

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

**Ranch Markets Inc,**

**Appellant,**

**v.**

**Office of Retailer Operations and  
Compliance,**

**Respondent.**

**Case Number: C0224793**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Office of Retailer Operations and Compliance to impose a six month disqualification against Ranch Markets Inc (hereinafter Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), § 278.6(e)(5 and 6), and § 278.6(f)(1) in its administration of the SNAP when it imposed a six month period of disqualification against the Appellant.

**AUTHORITY**

According to 7 U.S.C. § 2023 and the 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**

USDA investigators conducted an investigation of the compliance of Appellant with federal SNAP law and regulations during the period May 28, 2020, through June 25, 2020. The investigation determined that personnel at the Appellant firm accepted SNAP benefits in exchange for ineligible merchandise on five separate occasions. All five transactions were deemed clearly violative and warrant a six month disqualification period. The items sold are best described in regulatory terms as common nonfood items such as plastic cutlery, foam plates, foam bowls, plastic cups, and napkins. The investigative report indicates that these violative

transactions were handled by three different clerks. It is noted that on one occasion (Exhibit A), the clerk refused to allow the purchase of ineligible items using SNAP and only ran the transaction for the eligible items. However, this same clerk subsequently allowed the purchase of ineligible items using SNAP benefits in Exhibits C, D, and G. It is also noted that the clerk in Exhibit F refused to exchange SNAP benefits for cash, but did allow the purchase of ineligible items in the same Exhibit. Additionally, the clerk overcharged the investigator in Exhibit A and no POS receipts were provided to the investigator in Exhibits D and G. These actions also constitute violations of SNAP rules and regulations.

As a result of evidence compiled from this investigation, the Office of Retailer Operations and Compliance informed Appellant, in a letter dated December 9, 2020, that the firm was charged with violating the terms and conditions of the SNAP regulations, 7 CFR § 278.2(a). The letter states, in part, that the violations “. . . warrant a disqualification period of six months (Section 278.6(e)(5)). The letter also states that under certain conditions, FNS may impose a civil money penalty (CMP) in lieu of a disqualification (Section 278.6(f)(1)).”

Appellant responded to the charges in a letter dated December 18, 2020. After giving consideration to the evidence, the Office of Retailer Operations and Compliance notified Appellant in a letter dated January 19, 2021, that it determined that violations had occurred at the firm, and that a six month period of disqualification from participating as an authorized firm in SNAP was warranted. This determination letter also states that Appellant’s eligibility for a hardship CMP according to the terms of Section 278.6(f)(1) of the SNAP regulations was considered. However, the letter stated “. . . you are not eligible for the CMP because there are other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.”

By letter dated January 28, 2021, Appellant appealed the Office of Retailer Operations and Compliance’s decision and requested an administrative review of this action. The appeal was granted and implementation of the sanction has been held in abeyance pending completion of this review. No subsequent correspondence was received.

## **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 sufficient 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. § 2021), and implemented through regulation under Title 7 CFR Section 278. In particular, Sections 278.6(a) and (e)(5) establish the authority upon which a six month disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 271.2 states that: Eligible foods means any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot food and hot food products prepared for immediate consumption.

7 CFR § 278.2(a) states that: Coupons [SNAP benefits] may be accepted by an authorized retail food store only from eligible households, and only in exchange for eligible food. Further, the citation specifies that coupons may not be accepted in exchange for cash, in payment of interest on loans, or for any other nonfood use.

7 CFR § 278.6(a) states that: FNS may disqualify any authorized retail food store . . . if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations.

7 CFR § 278.6(e)(5) states that: a firm is to be disqualified for six months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as but not limited to the sale of common nonfood items due to carelessness or poor supervision by the firm's ownership or management.

7 CFR § 278.6(f)(1) states that, “FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm’s disqualification would cause hardship to SNAP households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices. FNS may disqualify a store which meets the criteria for a CMP if the store had previously been assigned a sanction. A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

### **APPELLANT’S CONTENTIONS**

The following may represent a summary of Appellant’s contentions in this matter; however, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein:

In the reply to the charges:

- Ranch Market is a small convenience store in Thousand Palms primarily selling food, meat, and alcohol products, and is centered around several low-income housing projects, elderly living centers, and homeless shelters. Most Ranch Market customers reside in nearby shelters and projects and assisting living centers. The owners have owned and operated the business for 28 years;
- Store employees would never engage in trafficking or SNAP sale of Alcohol & Cigarettes/Tobacco for personal or business financial gain. The USDA notified the owners that the store will be charged with the violations in Exhibits D, E, G that warrant a disqualification period of 6 months. The owners want to note that these two employees made a mistake selling utensils and plates, which are ineligible products under EBT Food Stamp. During this time, the owners were absent due to Covid 19 and left the operational responsibilities to the manager. Due to his neglect, he has now been fired, and management restored to the owners. The owners would have taken reactive measures to prevent these acts

from ever happening again had USDA informed them after the third visit of the violations. To add insult to injury, the old-fashioned cash registers made redaction of ineligible purchase items very problematic. Most of the time, my employees are understaffed and monitoring the store's safety & security while assisting all customers with purchases and maintaining a safe social distance-controlled environment. However, by no means is this an excuse for their described actions. Therefore, the owners have moved from dated cash registers to new POS registers that separate eligible SNAP items from ineligible and will allow the system to process EBT payment for only eligible items. All ineligible items will be asked to provide an alternative payment to complete the transaction. The new POS registers will be installed and programmed in the second week of January 2021. The owners have also added another employee effective immediately during all store hours to help keep traffic moving and ensure accountability of each other transactions. These improvements are to ensure something like this does not happen again;

- All cashiers are periodically trained to abide by the Food Stamp Act. The owners have established an effective program compliance policy training throughout the year to maintain the EBT laws (please see attachment); and,
- In light of these facts and improvements, the owners hope USDA will reconsider the decision about the SNAP benefits. The owners want to keep the services active to keep the business afloat when currently small business owners are living in unprecedented times with great uncertainty. The store serves so many people in the community, while Big-Box stores pose health risk for many of our at-risk low-income customers. The owners have instilled rigorous cleaning practices and procedures to keep our elderly customers safe during these harsh times.

Appellant submitted three pages of training documentation in support of these contentions.

In the request for administrative review:

- Appellant strongly objects to the undercover investigation conducted by the department without their knowledge, consent, or a court order;
- The Fourth Amendment provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated". A "seizure" of property occurs when there is a meaningful interference with an individual's possessory interest in that property." Further, the entry onto the business for purposes of investigation by USDA was an unconstitutional search in violation of the Fourth Amendment as entry without true consent was an unlicensed intrusion subject to Fourth Amendment protection (unreasonable search and seizure occurs under the Fourth Amendment when a governmental official enters a house or office by "stealth, through social acquaintance, or in the guise of a business call, gains entrance by "stealth, through social acquaintance, or in the guise of a business call, gains entrance to the house or office of a person suspected of a crime, whether in the presence or absence of the owner," and then conducts a warrantless search). Not only does entry into the business under false pretenses constitute a search, but USDA's seizure of the business transaction receipts also is an unconstitutional Fourth Amendment search and seizure. The Fourth Amendment establishes "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." and provides "no Warrants shall issue, but upon probable cause." A "search" occurs, and therefore the

Fourth Amendment applies, when the government violates a "reasonable expectation of privacy". Especially noteworthy for administrative and special needs cases, the protections under the Fourth Amendment applies to all agents of the government - civil as well as criminal - and applies to a broad range of actors beyond law enforcement officers, and "without regard to whether the government actor is investigating crime or performing another function". The government conducts a Fourth Amendment "search" whenever it compels a business to hand over records in which the business holds a legitimate privacy interest. Appellant cited approximately 21 court decisions relating to Fourth Amendment issues; and,

- The business receipts that USDA obtained undercover had information on it, namely in this case the items charged, and that was a private business record that the owners had a right to exclude others from seeing, and thus there is a reasonable expectation of privacy in the records. As the business receipts are protected under the Fourth Amendment, USDA's obtaining the information by way of an unlicensed intrusion onto the business and under false pretenses constitutes a violation of the Fourth Amendment and cannot be used to support your charges.

Appellant submitted no evidence or other rationales in support of these contentions.

### **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 decision of the Office of Retailer Operations and Compliance and is limited to what circumstances were at the basis of the action at the time such action was made. There is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of corrective actions implemented subsequent to investigative findings of program violations. Therefore, while the owners have procured a new POS system to ensure future SNAP compliance is a positive step, it does not provide any valid basis for dismissing the charges, or for mitigating the penalty imposed. While store ownership may not have personally conducted the violative transactions, SNAP rules and regulations state that regardless of whom the ownership of a store may utilize to handle store business or their degree of involvement in store operations, that ownership is accountable for the proper training of staff and the monitoring and handling of all SNAP benefit transactions. Both the SNAP retailer application and retailer reauthorization application contain a certification page whereby applicants must confirm their understanding of and agreement with SNAP retailer requirements in order to complete the application/ reauthorization process. Store ownership did certify its understanding and agreement to abide by program rules and regulatory provisions when it applied to become a SNAP retailer and when it applied for reauthorization. The ownership remains liable for all violative transactions handled by store personnel, whether paid or unpaid, new, full-time or part-time regardless of the amount of time the owner(s) is present at the subject firm. The certification is clear that store ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP.

The FNS investigative report clearly shows that three employees working at the Appellant firm accepted SNAP benefits for ineligible items on five separate occasions during the investigative

period indicating an ongoing pattern of SNAP violations as defined by Section 271.2 of the SNAP regulations. The report shows that the nature and scope of the violations under review do violate SNAP regulations, and the transaction amounts cited in the report also match FNS transaction records for the dates in question. Additionally, a review of the report shows no errors or discrepancies. There is no regulatory threshold for the dollar value of the ineligible items purchased or for the timeframe in which they were purchased. The acceptance of SNAP benefits for ineligible items is a violation of SNAP rules and regulations. The ineligible items sold were obvious nonfood items and would not readily be confused with eligible edible food items. SNAP regulations explicitly state that FNS shall disqualify a store for a six month period if it is to be the first sanction for the firm, and the evidence shows that personnel of the firm have committed violations such as the sale of common nonfood items in exchange for SNAP benefits due to carelessness or poor supervision by the firm's ownership or management. SNAP regulations at 7 CFR § 278.6(e)(5) discuss the disqualification of firms for six months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as, but not limited to, the sale of common nonfood items due to carelessness or poor supervision by the firm's ownership or management. The applicable regulations do not specify intent as being a required element for a six month disqualification.

SNAP benefits, in general, are only authorized to be used for the purchase of foods for the household to eat as well as seeds and plants which produce food for the household to eat. The common nonfood items purchased are clearly not edible foods and are not plants or seeds, so one has to question the level of training these employees received by store ownership and/or management. The basic concept of "if you can't eat it, you can't buy it using SNAP" is not a difficult one for employees to grasp, yet these employees allowed the purchase of ineligible items using SNAP benefits on multiple occasions. Had an effective compliance policy and program been in effect at the firm, it is unlikely that these employees would have made such obvious mistakes. The more likely explanation is that store ownership and/or management failed to properly train and subsequently supervise these employees. Additionally, had store ownership and/or management been supervising these employees through occasionally monitoring them using videotape, if available, or in person, it would have readily noticed that they were allowing the sale of ineligible nonfood items in exchange for SNAP benefits. It also would have been immediately evident to store ownership and/or management that these employees were deficient in their knowledge of SNAP rules and regulations had it periodically spot checked their knowledge and abilities by asking questions about SNAP eligible/ineligible items. Either of these basic supervisory techniques would have provided a no cost method for store ownership and/or management to ensure that store employees were not putting the firm's SNAP license at risk. These are clear signs of poor or no supervision by store ownership and/or management.

It is highly improbable, based on the willingness of these employees to exchange SNAP benefits for ineligible nonfood items, that the only instances of SNAP violations were those transactions identified as part of the FNS undercover investigation. Common sense dictates that these actions more likely than not represented an ongoing pattern of SNAP violations at the Appellant firm. As previously stated, store ownership is responsible for all SNAP transactions at the firm and therefore a certain minimal level of oversight and training on the part of ownership to ensure employees, especially new employees, are not violating SNAP laws or regulations is expected. It would be unusual and irresponsible for store ownership to not have a program of ongoing

supervision of employee performance and conduct by periodically monitoring store transactions, including those involving SNAP, and reviewing daily balance sheets to ensure store employees were not stealing from the firm or conducting other activities that would jeopardize the licenses and income that the firm is dependent upon. Under SNAP regulations, the penalty for allowing the purchase of ineligible nonfood items using SNAP benefits as the result of poor supervision by ownership or management is a six month disqualification. The regulations do allow SNAP retailers to pay a hardship CMP, if eligible, as explained in the next section.

Regarding Appellant's other contentions, the Fourth Amendment deals with rights regarding search and seizure. As such, it is not clear how this matter infringes on the Appellant's rights under this Amendment as receipts for purchases are required to be provided to customers for all SNAP purchases. In regard to case law cited by the Appellant, considerations of relevant legal precedent through case law, or the lack thereof in relation to the present case, are beyond the scope of this review. This review relies upon the statute and regulations governing the SNAP and evaluates whether the decision to impose a disqualification upon the Appellant was in accordance with same and sustainable by a preponderance of the evidence. Appellant's case law references are acknowledged in this context only. The applicability of the Fourth Amendment to Appellant's case would be best decided during the judicial review process by a federal district court judge.

Based on this discussion, the decision by the Office of Retailer Operations and Compliance to disqualify the firm for a six month period was the appropriate penalty and there is no valid basis for dismissing the charges or for mitigating the penalty imposed.

### **CIVIL MONEY PENALTY**

Appellant is not eligible for a trafficking CMP as these only apply in cases of permanent disqualifications. The matter under review is a term disqualification of six months and does not involve trafficking therefore a trafficking CMP cannot be considered under 7 CFR § 278.6. Accordingly, the training documentation provided has no applicability to the matter under review.

A hardship CMP as an optional penalty in lieu of a six month disqualification was considered in this case. Such a finding is appropriate only if a store sells a substantial variety of staple food items and its disqualification would create a hardship to SNAP households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices. FNS records show there are at least eight comparably sized or larger SNAP retailers located within a 1.0 mile radius of Appellant's location that includes two super stores, one medium grocery store, and five convenience stores with the medium grocery store located approximately five blocks from Appellant's location while the nearest convenience store is 176 yards or approximately one block away. There are also additional larger stores within a 2.0 mile radius. All of the comparable stores stock adequate varieties of food in all four staple food categories and in perishables as required by FNS.

The nearby stores appear readily accessible to SNAP recipients and offer a variety of staple foods comparable to, or better than, those offered by Appellant. It is acknowledged that some

level of inconvenience to SNAP users is inherent in the disqualification from SNAP of any participating food store as the normal shopping pattern of such SNAP benefit holders may be altered. Inconvenience, however, does not rise to the level of hardship required by the regulations.

## **CONCLUSION**

A review of the evidence in this case supports that the program violations at issue did occur as charged and as admitted to by Appellant. As noted previously, the charges of violations are based on the findings of a formal USDA investigation. All transactions cited in the letter of charges were conducted by a USDA investigator and signed under penalty of perjury. A review of this documentation has yielded no indication of error or discrepancy in any of the reported findings. Rather, the investigative record is specific and accurate with regard to the dates of the violations, the specific ineligible merchandise sold in exchange for SNAP benefits, and in all other critically pertinent detail. Accordingly, the determination by the Office of Retailer Operations and Compliance to impose a disqualification of six months against the Appellant firm from participating as an authorized retailer in SNAP is sustained. Furthermore, the Office of Retailer Operations and Compliance properly determined that Appellant was not eligible for a hardship CMP according to the terms of Section 278.6(f)(1) of the SNAP regulations as there are other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

In accordance with the Food and Nutrition Act, and the regulations thereunder, this penalty shall become effective thirty (30) days after receipt of this decision. A new application for SNAP participation may be submitted ten (10) days prior to the expiration of the six month disqualification period. When eligible, Appellant may reapply for SNAP authorization using the application instructions contained on the FNS web site. Questions regarding the application process can be answered by the FNS Retailer Service Center at 877-823-4369.

## **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (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.

ROBERT T. DEEGAN  
ADMINISTRATIVE REVIEW OFFICER

April 9, 2021