previous agency records related to the store.

In response to this request, the Appellant submitted a number of documents on June 10, 2019, including two documents (the affidavit and the bill of sale) that were notarized by 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Retailer Operations Division found it highly unusual that the person who notarized the documents for the firm was the same person who submitted the October 2018 reauthorization application as an "authorized representative" of the firm. Despite submitting many of the requested documents, the Appellant offered no explanation regarding 5 U.S.C. § 552 (b)(6) & (b)(7)(C)'s relationship with the store. As a result of the Appellant's failure to submit all information as required, the store's SNAP authorization was withdrawn on June 27, 2019.

It is important to note that one of the documents provided by the firm during the reauthorization process was a 2018 Federal tax return, Form 1120S, under the firm's corporate name, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Schedule K-1 of this tax return lists 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as 50 percent owner and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as 50 percent owner. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was not listed anywhere on FNS records. It is noted that in May 2017, Ocala Meat and Produce Market was visited by a contractor as part of a routine store inspection. During that visit, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) signed the Store Review Consent Form, and identified himself as "owner." In July 2017, the Retailer Operations Division contacted the store to ask about 5 U.S.C. § 552 (b)(6) & (b)(7)(C)'s role in the business. The employee who answered the phone said that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was the owner and that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was the manager. The issue was then dropped. But the 2018 Federal tax filing makes it clear that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was, in fact, an owner, which fact was never reported to FNS.

On July 16, 2019, the Appellant submitted a new SNAP application. This time, the application was signed by 5 U.S.C. § 552 (b)(6) & (b)(7)(C) rather than 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Once again, the Retailer Operations Division asked for a number of documents to clarify the firm's current ownership. The agency also repeated its request for an explanation of 5 U.S.C. § 552 (b)(6) & (b)(7)(C)'s relationship to the store.

In response to this request, the Appellant again submitted several documents. One of these documents was the 2018 Form 1120S under the corporate name 5 U.S.C. § 552 (b)(6) & (b)(7)(C). At first glance, this appeared to be the same tax return document that had been submitted during the reauthorization application. It stands to reason that these forms, submitted

to FNS less than two months apart, would have been identical. However, that was not the case. For instance, on the more recent version, submitted on August 1, 2019, Line 21 shows "ordinary business income" as 5 U.S.C. § 552 (b)(6) & (b)(7)(C). In the version submitted in June, this amount was 5 U.S.C. § 552 (b)(6) & (b)(7)(C). And on Schedule K-1, the August version shows 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as being a 100 percent owner. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is no longer listed. Finally, Form 1120S, as submitted to FNS in August, appears to have been prepared by 5 U.S.C. § 552 (b)(6) & (b)(7)(C), under the firm name Accounting and More.

As to 5 U.S.C. § 552 (b)(6) & (b)(7)(C)'s relationship to Ocala Meat and Produce Market, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) submitted a letter dated July 29, 2019, explaining that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is an accountant who helps the firm with month-end sales tax reports as well as year-end income taxes and other reports. Additionally, he helps submit applications. The Appellant stated that aside from these accounting-related activities, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) has no affiliation with Ocala Meat and Produce Market. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) further stated that after the Appellant's SNAP authorization was withdrawn in June, he stopped using 5 U.S.C. § 552 (b)(6) & (b)(7)(C)'s services.

Because the Appellant's Federal tax returns submitted to FNS in August contradicted the tax returns submitted in June, particularly in regard to firm ownership, the Retailer Operations Division requested additional clarifying documentation, including a "transcript copy of [the] 2018 and 2017 federal business tax filing for 5 U.S.C. § 552 (b)(6) & (b)(7)(C)."

On September 16, 2019, the Appellant submitted the requested documents, including the tax return transcript. This IRS document shows that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) submitted its 2018 Form 1120S on April 20, 2019. The transcript also shows that the firm's business income was 5 U.S.C. § 552 (b)(6) & (b)(7)(C), as reported on the tax return submitted to FNS in June 2019. The transcript further shows the number of shareholders as 2, which corresponds to the earlier Form 1120S showing both 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as 50 percent shareholders.

On November 13, 2019, the Retailer Operations Division contacted the Appellant by telephone and asked several clarifying questions, including:

- Did the Appellant file an amended Form 1120S for 2018? The Appellant said it did not.
- Who is 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and what is his relationship to the company? The Appellant said that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) had not been with the company for four or five years.

In a later e-mail, also on November 13, FNS asked similar questions:

- What is the relationship between 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and the store? This time, the Appellant answered differently, saying he is just an employee. (Appellant later submitted a Form W-2 for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for the year 2018.)
- Did the firm file an amended 2018 federal business tax return? The Appellant stated that it filed only one return, and filed on time.

After reviewing these events and correspondence and considering all available evidence, the Retailer Operations Division determined that the Appellant knowingly submitted false information as part of its SNAP application; specifically, that the 2018 Federal tax return, Form 1120S, submitted in August 2019, contained false or misleading information relating to the ownership of the firm.

In a letter dated November 27, 2019, and delivered to the store on December 4, 2019, the Retailer Operations Division informed the Appellant that its SNAP application was permanently denied because the application contained false or misleading information about a substantive matter. The letter stated that the action was taken in accordance with regulations at 7 CFR § 278.1(k)(4), § 278.1(o), and § 278.6(e)(1)(iii).

In a letter postmarked December 9, 2019, the Appellant requested an administrative review of the Retailer Operations Division's decision. The request was granted.

STANDARD OF REVIEW

In an appeal of adverse action, such as an application denial, 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 § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(k) and (o) provide the authority upon which FNS shall deny the authorization of any firm that knowingly submits an application containing false or misleading information.

7 U.S.C. § 2021(b)(4) states, in part:
...[A] disqualification under subsection (a) shall be...for a reasonable period of time to be determined by the Secretary, including permanent disqualification, on the knowing submission of an application for the approval or reauthorization to accept and redeem coupons that contains false information about a substantive matter that was a part of the application.

7 CFR § 278.1(o) reads:
Applications containing false information. 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, or disqualification of a firm from participation in the program, as specified in § 278.6, and may subject the firm and persons responsible to civil or criminal action.

7 CFR § 278.1(k) reads, in relevant 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 periods specified in § 278.6(e)(1) or § 278.6(e)(3).

7 CFR § 278.6(e) states, in relevant part:
FNS shall take action as follows against any firm determined to have violated the Act or regulations.... The FNS regional office shall:
(1) 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, such as, but not limited to, information related to:
(F) Ownership of the firm...
(H) SNAP history, business practices, business ethics... when the store did (or will) open for business under the current ownership...or
(I) Any other information of a substantive nature that could affect the eligibility of a firm.

APPELLANT'S CONTENTIONS

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

- Appellant's basis for its request for administrative review is the fact that USDA's determination was based on a mathematical error in the business taxes that appeared inconsistent with IRS records. This error was unearthed inadvertently.
- The tax records provided on behalf of the Appellant were incorrect due to an error by the accountant, which led to an error of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) being unrecorded for the tax returns. This incorrect number led to the same deficiency in related areas on the firm's SNAP application.
- On or about November 6, 2019, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was contacted and informed of the potential error due to multiple tax returns being filed.
- From the day that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) received the denial letter, he attempted to meet with the accountant who prepared the returns. The accountant had been previously terminated and dodged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for days.
- On December 6, 2019, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) tracked down the accountant and instructed him to reconcile the errors. As of that date, the errors were corrected, and the corrected tax returns were provided to USDA.
- Any inaccuracies in the application were entirely the result of a mathematical error created by the Appellant's former accountant, and were, under no circumstances, intentional or designed to provide any benefit to the Appellant. In fact, the correction of the mistake actually benefits the Appellant.
- Because the store does not sell alcohol or cigarettes, it is incredibly important to the Appellant that it be able to accept SNAP benefits.

In support of its response, the Appellant provided a number of documents, including the following:

- A copy of the tax return transcript from the IRS. This appears to be identical to the transcript that was submitted to FNS on September 16, 2019, and matches the information from the Form 1120S, as submitted on June 10, 2019 as part of the firm's reauthorization application. The transcript shows the firm's income as 5 U.S.C. § 552 (b)(6) & (b)(7)(C), a difference of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) from what was listed on the firm's Form 1120S, submitted to FNS on August 1, 2019. This transcript also lists the total number of shareholders as 2, which is consistent with the original Form 1120S submitted in June.
- Another copy of Form 1120S for calendar year 2018. This appears to be a mishmash of the two earlier 1120S forms that were submitted. Most of the data in this last version matches the 1120S that was submitted in June 2019, but Schedule M matches the data from the August 2019 version. Schedule K-1 shows 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as the sole shareholder.
- Personal tax returns for 2018 for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and his spouse, including Federal Individual Income Tax Return Forms 1040X and 1040 along with accompanying schedules and forms. Form 1040X indicates that an amended tax return was filed on December 6, 2019, "to correct amount from K1."

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 and evidence presented, including any not specifically summarized or explicitly referenced herein.

ANALYSIS AND FINDINGS

The purpose of this review is to either validate or invalidate the determination of the Retailer Operations Division. This review is limited to consideration of the relevant facts as they existed at the time the agency rendered its decision. This review cannot consider any actions taken by the Appellant subsequent to the agency's November 27, 2019, denial decision which was delivered to the firm on December 4, 2019.

After reviewing all available information in this case, this review finds in favor of the Retailer Operations Division. The key issue in this case is not one of mathematical calculations, as Appellant's counsel seems to believe. There is little evidence that the Retailer Operations Division ever concerned itself with the firm's revenue or the specific amounts listed on the Appellant's tax documents. Instead, the primary concern is one of store ownership. This has been the main issue from the earliest stages of this matter.

When the Appellant originally submitted a reauthorization application in October 2018, the Retailer Operations Division requested a large amount of documentation in an effort to clarify firm ownership. The involvement of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) – himself a permanently disqualified store owner – on several of the firm's documents raised immediate suspicions about who was involved in the firm's business operations. After the Appellant submitted a new application in July 2019, it provided documentation, including tax returns, which directly contradicted the documentation that was submitted as part of its earlier reauthorization application. Specifically, Federal tax Form 1120S, which was submitted in June 2019, shows two owners, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(6) & (b)(7)(C), each with

a 50 percent share in the company. The June 1120S appears to be the tax form that was submitted to the IRS in April 2019, as it matches the data found on the IRS Tax Return Transcript, including the total number of shareholders. And yet, less than two months later, the Appellant submitted a contradictory Form 1120S – prepared by 5 U.S.C. § 552 (b)(6) & (b)(7)(C) – which showed that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was the sole owner, and showing different income data.

When questioned about the contradictions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) repeatedly provided false answers. For instance, he originally stated that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) had not been with the company for the last four or five years. Later, he admitted that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) did work for the firm, but was "just an employee." Additionally, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) stated that he had filed his business taxes on time and that he had not filed an amended return. This means that the second Form 1120S, which he submitted in August, and which was supposedly prepared by 5 U.S.C. § 552 (b)(6) & (b)(7)(C), must have been false, as the data does not match the IRS Tax Return Transcript, which was also submitted as part of the firm's July 2019 SNAP application.

Based on a review of all available information, this review has little reason to believe that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was not part of the firm's ownership at the time it submitted its reauthorization application in October 2018 and at the time it submitted a new SNAP application in July 2019. Failure to report complete and accurate ownership information on an application is a substantive issue that could affect the eligibility of a firm and warrants permanent denial in accordance with regulations at 7 CFR § 278.1(o), (k)(4), and § 278.6(e)(1)(iii).

Hardship to Appellant

The Appellant claims that because the store does not sell alcohol or cigarettes, it is incredibly important that it be able to accept SNAP benefits. This contention implies that the firm will suffer financial hardship if the application denial is upheld.

Unfortunately, this contention has no bearing in this matter. A firm may only participate in SNAP if it meets eligibility requirements and complies with regulations regarding the submission of truthful and accurate information. Financial hardship to the store is not a consideration.

CONCLUSION

Based on a preponderance of the evidence, it is the determination of this review that the Appellant firm knowingly filed a SNAP application containing false or misleading information of a substantive nature. In accordance with 7 CFR § 278.1(o), (k)(4), and § 278.6(e)(1)(iii), the decision by the Retailer Operations Division to permanently deny the application of Ocala Meat and Produce Market, under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is sustained.

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.

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 March 9, 2020
Administrative Review Officer