

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

Ontario St Food Express,

Appellant,

v.

Case Number: C0207087

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that the Retailer Operations Division properly permanently denied the application of Ontario St Food Express (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 Ontario St Food Express.

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, Ontario St Food Express, originally applied to participate as a retailer in SNAP on September 20, 2017. According to the firm’s application, the store was opened for business under the current ownership on September 5, 2017.

As part of the application process, the Retailer Operations Division requested a number of documents from the Appellant to ensure that no disqualified owners from any other store were involved with Ontario St Food Express. Requested documentation included a notarized affidavit, a bill of sale for the firm, a copy of any lease agreements, personal and business tax returns, and a letter from Appellant's bank identifying authorized signers on the account. In response, the Appellant submitted several of the requested documents.

Based on the documentation provided by the Appellant, the Retailer Operations Division suspected that the Appellant owner's wife, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was involved with Ontario St Food Express in some capacity. 5 U.S.C. § 552 (b)(6) & (b)(7)(C), who formerly owned Moon's Drive Inn Market in Nashville, Tennessee, was permanently disqualified from SNAP effective November 8, 2005, due to trafficking violations committed at that store.

In a letter dated December 13, 2017, the Retailer Operations Division requested that the Appellant provide another letter from its financial institution identifying all authorized signers for any account used by the firm. The previous letter from the Appellant's bank stated that owner 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was the signer on the account, but it was not clear if he was the only person who had access to the account.

The Appellant provided an additional letter from Sun Trust Bank along with a copy of three bank statements, again showing that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was the authorized signer on the account. But the letter did not clearly specify that only 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was authorized to access the account.

On December 29, 2017, the firm's application was withdrawn due to failure to provide all requested information.

On January 22, 2018, the Appellant submitted a new application for SNAP participation. Upon receipt of this new application, the Retailer Operation Division requested a few more documents, including a bill of sale. In response to this request, the Appellant provided a copy of a Quit Claim Deed dated May 13, 2004, showing that the property at 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was conveyed to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) appear to have remained owners of the property since that time, leasing it out to various store owners.

In a letter dated February 23, 2018, 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(o), § 278.1(k), and § 278.6(e). The letter did not specify which information on the application was considered false or misleading.

In a letter postmarked March 4, 2018, the Appellant requested an administrative review of the Retailer Operations Division's decision. The request was granted.

In a letter postmarked March 7, 2018, the Appellant's attorney submitted a second request for review. This request included a request for the specific reasons for the denial decision. Appellant's counsel argued that it had no way of disputing the denial if it is not aware of the information that has been deemed false or misleading.

After receiving counsel's letter, the administrative review officer determined that the request for information was a request under the Freedom of Information Act (FOIA) and forwarded the request to the agency FOIA office for an official response. On March 20, 2018, the administrative review officer also sent Appellant's counsel a letter by e-mail stating that once the Appellant received the agency's FOIA response, it would then have 21 days to provide any additional arguments or evidence in support of its request for administrative review.

FNS's response to the FOIA request was completed on April 13, 2018, and was delivered to Appellant's counsel April 19, 2018. As of the date of this decision, the 21 days for providing additional information has passed. No further documentation has been submitted by the Appellant or its counsel to support its request for review.

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) Food Stamp Program history, business practices, business ethics...or

(I) Any other information of a substantive nature that could affect the eligibility of a firm.

APPELLANT'S CONTENTIONS

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

- Appellant wants to know what the false or misleading information was that led to the application denial.
- Appellant submitted an application and then provided all documents that were requested. A store visit was then done by USDA. Next thing Appellant knows is that it was permanently denied.
- Appellant requests a review for the denial that was done for no reason.

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 herein.

ANALYSIS AND FINDINGS

It is important to clarify for the record that the purpose of this review is to either validate or invalidate the earlier determination of the Retailer Operations Division. Thus, this review is limited to consideration of the relevant facts and circumstances as they existed at the time the Retailer Operations Division rendered its decision.

The chief issue raised by the Appellant and its counsel is a request for the specific reasons that the Retailer Operations Division denied the application. Appellant's counsel argued that it could not dispute the denial without being made aware of the specific information that was deemed false or misleading.

As noted earlier, this request for information was determined by the administrative review officer to be a FOIA request. The request was forwarded to FNS's FOIA office, which provided a response on April 13, 2018. As stated previously, the Appellant was given 21 days after receipt of the FOIA response to provide any additional information or documentation to support its request for administrative review. As of the date of this decision, no additional information has been provided. Without further contentions from the Appellant to explain why it believes a review is warranted in this case, this review has little option but to sustain the decision made by the Retailer Operations Division.

Evidence of False or Misleading Information

Based on a review of all available evidence in the case, it is the finding of this review that the Appellant owner attempted to conceal his relationship with his wife, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and her longstanding ownership

involvement with the property at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), where Ontario St Food Express is located.

Because 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was previously permanently disqualified from SNAP participation due to an earlier trafficking violation, she is not permitted to be an owner, officer, or manager of any store that wishes to be authorized in SNAP. The fact that she is married to and living with the present owner, and the fact that she remains an owner of the property strongly suggests that she is an owner of the firm and would directly benefit from the store's SNAP authorization.

This information regarding 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is a substantive matter that could affect the Appellant's eligibility for SNAP authorization. As such, the withholding of this information by the Appellant on its SNAP application warrants permanent denial in accordance with 7 CFR § 278.1(o), § 278.1(k)(4), and § 278.6(e).

Evidence that supports this conclusion includes, but is not limited to, the following:

- 2016 U.S. Individual Income Tax Return Form 1040, showing both 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(6) & (b)(7)(C), listed as "married filing jointly." Both are listed at a same address, which denotes that they are living together. The tax return was filed on November 20, 2017.
- Schedule E of Form 1040 shows both 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as earning supplemental income from rental property at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), which is the address of Ontario St Food Express. This denotes that both parties are joint owners of the property.
- Quit Claim Deed dated May 13, 2004, showing that the property at 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was "bargain[ed], [sold], remise[d], release[d], quit claim[ed] and convey[ed] unto 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and wife, 5 U.S.C. § 552 (b)(6) & (b)(7)(C)."
- Letter from attorney 5 U.S.C. § 552 (b)(6) & (b)(7)(C), dated September 19, 2017, stating that he represents 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and wife, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), "owners and Landlord of the property located at 5 U.S.C. § 552 (b)(6) & (b)(7)(C)..." [Emphasis added.]

When 5 U.S.C. § 552 (b)(6) & (b)(7)(C) submitted his SNAP application on September 20, 2017, no mention was made at all about his wife, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), who, according to the documents above, is co-owner of the property.

Along with the SNAP application, the Appellant owner submitted a notarized affidavit, in which he marked “No” on Question #4, indicating that no permanently disqualified owners are financially involved in or have other operational interest in the store. The Appellant also marked “No” for Question #6, thus claiming that no owners of Ontario St Food Express are related by birth or marriage to an owner of a firm that has been disqualified from SNAP. Both of these “No” answers appear to be false.

When he signed the notarized affidavit, the Appellant owner acknowledged “that if [FNS] becomes aware that anyone involved in a previous SNAP or WIC violation is associated with this business in any manner, FNS may institute action to permanently deny or disqualify all owners of this firm for falsification of a SNAP application.”

CONCLUSION

Based on the analysis above, it is the determination of this review that the Appellant firm intentionally excluded the owner’s permanently disqualified spouse/co-owner from the SNAP application and filed an untruthful affidavit. Thus, the Appellant knowingly submitted an application that contained false or misleading information of a substantive nature. Accordingly, the decision by the Retailer Operations Division to permanently deny the application of Ontario St Food Express, 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
Administrative Review Officer

June 5, 2018