

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review Branch  
Alexandria, VA 22302**

**Rock City,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0202852**

**FINAL AGENCY DECISION**

The USDA, Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Retailer Operations Division to deny the application of Rock City (Rock City or Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) for a period of three years.

**ISSUE**

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

**AUTHORITY**

7 USC § 2023 and the 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, under the ownership of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, owner of Rock City, applied for SNAP authorization on March 27, 2017. In a letter dated September 12, 2017, the Retailer Operations Division denied the application of Rock City to participate as an authorized retailer in the SNAP as it determined that the application was an attempt to

circumvent a period of disqualification through a purported transfer of ownership. The letter also stated that the denial would be effective for three years in accordance with 7 CFR 278.1(k)(3)(iii).

In a letter postmarked September 18, 2017, ownership appealed the Retailer Operations Division's decision and requested an administrative review of this action. The appeal was granted.

### **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, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

### **CONTROLLING LAW**

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).

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

7 CFR § 278.1(k)(3) states, in part, "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 . . . (iii) Firms for which evidence exists of an attempt to circumvent a period of disqualification, . . . and program regulations shall be denied for a period of three years from the effective date of denial; (iv) Firms for which evidence exists of prior Food Stamp violations by owners, officers, or managers of the firm for which a sanction had not been previously imposed and satisfied shall be denied for a period of time equivalent to the appropriate disqualification period for such previous violations, effective from the date of denial;"

7 CFR § 278.1(k) states, in part, "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."

### **APPELLANT'S CONTENTIONS**

Appellant made the following summarized contentions in its administrative review request postmarked September 18, 2017, in relevant part:

- The employee processing the application was racist towards ownership because of his accent and the employee never picked up calls or returned voicemails.
- The application was denied because Appellant's brother violated a SNAP rule, even though Appellant's application was submitted before the brother was informed of the violations.
- Appellant promises to obey all the rules.

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

### **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 it 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.

It is common for disqualified store owners to attempt to remain financially or operationally interested in a firm by selling the store to a relative. This practice is known as "circumvention" and is not allowed under SNAP regulations. Specifically, the regulations at 7 CFR § 278.1 (k)(6) establish the authority upon which the application of any firm to participate in the SNAP shall be denied if the firm has been found to be circumventing a period of disqualification through a purported transfer of ownership. In the matter currently under review, Appellant's owner is the brother of a permanently disqualified store owner and the store is located at the same location.

The evidence shows that the brothers share the same address. Furthermore, the evidence also shows that the permanently disqualified brother, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and Appellant's owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), were both signers on the new store's bank account as of May 24, 2017. According to the Contract for Purchase of Business Assets submitted to the Retailer Operations Division, the closing occurred on April 24, 2017. The bank account for the new store was opened on April 26, 2017, which is two days after the transfer of ownership. It is unusual for a previous owner to be listed on a new business bank account and unlikely if a legitimate transfer of ownership occurred.

Appellant contends that the application was submitted before the permanently disqualified brother was informed of the violations. However, the timing of the new application ultimately has no bearing on this review's decision because there is sufficient evidence that the transfer of ownership was not legitimate. The evidence indicates that the brother who was eventually disqualified remains involved with the store. That having been said, the timing of the attempted transfer, after an FNS contractor visited the store, strongly suggests that the brothers anticipated

being charged with program violations and supports the agency's position that Appellant was trying to circumvent a period of disqualification.

With regards to the allegation that Retailer Operations Division's denial action may have resulted from disparate treatment; there is no evidence to support the allegation. However, ownership has the right to pursue any such allegations of discrimination directly with the USDA office which handles such matters. If ownership wishes to file a Civil Rights program complaint of discrimination with USDA, the USDA Program Discrimination Complaint Form, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), should be completed. The form may also be requested by calling (866) 632-9992. Ownership may also write a letter containing all of the information requested in the form. The completed complaint form or letter should be mailed to U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410. Any such allegations of discrimination will be handled by that office independently of this administrative review.

### **CONCLUSION**

In accordance with 7 CFR § 278.1(b)(3)(iii), the decision by the Retailer Operations Division to deny the SNAP application of Rock City for a period of three years is sustained.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. 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's owner resides or is 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.

MARY KATE KARAGIORGOS  
Administrative Review Officer

December 13, 2017