

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

**Panaca Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0200940**

**FINAL AGENCY DECISION**

It is the final decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS), that there is sufficient evidence to sustain the initial decision to permanently withdraw the authorization of Panaca Market(hereinafter “Appellant”) to participate in the Supplemental Nutrition Assistance Program (SNAP) for TIME PERIOD, by the ROD Office (hereinafter “ROD Office”).

**ISSUE**

The issue accepted for review is whether the ROD Office took appropriate action, consistent with 7 C.F.R. § 271.2, § 278.1(b)(3) and § 278.1(k)(3) when it made the decision to deny Appellant’s application to participate in the SNAP.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 C.F.R. § 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 record reflects that on 12/5/2011, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** signed as President an application for authorization to participate in the SNAP. On or about December 21, 2011 Appellant was authorized to participate in the SNAP. The firm was subsequently advised in a letter dated June 5, 2017 of the Department's decision to withdraw the firm's authorization to participate in the program. The regulatory bases given for that denial were 7 C.F.R. § 278.1(l)(iv), § 278.1(b)(3) and § 278.1(k)(3). On June 14, 2017, Appellant requested an administrative review of this action. The request was granted.

## STANDARD OF REVIEW

In appeals of adverse actions an appellant bears the burden of proving by a preponderance of the evidence that the administrative actions should be reversed. That means 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

The controlling statute in this matter is contained in the Food & Nutrition Act of 2008, as amended, at 7 U.S.C. § 2018 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2018, 7 C.F.R. § 271.2, § 278.1(b)(3) and § 278.1(k)(3) establish the authority upon which a retail food store's or wholesale food concern's authorization to participate in the SNAP may be denied on the basis of a lack of business integrity. There also exist FNS policy memoranda and clarification letters which further clarify the bases for such decisions.

7 C.F.R. § 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.

7 C.F.R. § 278.1(b)(3) states, *inter alia*:

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 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 relating to alcohol, tobacco, firearms, controlled substances and/or gaming licenses

7 C.F.R. § 278.1(k)(3) states, *inter alia*:

FNS shall deny the application of any firm if it determines that 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.

### **SUMMARY OF THE CHARGES**

Owner **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** was charged with Insurance Fraud (a category D felony) and Submitting False Claims: Medicaid Fraud (a category D felony) via a Criminal Information document filed July 13, 2016 in the Lincoln County Clerk's Office, Seventh Judicial District of the State of Nevada, Case No CR0717016. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** was sentenced to 12-48 months prison on or about January 13, 2017.

## APPELLANT'S CONTENTIONS

In its written request for review dated June 14, 2017, and in subsequent correspondence, Appellant provided information in which it was argued that:

The reauthorization application, while it represents that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) had pled guilty to Category D felonies, did not accurately represent the current ownership of the firm. The current owners of stock in the retail store are 5 U.S.C. § 552 (b)(6) & (b)(7)(C) 5 U.S.C. § 552 (b)(6) & (b)(7)(C) divested himself of his shares prior to his guilty plea and was no longer a shareholder at the time of its filing. The firm has prepared an amended 2016 Form 1120 S tax return to properly reflect the ownership and has provided a copy of same in support of the above.

## ANALYSIS AND FINDINGS

In regard to the above contentions, the firm's initial application to accept SNAP benefits signed on December 5, 2011 indicated that there were four owners of the firm, including 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The record contains 2015 tax documents showing that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) each held 50% of the firm's shares of common stock. 2016 tax records were provided by Appellant showing that this arrangement had been modified to reflect that 5 U.S.C. § 552 (b)(6) & (b)(7)(C), spouse of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was now the holder of 50% of the firm's shares of common stock, along with 5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, Nevada being a Community Property State, meaning that all property obtained during the marriage of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) are owned jointly, moreover means that both spouses own 50% of either's shares in the firm; consequently, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) remains an owner of the firm. The moving of ownership of shares from one joint owner to the other, in the state of Nevada, does not demonstrate that both do not retain ownership in the firm. As such, the record reflects that a current owner of the firm Panaca Market was in fact found guilty of and sentenced for felony crimes which form bases for the firm's withdrawal from the SNAP under 7 CFR § 278.1(b)(3)(i) and § 278.1(l)(1)(iv).

## CONCLUSION

In view of the above, it is my determination that the ROD Office's permanent withdrawal of Appellant's authorization to participate in the SNAP is in accord with the law and regulatory provisions at 7 U.S.C. § 2018, 7 C.F.R. § 271.2, § 278.1(l)(1)(iii), § 278.1(b)(3) and § 278.1(k)(3). The withdrawal, therefore, is sustained.

## **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food & Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right 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 you 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.

In accordance with the provisions of the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If the agency receives such a request, it will seek to protect, to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.

DANIEL S. LAY  
Administrative Review Officer

February 5, 2018