

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

Silver Dollar Bargains No 3,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0229874

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 the Retailer Operations Division's permanent denial of the application of Silver Dollar Bargains No 3 (hereinafter "Silver Dollar Bargains No 3" or "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 application of Silver Dollar Bargains No 3.

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 applied to participate as a retailer in the SNAP via an application that was signed on February 18, 2020. 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 "yes," and explained that store owner **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** had been convicted of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

On March 23, 2020, the Retailer Operations Division requested from the Appellant additional information and evidence regarding the criminal offense. In response to the request, on April 1,

2020, the Appellant owner submitted 13 pages of evidence which included a copy of the Sentencing Order dated July 12, 2019 from the United States District Court 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Per the Sentencing Order, the Appellant owner plead guilty to 5 U.S.C. § 552 (b)(6) & (b)(7)(C), which is a violation of Washington Criminal Law, Title and Section 18 U.S.C. § 371. For the conviction, the Appellant owner was sentenced to 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

After reviewing the Appellant's documentation, the Retailer Operations Division determined that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) criminal conviction constituted a lack of business integrity in accordance with SNAP regulations at 7 CFR § 278.1(b)(3)(i). As a result, the Appellant's application was permanently denied pursuant to 7 CFR § 278.1(k)(3)(i). A letter of denial, dated April 17, 2020, was delivered to the Appellant via email on April 17, 2020.

In a letter postmarked April 27, 2020, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision. FNS granted the Appellant's request for administrative review by letter dated May 18, 2020. In telephone and email responses of June 8, 2020, the Appellant's counsel requested and was granted an extension in time to June 22, 2020 for providing additional information in support of the request for administrative review. In an email response of June 21, 2020, the Appellant, through counsel, provided additional information in support of the request for administrative 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 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 law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(k) provides the authority upon which FNS shall deny the authorization of any firm applying for participation in SNAP if it fails to meet established business integrity criteria.

7 CFR § 278.1(k) reads, in relevant part:

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 the owners, officers, or managers as stipulated in §278.1(b)(3)(i) shall be denied authorization permanently.

7 CFR § 271(b)(3) states, in relevant part:

(3) *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.

APPELLANT'S CONTENTIONS

The following represents a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the request for administrative review and in subsequent correspondence, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The owner has been in business for over 37 years at the same location in Golden, Mississippi, primarily in the discount wholesale grocery business. He currently has three retail locations located in Tupelo, Mississippi, Golden, Mississippi, and Hamilton, Alabama. Recently, the owner reacquired the Golden retail location from his brother, which necessitated the request for a new SNAP authorization.
- The Appellant owner has owned multiple businesses with SNAP programs in place and has not had any issue in operation or compliance.
- The determination that someone lacks "necessary business integrity" to further the purposes of the SNAP program is a snap judgment without looking at the totality of the circumstances. The owner employs numerous local individuals in his business and contributes a tremendous amount in tax revenue to the local community, State and Federal government. The owner's guilty plea in 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is the basis for the initial denial decision. According to a telephone conversation with Retailer Operation Division staff, if the owner had not disclosed the charge, the SNAP application would have probably passed through. This is a particularly important distinction to consider that if the owner had been untruthful, he likely would have been approved. His willingness to be open and transparent is contrary to the finding of someone who lacks "necessary business integrity".

- The owner’s conviction revolves around the nature of the salvage and distressed grocery business; the primary of the owner’s wholesale operation. The owner procures goods from a wide variety of sources, including manufacturing defects, overproduction, damaged goods, insurance claims, close-out markets (foreign and domestic), natural disasters, fires, store returns and a myriad of other business mistakes or strategic decisions that did not go as intended. A manufacturer would generally not want to be in the business of selling to the secondary market, where the owner operates, because it means something went wrong. Manufacturers and major retailers utilize the secondary market to dump their problems, but they do not want to compete against their products in the primary market. Often there are stipulations to purchases for no advertising or regional restrictions to re-sell such product. The manufacturers, wholesalers and major retailers want the secondary market when they need it, but will quickly raise negativity when something goes wrong.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C). None of the “victims” chose to pursue a civil case against anyone involved in the matter. The owner took responsibility for his part and is on probation with a likely early release as he has paid all fines, costs and restitution ordered of him in the Sentencing Order. The owner is in full compliance with his probation officer and continues to work daily in the operation of his businesses.
- The denial of the SNAP program to a discount grocery in the foothills of the Appalachians, where median income is well below the national average, would certainly fail to further the purpose of the SNAP program and deny service to those most in need of the benefits. The Appellant requests that FNS reconsider the denial decision.
- Although the owner has pleaded to the charge, paid his fines, costs, restitution and is currently on probation, the costs of this action have not ceased. The owner was summarily denied financial relief related to Covid-19 for his businesses due to the felony plea, costing his business close to 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

In support of these contentions, the Appellant submitted a copy of the Sentencing Order dated July 12, 2019 from the United States District Court 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

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 primary issue under consideration is whether or not the Appellant has the necessary business integrity and reputation, in accordance with regulation, to further the purposes of SNAP. The USDA holds that the business integrity of a firm is critically important to the effective operation of SNAP. Therefore, the criteria outlined in the regulations focus on the business integrity and reputation of the owners, officers, and managers of firms seeking SNAP authorization. Prior criminal convictions relating to business integrity reflect on the ability of a firm to effectuate the purposes of SNAP and abide by the rules governing the program.

A review of the case record shows that the Appellant owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was criminally convicted of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This crime is a violation of Washington Criminal Law, Title and Section 18 U.S.C. § 371. For the conviction, the Appellant owner was sentenced to 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is supported by written documentation received by the Retailer Operations Division which included a copy of the Sentencing Order dated July 12, 2019 from the United States District Court 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The SNAP regulations enunciated at 7 CFR § 278.1(b)(3) provide for the permanent denial 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 Retailer Operations Division has determined that the Appellant's offense of "5 U.S.C. § 552 (b)(6) & (b)(7)(C)" violates the business integrity provisions of the SNAP regulations, specifically that which is found in 7 CFR § 278.1(b)(3)(i)(A), which reads: "FNS shall deny the authorization of any firm from participation in the program for...conviction of or civil judgment against the owners, officers or managers of the firm for commission of fraud **or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction**" (emphasis added). The SNAP regulations at 7 CFR § 278.1(k)(3)(i) state that firms lacking business integrity and reputation as described in § 278.1(b)(3)(i) shall have their SNAP application denied permanently.

It must be noted that the Appellant has not submitted any evidence or documentation to prove that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) criminal conviction did not occur. In fact, the Appellant has freely acknowledged that it did occur. Without evidence to the contrary, this review has little option but to find in favor of the agency in this matter.

Because the criminal conviction meets the conditions found in 7 CFR § 278.1(b)(3)(i)(A), and because the convictions occurred after June 1, 1999 – which is when the business integrity provisions of the SNAP regulations took effect – the firm's application must be permanently denied. The regulations do not give FNS any latitude to consider a shorter denial period; neither do the regulations take into consideration whether or not the convicted individual has fulfilled his probationary obligations or made corrections or improvements in his life. If the matter violates the provisions of 7 CFR § 278.1(b)(3)(i), action to permanently deny an application must be taken accordingly. Therefore, the Appellant's request to overturn the permanent denial cannot be granted.

The Appellant contends that the owner has owned multiple businesses with SNAP programs in place and has not had any issue in operation or compliance. 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 Appellant contends that a permanent SNAP denial will impose a hardship on area customers as well as impose a financial hardship on the Appellant firm. However, such contentions cannot constitute grounds for reversing the denial decision in the present case. There are no provisions in the Food and Nutrition Act, SNAP regulations or agency policy allowing hardship to retail store owners, SNAP customers, etc. as considerations in determining eligibility for participation in the SNAP when the firm does not meet the business integrity provisions of the SNAP.

Therefore, based on the information provided on the Appellant's SNAP application and the court record assessed by the Retailer Operations Division, it is determined that in accordance with SNAP regulations specified in 7 CFR § 278.1(b)(3)(i)(A), the firm has failed to maintain the necessary business integrity to further the purposes of the program and is therefore denied from participation in the SNAP. The denial 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 denial action of the Appellant by the Retailer Operations Division is affirmed as the appropriate sanction for the program violations outlined in the subject case.

CONCLUSION

The documentation in the case record clearly shows that the Appellant store owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was criminally convicted on one occasion of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The conviction occurred after June 1, 1999. The criminal offense shows a lack of business integrity and reputation to such a degree that the Appellant does not further the purposes of the program. Accordingly, and based on the analysis above, the decision by the Retailer Operations Division to permanently deny the authorization of Silver Dollar Bargains No 3 to participate as a retailer in SNAP 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, FNS is 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

June 30, 2020