

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

**Silwad Meat Market Inc,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0196123**

**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 six-month disqualification of Silwad Meat Market Inc. (hereinafter Appellant), from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) as initially imposed by the Retailer Operations Division.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a six-month disqualification against Appellant.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1 provides 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 USDA conducted an investigation of the compliance of Silwad Meat Market Inc. with Federal SNAP law and regulations from January 3, 2017 through January 23, 2017. In a letter dated February 15, 2017, Retailer Operations Division charged the Appellant firm with accepting SNAP benefits in exchange for merchandise which included common ineligible non-

food items in violation of 7 CFR § 278.2(a). These SNAP violations occurred on four (4) out of four (4) compliance visits. The letter further informed the Appellant that the violations warranted a disqualification period of six months as provided in 7 CFR § 278.6(e)(5).

In correspondence dated February 23, 2017, the Appellant, through counsel, responded to the charge letter and generally stated that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were removed from the business well before the alleged violations and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) became the sole permit holder for the business. My clients vehemently deny that they have violated the SNAP regulations and have not been provided any reliable, credible evidence of any SNAP violations that they would be responsible for, including the administrative record, thereby precluding them from fully responding to the charges against them. It is our position that my clients have been denied due process of law.

Appellant, through counsel, also stated that the USDA has erroneously concluded that my clients have sold ineligible non-food items in return for SNAP benefits based upon alleged purchases by unidentified undercover individuals. It is our position that these individuals lack investigative training that would prevent improper undercover techniques and are therefore, unreliable. Appellant's counsel also submitted an FOIA request of all documents of the record.

Appellant, through counsel, stated that it is located in an area not sufficiently covered by other retailers who accept SNAP benefits and it request that all charges against it be dismissed. In the alternative, my client requests that USDA access a reasonable civil money penalty in lieu of disqualification.

The record reflects that documentation requested in Appellant's FOIA request was received in correspondence dated March 29, 2017. The record indicates that the response to the FOIA was not appealed and in correspondence dated October 19, 2017, Retailer Operations Division requested a final response to the charges.

After reviewing the evidence and the response from the Appellant, Retailer Operations Division issued a determination letter dated November 1, 2017. The determination letter informed the Appellant it was disqualified from the SNAP for a period of six months in accordance with 7 CFR § 278.6(a) and (e). The determination letter also stated that Retailer Operations Division considered Appellant's eligibility for a hardship CMP under 7 CFR § 278.6(f)(1). Retailer Operations Division determined that the Appellant was not eligible for the hardship CMP in lieu of the six-month disqualification because there were other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

In a letter dated November 13, 2017, the Appellant requested an administrative review of the Retailer Operations Division's determination. The appeal was accepted and the implementation of the six-month disqualification was held in abeyance pending completion of this review.

## STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means 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

The controlling statute in this matter is contained in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e) establish the authority upon which a period of disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 278.2(a) states, inter alia: “Coupons may be accepted by an authorized retail food store only from eligible households.... Only in exchange for eligible food”

7 CFR § 271.2 states, inter alia: “Eligible food means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption”

7 CFR § 278.6(a) states, inter alia: “FNS may disqualify any authorized retail food store... if the firm fails to comply with the Food and Nutrition Act of 1977, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations...”

7 CFR § 278.6(e)(5) states, inter alia: “Disqualify the firm for 6 months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as, but not limited to, the sale of common nonfood items due to carelessness or poor supervision by the firm’s ownership or management.”

7 CFR § 278.6(f)(1) states, inter alia: “FNS may impose a civil money penalty as a sanction in lieu of when... the firm’s disqualification would cause hardship to Food Stamp [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.”

## APPELLANT'S CONTENTIONS

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

- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were removed from the business prior to the alleged violations.
- The six month disqualification assessed against my clients is too severe for the alleged conduct.
- The six month disqualification violates due process of law.
- The person utilized to conduct the actual in-store investigation was not properly trained and did not personally make the subsequent identification of the alleged traffickers in the store.
- Counsel quotes case law on Equal Protection, Contracts Clause and Takings Clause.
- My client would request that the Agency grant a warning letter and withdraw the disqualification.

Appellant provided a copy of a shareholder agreement dated May 10, 2016 transferring all shares of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) who will hold 100% of all shares in the business. The document was notarized on June 9, 2016. Appellant also provided a copy of the SNAP authorization reissued on August 19, 2016 showing the only owner as 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant also provided two signed statements indicating that all rules and regulations were read, videos watched, and that the individual will avoid any further mistakes and act according to the law the best way possible.

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

## ANALYSIS AND FINDINGS

FNS initially authorized Silwad Meat Market Inc. as a medium grocery store on November 29, 2011. During an investigation from January 3, 2017 through January 23, 2017, the USDA conducted four (4) compliance visits at Appellant's store. A report of the investigation was provided to the Appellant as an attachment to the charge letter dated February 15, 2017. The investigation report included Exhibits A through D which provide full details on the results of each compliance visit. The investigation report documents that SNAP violations were committed during four (4) of the four (4) compliance visits and involved the sale of one 4 roll package of Cool Clean toilet tissue; one 930 ml bottle of Clorox bleach original "Maxima Pureza"; one 650 gram package of Tide laundry powder with Downy; one Metal colander; one package of Party Tumblers (blue cups); two rolls of POM 2 ply bath tissue; one spray can of Hot Shot ant & roach plus germ killer; one 28 ounce bottle of Ajax triple action orange dish liquid; one 2.75 ounce can of Edge with cooling conditioners shave gel; one package of

Rosewood fold lock top sandwich bags; one 22 ounce bottle of Fabuloso (passion of fruits) multi-purpose cleaner and one 3 ounce spray can of Right Guard sport original deodorant. Store personnel refused to exchange an undisclosed amount of cash for SNAP benefits during Exhibits C and D.

Appellant, through counsel, contends that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were removed from the business prior to the alleged violations. With regard to this contention, the record reflects that those two previous owners were in fact removed from the record and show the only owner as 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant, through counsel, contends that the six month disqualification violates due process of law and is too severe for the alleged conduct. With regard to these contentions, 7 CFR § 278.6(b) of the SNAP regulations provides that upon charging a firm with SNAP violations, the letter informing the firm of the charges “shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter.” The letter was delivered on February 16, 2017 and signed for by “5 U.S.C. § 552 (b)(6) & (b)(7)(C)”. First, the retailer is afforded an opportunity to reply to the charges as specified by the Retailer Operations Division; Appellant, through counsel, has availed itself of this first aspect of the due process procedures in the form of a written reply to the Retailer Operations Division and through the FOIA request. The second level of due process involves an administrative review, of which Appellant, through counsel, has likewise availed itself and in the process of which Appellant was granted an additional three (3) weeks within which additional information may be provided in support of the request for review. The purpose of the administrative review process is to ensure that firms aggrieved by FNS’s adverse actions have the opportunity to have their position fairly considered by an impartial reviewing authority prior to that adverse action becoming final. Appellant has been duly given, and has taken, the opportunity to present to USDA through the administrative review process whatever evidence and information it deems as pertinent in support of its position that the Retailer Operations Division’s adverse action should be reversed.

Furthermore, as noted, Section 278.6(e)(5) of the FSP regulations, states that FNS shall disqualify a store for six months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as the sale of common nonfood items in exchange for FSP benefits due to carelessness or poor supervision by the firm's ownership or management.

Appellant, through counsel, contends that the person utilized to conduct the actual in-store investigation was not properly trained and did not personally make the subsequent identification of the alleged traffickers in the store. With regard to this contention, based on a review of the evidence in this case, there is no question that program violations did occur. Two clerks working at Appellant sold common ineligible items to an FNS, USDA investigator on four separate investigative visits. In fact the investigative record reflects that the clerk in Exhibit B, C and D, stated, to the investigator, that SNAP benefits were for food only and that she was not supposed to allow the ineligible items however, both clerks allowed the purchases. The investigative record is specific and accurate with regard to the dates of the violations, the exchange of SNAP benefits for ineligible items, and in all other critically pertinent detail. As

such, the contentions presented do not constitute valid grounds for dismissal of the current charges of violations, or for mitigating the impact of those charges.

Appellant, through counsel, advocates the issuance of a warning letter, and cites a number of case law as relevant to the current case. However, this administrative review decision is limited to whether the Retailer Operations Division appropriately followed the Food and Nutrition Act of 2008, as amended, and the regulations and agency policy promulgated under that act. Therefore, any application of a supposed judicial precedent would best be addressed in a judicial review. It is important to clarify for the record that the purpose of this review is to determine if the earlier decision of the Retailer Operations Division, to disqualify Appellant from participation in the SNAP for a period of six months, was in fact a correct one. It is not within the scope of this review to consider what subsequent actions Appellant may have taken so that its store may begin to comply with program requirements.

### **CIVIL MONEY PENALTY**

The Appellant requested reconsideration of the denial of a civil money penalty under the circumstances of the investigation. The Retailer Operations Division considered Appellant's eligibility for a hardship CMP under 7 CFR §278.6(f)(1). The Retailer Operations Division determined that the Appellant was not eligible for the hardship CMP in lieu of the six-month disqualification because there were at least seven other authorized retail stores, within a two-mile radius of Appellant, including supermarkets, superstores and one other medium grocery store, selling as large a variety of staple foods at comparable prices.

### **CONCLUSION**

The documentation presented by Retailer Operations Division provides through a preponderance of the evidence that the violations as reported occurred at the Appellant firm. 7 CFR § 278.6(e)(5) specifies that FNS shall "disqualify the firm for six months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as, but not limited to, the sale of common nonfood items due to carelessness or poor supervision by the firm's ownership or management.

The violations were determined by Retailer Operations Division to represent the first sanction for the firm and evidence carelessness and poor supervision. Therefore, the imposition of a six-month disqualification, the least severe penalty allowed by regulation, is appropriate.

It is therefore established that the violations as described in the letter of charges did in fact occur at the Appellant firm warranting a disqualification of six months in accordance with 7 CFR § 278.6(e)(5). Based on the discussion herein, the decision to impose a six-month disqualification against Silwad Meat Market Inc. is appropriate and the action is sustained. In accordance with the Act and regulations, the six-month period of disqualification shall become effective thirty (30) days after receipt of this letter. The Appellant may submit a new

application for SNAP participation ten (10) days prior to the expiration of the six-month disqualification period.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (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 (FOIA), 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.

Monique Brooks  
Administrative Review Officer

February 13, 2018