

AMEIRA CORPORATION, d/b/a JOHN'S CURB MARKET, v. USDA, et al.
No. 1:01CV00673.
Filed July 30, 2002.

(Cite as: 2002 WL 1791906 (M.D.N.C.)).

**United States District Court,
M.D. North Carolina.**

FSP – Fifth Amendment – TRO – Injunction – Administrative remedies, failure to exhaust, when not required.

A neighborhood grocery store merchant who had participated in the Food Stamp Program (FSP) for several years was summarily deprived of the right to continue FSP participation based upon an allegation by a “unnamed accuser” that the merchant was illegally trafficking in food stamps. The court found that the past participation in the FSP merged into a “property right” from which the merchant could not be deprived except by due process of law. The court also held that since the challenge was on pure constitutional grounds there was no need to first exhaust his administrative remedies.

MEMORANDUM OPINION AND ORDER

OSTEEN, J.

This matter arises from the decision of the United States Department of Agriculture ("USDA") to permanently disqualify Plaintiff Ameira Corporation ("Ameira"), d/b/a John's Curb Market, from participation in the Food Stamp Program ("FSP") for allegedly trafficking in food stamps in violation of 7 U.S.C. § 2021(b)(3)(B) and 7 C.F.R. §§ 270-282. Plaintiff instituted this case in state court, alleging that Defendants' actions deprived it of property without due process of law and constituted a taking, both in violation of the Fifth Amendment. Plaintiff moved for a temporary restraining order and preliminary as well as permanent injunction. Following Defendants' removal of the case to federal court, Plaintiff's motion for a temporary restraining order and injunction was denied. *See Ameira Corp. v. Veneman*, 169 F.Supp.2d 432 (2001).

The matter is now pending on Defendants' motion to dismiss Plaintiff's complaint. For the reasons set forth herein, Defendants' motion will be denied.

I. FACTUAL BACKGROUND

The facts of this case are set forth in the court's memorandum opinion denying Plaintiff's motion for a temporary restraining order and injunction and are

incorporated by reference here. *See Ameira*, 169 F.Supp.2d at 434-35.

II. DISCUSSION

A. Lack of Jurisdiction--Federal Rule of Civil Procedure 12(b)(1)

Defendants' first argument in furtherance of their motion to dismiss is that the court lacks jurisdiction over Plaintiff's complaint because Plaintiff has not exhausted its administrative remedies under the federal laws governing the FSP. *See* 7 U.S.C. § 2023(a). Under the FSP, a retail food store that has been disqualified from participation in the FSP is entitled to certain procedural protections. First, the store is entitled to notice of disqualification via certified mail or personal service. *See* § 2023(a)(1)- (2). Following disqualification, the store may, within 10 days of receipt of the notice, request an opportunity to submit information in support of its position. *See* § 2023(a)(3). Administrative review of the decision follows, and at the conclusion of this review, the agency issues its final notice of determination, effective 30 days after receipt. *See* § 2023(a)(5). If still aggrieved by the agency's decision, the store may then seek judicial review in a United States district court, where the validity of the determination will be resolved by trial *de novo*. *See* § 2023(a)(13), (15).

[1][2] Defendants' assertion that this court lacks jurisdiction would be correct if Plaintiff had requested judicial review of its disqualification. As all parties have noted, administrative review of Plaintiff's disqualification is still pending, (Defs.' Mem. Supp. Mot. Dismiss at 4; Pl.'s Br. Opp'n Defs.' Mot. Dismiss at 5), and before that review becomes final, Plaintiff's claim is not ripe for judicial scrutiny. *See* § 2023(a)(13). However, as Plaintiff's complaint makes clear, Plaintiff's claims are solely constitutional in nature, and thus collateral to the disqualification determination.¹ As Plaintiff correctly points out, the federal courts have jurisdiction over constitutional challenges to FSP procedures regardless of whether those procedures have been exhausted. *See Mohamed v. United States*, 1999 WL 1939991, at *3 (E.D.N.C.1999) (citing *Bowen v. City of New York*, 476 U.S. 467, 483, 106 S.Ct. 2022, 2031, 90 L.Ed.2d 462 (1986)) (noting lack of jurisdiction in the absence of a constitutional challenge); *Nguyen v. United States*, 1997 WL 124138, at *3 (E.D.La.1997) (relying on *Bowen*, recognizing exception to exhaustion requirement where plaintiff challenges constitutional validity of

¹ Plaintiff may seek *de novo* judicial review following receipt of a final notice of determination. The instant case does not raise nor preserve such a claim.

administrative process). Therefore, the court has jurisdiction over Plaintiff's constitutional claims, and Defendants' motion to dismiss pursuant to Rule 12(b)(1) is without merit.

B. Failure to State a Claim--Federal Rule of Civil Procedure 12(b)(6)

Defendants also argue that Plaintiff's complaint should be dismissed for failure to state a claim under Rule 12(b)(6). The Fourth Circuit has long adhered to the view that a motion to dismiss for failure to state a claim should be granted only under very limited circumstances. *See Rogers v. Jefferson-Pilot Life Ins. Co.*, 883 F.2d 324, 325 (4th Cir.1989). The motion should be granted only when "it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim." *Rogers*, 883 F.2d at 325 (quoting *Johnson v. Mueller*, 415 F.2d 354, 355 (4th Cir.1969)).

[3] To prevail on a due process claim, Plaintiff must demonstrate that 1) it had a property interest in the FSP, and 2) it received inadequate process. *See Ameira*, 169 F.Supp.2d at 438. Therefore, to survive a Rule 12(b)(6) motion, Plaintiff must allege facts supporting each of these elements. This circuit has long recognized that the right to participate in the FSP is a property interest. *See Cross v. United States*, 512 F.2d 1212, 1217 (4th Cir.1975). Plaintiff's complaint states that Plaintiff was authorized by the USDA to participate in the FSP on October 15, 1996; therefore, Plaintiff has alleged a property interest entitling it to due process.

Furthermore, Plaintiff's complaint clearly alleges that it received inadequate process under the laws and regulations governing the program. Plaintiff asserts, *inter alia*, that Defendants failed to respond to its request for more information concerning Defendants' accusations; that the "facts" contained in Defendants' investigative report which formed the basis of Plaintiff's disqualification were false in several respects; that Defendants relied on an "unnamed accuser" in their report thereby denying Plaintiff's right to confront its accusers; and that Plaintiff was denied any meaningful opportunity to demonstrate the falsity of the report; all in violation of Plaintiff's Fifth Amendment rights.

Additionally, Plaintiff alleges that because a stay of disqualification pending review is unavailable under the statutory and regulatory scheme governing the FSP, Plaintiff's due process rights were violated when it was not afforded a pre-disqualification hearing. Plaintiff further alleges that the lack of a pre-disqualification hearing violated due process because the financial deprivation it will suffer as a result of disqualification is irreversible. *See 7 U.S.C. §*

2023(a)(18) (prohibiting recoupment of lost sales even where disqualification is later found to have been invalid).

Given these allegations, the court cannot find at this juncture that there exists no state of facts which could be proved in support of Plaintiff's claim. *See Rogers*, 883 F.2d at 325. Defendants' argument improperly focuses on the merits of Plaintiff's claim, i.e., whether, in fact, the process afforded to Plaintiff was constitutionally adequate. This is inappropriate at this stage in the proceedings. Plaintiff has clearly stated a claim for a constitutional violation, and Defendants' motion to dismiss under Rule 12(b)(6) will therefore be denied.

C. Insufficiency of Process--Federal Rule of Civil Procedure 12(b)(5)

Defendants' final objection is that Plaintiff has failed to perfect service upon the U.S. Attorney, the Attorney General, and an employee of the federal agency. The court notes that both parties represent that Defendants' counsel has agreed to accept service on behalf of Defendants pursuant to Rule 4(d)(3). The court further notes that Plaintiff, in its response brief, indicates that the documents have been forwarded to Defendants' counsel and that service would be perfected upon Defendants' counsel's return of those forms to Plaintiff's counsel. In light of this apparent agreement between the parties, the court will deny Defendants' motion on this basis without prejudice to the Defendants to reassert this issue if Plaintiff has not perfected service.

D. CONCLUSION

Defendants have failed to provide any grounds on which the court may properly dismiss Plaintiff's complaint. Therefore,

IT IS ORDERED that Defendants' Motion to Dismiss [4] is denied.
