

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

**South Bay Liquor (aka A J Liquor, Inc.),**

**Appellant,**

**v.**

**Case Number: C0209947**

**Retailer Operations Division,**

**Respondent.**

**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 finding that the decision by the Retailer Operations Division (Retailer Operations) to permanently deny the application of South Bay Liquor (aka A J Liquor, Inc.) (Appellant) to participate in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed.

**ISSUE**

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

**AUTHORITY**

7 USC § 2023 and the implementing regulations at 7 CFR § 279.1 provide that a food retailer 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**

Retailer Operations advised Appellant by letter dated May 29, 2018 of its decision to permanently deny the firm's authorization to participate in the program. The regulatory citations for the denial were 7 CFR § 278.1(b)(3)(i)(A) and 7 CFR § 278.1(k)(3).

By letter dated June 5, 2018, counsel requested administrative review. The request was granted by letter dated June 19, 2018.

## **STANDARD OF REVIEW**

In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of the evidence that the administrative action 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 argument asserted is more likely to be true than not true.

## **CONTROLLING LAW AND REGULATIONS**

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 USC § 2018, 7 CFR § 278.1(b)(3) and 7 CFR § 278.1(k)(3) establish the authority upon which a retail food store's authorization to participate in the SNAP may be denied on the basis of a lack of business integrity.

7 CFR § 278.1(b)(3) states: "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:"

7 CFR § 278.1(k) states: "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."

## **APPELLANT'S CONTENTIONS**

All contentions have been considered whether stated here or not.

- FNS is denying the firm's application due to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) conviction of selling alcohol to a minor from 1999. FNS regards this offense calls into question 5 U.S.C. § 552 (b)(6) & (b)(7)(C)'s business integrity.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) underwent a comprehensive application process with the California ABC and was approved for a state liquor license.
- Exhibit A is a copy of the approved liquor license. California has one of the strictest regulations in the nation concerning sales of alcohol and licensing.
- ABC determined 5 U.S.C. § 552 (b)(6) & (b)(7)(C) does possess the requisite business integrity and was sufficiently rehabilitated to qualify for a liquor license.
- Exhibit B is a copy of a letter to ABC with the rehabilitation letter and letters of recommendation.
- If California ABC is sufficiently satisfied with 5 U.S.C. § 552 (b)(6) & (b)(7)(C)'s conviction concerning an alcohol sale to a minor, FNS should follow suit.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) has no other convictions concerning fraud, theft, forgery, or any other offenses that call into question an individual's character for honesty.
- An alcohol sale to a minor is not a crime of dishonesty or even an intentional act. This was an innocent mistake by a 20-year old kid working as a clerk in a liquor store.
- Such an act cannot reasonably justify the denial of participation in the SNAP to a grown man 20 years later.
- It is inconceivable that the regulations were intended to bar someone like 5 U.S.C. § 552 (b)(6) & (b)(7)(C) under these facts and circumstances.
- This application was not in connection with an entirely new ownership. It was prompted due to a transfer of ownership from the parents to their sons.
- The same family that has been authorized this entire time will continue to operate and manage the business just as before. The denial serves no legitimate purpose other than to punish the retailer and the family from an impeccable and unblemished business operation for the past ten years.

The aforementioned Exhibits were advanced.

## **ANALYSIS AND FINDINGS**

The purpose of this review is to validate or to invalidate the determination of Retailer Operations, 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 federal regulations, as amended; those requirements of law cannot be waived. The SNAP regulations at 7 CFR § 278.1(b)(3) and (k) provide for the 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. The regulations at 7 CFR § 278.1(b)(3) address the business integrity and reputation of the applicant.

FNS reasonably interprets 7 CFR § 278.1(b)(3)(i)(A) to cover criminal offenses in connection with performing a private transaction, such as the sale of alcohol to a minor. The conviction therefore has a transactional element and reflects on the owner's business integrity under the

regulations. Retailer Operations determined that per 7 CFR § 278.1(k)(3) the firm lacked the necessary business integrity and reputation to further the purposes of the program. Firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers as stipulated in 7 CFR § 278.1(b)(3)(i) shall be denied authorization permanently.

While California may have granted the referenced owner a liquor license, authorization as a SNAP retail food store is subject to federal law and the relevant implementing regulations. Appellant appears to misconstrue its initial SNAP authorization as having bestowed upon it a right/entitlement to SNAP income and a corresponding perpetual and irreversible ownership/property interest in its SNAP authorization. It must be impressed upon Appellant that SNAP authorization is an administratively-granted privilege subject to the terms and conditions for participation detailed in the Act and the regulations.

### **CONCLUSION**

After review of all the pertinent documentation, the record by a preponderance supports that Retailer Operations properly applied the applicable SNAP regulations. One owner pled guilty to and was convicted of selling alcohol to a minor after June 1, 1999. The firm has been found to lack the necessary business integrity and reputation to further the purposes of the program. The decision by Retailer Operations to permanently deny the application of Appellant to participate as a SNAP retailer, based on the regulations cited is therefore sustained.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 USC § 2023) and to the regulations at 7 CFR § 279.7 with respect to applicable rights 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 the Appellant's owners 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, 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.

M. Viens  
Administrative Review Officer

August 24, 2018