

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

Riella Farms,

Appellant,

v.

Case Number: C0194035

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 there is sufficient evidence to support a finding that the initial decision by the Retailer Operations Division to permanently withdraw the authorization of Riella Farms to participate in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(b)(3) and § 278.1(k), in its administration of the SNAP when it permanently withdrew the authorization of Riella Farms on September 13, 2016.

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 an electronic reauthorization application from the Appellants for SNAP reauthorization of Riella Farms which

5 U.S.C. § 552 (b)(6) & (b)(7)(C), store owner, signed on January 19, 2016. The Retailer Operations Division subsequently advised the Appellants by letter dated September 13, 2016 of its decision to permanently withdraw Riella Farms' authorization to participate in the SNAP. The regulatory citations for that withdrawal were 7 CFR § 278.1(b)(3) and § 278.1(k)(3)(i). By letter dated September 22, 2016, the Appellants, through counsel, requested an administrative review of this action. The request was granted by letter dated September 29, 2016 and implementation of the withdrawal was held in abeyance pending completion of this review.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means the 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 argument 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 U.S.C. § 2018 and § 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2018, 7 CFR § 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/withdrawn on the basis of a lack of business integrity.

7 CFR § 271.2 states, *inter alia*: "*Retail Food Store* means: An establishment or house- to-house trade route that sells food for home preparation and consumption normally displayed in a public area, and either offers for sale, on a continuous basis, a variety of foods in sufficient quantities in each of the four categories of staple foods including perishable foods in at least two such categories (Criterion A) as set forth in § 278.1(b)(1) of this chapter, or has more than 50 percent of its total gross retail sales in staple foods (Criterion B) as set forth in § 278.1(b)(1) of this chapter as determined by visual inspection, marketing structure, business licenses, accessibility of food items offered for sale, purchase and sales records, counting of stockkeeping units, or other inventory or accounting recordkeeping methods that are customary or reasonable in the retail food industry as set forth in § 278.1(b)(1) of this chapter. Entities that have more than 50 percent of their total gross retail sales in hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption, either for carryout purposes or on-premises consumption, and require no additional

preparation, are not eligible for SNAP participation as retail food stores under § 278.1(b)(1) of this chapter”.

7 CFR § 278.1(b)(3)(i) states, *inter alia*: “*The business integrity and reputation of the applicant.* 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 or other laws relating to alcohol, tobacco, firearms, controlled substances, and/or gaming licenses”.

7 CFR §278.1(k)(3)(i) states, *inter alia* ... “*Denying authorization.* FNS shall deny the application of any firm if it determines that : ... (3) 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 owners, officers, or managers as stipulated in § 278.1(b)(3)(i) shall be denied authorization permanently”.

APPELLANTS’ CONTENTIONS

In the written request for review postmarked September 22, 2016 and in subsequent correspondences postmarked October 5, 2016 and November 21, 2016, the Appellants, through counsel, provided information in which it was argued that:

- The SNAP regulatory citation included in the Withdrawal Letter, 7 CFR § 278.1(b)(3)(i)(A), is inapplicable to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) conviction as there was no agreement involved in the incident;
- Although the SNAP regulatory citation included in the Withdrawal Letter, 7 CFR § 278.1(b)(3)(i)(C), is applicable to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) conviction of aiding and abetting activities relating to the inspection of meat, no employees of Riella Farms, including 5 U.S.C. § 552 (b)(6) & (b)(7)(C), participated in the unlawful resale of uninspected meat;

- Riella Farms has been authorized to participate in the SNAP for more than 30 years and it has never been cited for any SNAP violations;
- Many of Riella Farms' SNAP customers will suffer a hardship if it is permanently withdrawn from participating in the SNAP as: (1) SNAP customers will have no other option for slaughter of meat that complies with cultural and religious needs; and (2) Riella Farms is the only licensed custom livestock slaughterhouse able to provide large cattle in that part of the state;
- Per the affidavits provided from various employees of USDA, the California Department of Food and Agriculture, etc., a permanent SNAP withdrawal of Riella Farms will impose hardship on USDA, the California Department of Food and Agriculture, as well as county fair poultry participants;
- A permanent SNAP withdrawal will have a significant economic impact on Riella Farms and would most likely result in the Appellants closing the firm; and
- The Appellants are requesting that FNS impose a civil money penalty or be allowed to submit a collateral bond or irrevocable letter of credit in lieu of a permanent SNAP withdrawal of Riella Farms.

The preceding may represent only a brief summary of the Appellants' 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

It is important to clarify for the record that the purpose of this review is to validate or to invalidate the initial determination of the Retailer Operations Division, and as such is limited to consideration of the relevant facts and circumstances at the time of the decision. The authorization of a store to participate in the SNAP must be in accord with the Act and the Regulations, as amended; those requirements of law cannot be waived.

The SNAP regulations enunciated at 7 CFR § 278.1(b) provide for the withdrawal of an applicant firm to participate as a SNAP retailer based on a number of reasons and for various timeframes. The statute and regulations specifically address the factors which constitute a lack of business integrity. These considerations are eligibility concerns; a firm either meets all the requirements stipulated in law and regulations or it does not. The regulations at 7 CFR § 278.1(b)(3)(A) and (C) state: "*The business integrity and reputation of the applicant.* 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); or (C) Violation of Federal, State and/or local consumer protection laws or other laws relating to alcohol, tobacco, firearms, controlled substances, and/or gaming licenses”.

The record under review supports that on December 16, 2009, the store owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), pled guilty to and was convicted of “21 USC 610(c)(2) & 676(a) Sale of Uninspected Meat” and “18 USC 2 Aiding and Abetting” in the U.S. District Court, Eastern District Court of California. Therefore, as was indicated in the September 13, 2016 Withdrawal Letter, the Retailer Operations Division determined that the firm has failed to maintain the necessary business integrity to further the purposes of the program, as specified in 7 CFR § 278.1(b)(3)(A) and (C) and is therefore withdrawn from participation in the SNAP. The withdrawal shall be permanent in accordance with 7 CFR § 278.1(k)(3)(i) of the SNAP regulations.

As a result of his guilty plea, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) agreed to pay a criminal fine, pay a special assessment monetary penalty, and was sentenced to two years of probation. According to court documents, Riella Farms is a livestock slaughter business operating under a custom slaughter general exemption to USDA inspection requirements. Under its custom slaughter exemption, Riella Farms is permitted to sell live animals to customers then slaughters them for the customer and/or slaughters the animals brought to Riella Farms by and belonging to the customer. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) holds a Livestock Meat Inspector License through the state of California that permits him to act as a state meat inspector at Riella Farms under its Plan Operations License. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) license does not permit him to act as a USDA inspector. Under this licensure and USDA regulations, all meat derived from this process is to be used by the customer purchasing or owning the live animal, that customer’s household, and certain limited additional persons. All such carcasses and meat products derived therefrom were required to be labelled “not for sale” before they left the control of Riella Farms. Sale of such carcasses and meat products derived therefrom are illegal.

During an under-cover investigation of Riella Farms by USDA Food Safety Inspection Service (FSIS) investigators in July 2004, an FSIS investigator spoke with 5 U.S.C. § 552 (b)(6) & (b)(7)(C) about purchasing a couple of pounds of goat meat. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) advised that he did not sell “pieces”, but indicated a building on the property and told the investigator that people there may be willing to “share” their meat. The investigator proceeded to that building and observed the individuals manning tables that had meat products

on them. These individuals were not employees of Riella Farms. None of the products were labeled “not for sale”. The investigator purchased approximately 15 pounds of uninspected beef products.

Upon completion of the investigation of Riella Farms by USDA FSIS investigators, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) met with and gave voluntary statements to FSIS investigators where he acknowledged that he had not marked “not for sale” on some slaughtered beef that had been purchased by customers before it left his control. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) stated that he had provided space and tables on Riella Farms’ property to individuals who purchased livestock from him. He also acknowledged that he was aware that these individuals were using Riella Farms’ space to sell the products derived from the live animals that he sold to them that were not labeled “not for sale” and that he was aware at the time that it was a violation of the law. In August 2004, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) made a further voluntary statement to USDA FSIS investigators and acknowledged that although he did not receive direct compensation from those who re-sold Riella Farms livestock on Riella Farms’ property, he knew that he profited from the increased sale of animals caused by permitting resale of the resulting carcasses and meat products on Riella Farms’ property.

The Appellants contend that the SNAP regulatory citation included in the Withdrawal Letter, 7 CFR § 278.1(b)(3)(i)(A), is inapplicable to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) conviction as there was no agreement involved in the incident. With regard to the Appellants’ contention, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) informed USDA FSIS investigators that he had provided space and tables on Riella Farms’ property to individuals who purchased livestock from him. He also acknowledged that he was aware that these individuals were using Riella Farms space to sell the products derived from the live animals that he sold to them and that he was aware at the time that it was a violation of the law. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was aware that he had sold slaughtered meat that had not gone through proper inspection. The store owner clearly sold the meat to someone and that was a criminal transaction offense committed. In other words, there does not need to be an agreement for the transaction to have occurred under 7 CFR 278.1(b)(3)(i)(A).

The Appellants also contend that although the SNAP regulatory citation included in the Withdrawal Letter, 7 CFR § 278.1(b)(3)(i)(C), is applicable to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) conviction of aiding and abetting activities relating to the inspection of meat, no employees of Riella Farms, including 5 U.S.C. § 552 (b)(6) & (b)(7)(C), participated in the unlawful resale of uninspected meat. However, under 5 U.S.C. § 552 (b)(6) & (b)(7)(C) custom slaughter exemption, he personally held the license that permitted Riella Farms to operate under a custom slaughter exemption and is responsible for directing all operations under the license at Riella Farms. 5 U.S.C. § 552 (b)(6) & (b)(7)(C)

provided space and tables on Riella Farms' property to individuals who purchased livestock from him. He also acknowledged to FSIS investigators that he was aware that these individuals were using Riella Farms' space to sell the products derived from the live animals that he sold to them and that he was aware at the time that it was a violation of the law. As 5 U.S.C. § 552 (b)(6) & (b)(7)(C) sold meat that had not been inspected, he was in violation of consumer protection laws under 7 CFR 278.1(b)(3)(i)(C).

The Appellants contend that Riella Farms has been authorized to participate in the SNAP for more than 30 years and it has never been cited for any SNAP violations. However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

The Appellants contend that many of Riella Farms' SNAP customers will suffer a hardship if it is permanently withdrawn from participating in the SNAP as: (1) SNAP customers will have no other option for slaughter of meat that complies with cultural and religious needs; and (2) Riella Farms is the only licensed custom livestockslaughterhouse able to provide large cattle in that part of the state. Also, per the affidavits provided from various employees of USDA, the California Department of Food and Agriculture, etc., a permanent SNAP withdrawal of Riella Farms will also impose a hardship on USDA, the California Department of Food and Agriculture, as well as county fair poultry participants. However, such contentions cannot constitute grounds for reversing the withdrawal decision in the present case. 5 U.S.C. § 552 (b)(7)(E). It is added for the record that a withdrawal on the basis of business integrity provisions precludes the firm's eligibility regardless of its other qualifications to participate in the SNAP.

The Appellants contend that a permanent SNAP withdrawal will have a significant economic impact on Riella Farms and would most likely result in them closing the firm. 5 U.S.C. § 552 (b)(7)(E). To allow store ownership from being excused from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified/withdrawn from the program in the past for similar violations. Therefore, the Appellant's contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

The Appellants are requesting that FNS impose a civil money penalty or be allowed to submit a collateral bond or irrevocable letter of credit in lieu of a permanent SNAP withdrawal of Riella Farms. There are only two provisions in the SNAP regulations in which a civil money penalty (CMP) may be imposed as an alternative penalty for SNAP authorized retail stores which have been disqualified/withdrawn from participation in the SNAP. 7 CFR § 278.6(f)(1) of the SNAP regulations allows for the imposition of a hardship CMP as a sanction in lieu of a SNAP 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." [Emphasis added]. However, the imposition of a hardship CMP as a sanction in lieu of a SNAP disqualification is a provision that applies only to SNAP authorized stores which have been charged with accepting SNAP benefits in exchange for ineligible nonfood items in violation of 7 CFR § 278.2(a). Therefore, since the subject case does not involve Riella Farms having been charged with accepting SNAP benefits in exchange for ineligible nonfood items, a hardship CMP is not an alternative sanction option for Riella Farms.

7 CFR § 278.6(i) of the SNAP regulations allows for the imposition of a CMP in lieu of a permanent disqualification for trafficking if the retail store establishes that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. However, since the subject case does not involve the imposition of a permanent disqualification from the SNAP for trafficking of SNAP benefits, a trafficking CMP is not an alternative sanction option for Riella Farms. There are no provisions in the SNAP regulations that allow for submission of a collateral bond or irrevocable letter of credit by authorized retailers in lieu of the imposition of a permanent SNAP withdrawal.

Based on the court records assessed by the Retailer Operations Division, it is determined that in accordance with SNAP regulations specified in 7 CFR § 278.1(b)(3)(A) and (C), the firm has failed to maintain the necessary business integrity to further the purposes of the program and is therefore withdrawn from participation in the SNAP. The withdrawal action shall be permanent in accordance with 7 CFR § 278.1(k)(3)(i) of the SNAP regulations. As such, the imposition of a permanent SNAP withdrawal action on Riella Farms by the Retailer Operations Division is affirmed as the appropriate sanction for the program violations outlined in the subject case.

CONCLUSION

After review of all the pertinent documentation and based on the discussion herein, the initial decision by the Retail Operations Division to permanently withdraw the authorization of Riella Farms to participate as a SNAP retailer is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act (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.

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

November 20, 2017