

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

Spice Market of India,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0217996

FINAL AGENCY DECISION

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a one year disqualification against Spice Market of India from participating 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 Title 7 of the Code of Federal Regulations (CFR) § 278, when it imposed a one year period of disqualification against Appellant on May 7, 2019.

AUTHORITY

According to 7 USC § 2023 and the implementing regulations at 7 CFR § 279.1, “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 record reflects that one of the owners of the Appellant firm knowingly submitted false or misleading information related to the SNAP retailer application of another firm. Based on information in the record, FNS has determined that this owner lacks the necessary business integrity to further the purposes of SNAP.

In a letter dated May 7, 2019, the Retailer Operations Division informed store ownership that it had withdrawn the firm's SNAP retailer authorization for a period of one year as stipulated in 7 CFR 278.1(l)(iv) and 7 CFR 278.1(b)(3)(vi) of the SNAP regulations.

By letter dated May 20, 2019, Appellant appealed the Retailer Operations Division's assessment and requested administrative review. The appeal was granted. Subsequent correspondence was received from Appellant, through counsel.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that 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 untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 USC § 2021), and implemented through regulation under Title 7 CFR § 278. In particular, 7 CFR § 278.6(e)(1)(iii) establishes the authority upon which a retail food store's authorization to participate in the SNAP may be permanently denied for providing false information on the store's application.

Food and Nutrition Act of 2008 – 7 USC 2021 Section 12(b)(4) states: An approved retail food store or wholesale food concern that violates a provision of this Act or a regulation under this Act may be disqualified for (A) a specified period of time from further program participation in the supplemental nutrition assistance program;... (4) for a reasonable period of time to be determined by the Secretary, including permanent disqualification, on the knowing submission of an application or the approval or reauthorization to accept and redeem coupons that contains false information about a substantive matter that was part of the application.

7 CFR § 278.1(b)(3)(vi) 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: (vi) Commission of any other offense indicating a lack of business integrity or business honesty of owners, officers or managers of the firm that seriously and directly affects the present responsibility of a person.

7 CFR § 278.1(l)(1)(iv) states: FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons. (iv) The firm fails to maintain the necessary business integrity to further the purposes of the program, as specified in paragraph (b)(3) of this section. Such firms shall be withdrawn for lack of business integrity for periods of

time in accordance with those stipulated in paragraph (k)(3) of this section for specific business integrity findings.

7 CFR § 278.1(k)(3)(vi) 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: (vi) Firms for which any other evidence exists which reflects negatively on the business integrity or business honesty of the owners, officers or managers of the firm as specified in § 278.1(b)(3)(vi) shall be denied for a period of one year from the effective date of denial.

APPELLANT'S CONTENTIONS

The following may represent a summary of Appellant's contentions in this matter; however, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein:

- The firm's customer base is beyond Asian Indian subcontinent. The firm has been accepting SNAP for more than six years and has tried to reduce fraud by letting customers know what can and cannot be purchased with SNAP;
- The individual in question is one of the LLC members and there are more than one business where both he and the managing owner are shareholders or LLC members. No other LLC members are involved in the day-to-day operations except for the managing owner; and,
- If the managing owner is given permission to continue accepting SNAP, it would be a service to SNAP recipients.

Appellant submitted no evidence or other rationales in support of these contentions.

ANALYSIS AND FINDINGS

It is important to clarify for the record that the purpose of this review is to validate or to invalidate the determination made by Retailer Operations Division. This review is limited to a consideration of the relevant facts and circumstances that were at the basis of the Retailer Operation Division action at the time such action was made. 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.

A review of the case record shows that one of the Appellant firm's current owners did knowingly submit information false information of a substantive nature on the application of another firm that could have affected the SNAP eligibility of that firm. SNAP regulations specify that FNS shall withdraw the SNAP retailer authorization of any firm for failing to maintain the necessary business integrity to further the purposes of the SNAP program for a period of one year.

The two affidavits submitted by counsel have no bearing on the matter under review and will not be addressed further.

CONCLUSION

SNAP regulations at 7 CFR 278.1(l)(iv) and 7 CFR 278.1(b)(3)(vi) specify that the sanction for failing to maintain the necessary business integrity to further the purposes of the SNAP is a one year period of disqualification. Accordingly, the decision by the Retailer Operations Division to impose a one year disqualification 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 must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, 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.

ROBERT T. DEEGAN
ADMINISTRATIVE REVIEW OFFICER

August 13, 2019