

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

Tavares Food Market Inc,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0204480

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that Tavares Food Market Inc. (hereinafter Appellant) was properly permanently denied authorization to participate in the Supplemental Nutrition Assistance Program (SNAP), formerly the Food Stamp Program (hereinafter SNAP), by the Retail Operations Branch.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(o), § 278.1(k)(4) and § 278.6(e)(1), in its administration of the SNAP when it permanently denied the application of Appellant to participate as an authorized SNAP retailer on November 9, 2017.

AUTHORITY

7 U.S.C. § 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

The record reflects that on October 10, 2017, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** signed, as owner, an application for authorization to participate in the SNAP. Appellant was subsequently advised in a letter dated November 9, 2017, of the Retailer Operations Division’s decision to

permanently deny the application of Appellant to participate as an authorized retailer in SNAP. The determination was based on the following information:

Based on information received Tavares Food Market Inc. has provided false or misleading information about a substantive matter in its application for SNAP authorization, the application for the firm's authorization at the location above is permanently denied.

In a letter dated November 16, 2017, Appellant 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, an appellant bears the burden of proving by a clear 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 and Nutrition Act of 2008, as amended at 7 USC § 2018 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 USC § 2018, 7 CFR § 278.1(o), § 278.1(k), and § 278.6(e) establishes the authority upon which a retail food store or wholesale food concern may be denied authorization to participate in the SNAP on the basis of a lack of business integrity.

7 CFR § 278.1(o) relays specific program requirements for retail food store participation, which reads, in part, "*Applications containing false information.* The filing of any application containing false or misleading information may result in the denial of approval for participation in the program, as specified in paragraph (k) of this section or disqualification of a firm from participation in the program, as specified in § 278.6, ..."

7 CFR § 278.1(k)(4) relays specific program requirements for retail food store participation, which reads, in part, "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)(1) relays specific program requirements for retail food store participation, which reads, in part, "FNS shall take action as follows against any firm determined to have violated the Act or regulations." "...The FNS regional office shall..." "disqualify a firm permanently if" "...personnel of the firm have trafficked as defined in § 271.2."

7 CFR § 278.6(e)(1)(iii) relays specific program requirements for retail food store participation, which reads, in part, "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,..."

The regulations have clearly set out the position of the agency with regard to the business integrity of participating retailers. There is no discretion available to any party involved in the determination of eligibility or the determination of an administrative review regarding the seriousness of a business integrity violation. If the matter violates the provisions of § 278.1(b)(3) and § 278.1(1), action to deny or withdraw must be taken accordingly.

APPELLANT'S CONTENTIONS

In response to the Retailer Operations Division denial letter and in the request for administrative review, Appellant has stated as its position in the matter the following:

- I disagree that my application contained false or misleading information and request that my application be reviewed.

The preceding may represent only a brief 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.

ANALYSIS AND FINDINGS

In regards to Appellant's contention, the purpose of this review is to evaluate the conduct of the Appellant in its current application process to become an authorized retailer in the SNAP. The record reflects that Appellant submitted a signed and notarized Affidavit, dated October 23, 2017. Appellant responded "no" to the following six questions as listed on the Affidavit:

1. One or more owners or managers of this firm has been involved in prior Supplemental Nutrition Assistance Program (SNAP) or Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) violation.
2. One or more owners or managers of this firm has had ownership in or was a manager of a business that is or has been disqualified from SNAP or WIC.
3. Persons who were owners, managers, or employees of any firm that is or has been disqualified from SNAP or WIC are working in this store (in any capacity).
4. Persons who were owners or managers of any store that has been permanently disqualified from SNAP or WIC are financially involved or have other operational interest in this store.
5. Persons who committed an intentional program violation (IPV) as a SNAP or WIC recipient are working in this store (in any capacity).
6. One or more owners or managers of this firm are related by birth or marriage to an owner or manager of a firm that is or has been disqualified from SNAP or WIC.

The record reflects that a retailer, located at the same address as Appellant's store, was previously permanently disqualified from SNAP on August 3, 2017, and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) signed the store visit consent form on May 1, 2017, as an employee in that previously permanently disqualified store. The record also reflects that Appellant submitted a bill of sale which shows 5 U.S.C. § 552 (b)(6) & (b)(7)(C) purchased the business from the previous owner on July 5, 2017, which was prior to the permanent disqualification of the previous business. Therefore, Appellant's answer of "No" to Question 2, Question 3 and Question 4 of the Affidavit are considered false.

Furthermore, Appellant submitted documentation showing three (3) different legal addresses simultaneously. Appellant submitted a Philadelphia, PA address by way of a residential lease signed January 1, 2011, with a renewal date of one year on December 15, 2016. However, Appellant also submitted a New York State driver's license issued on March 5, 2013, expiring on January 15, 2021, with one New York address and his 2016 federal income tax form 1040 and his 2016 NYS 1040 income tax form showing a second New York address. This information is of a substantive nature and misleading.

With regards to Appellants' contention the authorization of a store to participate in SNAP must be in accord with the Food and Nutrition Act and regulations, as amended and those requirements of law cannot be waived. The aforementioned SNAP regulations provide for the denial of applicant firms to participate in the SNAP on the basis of an attempt to circumvent or avoid a period of disqualification by knowingly submitting 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. As such, Appellants' contention does not provide any valid basis for reversing or mitigating the denial action imposed against Tavares Food Market Inc.

CONCLUSION

Based on the discussion herein, the determination by the Retailer Operations Division to permanently deny the application of Tavares Food Market Inc. to participate as an authorized SNAP retailer is sustained.

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 20, 2018