

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

Taza Shop,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0205149

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 the Retailer Operations Division's (Retailer Operations) decision to permanently deny the application of Taza Shop (Appellant) to participate as a retail food store in the Supplemental Nutrition Assistance Program (SNAP).

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) of the SNAP regulations, when it permanently denied the application of Appellant to participate in the SNAP as an authorized retail food store.

AUTHORITY

7 U.S.C. § 2023 and its 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

By letter dated November 29, 2017, Retailer Operations permanently denied Appellant's application to participate as an authorized retailer in the SNAP in accordance with 7 CFR § 278.1(b)(3)(i)(B) based on the business integrity and reputation of the applicant. Per 7 CFR § 278.1(k)(3)(i) of the SNAP regulations, "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.”

One owner appealed Retailer Operations’ decision by letter dated December 14, 2017, and requested administrative review. The appeal was granted by letter dated December 22, 2017.

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). Section 278.1(b)(1) establishes the authority upon which the application of any firm to participate in the SNAP may be denied if it fails to meet established eligibility requirements.

7 CFR § 278.1 (b)(3) provides, in relevant part: “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 judgement against owners, officers, or managers of the firm for (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;”

7 CFR § 278.1(k) Denying authorization reads, in 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 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 recapitulated herein or not. In the written request for review the owner contends:

- My conviction of the offense was not based on intentional and willful conduct.

- I mistakenly did not include a bonus payment as ordinary recurring income and was over the limit and thus in violation of the NJ Family Care law.
- We entered into pretrial intervention instead of litigation because it was most cost effective and upon finding out about the omission I paid back the benefits I received as part of the plea deal.
- The form letter rejection seems to be the same day the application was received. It does not appear that someone actually looked at the paperwork but just rejected the application automatically.

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 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 Regulations, as amended; those requirements of law cannot be waived.

The review of the record supports that **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** pled guilty to charges of theft by deception, in violation of N.J.S.A. 2C:20-4 per documentation dated October 23, 2008, Superior Court of New Jersey. The SNAP regulations enunciated at 7 CFR § 278.1(k)(3)(i) provide for the permanent denial of applicant firms to participate in the SNAP based on conviction of or civil judgment against the owners, officers or managers of the firm for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice.

CONCLUSION

The owner pled guilty to an accusation which charged theft by deception whereby the owner and his family received health insurance benefits from New Jersey. The record supports that he was required to pay restitution as a condition of enrollment in a pretrial intervention program. A document dated October 23, 2008 states “the defendant has agreed to entry of this Civil Consent Judgment.” The civil consent judgment issued by a superior court judge was based on an agreement the parties entered into in order settle a civil suit with an enforceable agreement.

After review of all the pertinent documentation, and based on the discussion herein, the decision by Retailer Operations to permanently deny the application of Appellant to participate as a retail food store in the SNAP is sustained.

RIGHTS AND REMEDIES

See Section 14 of the Food and Nutrition Act of 2008 (7 USC § 2023) and to Section 279.7 of the regulations (7 CFR § 279.7) with respect to applicable rights to a judicial review of this determination. 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 (FOIA), it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.

M. Viens
Administrative Review Officer

February 6, 2018