

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

Tioga Mini Market, Inc,

Appellant,

v.

Case Number: C0208478

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Retailer Operations Division to permanently deny the application of Tioga Mini Market, Inc. (“Appellant”) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program.

ISSUE

The purpose of this review is to determine whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.1(k)(4), in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it permanently denied the application of Appellant to participate in SNAP on April 19, 2018.

AUTHORITY

According to 7 U.S.C. § 2023 and its 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

In a letter dated April 19, 2018, the Retailer Operations Division permanently denied the application of Appellant to participate as an authorized retailer in SNAP in accordance with 7 CFR § 278.1(e)(1) and 7 CFR § 278.1(k). In concluding that Appellant should be permanently denied authorization, the Retailer Operations Division determined that Appellant provided false information on a SNAP application.

On April 26, 2018, Appellant appealed the Retailer Operations Division decision and requested an administrative review of this action. The appeal was granted.

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 U.S.C. § 2018), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(e)(1) establishes the authority upon which a firm may be permanently disqualified from participating in SNAP because the firm's application contains false information of a substantive nature.

7 CFR § 278.6(e)(1) states, in part:

FNS . . . shall [d]isqualify a firm permanently if . . . [i]t 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, such as, but not limited to, information related to . . . ownership of the firm

7 CFR § 278.1(k) states, in part:

FNS shall deny the application of any firm if it determines that . . . 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)

APPELLANT'S CONTENTIONS

Appellant's response regarding this matter is essentially that it did not commit fraud. This explanation may represent only a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any others that have not been specifically listed here.

ANALYSIS AND FINDINGS

Application Included False Information

With respect to Appellant's contention that it did not commit fraud, 7 CFR § 278.1(e)(1) requires the permanent disqualification of authorization of firms from continued participation in SNAP on the basis of a number of reasons, one of which is the submitting false information of a substantive nature on a SNAP application that could affect the eligibility of the firm for authorization in the program.

5 U.S.C. § 552 (b)(6) & (b)(7)(C) was permanently disqualified at Appellant's location for trafficking on December 10, 2008. The successor owner was permanently withdrawn in May 2012 when it was discovered that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was still an owner of the firm, but was not included on the successor owner's application for SNAP authorization. A third owner apparently purchased the firm in 2012, leasing the building from 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and sold the firm to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on October 11, 2017.

In an affidavit signed by 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on January 30, 2018, as part of Appellant's application to be a SNAP-authorized retailer, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) affirmed that the following statement was not true: "Persons who are owners...of any firm that has been permanently disqualified from SNAP or WIC are financially involved or have other operational interest in this store." However, further investigation by the Retailer Operations Division showed that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) resides with 5 U.S.C. § 552 (b)(6) & (b)(7)(C), that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is in fact that father of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) (now adult) children, and that the utilities at the firm remained in 5 U.S.C. § 552 (b)(6) & (b)(7)(C) name. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) insists that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) does not have an operational interest in the store, she does not have a relationship with 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and that she pays only utilities, not rent, for residing with 5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, based on all the evidence, and in light of the fact that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) share a household, it seems more likely than not that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is financially involved and/or has an operational interest in the firm, and that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) knowingly falsified her SNAP application to disguise this fact. This information was of a substantive nature that could effect the eligibility of the firm for SNAP authorization.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to deny the application of Tioga Mini Market, Inc. to participate as an authorized retailer in SNAP is sustained. Denial of a firm's authorization to participate in the SNAP under the provisions of 7 CFR § 278.1(e)(1) is permanent.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If Appellant desires a judicial review, 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.

RICH PROULX
Administrative Review Officer

June 11, 2018