

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

Rayman Brothers Inc,

Appellant,

v.

Case Number: C0210276

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), finds that there is not sufficient evidence to support the Retailer Operations Division’s decision to deny the application of Rayman Brothers Inc. (Appellant) to participate as a retail food store in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(b)(3) and 7 CFR § 278.1(k) in its administration of the SNAP, when it denied for a period of three years, the application of the Appellant to participate in the SNAP as an authorized retail food store.

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 Retailer Operations Division received a SNAP application from the Appellant on April 6, 2018. The Retailer Operations Division sent a letter to the owner requesting additional information. By letter dated June 1, 2018, the Retailer Operations Division informed the owner that the application of the Appellant to participate as a SNAP authorized retailer was denied for a period of three years.

The Retailer Operations Division determined that sufficient evidence existed that the Appellant was circumventing a period of disqualification through a purported transfer of ownership. This

decision was made based on information the owner submitted and/or lack of corroborating documentation to support a bona fide transfer of ownership in connection with the Appellant's SNAP application. The owner attempted to avoid or circumvent the permanent disqualification of his father, the previous owner of a SNAP authorized store located at the same address as the Appellant. The Appellant was informed that, in accordance with Section 278.1(b)(3)(iii) of the SNAP regulations, a new application to participate in the SNAP could not be submitted for a period of three years from the date of the denial.

The owner, through counsel, requested administrative review of the determination by a letter dated June 11, 2018. The appeal was granted by letter dated July 5, 2018.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a clear preponderance of the evidence, that the administrative actions should be reversed. That means the 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 statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 USC § 2018 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Section 278.1(b)(1) establishes the authority upon which the application of any firm to participate in the SNAP may be denied if it fails to meet established eligibility requirements.

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 USC § 2021 and Part 278 of Title 7 of the Code of Federal Regulations (CFR) which establish the authority upon which a retail food store or wholesale food concern may be withdrawn from participation in the SNAP.

The Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 Section 12(b)(4) states that: "An approved retail food store or wholesale food concern that violates a provision of this Act or a regulation under this Act may be (A) disqualified for a specified period of time from further program participation in the Supplemental Nutrition Assistance Program..."

7 CFR § 278.1(b)(3) "The 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 reputations of the firm as follows (iii) Evidence of an attempt by the firm to circumvent a period of disqualification, a civil money penalty, or fine imposed for violation of the Food Stamp Act and program regulations."

7 CFR § 278.1(k) states in relevant part that: "Denying authorization. FNS shall deny the application of any firm if it determines that ... (6) The firm has been found to be circumventing a period of disqualification or a civil money penalty through a purported transfer of ownership."

7 CFR § 278.1(k)(3)(iii) states in relevant part that: “Firms for which evidence exists of an attempt to circumvent a period of disqualification, a civil money penalty, or fine imposed for violation of the Food Stamp Act ...and program regulations shall be denied for a period of three years from the effective date of denial.”

APPELLANT’S CONTENTIONS

In the written request for administrative review, the Appellant, through counsel, argued that:

- USDA’s decision to deny Rayman Brothers Inc. from participation in the SNAP is not supported by the facts of the regulations at 7 CFR § 278.1(b)(3)(iii) and 7 CFR § 278.1(k)(3)(iii) as the firm has already served a three year disqualification period beginning April 27, 2015.
- Rayman Brothers Inc. was denied participation in the SNAP three years ago based on activities of the prior proprietor.
- When Rayman Brothers Inc. originally applied for the SNAP in 2015, the location had been without EBT for four years. Rayman Brothers Inc. had taken over operation of the business from another corporation which had run the business in the ground. The commitment made by the Appellant was to run the business for two years and turn it back over with inventory intact. The Appellant has served its three year period of SNAP participation.
- The new application shows that this firm is a “good citizen” within the City of Detroit by participating in Project Green Light.
- FNS is free to “brand” the owner of a business for the transgression based on the criminal or ignorant activities of one store clerk, no matter if the owner had any involvement or knowledge. The Appellant has already served the penalty time and it is improper to penalize it again using the same regulatory authority.

In support of the Appellant’s contentions, the following documents were submitted to FNS:

- Copy of a previous Final Agency Decision, dated April 27, 2015, for Case Number **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**;
- Explanation of Transfer of Gas Station; and
- Memorandum of Understanding--Project Green Light Detroit Agreement.

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

ANALYSIS AND FINDINGS

The owner submitted a purchase agreement business inventory, inventory bill of sale (with audit of equipment inventory and monetary worth by Approved Inventory Specialists), lease agreement, articles of incorporation for Appellant business, a letter from financial institution (noting that the owner is the only signer on the account for the Appellant business), as well as

other related documents to the Retailer Operations Division that he bought the Appellant from his permanently disqualified father. The record confirms that there is more evidence than not that the owner executed a legitimate purchase agreement and that a legitimate sale of the business did occur.

CONCLUSION

The SNAP regulations do not preclude the agency from denying a firm's application to participate as an authorized retailer in the SNAP more than once under 7 CFR § 278.1(b)(3)(iii) and 7 CFR § 278.1(k)(3)(iii). However, after review of all the documentation in the record, the decision by the Retailer Operations Division to deny the application of the Appellant to participate in the SNAP for a period of three years is reversed. The Retailer Operations Division will evaluate if the Appellant meets the eligibility criteria for authorization as a retail food store.

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.

LORIE L. CONNEEN
Administrative Review Officer

March 26, 2019