

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

**S & K Mini Mart,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0202501**

**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 permanently deny the application of S & K Mini Mart (S & K or Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(iii)(B) and § 278.1(k)(4) in its administration of the SNAP when it permanently denied the application of the Appellant to participate as an authorized SNAP retailer.

**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**

S & K submitted an application for SNAP authorization on June 3, 2017. As part of the authorization process, a store visit was conducted on July 31, 2017, to document the firm’s stock for the purpose of determining the eligibility of S & K to participate in the SNAP. Based on the store visit report and photographs, the Retailer Operations Division determined that the firm did

not have three varieties of food in the dairy staple food category. The Retailer Operations Division sent Appellant a proof of inventory letter dated August 9, 2017, to determine if S & K normally stocks three varieties of dairy. Appellant provided one invoice and seven receipts. The Retailer Operations Division analyzed the documentation and determined that the documentation was falsified.

In a letter dated August 24, 2017, the Retailer Operations Division informed Appellant that it was being permanently denied from participating as an authorized retailer in SNAP, in accordance with 7 CFR § 278.(e) and 278.1(k) because Appellant provided false or misleading information about a substantive matter in its application for SNAP authorization.

In a letter postmarked September 1, 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 § 2021 and Section 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.1(k)(4) establishes the authority upon which a firm may be denied from participating in SNAP because the firm's application contains false information of a substantive nature.

7 CFR § 278.1(k) states, in part, that "FNS shall deny the application of any firm if it determines that . . . 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) specifies the penalties and 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: . . . (B) Staple food stock; ... or (I) Any other information of a substantive nature that could affect the eligibility of a firm."

## **APPELLANT'S CONTENTIONS**

Appellant made the following summarized contentions in its administrative review request postmarked September 1, 2017, and subsequent information postmarked September 18, 2017, in relevant part:

- Appellant mailed invoices from Food 4 Less, Smart & Final, and Crystal Creamery as proof of the staple foods that are stocked.
- Appellant is located in an area where fruits, vegetables, and dairy products are scarce.
- A part-time employee added to the receipt.
- The employee admitted that it put the information in the wrong paperwork because he was confused.
- There were no bad intentions behind the action.
- Appellant submitted additional receipts to show that it continues to provide its customers with sufficient staple foods from all of the four categories.

In support of its contentions, Appellant provided three additional invoices dated after the store visit.

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.

The record shows that Appellant submitted one invoice dated July 31, 2017, the same day as the store visit, and all of the other submitted invoices were dated after the store visit. After careful analysis the Retailer Operations Division determined that the cost of the items purchased and the total cost of the invoice did not match up. The Retailer Operations Division contacted the supplier, Crystal Creamery, and determined that there was no delivery made to Appellant on July 31, 2017 to the Appellant firm. There was a delivery on August 17, 2017. The representative from Crystal Creamery further stated that its employee was asked by the Appellant firm to put a different date on the invoice. The distributor went on to state by e-mail that the yogurt, butter, and buttermilk were not purchased from the company. Crystal Creamery provided a copy of the original invoice showing the items that were actually purchased from the Appellant firm. Thus, the most likely explanation is that Appellant altered the proof of inventory documentation in order to be determined eligible for SNAP authorization.

Appellant contends that one of its part-time employees admitted that it added the information to the wrong paperwork because he was confused with the store inventory. Appellant explains that there were no bad intentions behind the action. This scenario strains credibility.

As previously mentioned, 7 CFR § 278.6(e) is specific in its requirement that:

*FNS . . . shall [d]isqualify a firm permanently if . . . [i]t 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 . . . [s]table food stock . . . .*

There is no agency discretion in the matter of what sanction is to be imposed when a false statement of a substantive nature is involved.

### **Corrective Action**

Appellant submitted documentation to show that it now carries the required staple food items. It is important to clarify for the record that the purpose of this review is to either validate or invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not within the authority of this review to consider what subsequent remedial actions may have been taken or will be taken in the future so that a store may begin to comply with program requirements. There is no provision in the SNAP regulations for a waiver or a reduction of an administrative penalty assessment on the basis of corrective actions implemented subsequent to findings of program violations. Therefore, Appellant's contention that it has taken corrective action does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Hardship to SNAP Participants**

Appellant explains that it is located in an area where fruits, vegetables, and dairy products are scarce. Regarding this contention, a hardship to SNAP customers and to the community, or any hardship resulting from the firm's denial of SNAP authorization, cannot constitute grounds for reversing the denial decision in the present case. There are no provisions in the Act and regulations allowing hardship to applicants and/or to SNAP customers as considerations in determining eligibility for participation in the SNAP.

## **CONCLUSION**

In accordance with 7 CFR § 278.6(e) and § 278.1(k)(4), the decision by the Retailer Operations Division to permanently deny the SNAP application of S & K 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 1, 2017