

United States  
Department of  
Agriculture



Food and  
Nutrition  
Service

May 26, 2023

Retailer Policy  
Management  
Division

Mansoor Ansari, Attorney  
Ansari Law Firm  
2650 Holcomb Bridge Road  
Alpharetta, GA 30022

Administrative  
and Judicial  
Review Branch

1320 Braddock  
Place, Rm.  
5042  
Alexandria, VA  
22314

Re:

[REDACTED]  
[REDACTED] c.  
[REDACTED]  
[REDACTED]

Phone:  
(978) 314-  
0046

Dear Counselor:

Fax:  
(844) 629-  
1722

Enclosed is the Final Agency Decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) in response to your request for administrative review, dated November 3, 2022. Also included is a statement regarding relevant rights to a judicial review.

MaryKate.  
Karagiorgos  
@usda.gov

It is the decision of the USDA that there is sufficient evidence to support a finding that a six-month disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against [REDACTED] by the Retailer Operations Division of the FNS. However, the determination is modified to permit a civil money penalty in the amount of \$5,418.00 as an option in lieu of the six-month disqualification.

Sincerely,


A handwritten signature in cursive script that reads "Mary Kate Karagiorgos".

Mary Kate Karagiorgos  
Administrative Review Officer

Enclosure – Final Agency Decision

cc: Appellant

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

  
**Appellant,**  
  
**v.**  
  
**Retailer Operations Division,**  
  
**Respondent.**

**Case Number: C0252968**

---

**FINAL AGENCY DECISION**

It is the decision of the United States Department of Agriculture (USDA) that there is sufficient evidence to support a finding that a six-month disqualification of Syrena Trading Inc. (Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), as initially imposed by the Retailer Operations Division, was appropriate. However, the determination is modified to permit a civil money penalty (CMP) in the amount of \$5,418.00 as an option in lieu of the six-month disqualification.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(f)(1) and 7 CFR § 278.6(a) and (e)(5) in its administration of the SNAP, when it imposed a six-month period of disqualification against Appellant.

**AUTHORITY**

7 USC § 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 USDA investigated the compliance of Appellant with federal SNAP law and regulations during the period of April 8, 2022, through April 22, 2022. The investigative report documented that personnel at Appellant accepted SNAP benefits in exchange for ineligible merchandise on four separate occasions. As a result of evidence compiled during this investigation, by letter dated June 23, 2022, the Retailer Operations Division charged ownership with violating the terms and conditions of the SNAP regulations at 7 CFR § 278.2(a) and noted the violations

warranted a six-month disqualification period. The letter also stated that under certain conditions, FNS may impose a CMP in lieu of a disqualification.

Appellant, through counsel, replied to the charges by letter dated July 1, 2022. Counsel explained that Appellant implemented an effective training program and a disqualification would be hardship for the community. After considering the retailer's reply and the evidence, the Retailer Operations Division notified Appellant in a letter dated October 31, 2022, that the violations cited in the charge letter occurred at the firm and that a six-month period of disqualification was warranted. The letter stated that eligibility for a hardship CMP was not applicable as there were other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

By letter dated November 3, 2022, Appellant requested an administrative review of the Retailer Operations Division's determination. The appeal was granted and implementation of the disqualification has been held in abeyance pending completion of this review.

### **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the 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 and Nutrition Act of 2008, as amended, 7 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Sections 278.6(a) and (e)(5) establish the authority upon which a six-month disqualification may be imposed against a retail food store or wholesale food concern.

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, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system . . .

Section 278.6(e)(5) of the SNAP regulations states, in part, that a firm is to be disqualified for six months:

[I]f 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.

In addition, 7 CFR § 278.6(f)(1) provides for civil money penalty (CMP) assessments in lieu of disqualification in cases where disqualification would cause “hardship” to SNAP households benefit because of the unavailability of a comparable participating food store in the area to meet their shopping needs. It reads:

FNS may impose a civil money penalty as a sanction in lieu of disqualification when . . . the firm’s disqualification would cause hardship to SNAP households benefit because there is no other authorized retail food store in the area selling as large a variety of staple food items.

### **SUMMARY OF CHARGES**

During an investigation conducted between April 8, 2022, and April 22, 2022, an investigator conducted four compliance visits at Appellant. A report of the investigation dated April 27, 2022, was provided to Appellant as an attachment to the charge letter. The investigation report included Exhibits A through D which provide full details on the results of each compliance visit. The investigation report documents that SNAP violations were recorded during each of the compliance visits and involved the sale of cleaning pads, toilet paper, multi-purpose cleaner, mesh scourer, soap, plastic cutlery, and laundry detergent. Upon review, the evidence indicates that Appellant established a record of selling non-food items, as defined by Section 271.2 of the regulations, on multiple occasions as noted in Exhibits A, B, C, and D, furnished with the charge letter.

### **APPELLANT’S CONTENTIONS**

Appellant, through counsel, made the following summarized contentions in its administrative review request dated November 3, 2022, and in a November 7, 2022, e-mail, in relevant part:

- Appellant has been SNAP authorized since 1996 and has never violated any laws.
- Appellant has implemented an effective training and compliance program.
- Appellant is located in the heart of a low-income neighborhood with many large families and elderly.
- Appellant sells mainly imported goods from Poland such as cheese and meats.
- Appellant has a butchery section with famous meats and sausages.
- Appellant is a Polish grocery store with 95% of its inventory is Polish products.

The preceding may represent only a summary of the Appellant’s contentions presented 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.

### **ANALYSIS AND FINDINGS**

The investigation report documents that the charges of violations are based on the findings of a formal investigation. The transactions cited in the letter of charges are thoroughly documented. A complete review of this documentation has yielded no error or discrepancy. The investigation report is specific and thorough regarding the dates of the violations, the specific facts related

thereto, and is supported by documentation that confirms specific details of the transactions. The documentation presented by the Retailer Operations Division provides through a preponderance of the evidence that the violations as reported occurred at the Appellant firm.

The Retailer Operations Division determined that the violations committed by Appellant represent the first sanction for the firm and evidence carelessness or poor supervision. 7 CFR §278.6(e)(5) states that FNS shall disqualify a 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 and poor supervision by the firm's ownership or management. The imposition of a six-month disqualification, the least severe penalty allowed by regulation, is appropriate.

### **No Previous Violations**

Counsel explains Appellant has been authorized for many years without any previous violations. A record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of the violations upon which they are based. There is no provision in the Act or regulations that reverses or reduces a sanction based upon a lack of prior violations by a firm and its owners, managers and/or employees.

### **Training**

Counsel reports that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP which was in effect at the time of the violations. Retailers that are charged with trafficking can request a trafficking CMP in lieu of a permanent disqualification under 7 CFR 278.6(i). In such cases, retailers must submit evidence to demonstrate that the firm had established and implemented an effective compliance policy to prevent SNAP violations prior to the violations. However, since Appellant was not charged with trafficking, it is therefore not eligible for a trafficking CMP.

### **Civil Money Penalty**

CFR § 278.6(f)(1) reads, in part, "FNS may impose a civil money penalty as a sanction in lieu of disqualification when . . . the firm's disqualification would cause hardship to [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."

There is insufficient evidence to support the denial of a civil money penalty. A civil money penalty in the amount of \$5,418.00 is assessed as an option in lieu of the six-month disqualification.

### **CONCLUSION**

Based on the discussion above, the determination by the Retailer Operations Division to impose a disqualification of six months against Syrena Trading Inc. from participating as an authorized

retailer in SNAP is modified. Consistent with 7 CFR § 278.6(f), a civil money penalty shall be imposed as an option in lieu of completion of the six-month disqualification period. In accordance with 7 CFR § 278.6(g), this civil money penalty shall be in the amount of \$5,418.00. The Retailer Operations Division will be informed of this decision. Appellant should hear from that office in the near future with respect to the arrangements for payment of this civil money penalty.

In accordance with the Food and Nutrition Act, and the regulations thereunder, this penalty shall become effective thirty (30) days after receipt of this letter. Should Appellant choose to accept disqualification rather than pay the civil money penalty, a new application for participation in SNAP may be submitted ten (10) days prior to the expiration of the six-month disqualification period.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7CFR § 279.7. 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 the Appellant's owner resides or is 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 days of receipt of this Decision.

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.

MARY KATE KARAGIORGOS  
Administrative Review Officer

May 26, 2023