

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

**Winners African Market Inc,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0196657**

**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 a six-month disqualification of Winners African Market Inc. (hereinafter Appellant), from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) as initially imposed by the Retailer Operations Division.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a six-month disqualification against Appellant.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1 provides 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 USDA conducted an investigation of the compliance of Winners African Market Inc. with Federal SNAP law and regulations from January 30, 2017 through May 12, 2017. In a letter dated June 28, 2017, Retailer Operations Division charged the Appellant firm with accepting SNAP benefits in exchange for merchandise which included common ineligible non-food items

in violation of 7 CFR § 278.2(a). These SNAP violations occurred on three (3) out of three (3) compliance visits. The letter further informed the Appellant that the violations warranted a disqualification period of six months as provided in 7 CFR § 278.6(e)(5).

In a facsimile dated July 7, 2017, Appellant replied to the charge letter and general stated that it was not sure how this happened because when people purchase non-food items it makes sure to tell them that they can't buy it with the EBT but that it can be taken from their cash on the EBT card. Appellant indicated that it was baffled that this mistake happened.

After reviewing the evidence and the response from the Appellant, Retailer Operations Division issued a determination letter dated July 19, 2017. The determination letter informed the Appellant it was disqualified from the SNAP for a period of six months in accordance with 7 CFR § 278.6(a) and (e). The determination letter also stated that Retailer Operations Division considered Appellant's eligibility for a hardship CMP under 7 CFR § 278.6(f)(1). Retailer Operations Division determined that the Appellant was not eligible for the hardship CMP in lieu of the six-month disqualification because there were other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

In a letter dated July 27, 2017, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's determination. The appeal was accepted and the implementation of the six-month disqualification was held in abeyance pending completion of this review.

## **STANDARD OF REVIEW**

In appeals of adverse actions, an appellant bears the burden of proving by a 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 & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e) establish the authority upon which a period of disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 278.2(a) states, inter alia: "Coupons may be accepted by an authorized retail food store only from eligible households.... Only in exchange for eligible food"

7 CFR § 271.2 states, inter alia: "Eligible food means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption"

7 CFR § 278.6(a) states, inter alia: “FNS may disqualify any authorized retail food store... if the firm fails to comply with the Food and Nutrition Act of 1977, 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)(5) states, inter alia: “Disqualify the firm for 6 months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as, but not limited to, the sale of common nonfood items due to carelessness or poor supervision by the firm’s ownership or management.”

7 CFR § 278.6(f)(1) states, inter alia: “FNS may impose a civil money penalty as a sanction in lieu of when... the firm’s disqualification would cause hardship to Food Stamp [SNAP] households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices.”

### **APPELLANT’S CONTENTIONS**

The Appellant, through counsel, made the following summarized contentions in its request for administrative review, in relevant part:

- I think your investigation and the report made do not belong to my business.
- I request a hearing at your location and with the presence of the Investigator as I am in total disagreement and sure these accusations are not valid.

Appellant, through counsel, submitted an FOIA request for all documentation and information concerning the investigation. The request was processed on September 6, 2017 and Appellant’s counsel received the requested FOIA documentation on October 6, 2017. Appellant, through counsel, did not provide any additional documentation or information in support of its position

The preceding may represent only a brief summary of the Appellant’s contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

### **ANALYSIS AND FINDINGS**

FNS initially authorized Winners African Market Inc. as a small grocery store on January 12, 2015. During an investigation from January 30, 2017 through May 12, 2017, the USDA conducted three (3) compliance visits at Appellant’s store. A report of the investigation was provided to the Appellant as an attachment to the charge letter dated June 28, 2017. The investigation report included Exhibits A through C which provide full details on the results of each compliance visit. The investigation report documents that SNAP violations were committed during three (3) of the three (3) compliance visits and involved the sale of one 4.761 ounce bar of shea butter soap, one 32 ounce bottle of Dr. Natural pure Castile hand soap, one 10.7 ounce bottle of olive oil hair lotion, one 24 ounce bottle of Dove purely pampering body

wash and one 25 ounce bottle of Tide with bleach alternative. Store personnel refused to exchange an undisclosed amount of cash for SNAP benefits during Exhibit C.

Appellant, through counsel, contends that the investigation and the report do not belong to the business. With regard to this contention, the violations are based on the findings of a formal USDA investigation. The transactions cited in the letter of charges were conducted under the direction of an USDA investigator and are thoroughly documented. A review of this documentation has yielded no indication of substantial error or discrepancy in the reported findings; the investigative record is specific and thorough with regard to the dates and other specifics of the violations and in all other critically pertinent detail. Additionally, the investigative results are routinely supported by documentation in the record that confirms items purchased at a retail firm, in the course of an investigation, are donated to and signed for by a charitable organization following the transactions; such documentation is found in the record for the present case. The purchase costs of each of the transactions involved in the investigation are documented on SNAP terminal receipts obtained during each transaction which also contain identifying information for Appellant's firm. Accordingly, the Investigator did in fact obtain a receipt for each transaction noted in the report and such is present in the record. Therefore, it is more likely true than not true that the violations as described in the investigation report did take place at Appellant's firm.

Appellant, through counsel, requested an in person hearing with the presence of the investigator. With regard to this request, in a rule implemented in 2003, the Agency eliminated in-person reviews because there were only three areas, in the country, in which those reviews could be conducted and gave the appearance that any retailer outside of those areas were at a disadvantage. It is important to note that the Department makes administrative review determinations based on the documented facts of the case, and whether or not aggrieved retailers meet with review staff has no bearing on the outcome. Retailers/counsel can and do talk with reviewers by phone as a follow-up to written documentation, however it is imperative to note that review staff base their determinations on the facts of the case, not on a meeting or phone conversation.

Additionally, it is important to clarify for the record that the purpose of this review is to determine if the earlier decision of the Retailer Operations Division, to disqualify Appellant from participation in the SNAP for a period of six months, was in fact a correct one.

### **CIVIL MONEY PENALTY**

The Appellant requested reconsideration of the denial of a civil money penalty under the circumstances of the investigation. The Retailer Operations Division considered Appellant's eligibility for a hardship CMP under 7 CFR §278.6(f)(1). The Retailer Operations Division determined that the Appellant was not eligible for the hardship CMP in lieu of the six-month disqualification because there were at least 264 authorized retail stores, within a one-mile radius of Appellant, including medium grocery stores, large grocery stores, supermarkets, superstores and other small grocery stores selling as large a variety of staple foods at comparable prices.

The record also reflects that there are at least 2 authorized retailers that have similar and comparable inventory as that of Appellant's store.

## **CONCLUSION**

The documentation presented by Retailer Operations Division provides through a preponderance of the evidence that the violations as reported occurred at the Appellant firm. 7 CFR § 278.6(e)(5) specifies that FNS shall "disqualify the firm for six months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as, but not limited to, the sale of common nonfood items due to carelessness or poor supervision by the firm's ownership or management.

The violations were determined by Retailer Operations Division to represent the first sanction for the firm and evidence carelessness and poor supervision. Therefore, the imposition of a six-month disqualification, the least severe penalty allowed by regulation, is appropriate.

It is therefore established that the violations as described in the letter of charges did in fact occur at the Appellant firm warranting a disqualification of six months in accordance with 7 CFR § 278.6(e)(5). Based on the discussion herein, the decision to impose a six-month disqualification against Winners African Market Inc. is appropriate and the action is sustained. In accordance with the Act and regulations, the six-month period of disqualification shall become effective thirty (30) days after receipt of this letter. The Appellant may submit a new application for SNAP participation ten (10) days prior to the expiration of the six-month disqualification period.

## **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

November 30, 2017