

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

Sun Mart #1,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0223734

FINAL AGENCY DECISION

The USDA, Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the decision of the Retailer Operations Division to permanently deny the application of Sun Mart #1 (Appellant), to participate 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 § 278.1(b)(3) and § 278.1(k)(3) in its administration of the SNAP when it advised Suna Mart #1 on October 3, 2019, that it was permanently denied from participation in SNAP.

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

In a letter dated October 3, 2019, the Retailer Operations Division informed ownership that the application of Sun Mart #1 to participate as an authorized retailer in SNAP was permanently denied. The letter states:

Based on the available information, FNS has determined that **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, owner of Sun Mart #1, lacks the necessary business integrity to further the purposes of SNAP. Therefore, as stipulated in 7 CFR 278.1(b)(3)(i) and 7 CFR 278.1(k)(3)(i) of the SNAP regulations, your application to participate in SNAP is permanently denied.

By letter postmarked October 11, 2019, 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 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 USC § 2018), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(k)(3)(i) and (l)(iv) establishes the authority upon which the application of any firm to participate in the SNAP may be denied because "records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers."

7 CFR § 278.1(b) 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:

(C) Violation of Federal, State and/or local consumer protections laws or other laws relating to alcohol, tobacco, firearms, controlled substances, and/or gaming licenses;

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

APPELLANT’S CONTENTIONS

Appellant submitted a certified copy of its court case that it received from the Connecticut Superior Courts Record Center in support of its administrative review request dated October 10, 2019.

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

The Retailer Operations Division determined that **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, owner of Sun Mart #1, was convicted of the Illegal Sale of Unstamped Cigarettes by the State of Connecticut on July 23, 2014. 7 CFR § 278.1(b)(3)(i)(C) is specific in its requirement that “FNS shall deny the authorization of any firm from participation in the program . . . based on[c]onviction of or civil judgment against the owners, officers or managers of the firm forviolations of Federal, State, and/or local consumer protections laws or other laws relating to alcohol, tobacco, firearms, controlled substances. . . .”

The regulation at 7 CFR § 278.1(k)(3)(i) states that “[f]irms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers as stipulated in § 278.1(b)(3)(i) shall be denied authorization permanently.” The business integrity provisions of the SNAP regulations do not provide the agency with discretion for dismissal of any action or for mitigating the impact of those actions on the basis of the seriousness of the violations, a lack of knowledge of the law, time that may have lapsed between conviction and application, circumstances under which they occurred, or whether restitution has been paid. If the matter violates the provisions of § 278.1(b)(3), action to deny must be taken accordingly.

The evidence supports the decision of the Retailer Operations Division to permanently deny the authorization of Sun Mart #1 to participate as an authorized retailer in the SNAP.

CONCLUSION

The Retailer Operations Division’s initial decision to deny the application of Sun Mart #1 to participate as an authorized retailer in the SNAP is sustained. Denial of a firm’s authorization to participate in the SNAP under the provisions of 7 CFR § 278.1(b)(3)(i) is permanent.

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 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.

Mary Kate Karagiorgos
ADMINISTRATIVE REVIEW OFFICER

March 4, 2020