

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

White Mountain Farm Inc,

Appellant,

v.

Case Number: C0237308

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), that there is insufficient evidence to support that the Retailer Operations Division (Retailer Operations) properly imposed a permanent disqualification against White Mountain Farm Inc. (Appellant), from participation as an authorized retail food store in the Supplemental Nutrition Assistance Program (SNAP). The permanent disqualification determination is reversed.

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 U.S.C. § 2021, 7 CFR § 278.6(a), 7 CFR § 271.2, and 7 CFR § 278.6(e)(1)(i), in its administration of the SNAP when it imposed a permanent disqualification against Appellant.

AUTHORITY

7 U.S.C. § 2023, and the implementing regulations at 7 CFR § 279.1, provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6, or § 278.7, may file a written request for review of the administrative action with the Food and Nutrition Service.

CASE CHRONOLOGY

By Charge letter dated January 19, 2021, Retailer Operations informed Appellant that it was charged with violating the terms and conditions of the SNAP regulations based on a trafficking violation noted in Exhibit E of a provided investigative report. The investigation was conducted during the period of December 4, 2020, through December 11, 2020, and described in a report dated January 7, 2021. Previous counsel replied to the Charge letter on March 1, 2021.

By Determination letter dated March 29, 2021, Retailer Operations informed Appellant that it was permanently disqualified from participation as a retail food store in the SNAP in accordance

with Section 278.6(c) and 278.6(e)(1) of the regulations. The letter states that the store was not eligible for a trafficking CMP according to the terms of Section 278.6(i) because the firm failed to submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

By letter dated April 7, 2021, current counsel appealed Retailer Operations' determination, and requested administrative review. The appeal was granted by letter dated April 9, 2021. By email dated April 30, 2021, counsel provided additional information.

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 credible, 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 not true.

CONTROLLING LAW AND REGULATIONS

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended (the Act), 7 U.S.C. § 2021, and § 278 of Title 7 of the Code of Federal Regulations (CFR).

7 CFR § 278.6(a) states in part: "FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations."

7 CFR § 278.6(e)(1)(i) states: FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2. 7 CFR § 271.2 states that trafficking means: "(1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;"... (4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food. (6) Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone."

SUMMARY OF THE CHARGES

A contracted investigator conducted five compliance visits at Appellant. Appellant was charged with trafficking in Exhibit E, wherein one store clerk exchanged cash with the investigator for one case of Red Bull purchased with SNAP benefits.

APPELLANT'S CONTENTIONS

In reaching a decision, consideration has been given to all contentions and submission presented, including any not recapitulated here.

- I disagree with many of the statements in Exhibits D and E of the Investigative Report and note that it omits numerous key details. I was working at the Store on December 11, 2020. The Store was crowded. My first interaction with the person I now know to be an undercover USDA investigator (UI) took place that afternoon. At that time, she and several customers, including Eroilda Quiles, were standing near a refrigerated cooler approximately 12 feet away from the counter where I typically stand. While I was busy helping other customers, the woman asked me if she wanted to purchase Red Bull or Monster energy drinks and propose to sell those items to be for \$1.00 each or for \$24.00 for an entire case. After I asked the woman why she wanted to sell energy drinks, the UI stated that she “had an employee discount at another store and was trying her best to help people during these hard Coronavirus times.”
- I told her that I was not interested and repeatedly declined her proposal. I did so because the Store was crowded at that time, I was helping other customers, and because the Store’s cost for purchasing cases of Red Bull from our distributors was only a few dollars more than the price that the undercover investigator proposed. At no time did I have any interest or inclination to purchase any items from the UI. All interactions I had with the UI were commenced exclusively by her and I never bargained with her. Additionally, my conversations with her were extremely limited, including because I do not speak perfect English. The UI was extremely persistent, was disturbing our customers, and was preventing me from conducting business normally.
- For quite a long time, the UI continued to push me to purchase numerous cases of Red Bull or Monster Energy Drinks. Because it was a busy evening and the Store was crowded, I reluctantly and under duress agreed to purchase a single case of Red Bull. I only did so because I was trying to get her to leave the Store quickly and quietly, so I told her to “just bring one.”
- Exhibits D and E claim that I told the undercover investigator to purchase a case of Red Bull with her SNAP benefits. This is false. At no time did I ever tell the undercover investigator to do so. I also never heard her state, both before and after she purchased the case of Red Bull at another retailer, that she would be using or used SNAP benefits to purchase that item. I also never heard the UI state after she returned with the case of Red Bull that she was selling items purchased at another retailer with SNAP benefits. I am somewhat hard of hearing due to my age and the store is often noisy. I also have Korean music playing at all times.
- The UI returned to the Store a short time later with a case of Red Bull. She put the case of Red Bull on the counter and placed a receipt on top of the case. At that time, I gave her \$24.00 in cash and she left the Store. I thought it was odd for her to provide a receipt, but I never looked at it because I was busy slicing cold cuts for customers who were waiting. After putting the case of Red Bull away, I threw away the receipt without looking at it. Prior to

receiving the Charge Letter (CL), I was not aware of and have no knowledge that the UI intended to use and used SNAP benefits to pay for the case of Red Bull at another retailer.

- The female UI attempted to entrap me into purchasing items that I was not predisposed to purchase. I expressly dispute and deny that the Store or I ever exchanged SNAP benefits for eligible food items purchased at another store.
- I expressly dispute and deny that the Store or I ever knowingly exchanged cash in exchange for eligible food items purchased at another SNAP authorized retailer using SNAP benefits. At no time did White Mountain ever purchase eligible food items from a SNAP beneficiary.

ANALYSIS AND FINDINGS

This review is to either validate or to invalidate the determination made by Retailer Operations. The regulations establish that an authorized retail food store may be disqualified from participating in the SNAP when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf. The Exhibits recount one exchange by the store owner of cash with a USDA investigator for items purchased with SNAP benefits. Upon review, it is decided that there is insufficient evidence to support a permanent disqualification for trafficking defined under 7 CFR § 271.2 (5). The permanent disqualification determination is herein reversed.

This decision is not precedent setting as it is based on the specific circumstances of this case as documented by the materials in the record. In addition, this final agency decision does not establish policy, or supersede Federal law and regulations.

CONCLUSION

The record does not support, by a preponderance of the evidence, that the exchange by the store owner of cash for products purchased with SNAP benefits, meets the definition of trafficking. The permanent disqualification determination is therefore reversed.

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.

M. Viens
ADMINISTRATIVE REVIEW OFFICER

May 25, 2021