

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

W and W G Partnership,

Appellant,

V.

Retailer Operations Division,

Respondent.

Case Number: C0217128

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that W and W G Partnership (hereinafter Appellant) was properly permanently denied authorization to participate in the Supplemental Nutrition Assistance Program (SNAP), by the Retail Operations Branch.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(b)(3)(i) and §278.1(k)(3)(i), in its administration of the SNAP when it permanently denied the application of Appellant to participate as an authorized SNAP retailer on March 11, 2019.

AUTHORITY

7 U.S.C. § 2023 and the 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

The record reflects that on Appellant’s notary **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, signed, as an authorized representative for **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** and **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, an application for authorization to participate in the SNAP. Retailer Operations Division received the original documentation on February 19, 2019. Based on a review of those documents, in a letter dated February 21, 2019, Retailer Operations Division requested additional information pertaining to Appellant’s answers to Question 3 and Question 4 of the SNAP application. Appellant was subsequently advised in a letter dated March 11, 2019,

of the Retailer Operations Division's decision to permanently deny the application of Appellant to participate as an authorized retailer in SNAP. The determination letter stated the following:

“It is the determination of FNS that you knowingly submitted a SNAP application that contained false information of a substantive nature regarding your eligibility to participate in SNAP. SNAP regulations at 278.6(e)(1)(iii) provide that any firm found to have provided false information on their application relating to such matters shall be denied permanently. After review of all documentation provided, it has been determined that the previous permanently disqualified owner still has a financial interest in the operation of the business, which is contrary to information provided by the current ownership; therefore, firm is recommended for a permanent denial due to business integrity.”

In a letter dated March 22, 2019, Appellant appealed the Retailer Operations Divisions' decision and requested an administrative review of this action. The appeal was granted. A letter of representation was provided to this office dated April 29, 2019.

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, at 7 USC § 2018 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 USC § 2018, 7 CFR § 271.2, § 278.1(b)(3) and § 278.1(k)(3) establishes the authority upon which a retail food store or wholesale food concern may be denied authorization to participate in the SNAP on the basis of a lack of business integrity.

7 CFR § 278.1(k)(4) relays specific program requirements for retail food store participation, which reads, in part, “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) relays specific program requirement for retail food store participation, which reads, in part, “Disqualify a firm permanently if: (iii) 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,…”

The regulations have clearly set out the position of the agency with regard to the business integrity of participating retailers. There is no discretion available to any party involved in the determination of eligibility or the determination of an administrative review regarding the

seriousness of a business integrity violation. If the matter violates the provisions of § 278.1(b)(3) and § 278.1(1), action to deny or withdraw must be taken accordingly.

APPELLANT'S CONTENTIONS

In response to the Retailer Operations Division denial letter and in the request for administrative review, Appellant, through counsel, has stated as its position in the matter the following:

1. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) has no existing or prior personal or familial relationship with 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
2. On December of 2018, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) personally took over the lease.
3. W & W G Partnership's application did not contain any deliberately false information. The supplemental information provided, all of which was truthful, likely provided the basis for the partnership's disqualification.

Appellant, through counsel, provided a signed and notarized Affidavit of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), a copy of the Bill of Sale, a signed and notarized Affidavit of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), a statement from 5 U.S.C. § 552 (b)(6) & (b)(7)(C) regarding payments received and a copy of the commercial lease.

The preceding may represent only a brief 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.

ANALYSIS AND FINDINGS

With regards to Appellant's contentions, the record reflects that ownership provided Retailer Operations Division with documentation that questions Appellant's business integrity in its submission of the SNAP retailer application. The SNAP application shows that Appellant answered "no" to question #3 stating "persons who were owners, manager, or employees of any firm that is or has been disqualified from SNAP or WIC are working in this store (in any capacity)." Appellant also answered "no" to question #4 stating "persons who were owners or managers of any store that has been permanently disqualified from SNAP or WIC are financially involved or have other operational interest in this store."

The Bill of sale shows that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) sold the business located at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), Memphis, TN 38105, to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on December 31, 2018. The record reflects that although 5 U.S.C. § 552 (b)(6) & (b)(7)(C) name did not appear on the bank account signature cards, provided to Retailer Operations Division, her signature did appear on checks, authorizing payment, that were cashed through the business account of W and W G Partnership, as shown on bank statements provided, before, the day of and after the business was sold to the new owners. This is evidence that 5 U.S.C. § 552 (b)(6) & (b)(7)(C), a previously permanently disqualified

owner, has a financial interest in the new business W and W G Partnership. Based on an analysis of the documentation provided, the response to both Question #3 and Question #4 are more likely than not, false statement and therefore, Retailer Operations Division determination to permanently deny Appellant's SNAP application is hereby sustained.

It was also noted that the notary, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, for all documents including the bill of sale dated December 31, 2018 between the current and disqualified owner is also the authorized representative for the current owners. This notary also signed the SNAP application received by the agency on February 11, 2019 for the new owners as their authorized representative.

As previously mentioned, 7 CFR § 278.1(k)(4) relays specific program requirements for retail food store participation, which reads, in part, "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)".

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to permanently deny the application of W and W G Partnership to participate as an authorized SNAP retailer is sustained.

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

August 15, 2019