

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

**R&N Mini Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C C0222575**

**FINAL AGENCY DECISION**

It is the decision of the USDA that there is sufficient evidence to support a finding that the permanent denial of R&N Mini Market from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a permanent denial against R&N Mini 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 applied for SNAP authorization on April 22, 2019. As part of a routine integrity process, the Retailer Operations Division requested additional documents in letters dated May 16, 2019 and June 26, 2019. The requested documents included business integrity affidavits from the store owners and a signed letter from the Appellant’s bank or financial institution identifying the authorized signers for the business on any accounts used by the business.

In a letter dated August 27, 2019, the Retailer Operations Division informed the Appellant that R&N Mini Market was denied permanently for providing false or misleading information of a substantive matter in its application for SNAP authorization. Specifically, it was determined that

R&N Mini Market filed an application containing false or misleading information about the financial and operational ownership or involvement of a previously permanently disqualified person. The letter also informed the Appellant of its right to request an administrative review of the decision within ten (10) days of receipt.

In a letter postmarked August 31, 2019, the Appellant appealed the Retailer Operations Division's determination and requested an administrative review of the permanent denial. The request for administrative review 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, might 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 covered in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and promulgated as regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(e)(1)(iii) establishes the authority upon which a permanent denial may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(4) states, in part:

... a denial ... shall be ... (4) for a reasonable period of time to be determined by the Secretary, **including permanent denial**, 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. [Emphasis added.]

7 CFR § 271.2 states that the definition of "coupon" includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

7 CFR § 278.1(o) states:

**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)(4) states, in part:

**Denying authorization.** FNS shall deny the application of any firm if it determines that ... 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) ....

7 CFR § 278.6(e) states, in part:

... FNS shall take action as follows against any firm determined to have violated the Act or regulations .... (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, WIC disqualification or authorization status, when the store did (or will) open for business under the current ownership, business, health or other licenses, and whether or not the firm is a retail and wholesale firm operating at the same location; or (I) Any other information of a substantive nature that could affect the eligibility of a firm. [Emphasis added.]

### APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions, in relevant part:

- The store application was denied because it is claimed the Appellant filed an application containing false or misleading information about the financial and operational ownership or involvement of a previously permanently disqualified person, 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- However, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) has never been a corporate owner or officer of the business at any point during its existence.
- In 2015, the firm president had to leave the United States due to a family matter and was out of the country from May 30, 2015 until August 5, 2015. During this time, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) assisted with the operation of the business and was listed with the firm's banking account as an individual who could make deposits. He was not designated a corporate officer. When the firm president returned, he failed to remove him from the list of individuals who could make deposits with the bank; however, the firm has now done so as documented by a letter from the bank dated August 30, 2019.
- Authorization of the Appellant firm will greatly serve the community as many lack the transportation to go to other SNAP authorized stores.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

## ANALYSIS AND FINDINGS

A review of the case record reveals that the Appellant store owners provided false information on business integrity affidavits submitted to the Retailer Operations Division. Specifically, the Appellant store owners answered “no” to the following question:

Persons who were owners or managers of any store that has been permanently disqualified from SNAP or WIC are financially involved or have other operational interest in this store.

Owner 5 U.S.C. § 552 (b)(6) & (b)(7)(C) husband, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), had been previously permanently disqualified from the SNAP due to violations at another store. Nevertheless, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was listed as an account signer for the business checking account of R&N Mini Market as confirmed in writing by a bank representative in a letter dated May 24, 2019. Therefore, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was “financially involved” or had an “operational interest” within the meaning of the business integrity affidavit.

The Appellant firm president acknowledges in the arbitration request that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was added as an account signer in 2015 for R&N Mini Market but states that he was only authorized to make deposits during a three-month period when the firm president was out of the country. Allegedly, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) remained as an account signer on the business account due to an oversight. However, it should be noted that there was no indication in the letter from the bank that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was ever limited to “making deposits” and there was no evidence submitted that supported the firm president’s claim.

A review of the entire case record indicates that it is more likely true than not true that the Appellant store owners were aware of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) previous permanent disqualification and his ongoing status as an account signer on the business bank account. Although 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is an alleged owner of R&N Mini Market she is **not** listed as an account signer on the business banking account; however, her husband is listed. This tends to indicate that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) may have had a de facto status as the actual owner with his wife as the front person to avoid any issues with 5 U.S.C. § 552 (b)(6) & (b)(7)(C) prior disqualification.

The Appellant also states that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was never a corporate officer. However, this contention has no relevance in the case as the permanent denial is based on false statements regarding 5 U.S.C. § 552 (b)(6) & (b)(7)(C) financial or operational interest in the store and not whether he is a corporate official.

### **Impact on the Local Community**

The Appellant claims that a permanent denial would be a disservice to the community as many lack transportation to other SNAP authorized stores. Regarding this contention, there is no provision in SNAP law or regulations that would negate, waive or reduce a permanent denial for falsification on a substantive matter based on this contention.

## **CONCLUSION**

Based on a review of the entire case record, a preponderance of the evidence indicates that the Appellant knowingly submitted false information regarding a substantive matter which affected the eligibility of the firm. The appropriate sanction for such a violation is permanent denial as provided by 7 CFR § 278.1(o), 7 CFR § 278.1(k)(4), and 7 CFR § 278.6(e)(1)(iii). Accordingly, the decision to impose a permanent denial against the Appellant, R&N Mini Market, is sustained.

## **RIGHTS AND REMEDIES**

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses 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.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If FNS 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.

RONALD C. GWINN  
Administrative Review Officer

December 27, 2019