

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

Lonyo Market	)	
	)	
Appellant,	)	
	)	
v.	)	Case Number: C0164358
	)	
Retailer Operations Division,	)	
	)	
Respondent.	)	
_____	)	

**FINAL AGENCY DECISION**

It is the decision of the USDA that there is sufficient evidence to support a finding that the permanent disqualification of Lonyo Market from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly 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 permanent disqualification against Lonyo Market.

**AUTHORITY**

7 U.S.C. § 2023 and its 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 Appellant applied for SNAP authorization on August 28, 2009. The FNS-252E form entitled *Supplemental Nutrition Assistance Program Application for Stores* states that the owner of Lonyo Market is Ali Haider Aoun. (Note: the Social Security card and driver’s license submitted with the application spells the name as Ali Haidar Aoun). The signature on the application was signed Ali Aoun. No other officers, owners, partners, or members were listed on the application or were included in the mandatory supporting documents. On October 14, 2009, FNS authorized Lonyo Market for the SNAP as a small grocery store.

On February 4, 2016, as part of an ongoing investigation, agents of the USDA-Office of Inspector General (OIG) and the Federal Bureau of Investigation (FBI) interviewed [7 U.S.C. 2018 (b)(6) & (b)(7)(c)], (hereinafter referred to as “[7 U.S.C. 2018 (b)(6) & (b)(7)(c)]”) at Lonyo Market located at 6200 Lonyo St., Detroit, Michigan 48210. [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] is the father of the purported Appellant store owner Ali Haider Aoun. The agents informed [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] that he was not under arrest and was free to leave. After being advised of the identity of the agents and the nature of the interview, [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] voluntarily agreed to talk to the agents. [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] stated that he has been the owner of Lonyo Market since 2000 even though another relative was listed as the owner. In 2006 or 2007, ownership “on paper” was transferred to his son Ali Haider Aoun. However, no money was exchanged and [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] still ran the business. [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] stated he handles the inventory and accounts for the store and has always been the signor on the business bank account.

The administrative record documents that [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] was permanently disqualified from the SNAP in 1999 due to violations at a Florida store. Documents obtained by the Retailer Operations Division also show that [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] has a criminal record and served time in the Federal Correctional Institution in Terre Haute, Indiana.

Also on February 4, 2016, OIG and FBI agents interviewed Ali Haidar Aoun (aka Ali Haider Aoun but hereinafter referred to as “Ali”) at Lonyo Market located at 6200 Lonyo St., Detroit, Michigan 48210. The agents informed Ali that he was not under arrest and was free to leave. After being advised of the identity of the agents and the nature of the interview, Ali voluntarily agreed to talk to the agents. During the interview, Ali stated that his father [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] asked Ali to put the store in Ali’s name around the time that [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] was released from prison. Ali further stated that [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] maintained sole control of the firm’s books and [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] was the owner of the funds in the firm’s business banking account although Ali was allowed to withdraw funds as needed. Ali works at the store and receives a paycheck based on the number of hours that he works. Ali stated that he believed that [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] wanted the business in Ali’s name due to [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] “past troubles.” Ali described SNAP violations committed by [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] that he personally witnessed which included the exchange of cash for SNAP benefits. Ali also admitted to exchanging SNAP benefits for ineligible items and cigarettes.

As a result of the evidence from this investigation, the Retailer Operations Division charged the Appellant, in a letter dated May 4, 2016, with knowingly providing false information of a substantive nature regarding store ownership. The letter states, in relevant part, that:

*Based on information uncovered during this investigation your firm, Lonyo Market is charged with providing false information about ownership. As provided by Section 12(b)(4) of the Food and Nutrition Act of 2008 (7 U.S.C. 2021(b)(4)) and Section*

*278.6(e)(1)(iii) of the SNAP regulations ... the sanction for providing false information is permanent disqualification.*

The Appellant, through counsel, responded to the charges in a letter dated June 9, 2016. The Appellant generally stated that there was no violation of any applicable law or statute and that the charges were based on a vague and overly broad application of law. More specifically the Appellant stated that no false information of a substantive nature was provided in the Appellant's SNAP application. The Appellant also cited miscellaneous case law regarding due process issues relating to vague statutes.

After giving consideration to the evidence and the Appellant's response, the Retailer Operations Division informed the Appellant, by letter dated July 14, 2016, that Lonyo Market was permanently disqualified from participation in the SNAP. The determination letter informed the Appellant of the right to request an administrative review.

In a letter dated July 19, 2016, the Appellant, through counsel, appealed the Retailer Operations Division's determination and requested an administrative review of the permanent disqualification. The request for administrative review was granted.

### **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, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

### **CONTROLLING LAW AND REGULATIONS**

The controlling law in this matter is covered in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and promulgated as regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(iii) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(4) states, *inter alia*:

*... a disqualification ... shall be ... (4) for a reasonable period of time to be determined by the Secretary, including permanent disqualification, on the knowing submission of an application for the approval or reauthorization to accept and redeem coupons that contains false information about a substantive matter that was a part of the application.*

7 CFR § 278.6(e)(1)(iii)(F) states:

*... FNS shall take action as follows against any firm determined to have violated the Act or regulations .... (1) 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, such as, but not limited to, information related to: ... (F) Ownership of the firm .... [Emphasis added.]*

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 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 ....*

### **APPELLANT'S CONTENTIONS**

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

- The Retailer Operations Division's letter failed to provide the reasoning for its determination that false information was provided. In addition, the SNAP application form does not provide a clear definition of ownership and does not ask whether any other persons have an interest in the store.
- Other less severe penalties were not considered. The violation described in 7 U.S.C. § 2021(b)(4) provides for a disqualification of a reasonable amount of time including a permanent disqualification. The July 14, 2016 determination letter did not explain why a less severe penalty was not imposed or what factors were considered in imposing a permanent disqualification.
- There was a due process violation as 7 U.S.C. § 2021(b)(4) is not clear due to the vagueness of the statute. All the Appellant did was to fill out an application and he answered every question correctly. In addition, even if any information was false it was not about a substantive matter and the statute does not define a substantive manner.

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**

#### Reasoning for the Determination

The Appellant claims that the July 14, 2016 letter failed to provide the reasoning for its determination that false information was provided. However, a review of the charge letter documents that the Retailer Operations Division provided the Appellant with a sufficient explanation why the Appellant was being permanently disqualified and provided the Appellant with an opportunity to respond and explain. The charge letter dated May 4, 2016 stated, in part:

*Based on interviews with [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] and yourself, it was discovered that the true owner of this firm is [7 U.S.C. 2018 (b)(6) & (b)(7)(c)]. [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] was permanently disqualified from SNAP in 1999 and has a lengthy criminal history and would not have been eligible to participate in SNAP had he applied under his own name.*

The Appellant also claims that the SNAP application form does not provide a clear definition of ownership and does not ask whether any other persons have an interest in the store. Regarding this contention, Question 12 of the SNAP application clearly instructs the applicant to “enter the name and home address of **all** officers, owners, partners, and members. [Emphasis added.] In addition, a follow up letter to the Appellant was delivered on September 2, 2009 which reminded the Appellant to provide copies of “photo identification for **all** owners, partners, corporate officers/shareholders.” [Emphasis added.] These inquiries clearly require that the applicant must identify all persons having a business interest in the store.

The Appellant states that it is not uncommon for people to purchase property for a family member for one reason or another. However, Ali’s interview with Federal agents on February 4, 2016 clearly reveals that Ali believed that [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] did not want the SNAP application to be under [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] name because the store would not be authorized due to [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] “past troubles.” In addition, Ali states that [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] was solely in charge of the books and that [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] was the owner of the funds in the business banking account. In context, it is clear from the investigation interview that any purported transfer of the business was a sham in order to obtain SNAP authorization for a store owned by [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] who was permanently disqualified from the SNAP in 1999.

In summary, the statement that Ali made to Federal agents is that his father [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] is the actual owner of the store. In addition, [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] asked Ali to file an application under the son’s name in order to obtain authorization that otherwise could not be obtained due to [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] criminal record and prior permanent disqualification. Contrary to the Appellant’s claim, the statements made by Ali in the interview with Federal agents cannot reasonably be interpreted to represent a situation where Ali truthfully provided correct information in the SNAP application.

#### Lesser Penalties Not Considered

The Appellant claims that the agency penalty for falsification is subject to variance and discretion and imposing the maximum penalty without considering lesser penalties is arbitrary and capricious and warrants a reversal. Regarding this contention, the agency penalty for falsification is in fact not subject to variance or discretion. The Appellant is misinterpreting 7 U.S.C. § 2021(b)(4) which states, *inter alia*:

*... a disqualification ... shall be ... for a reasonable period of time to be determined by the Secretary, including permanent disqualification, on the knowing submission of an application for the approval or reauthorization to accept and redeem coupons that contains false information about a substantive matter that was a part of the application.*

The correct reading of 7 U.S.C. § 2021(b)(4) is that it gives the Secretary of Agriculture the authority to determine, through the regulatory process, the appropriate penalty for knowingly submitting an application containing false information about a substantive matter. The statute further authorized the Secretary to define a “reasonable period of time” as a permanent disqualification for this violation. Subsequent rulemaking as reflected in 7 CFR § 278.6(e)(1)(iii)(F) clearly shows that the Secretary did exercise this grant of authority and that the agency determined that a permanent disqualification is the appropriate and only penalty for this violation. Therefore, the Retailer Operations Division could not consider a lesser penalty than permanent disqualification.

### Due Process

The Appellant contends that the statute at 7 U.S.C. § 2021(b)(4) is unduly vague and therefore denies due process due to a lack of fairness and clarity. However, as noted above, this statutory provision was simply a grant of authority by Congress to the Secretary to determine the appropriate penalty for providing false information on a substantive matter relating to the authorization of a retail food store for the SNAP. The Secretary subsequently exercised that authority through the regulatory process and promulgated 7 CFR § 278.6(e)(1)(iii)(F) which states:

*... FNS **shall** take action as follows against any firm determined to have violated the Act or regulations .... (1) 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, **such as**, but not limited to, information related to: ... (F) **Ownership of the firm** ....*

By intentionally not listing his father’s name on the SNAP application, Ali knowingly submitted false information regarding ownership, a substantive matter, which affected the eligibility of the firm in that the application would have been otherwise denied.

### Vagueness of Law

The Appellant, through counsel, cites miscellaneous case law regarding challenging statutes on grounds of vagueness. However, there is no vagueness in the statute when one realizes that the purpose of 7 U.S.C. § 2021(b)(4) was to grant to the Secretary the authority to promulgate regulations further defining the violation of application falsification and the appropriate penalty. In any case, this administrative review decision is limited to whether the Retailer Operations Division appropriately followed the regulations and agency policy guidance in reaching its

determination. Therefore, any application of a supposed judicial precedent would best be addressed in a judicial review.

### **CONCLUSION**

Based on a review of the entire administrative case, the Retailer Operations Division has provided by a preponderance of the evidence that the Appellant knowingly submitted false information about a substantive matter affecting the eligibility of the firm, namely the firm's ownership. Accordingly, the decision to impose a permanent disqualification against the Appellant, Lonyo Market, is sustained.

### **RIGHTS AND REMEDIES**

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses 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), it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personal information that if released, could constitute and unwarranted invasion of privacy.

/S/

RONALD C. GWINN  
ADMINISTRATIVE REVIEW OFFICER

October 25, 2016  
DATE