

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

CARMEN'S CORNER STORE, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF AGRICULTURE,
et al.,

Defendants.

Civil Action No. 1:23-cv-02059-LKG

SETTLEMENT AGREEMENT

Plaintiffs, Carmen's Corner Store and Altimont Mark Wilks, and Defendants, the U.S. Department of Agriculture ("USDA"), the USDA's Food & Nutrition Service ("FNS"), Thomas J. Vilsack, in his official capacity as the Secretary of the USDA, Stacey Dean, in her official capacity as Deputy Under Secretary of FNS, and the United States of America, have reached a settlement agreement, which they now memorialize with the Court.

BACKGROUND

The Plaintiffs filed a complaint on July 31, 2023, seeking judicial review of the Defendants' decision to deny the Plaintiffs' application for the Frederick, Maryland, location of Carmen's Corner Store to participate as a SNAP retailer. The USDA based the denial on the USDA's determination that Altimont's 2004 convictions related to drug dealing fell within the meaning of the FNS's "Business Integrity Rule" at 7 C.F.R. § 278.1(b)(3)(i).

The Defendants permanently denied two locations of Carmen's Corner Store based on Altimont's 2004 convictions for crimes relating to drug dealing. Back in 2019, they applied the Business Integrity Rule to permanently deny Carmen's Corner Store in

Hagerstown, Maryland. Then, in March 2022, Altimont applied on behalf of the Frederick, Maryland, location of Carmen's Corner Store. FNS again determined that Altimont's prior convictions relating to drug dealing meant he will forever "lack[] the necessary business integrity to further the purposes of SNAP." FNS permanently denied the Plaintiffs' application because it determined that Altimont's drug-related offenses fell within the agency's then-interpretation of § 278.1(b)(3)(i)(A).

After the Plaintiffs' filed a timely administrative appeal of that denial, in January 2023, the USDA implemented interim guidance on how the agency would interpret the business-integrity rule going forward. Under the interim guidance, the FNS now treats distribution-related drug convictions as disqualifying under § 278.1(b)(3)(i)(A) only if they involve "[d]istributing or intent to distribute controlled substances on store property."

On July 6, 2023, the USDA issued a letter stating that the Frederick store's appeal was "moot" because Altimont's Hagerstown store permanent denial became final in 2019. The Plaintiffs appealed the agency's decision by filing the complaint in this case.

Then on, December 1, 2023, the FNS finalized its guidance on the Business Integrity Rule. Under this guidance, FNS considers convictions for distributing controlled substances as disqualifying under the Business Integrity Rule only if they involve (1) "[t]rafficking, distributing, or intent to distribute controlled substances *on store property*" [emphasis added] or (2) the violation of a "consumer protection or other law[]" relating to the licensing of controlled substances.

Accordingly, the parties now agree to the following settlement.

TERMS OF THE SETTLEMENT

1. The parties agree that Altimont's past convictions do not warrant denial under the Business Integrity Rule.

2. The parties agree that FNS's prior interpretation of the Business Integrity Rule was contrary to the holding in *Astoria Downtown Market v. United States of America*, 18-cv-1367 (D. Or. 2019).

3. The FNS's denials of the Plaintiffs' applications based on the Business Integrity Rule are rescinded.

4. The Defendants agree to allow the Plaintiffs to re-apply immediately to be a SNAP retailer at the Hagerstown and Frederick locations of Carmen's Corner Store.

5. The Defendants agree that they will not deny the renewed applications for the Hagerstown and Frederick locations of Carmen's Corner Store based on the Business Integrity Rule.

6. For the purposes of Plaintiffs' applications and any other subsequent applications or reauthorizations, FNS agrees that it shall not consider Plaintiffs' prior denials or any related administrative action at issue in the above-captioned matter when determining whether Plaintiffs are eligible to participate in SNAP.

7. The Defendants' December 1, 2023, guidance on the Business Integrity Rule has been posted on FNS's website along with the other guidance for retailers' eligibility. FNS agrees that all applicable final guidance documents will remain publicly available.

8. The Plaintiffs agree to voluntarily dismiss their complaint against the Defendants.

9. The parties agree that each party will bear their own costs, expenses, and attorneys' fees.

10. The parties acknowledge, understand, and agree that this Agreement sets forth the entire agreement between the Parties related to the subject matter hereof.

11. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors, and assigns.

12. It is contemplated that this Agreement may be executed in several counterparts. All such counterparts and signature pages, together, shall be deemed to be one document.

AGREED:

Carmen's Corner Store, a sole proprietorship

Dated: _____

By: _____

Title: _____

Altimont Mark Wilks

Dated: _____

* * * *

U.S Department of Agriculture

Dated: _____

By: Michael J. Wilson, Assistant U.S. Attorney

U.S Department of Agriculture, Food & Nutrition Service

_____ Dated: _____
By: Michael J. Wilson, Assistant U.S. Attorney

Thomas J. Vilsack, in his official capacity as United States Secretary of Agriculture

_____ Dated: _____
By: Michael J. Wilson, Assistant U.S. Attorney

Stacy Dean, in her official capacity as Deputy Under Secretary, USDA's Food, Nutrition, and Consumer Services

_____ Dated: _____
By: Michael J. Wilson, Assistant U.S. Attorney

The United States of America

_____ Dated: _____
By: Michael J. Wilson, Assistant U.S. Attorney