

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

Vaj, LLC,

Appellant,

v.

Case Number: C0217999

Retailer Operations Division,

Respondent.

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 permanently disqualify Vaj, LLC (hereinafter Appellant) from participation 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 permanently disqualified the Appellant from participation in SNAP 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 Appellant firm applied for authorization as a SNAP retail store through an electronic retailer application submitted on August 17, 2018. Store ownership submitted documents in support of their application that included FNS affidavits among others. The FNS affidavit consists of six questions asking: (1) Have one or more owners or managers of this firm been involved in any prior SNAP or WIC violations? (2) Have one or more owners or managers of this firm had ownership in or were managers of a business that is or has been disqualified from SNAP or

WIC? (3) Are any persons who were owners, managers, or employees of any firm that is or has been disqualified from SNAP or WIC working in this store (in any capacity)? (4) Are persons who were owners or managers of any store that has been permanently disqualified from SNAP or WIC financially involved or have other operational interest in this store? (5) Are persons who committed an intentional program violation as a SNAP or WIC recipient working in this store (in any capacity)? (6) Are one or more owners or managers of this firm related by birth or marriage to an owner or manager of a firm that is or has been disqualified from SNAP or WIC?

Store ownership submitted an FNS affidavit along with other documents that were received by the Retailer Operations Division on October 3, 2018. This FNS affidavit was not notarized, was unsigned and undated, and had questions three and six answered in the affirmative while the other four questions were answered in the negative. Although the FNS affidavit stipulates that all affirmative answers must be explained on a separate sheet of paper, none was included.

Subsequently, both store owners submitted signed and notarized non-FNS affidavits dated October 4, 2018, which were received by the Retailer Operations Division on April 24, 2019. These non-FNS affidavits state that the store owners were aware the previous owners were permanently disqualified from SNAP and that the current owners “do not have any business relationship with the former owners and the former owners are not involved in the operation of Vaj, LLC”. These non-FNS affidavits were submitted along with unsigned, undated FNS affidavits that were not notarized and that had all six questions answered in the negative.

Most recently, both store owners submitted signed and notarized FNS affidavits dated May 3, 2019, that answered question six in the affirmative for both owners and answered question three in the affirmative for **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

In a letter dated May 7, 2019, the Retailer Operations Division informed store ownership that it had denied their application for SNAP retailer authorization for having knowingly submitted information on an application that contained false information of a substantive nature that could affect the eligibility of the firm for authorization in the program. The letter noted that the penalty for knowingly providing false information is permanent disqualification as stated in SNAP regulations at 7 CFR § 278.6(e)(1)(iii).

By letter dated May 20, 2019, Appellant, through counsel, appealed the Retailer Operations Division’s assessment and requested administrative review. The appeal was granted. Subsequent correspondence was received from 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(k)(4) states: 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).

7 CFR § 278.6(e)(1)(iii) states: FNS shall disqualify a firm permanently if 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.

7 CFR § 278.1(o) states: 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, and may subject the firm and persons responsible to civil or criminal action.

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:

- At issue are the affidavits by the store owners in which some questions were answered in the affirmative while questions 1, 2, 4, and 5 were answered in the negative. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) answered question three in the affirmative and both answered question six in the affirmative. Counsel has discussed the facts with the owners and differences in language and culture affect the answers to question six that uses the English term "by birth". 5 U.S.C. § 552 (b)(6) & (b)(7)(C) brother is an owner and manager of a firm that was disqualified from SNAP;

- While it would have been more prudent for the owners to have consulted with a lawyer or other person for whom English was a first language, prior to filling-out the affidavits, a government action preventing the firm from accepting SNAP is too harsh a sanction for having failed to accurately and consistently fill-out affidavits;
- The food products sold at the firm have been a staple for customers in the area for decades in an underserved area;
- The brother's firm was disqualified for failing to have cash register tapes to corroborate the charges. The successful operation of the Appellant firm would show that the type of business practices of the disqualified firm were not indicative of any wrongdoing;
- The government is seeking to prevent the opportunity for the Appellant firm to be successful by holding against it the actions that the government has concluded were undertaken by relatives of the Appellants. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) brother is engaged in other businesses in which he enjoys an excellent business reputation; and,
- The Appellants should be allowed the opportunity to pursue the American dream.

Appellant submitted an affidavit signed by 5 U.S.C. § 552 (b)(6) & (b)(7)(C) brother refuting the charges made against his disqualified firm as well as two affidavits by customers of the brother's disqualified firm in support of these contentions. One affidavit stating that the former customer made large purchases at the firm and the other stating that the firm's closure has caused a hardship.

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.

The primary issue under consideration is whether or not the current store owners knowingly submitted false information on their SNAP retailer application.

A review of the case record by the Retailer Operations Division shows that one of the current owners, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is also one of the owners of record of another FNS SNAP authorized firm. Other co-owners of this firm include 5 U.S.C. § 552 (b)(6) & (b)(7)(C) brother and uncle. Both of these individuals were also co-owners of the permanently disqualified firm that the current owners had purchased. Additionally, FNS records show that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) previously worked at the same permanently disqualified firm. Other business relationships were also noted by the Retailer Operations Division. Upon review, the evidence clearly shows previous, current and ongoing business relationships between the current store owners and the permanently disqualified store owners contrary to the assertions made in the two non-FNS affidavits that both state the current owners "do not have any business relationship with the former owners".

This action by the current store owners confirms that they knowingly made a conscious decision to provide untrue answers to the Retailer Operations Division's questions. SNAP regulations specify that those firms for which evidence exists showing 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 shall be permanently denied authorization.

With regards to Appellant's contentions regarding the FNS permanent disqualification action previously taken against the permanently disqualified store and the former store owners, no ruling will be rendered as the scope of this review is limited solely to the factors pertaining to the permanent disqualification of Val, LLC. Therefore, Appellant's contentions cannot be used to reverse or mitigate the decision of the Retailer Operations Division.

CIVIL MONEY PENALTY

A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification as specified in SNAP regulations at 7 CFR § 278.6(f). Submitting false information is a permanent disqualification so Appellant is not eligible for a hardship CMP.

Appellant is not eligible for a trafficking CMP as these only apply in cases of permanent disqualifications as a result of trafficking.

CONCLUSION

The documentation in the case record clearly shows the store owners knowingly submitted false information in their SNAP retailer application. SNAP regulations at 7 CFR § 278.6(e)(1)(iii) specify that the sanction for knowingly providing false information is permanent disqualification. Accordingly, the decision by the Retailer Operations Division to permanently disqualify Appellant from participation as a SNAP retailer 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