

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

OK Smoke Mart,

Appellant,

v.

Case Number: C02033453

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is insufficient evidence to support the determination by the Retailer Operations Division to permanently withdraw the authorization of OK Smoke Mart (“Appellant”) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The purpose of this review is to determine whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.1(k)(3)(i), when it permanently withdrew the authorization of Appellant to participate in SNAP on October 4, 2017.

AUTHORITY

According to 7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1, “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 October 4, 2014, the Retailer Operations Division informed Appellant that its application to participate as an authorized retailer in the SNAP was being withdrawn, in accordance with 7 CFR § 278.1(l)(1)(iv) and 7 CFR § 278.1(k)(3)(iv). In concluding that Appellant should be permanently withdrawn, the Retailer Operations Division relied upon information that the owner was found guilty on November 2, 2011 of committing trafficking.

On October 11, 2017, Appellant appealed the Retailer Operations Division decision and requested an administrative review of this action. The appeal was granted.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as insufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(k)(3)(i) and (l)(iv) establishes the authority upon which the application of any firm to participate in the SNAP may be denied because “records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers.”

7 CFR § 278.1(l) states, in part:

FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons 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 firms 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(b)(3) states, in part:

FNS shall deny the application 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: Conviction 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.

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.

APPELLANT'S CONTENTIONS

Appellant's responses regarding this matter are essentially as follows:

- The conviction was actually for accepting ineligible items, not trafficking;
- Appellant has had no further violations. Appellant is very generous to the community. Appellant provided two letters from employees and a donation receipt;
- Appellant already suffered the consequences for the conviction. Appellant provided seven pages of documents; and,
- Appellant already received a six-month disqualification for the violations. Appellant provided a letter from FNS.

These explanations may represent only a brief summary of Appellant's contentions.

ANALYSIS AND FINDINGS

Appellant is correct that the owner was not convicted for trafficking. Therefore, the involuntary withdrawal based on a conviction for trafficking is not appropriate. Accordingly, it is unnecessary to address Appellant's contentions in this matter. However, in reaching a decision, full attention and consideration have been given to all contentions presented. Nothing in this decision prevents the Retailer Operations Division from subsequently taking action against the firm for other reasons.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to withdraw the application of OK Smoke Mart to participate as an authorized retailer in SNAP is reversed.

RIGHTS AND REMEDIES

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.

RICH PROULX
Administrative Review Officer

December 4, 2017