

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

Rivas Grocery Inc,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0223717

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that FNS's Retailer Operations Division properly permanently denied the application of Rivas Grocery Inc. (hereinafter "Appellant") to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, in its administration of SNAP when it permanently denied the retailer application of Rivas Grocery Inc.

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 firm, Rivas Grocery Inc., originally applied to participate as a retailer in SNAP on September 4, 2019. On the SNAP application, Question #16 asks, "Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?" The Appellant marked "no." The USDA holds that the business integrity of a firm is critically important to the effective operation of SNAP. This includes the business integrity and reputation of any owners, officers, and managers of firms seeking SNAP authorization. Prior criminal convictions may reflect on the ability of a person to effectuate the purposes of SNAP and abide by the rules governing the program. Any applicant with a criminal history after June 1, 1999, is subject to

additional eligibility screening to ensure that the criminal activity does not impact the firm's eligibility for program authorization in accordance with SNAP regulations at 7 CFR § 278.1(b)(3)(i) and (vi).

As part of the firm's application process, the Retailer Operations Division requested several documents from the Appellant in an effort to verify the firm's current ownership, and to ensure that store owner 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was not affiliated with any prior owners from the same location who had been previously disqualified from SNAP due to program violations. During the course of this additional ownership verification process, the Retailer Operations Division conducted a criminal background search on 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and discovered he had not disclosed a number of criminal convictions from 5 U.S.C. § 552 (b)(6) & (b)(7)(C) that could potentially impact his eligibility for SNAP participation. Specifically, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was convicted of the following:

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

The record shows that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was sentenced to 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

After reviewing this evidence, the Retailer Operations Division determined that the firm knowingly filed a SNAP application containing false information. Specifically, the agency determined that Question #16, which asks about the owner's criminal background, was answered falsely.

In a letter dated October 4, 2019, the Retailer Operations Division informed the Appellant that its SNAP application was permanently denied because the application contained false or misleading information about a substantive matter. The letter stated that the denial action was taken in accordance with regulations at 7 CFR § 278.1(k)(4), § 278.1(o), and § 278.6(e)(1)(iii).

In a letter postmarked October 10, 2019, the Appellant requested an administrative review of the Retailer Operations Division's decision. The request was granted.

STANDARD OF REVIEW

In an appeal of adverse action, such as an application denial, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that 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 AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018 and § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(k) and (o) provide the authority upon which FNS shall deny the

authorization of any firm that knowingly submits an application containing false or misleading information.

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

...[A] disqualification under subsection (a) shall be...for a reasonable period of time to be determined by the Secretary, including permanent disqualification, 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.

7 CFR § 278.1(o) reads:

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) reads, in relevant part:

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

(4) 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) or § 278.6(e)(3).

7 CFR § 278.6(e) states, in relevant part:

FNS shall take action as follows against any firm determined to have violated the Act or regulations.... The FNS regional office shall:

(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:

(A) Eligibility requirements under § 278.1(b), (c), (d), (e), (f), (g) and (h);

(H) SNAP history, business practices, business ethics...or

(I) Any other information of a substantive nature that could affect the eligibility of a firm.

APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions in its request for administrative review, in relevant part:

- When Question #16 on the SNAP application was answered “no,” it was not with the intention of falsely answering or hiding information about the owner’s background. Instead it was a lack of communication between the owner and the person who completed the application on behalf of the firm. They were mostly focused on the

question of whether or not the owner had been disqualified by FNS, and the other questions were considered obvious based on the documents that the firm provided.

- Appellant apologizes for not reviewing the application correctly and for not noticing the mistake.
- Appellant requests that the case be reviewed so that it can continue with its application and be approved as an authorized SNAP retailer. The store cannot continue operating without SNAP, as it is located in an area of low income and most residents receive SNAP benefits. Authorizing the store would be very beneficial to the community.

In support of its contentions, the Appellant submitted a copy of the court records for the five criminal charges and a document which appears to show that 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a final decision, full attention was given to all contentions presented, including any not specifically summarized or explicitly referenced herein.

ANALYSIS AND FINDINGS

The purpose of this review is to either validate or invalidate the determination of the Retailer Operations Division. This review is limited to consideration of the relevant facts as they existed at the time the agency rendered its decision.

Based on documentation in the case file and provided by the Appellant, it appears to this review that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) knowingly submitted a SNAP application that contained false information of a substantive nature that could affect the program eligibility of the firm. Although this review cannot speak to the motivation behind the Appellant's actions, Question #16 of the SNAP application was clearly answered "no," when the appropriate answer was "yes."

5 U.S.C. § 552 (b)(6) & (b)(7)(C) printed and signed the Certification and Signature page of the SNAP application on September 5, 2019. By signing the application, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) certified that he was the owner of the store in question. The certification page also includes the following statements:

- I have provided truthful and complete information on this form and on any documents provided to the Food and Nutrition Service.
- If I provide false information, my application may be denied or withdrawn.
- Any information I have provided or will provide may be verified and shared by the USDA as described in the Privacy Act and Use and Disclosure statement.

At the bottom of the Certification and Signature page is a penalty warning statement, which is highlighted in bold lettering and set apart in a large text box. The warning statement is as follows:

PENALTY WARNING STATEMENT – The Food and Nutrition Service can deny or withdraw your approval to accept Supplemental Nutrition Assistance Program benefits if you

provide false information or try to hide information we ask you to give us. In addition, if false information is provided or information is hidden from the Food and Nutrition Service, the owners of the firm may be liable for a \$10,000 fine or imprisoned for as long as five years, or both (7 U.S.C 2024(f) and 18 U.S.C 1001).

There is no evidence that FNS intends to pursue a fine or criminal charges against the owner of the firm in this case. However, the statements above highlight the importance of providing complete and truthful information on a SNAP application. These certification statements also demonstrate that the owner was given ample opportunity to review his application and ensure that the information provided therein was complete and accurate before submitting it for processing. The owner's signature at the bottom of the page certified that he had read, understood, and agreed with the conditions of participation as outlined in the Privacy Act, Use and Disclosure, Penalty Warning, and Certification statements.

From this information, it appears clear to this review that the Appellant knowingly withheld from FNS critical eligibility information, specifically 5 U.S.C. § 552 (b)(6) & (b)(7)(C) criminal convictions, by answering "no" to Question #16 on the firm's SNAP application. Furthermore, no evidence has been provided by the Appellant to prove otherwise. The court documentation submitted by the Appellant was not given to FNS until after the firm had received the denial letter. As such, it is insufficient to show that the Appellant's failure to disclose the owner's criminal history was unintentional.

As to the Appellant's insinuation that denying the store's SNAP application will negatively impact both the firm and the surrounding community, this contention has no bearing in this matter. A firm may only participate in SNAP if it first meets eligibility requirements, including provisions regarding business integrity.

CONCLUSION

Based on a preponderance of the evidence, it is the determination of this review that the Appellant firm knowingly filed a SNAP application containing false or misleading information of a substantive nature. In accordance with 7 CFR § 278.1(o), (k)(4), and § 278.6(e)(1)(iii), the decision by the Retailer Operations Division to permanently deny the application of Rivas Grocery Inc., under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 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.

JON YORGASON
Administrative Review Officer

December 18, 2019