

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

<b>1798 Westchester Halal Meat And Grocery Corp</b>	)	
	)	
<b>Appellant,</b>	)	
	)	
<b>v.</b>	)	<b>Case Number: C0194459</b>
	)	
<b>Retailer Operations Division,</b>	)	
	)	
<b>Respondent.</b>	)	
<hr style="border: 1px solid black;"/>	)	

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is insufficient evidence to support a finding that a denial from participating as an authorized retailer in the Supplemental Nutrition Assistance Program<sup>1</sup> (SNAP) was properly imposed against 1798 Westchester Halal Meat And Grocery Corp (hereinafter, “1798 Westchester Halal Meat And Grocery Corp” and/or “Appellant”) by the Retailer Operations Division.

Although the decision to deny the firm’s application on the basis cited by the Retailer Operations Division is reversed, the record does not establish that the firm is otherwise eligible to participate; accordingly, the application process should proceed and the firm be evaluated for SNAP authorization based upon its eligibility under the statute, regulations and agency policy.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Parts 278.1(b)(3) and 278.1(k) in its administration of the SNAP when it withdrew the SNAP retailer authorization of 1798 Westchester Halal Meat And Grocery Corp, in a letter dated September 23, ,2015.

**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.

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<sup>1</sup> Section 4001(b) of the Food, Conservation, and Energy Act of 2008 (P.L. 110-234; 122 Stat. 1092) amended the Food and Nutrition Act of 2008 by striking “food stamp program” and inserting “supplemental nutrition assistance program” effective October 1, 2008

## CHRONOLOGY OF THE CASE

1798 Westchester Halal Meat And Grocery Corp is documented to have filed an electronic Supplemental Nutrition Assistance Program Application for Stores on July 18, 2016 under the signature of MD K Hassan, self-identifying as "President".

In a letter dated September 23, 2015, the Retailer Operations Division informed 1798 Westchester Halal Meat And Grocery Corp that its SNAP Retailer Application was being denied because "FNS has determined that you lack the business integrity and reputation to further the purposes of SNAP" and "FNS has determined that sufficient evidence exists that you have been found to be circumventing a period of disqualification through a purported transfer of ownership. This decision was made based on information you submitted to FNS and/or lack of corroborating documentation not support a bona fide transfer of ownership in connection with your SNAP application."

In a letter dated October 5, 2016, Appellant, through counsel, requested an appeal of the Retailer Operations Division determination to deny the SNAP Retailer Application of 1798 Westchester Halal Meat And Grocery Corp. The timely appeal was granted.

## STANDARD OF REVIEW

In appeals of adverse actions, Appellant bears the burden of proving by a clear preponderance of the evidence, that the administrative actions should be reversed. That means 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 statute in this matter is contained in the Food and Nutrition Act of 2008, as amended (the "Act")<sup>2</sup>, 7 USC 2021 and part 278 of Title 7 of the Code of Federal Regulations (CFR)<sup>3</sup>.

7 CFR § 278.1b) (3) states, in relative part, "*The business integrity and reputation of the applicant.* FNS shall deny the authorization of any firm from participation in the program for a period of time as specified in paragraph (k) of this section based on consideration of information regarding the business integrity and reputation of the firm as follows...

(iii) Evidence of an attempt by the firm to circumvent a period of disqualification, a civil money penalty or fine imposed for violations of the Food Stamp Act and program regulations;

(iv) previous Food Stamp Program violations personally committed by the owner(s) or the officer(s) of the firm for which a sanction has not been previously imposed and satisfied;

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<sup>2</sup> Effective October 1, 2008, the Food Stamp Act of 1977 was superseded by the Food and Nutrition Act of 2008, as amended through P.L. 110-246. The Food and Nutrition Act of 2008 was amended by P.L. 113-79, enacted February 7, 2014.

<sup>3</sup> Title 7 of the Code of Federal Regulations may be accessed in its entirety via the Internet at [http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title07/7tab\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title07/7tab_02.tpl)

(v ) Evidence of prior Food Stamp Program violations personally committed by the owner(s) or the officer(s) of the firm at one or more units of a multi-unit firm, or evidence of prior Food Stamp Program violations committed by management at other units of multi-unit firms which would indicate a lack of business integrity on the part of ownership and for which sanctions had not been previously imposed and satisfied; or

(vi) Commission of any other offense indicating a lack of business integrity or business honesty of owners, officers or managers of the firm that seriously and directly affects the present responsibility of a person.”

7 CFR § 278.1(k) *Denying authorization.* FNS shall deny the application of any firm if it determines that: (1) The firm does not qualify for participation in the program as specified in paragraph (b)... (3) The firm has been found to lack the necessary business integrity and reputation to further the purposes of the program. Such firms shall be denied authorization in the program for the following period of time:...

(iii) Firms for which evidence exists of an attempt to circumvent a period of disqualification, a civil money penalty or fine imposed for violations of the Food Stamp Act of 1977, as amended, and program regulation shall be denied for a period of three years from the effective date of the denial:..”

### **APPELLANT’S CONTENTIONS**

On appeal request dated October 5, 2016, Appellant, through counsel, provides that:

- It is unclear why a decision took four (4) months<sup>4</sup> to complete;
- the letter of determination cites two (2) different reasons for denial and fails to indicate specifically the basis for finding lack of business integrity or the identity of the party who was disqualified;
- requests the name of party who was disqualified together with a copy of the USDA decision disqualifying one (1) or more former owners of the grocery store; and
- indicates that it is impossible to refute allegations without specificity regarding the incident giving rise to charge.

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

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<sup>4</sup> Counsel cites an application made in May 2016 however the official record includes the electronically filed Supplemental Nutrition Assistance Program Application for Stores filed on July 18, 2016 therefore the application is calculated to have pended from July 18, 2016 through October 5, 2016.

## ANALYSIS AND FINDINGS

A review of the letter of determination reveals that it did not provide Appellant with any level of specificity with regard to the reasons cited for denial. The materials do not indicate what has prompted the decision that 1) the firm lacks necessary business integrity and reputation to further the purposes of SNAP; or, 2) what evidence has revealed that a circumvention of a period of disqualification has occurred through a purported transfer of ownership.

On review, materials contained in the Retailer Operations Division record were reviewed in an attempt to clarify the basis of denial as referenced in the letter of determination. In summary the materials evidence that:

- [7 USC 2018 (b)(6)&(b)(7)(c)], under the ownership of [7 USC 2018 (b)(6)&(b)(7)(c)], was SNAP authorized at the same location as that reported for Appellant from October 26, 2015 through its voluntary withdrawal on August 26, 2016.
- A bill of sale affirms that [7 USC 2018 (b)(6)&(b)(7)(c)] was sold by [7 USC 2018 (b)(6)&(b)(7)(c)] to 1798 Westchester Halal Meat And Grocery Corp, represented by MD K Hassan on July 15, 2016.
- The Certificate of Incorporation of 1798 Westchester Halal Meat And Grocery Corp annotated to have been filed with the Secretary of State for the State of New York on May 31, 2016, indicates that the corporation has the authority to issue 200 shares.
- The minutes of the shareholder and board of directors meeting held on July 15, 2016 identify the shareholders/officers as MD K Hasson serving as President and Vice-President holding 100 shares; [7 USC 2018 (b)(6)&(b)(7)(c)] serving as Secretary holding 50 shares; and, [7 USC 2018 (b)(6)&(b)(7)(c)] serving as Treasurer, holding 50 shares. These minutes are duly signed by all parties.
- A sworn affidavit by [7 USC 2018 (b)(6)&(b)(7)(c)] indicates that he is a share owner of 1798 Westchester Halal Meat And Grocery Corp and that he has “no connection or affiliation with the previous licensee [7 USC 2018 (b)(6)&(b)(7)(c)]. It is a coincident [coincidence] that we have the same last name. We are not family of friend. He is the seller. Furthermore the previous licensees will have no involvement or financial interest in the business.”

2015 Income Tax records for the owners/corporate officers of Appellant in the record include:

- IRS Form 1040 for MD K Hassan, [7 USC 2018 (b)(6)&(b)(7)(c)] filing as head of household which includes his two (2) parents and two (2) brothers.
- IRS Form 1040 for [7 USC 2018 (b)(6)&(b)(7)(c)] married, filing jointly, for themselves and two (2) children. The appended Profit or Loss Form Business Schedule C indicates that [7 USC 2018 (b)(6)&(b)(7)(c)] was doing business as [7 USC 2018 (b)(6)&(b)(7)(c)]. The Supplemental Income and Loss Schedule E indicates that the couple jointly own rental

property at 7 USC 2018 (b)(6)&(b)(7)(c).

- IRS Tax Return Transcript indicates that 7 USC 2018 (b)(6)&(b)(7)(c) filed as head of household with one (1) dependent.

Retailer Operations Division documented, in a memo to the file dated September 21, 2016, that [7 USC 2018 (b)(6)&(b)(7)(c)], spouse of [7 USC 2018 (b)(6)&(b)(7)(c)], was permanently disqualified as a SNAP retailer effective June 20, 2014 at [7 USC 2018 (b)(6)&(b)(7)(c)]. The agency automated system reveals that [7 USC 2018 (b)(6)&(b)(7)(c)], recorded as the sole proprietor of [7 USC 2018 (b)(6)&(b)(7)(c)] participated as a SNAP authorized retailer from March 28, 2011 through June 19, 2014.

In that same memo Retailer Operations Division documents that the 2015 Personal Federal Tax Returns and photo identification shows two (2) of the applicants, [7 USC 2018 (b)(6)&(b)(7)(c)] and [7 USC 2018 (b)(6)&(b)(7)(c)], share the same home address as [7 USC 2018 (b)(6)&(b)(7)(c)]. On review it is noted that although both tax materials and identification documents list the same base address for the parties as [7 USC 2018 (b)(6)&(b)(7)(c)] the materials indicate that [7 USC 2018 (b)(6)&(b)(7)(c)] and [7 USC 2018 (b)(6)&(b)(7)(c)] reside on "1F" and [7 USC 2018 (b)(6)&(b)(7)(c)] resides in apartment #2. This is consistent with the detail of the Schedule E tax return for [7 USC 2018 (b)(6)&(b)(7)(c)] and [7 USC 2018 (b)(6)&(b)(7)(c)] which reports rental property at [7 USC 2018 (b)(6)&(b)(7)(c)].

#### CONCLUSION

Based on the discussion above, the decision to deny the SNAP Retailer Application of 1798 Westchester Halal Meat And Grocery Corp is reversed. Although the decision to deny the firm's application on the basis cited by the Retailer Operations Division is reversed, the record does not establish that the firm is otherwise eligible to participate; accordingly, the application process should proceed and the firm be evaluated for SNAP authorization based upon its eligibility under the statute, regulations and agency policy.

#### RIGHTS AND REMEDIES

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 an unwarranted invasion of privacy.

/S/

November 17, 2016

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NANCY BACA-STEPAN  
ADMINISTRATIVE REVIEW OFFICER

\_\_\_\_\_  
DATE

