

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

Black Goodie Bus,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0200531

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is sufficient evidence to support a permanent disqualification of Black Goodie Bus (hereinafter “Appellant”) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) as imposed by FNS’s Retailer Operations Division.

ISSUE

The issue accepted for review is whether the Retailer Operations Division, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against Black Goodie Bus.

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.”

SUMMARY OF CHARGES

The Appellant was charged with trafficking and subsequently permanently disqualified from SNAP based on an analysis of EBT transaction data from December 2016 through May 2017. This involved the following transaction patterns which are common trafficking indicators:

- Multiple transactions were made from individual benefit accounts in unusually short timeframes.
- The majority or all of an individual recipient’s benefits were exhausted in unusually short periods of time.
- Excessively large purchase transactions were made from recipient accounts.

CASE SUMMARY

The agency's record shows that FNS initially authorized Black Goodie Bus for SNAP participation as a delivery route on March 11, 2015. In a letter dated June 28, 2017, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of December 2016 and May 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made and supporting documentation submitted within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In a letter dated July 21, 2017, the Appellant, through counsel, requested an extension to reply to the charges. In this letter, the Appellant also conceded that it was forfeiting its right to a CMP in lieu of disqualification. In response to this letter, the agency granted an extension to August 11, 2017, and reminded counsel that the timeframe for requesting a CMP and submitting supporting documentation for this alternative penalty could not be extended.

On August 11, 2017, Appellant's counsel submitted a request for case file information in a request made under the Freedom of Information Act (FOIA). This request put a hold on all actions in the case until after FNS responded to the FOIA request.

On September 18, 2017, FNS provided its response to the Appellant's FOIA request. The response included a four-page letter and 134 pages of responsive documents. The response letter further stated that the Appellant could appeal the agency's response, but must do so within 90 days of the date of the letter.

On December 18, 2017, Appellant's counsel filed an appeal to the agency's FOIA response. This appeal further held all case actions in abeyance until the FOIA process had concluded.

On January 17, 2020, the FOIA appeal response was completed and sent to Appellant's counsel.

In an e-mail dated February 19, 2020, the Appellant, through counsel, provided its official response to the June 2017 charge letter. The response included a 12-page letter and a large amount of supporting evidence, including inventory invoices and receipts, signed affidavits from SNAP customers, a list of meat and seafood products available for purchase at the store, reports from USDA and the Food Marketing Institute, and an April 2016 article from *Convenience Store News*.

After evaluating the Appellant's response and further considering the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated August 14, 2020. This letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but that a CMP was not appropriate in this case because the

Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked August 28, 2020, the Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

On July 12, 2022, the administrative review was reassigned to review officer Jon Yorgason.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an 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 AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) 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)(3)(B) states, in part:

...[A] disqualification under subsection (a) shall be...permanent upon...the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards...

7 CFR § 278.6(a) states, in part:

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, [or] evidence obtained through a transaction report under an electronic benefit transfer system....** [Emphasis added.]

7 CFR § 278.6(e)(1)(i) states:

FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, in part:

Trafficking means: The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone...

7 CFR § 271.2 states, in part:

Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption...

7 CFR § 278.6(b)(1) states, in part:

Any firm considered for disqualification...under paragraph (a) of this section...shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...

7 CFR § 278.6(c) states, in part:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(b)(2)(ii) states, in part:

Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence... that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).

7 CFR § 278.6(b)(2)(iii) states:

If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty.

7 CFR § 278.6(i) states, in part:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking ... if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program...

APPELLANT'S CONTENTIONS

The Appellant, through counsel, made the following contentions in its request for administrative review, summarized by the review officer for purposes of brevity and relevance:

- Appellant seeks reversal of the August 14, 2020, decision to disqualify the firm from SNAP participation.
- Black Goodie Bus is a mobile business and is frequently located outside of Harbor House in Annapolis, Maryland. Harbor House is government housing, but with higher than typical volume of SNAP participants. Black Goodie Bus is the only grocer in the area, and the closest grocery store is 2.34 miles away.
- Being in the vicinity of SNAP recipients is part of the firm's business model – offer staple food inventory to underserved communities and those who do not have ready access to grocery stores.
- Black Goodie Bus provides a variety of foodstuffs, nearly all of which qualify for purchase with SNAP benefits.
- The Appellant is the only delivery route in the county. FNS's Case Analysis Document indicates that the county averages are identical to those from the store and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) less than the state average. As such, it is highly unlikely that FNS's transaction analysis is going to be informative.
- Because of its ability to locate itself near Harbor House, it is not surprising that the firm receives significant and consistent business from the SNAP community.

- Because the firm caters to its customers, its inventory appears more piecemeal than a normal brick-and-mortar store.
- The store inspection occurred immediately before the owners were going on vacation, but even then, the inspector noted that the store carried T-bone steaks and infant formula, as well as pork, chicken, eggs, and jerky.
- The firm typically focuses on selling meat packages which are purchased by the firm and resold to customers.
- In the customer affidavits, the affiants state that they spend between \$50 and \$150 at the store during a single trip and attest that meats are commonly purchased. This is consistent with the invoices from Champion Meats and Sam's Club.
- The store inspection should never have occurred when the store was closed and was about to be closed for a week. FNS's analysis based upon this deeply flawed inspection is necessarily inaccurate.
- FNS has indicated that the general stock of the firm is that of a convenience store. This is not accurate. Convenience stores do not carry fresh steak, fish, and poultry. FNS claims that the store was deficient in almost every category of food. If the store was going to be closed for a week, why would it maintain a full inventory that is likely to spoil?
- Appellant asks that FNS's inventory analysis be disregarded, along with the onsite inspection. The inspector could have re-visited the store when it was open and USDA would have gotten a better review of the inventory and business operations.
- Appellant submitted national SNAP benefit redemption data and information related to shopping trends and customer behavior, including:
 - "Benefits Redemption Patterns in the Supplemental Nutrition Assistance Program: Final Report" (Food and Nutrition Service, February 2011)
 - "Foods Typically Purchased by SNAP Households" (Food and Nutrition Service, November 2016)
 - "U.S. Grocery Shopping Trends, 2016" (Food Marketing Institute and The Hartman Group, Inc., 2016)
 - "Know Your Core, Protect Your Core" (*Convenience Store News* for the Single Store Owner, April 2016)

These reports (copies of which were provided by the Appellant, except for the 2011 report) demonstrate, among other things, that customers nationwide are increasingly shopping at convenience stores, small grocery stores, and ethnic food stores, and using such stores as their primary grocers.

- It is not uncommon for households to make multiple purchases in a short period of time after a customer receives his or her benefits. After they leave the store, participants often realize that they forgot a grocery item or have decided that they want to purchase items they saw during their first trip, but originally opted not to purchase.
- In other instances, multiple members of the same household will shop together and then make purchases separately using the same EBT card. In other circumstances, the participants will go on a spending spree wherein they make purchase after purchase without leaving the store or by returning after a brief absence, thereby reducing their benefits in short order.
- Unlike normal shopping habits, SNAP participants buy sweetened beverages, frozen prepared foods, and prepared desserts at a much higher rate than traditional consumers. These purchasing habits, set against the inventory found at Black Goodie Bus, shows that

the store stocks the majority of a SNAP household's preferred needs, and has sufficient variety and quantity to meet the needs of several households all at once without having to replenish inventory.

- When making an evidentiary evaluation, the administrative review officer should look at the evidence offered and make a determination regarding which of the two explanations is more likely: that the store trafficked in SNAP benefits, or that the store's business operations, household shopping habits, business environment, and inventory provide alternative and plausible explanations for the presence of the transactions.
- The review officer is also permitted to consider new evidence and render a new decision on whether the additional evidence changes the balance of the evidence in the matter.
- The inventory maintained by the store (by value) is largely meats. Though the store inspector was able to take pictures of some of the items, it did not capture all items carried by the store.
- Unlike a traditional store, a delivery route only has to stock food when it is going to drive to the customer's location, and it only needs to cover the amount of inventory the customers wish to purchase.
- FNS is mistaken in viewing this store as equivalent to a convenience store. It is not built on the same business model, and it is not classified by FNS as one. It is improper to compare it to a convenience store when conducting a trafficking analysis. This is a delivery route only and should be reviewed as one.
- Appellant's counsel has spent years railing against the lack of accuracy of the ALERT system. Appellant request that the review officer consider prior determinations of plausible explanations for the presence of the scan categories. Appellant cites two cases, *Brooklyn Mini Market vs. U.S.* and *Skyson USA, LLC vs. U.S.* to support its claim that ALERT data is unreliable for purposes of disqualification.
- Appellant also cites two administrative review decisions: *Howard's Quik Mart* and *Gloesis Group*, both of which noted that "the determination of permanent disqualification must be supported to such a degree as to conclude that trafficking is the only plausible explanation." In the *Howard's Quik Mart* case, the Appellant stated that despite Howard's Quik Mart providing "meager" documentation, the firm had presented a sufficiently credible case to explain the transactions.
- The Appellant could not locate all of its inventory receipts and records. However, it was able to locate at least half – about 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of pre-markup inventory. The store's markups well exceed that of convenience stores because of the quality of the product and the store's ability to source food at lower prices on a daily basis. Thus, the store logically had more than enough high-priced inventory to account for the SNAP transactions during the review period.
- Regarding Attachment 1 (multiple transactions from the same household in unusually short timeframes):
 - It is not unusual for SNAP participants to spend their benefits within seven days of receiving their monthly allotment. Multiple purchases within 48 hours after receiving SNAP benefits are also not unusual.
 - Co-shopping, where both adult members of an average household are about 50 percent responsible for picking up groceries, is on the rise in the United States.
 - The court in *Onukwugha v. U.S.* (2013) found that multiple transactions occurring over the span of hours is not inherently suspicious.

- The store does not operate like a traditional brick-and-mortar store, where a customer makes inventory selections and brings them up to a checkout counter. Instead, the customer identifies what they want, and the transaction is processed and tabulated. This can occur within a matter of seconds.
- Delivery routes tend to have pre-planned purchases. In these cases, the store provides a menu of sorts. And because the orders are completed verbally, the purchase can take place quickly.
- Additionally, this store has no local competitors and literally drives by the outside of many of the participant's homes. As such, participants are more prone to supplemental shopping and co-shopping. This results in faster transaction times since the customer does not need to leave the 200-foot radius of their own home to make a purchase.
- As such, it is unlikely that the transaction pattern in Attachment 1 was the result of trafficking.
- Regarding Attachments 2 and 3 (depleted balances and excessively large transactions):
 - These transactions are the result of the store's inventory, co-shopping, and normal shopping habits.
 - According to USDA's own research, sweetened beverages and salty snacks are top expenditures for SNAP households. It is reasonable to expect SNAP customers to spend large amounts or the majority of their benefits at the Appellant store on sweetened soda and snack items, which the store stocks.
 - With the varieties and quantities in the store, and supported by the Appellant's evidence, USDA cannot make a straight-faced argument that the transactions are impossible for want of items to sell. The question becomes an issue of whether the transactions could be supported by the store's substantial inventory – both in quantity and price – which it clearly can.
 - An additional explanation is that the households that conducted the transactions in the charge letter have more SNAP participants residing in them, requiring a larger amount of food.
 - It is common for customers to spend larger amounts at the store as a direct result of the lack of nearby alternative stores. This is common for delivery routes.
 - The transactions in Attachments 2 and 3 are not trafficking and are supported by the substantial inventory of the store. That USDA segregated these transactions from the remainder is of little consequence, as most other grocers in the area are likely to have the same number (or greater) of similar transactions.
- By FNS's own sworn testimony, ALERT cannot identify fraud. It is designed to identify "suspicious behavior" at most, but the basis for the system is unknown.
- Appellant recognizes the Department's right to utilize redemption data in the disqualification of stores, but the statute does not authorize FNS to rely upon a system that inaccurately accounts for what is "consistent" or "inconsistent."
- Appellant cites two more administrative review decisions, *TG Mini Mart Inc.*, and *Lima Mini Mart Inc.*, to claim that the presence of documentation, such as cash register receipts, accounting records, tax records, SNAP recipient statements, or inventory purchase invoices, would have changed the outcome of the review officers' analyses. In this instance, the Appellant has shown by a preponderance of the evidence that the

transactions cited in the charge letter are more likely than not innocent transactions rather than trafficking.

- In this case, the weight of FNS's evidence is exceeded by reasonable and supported explanations given by the Appellant. Accordingly, the permanent disqualification should be overturned.

In support of its contentions, the Appellant submitted copies of the same evidence and documents that were submitted as part of its response to the charge letter.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all evidence and contentions submitted, including any not specifically summarized or explicitly referenced herein.

ANALYSIS AND FINDINGS

This section provides detailed analyses and findings relating to the agency's determination of trafficking and an analysis of the Appellant's contentions and supporting documentation.

Contractor Store Visit

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained from an April 28, 2017 store inspection which was conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. The purpose of the store inspection was to determine if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- Black Goodie Bus is a repurposed former school bus, roughly 200 square feet in size, operating as what appears to be a mobile convenience store.
- At the time of the contractor's visit, the firm had no shopping carts or handheld baskets and did not have a designated checkout area. However, it appeared quite evident that customers did not simply place orders and have them delivered to their homes, as in a traditional delivery route, but likely climbed aboard the bus and shopped as though it was a traditional brick-and-mortar store.
- Agency records reflect the use of one EBT point-of-sale terminal for SNAP purchases.
- According to the firm's SNAP application, 35 percent of its total sales were from the sale of staple food products; 55 percent from accessory foods, such as snacks and drinks; and 10 percent from nonfood. Based on the store inspection, the store's food inventory was insufficient for ongoing program eligibility under Criterion A, as it did not have sufficient varieties of staple food in either the dairy or fruits/vegetables categories. The firm would also not be eligible under Criterion B, as less than 50 percent of its total sales are in the sale of staple foods. Had the firm not been disqualified for trafficking, it is likely that the firm's authorization would have been withdrawn for failure to meet program eligibility requirements. By all indications, the vast majority of available inventory on the bus was snacks, candy, and beverages, with a small amount of expensive meat products contained in a single freezer.

- According to the report, the firm did not have any food stored out of public view, and no food was stored offsite. Traditional delivery routes, particularly meat routes, typically have an offsite warehouse and freezer where meat is stored. That did not appear to be the case here.
- The inspector acknowledged that the store owner was preparing to go out of town at the time the inspection occurred. However, with no apparent offsite storage of goods, there is little indication that the firm's inventory would have been substantially different than if the owner had not been going out of town, as there was little overall available freezer and storage space on the bus.
- It is notable that the store inspector specifically noted that the store did not sell meat bundles or special food packages. The report clearly instructs the inspector to take a photo of such merchandise or advertising flyers if such existed. The only flyer presented by the Appellant was in response to the charge letter, and did not appear to be specific to Black Goodie Bus, but was rather a 2020 printout pulled directly from a website owned by Champion Meats, a firm that was also SNAP-authorized during the review period.
- According to the inspector's report, most prices ended with a cents value of 9, such as \$3.99, \$6.99, etc. This is a common pricing practice among retail stores.

It is clear that the firm sold some volume of meat products. The store inspection verified this, as did customer affidavits and inventory records. However, the vast majority of available food in the store appeared to be snack foods and beverages, similar to a typical convenience store or gas station. There was no indication that SNAP households would be inclined to regularly visit Black Goodie Bus to purchase large quantities of groceries, including meat, especially considering the very limited overall inventory and the availability of brick-and-mortar stores in the area, including two well-stocked, longtime SNAP-authorized stores located less than a mile away from Harbor House. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from stores with similar inventory.

As to the Appellant's contention that the store inspection should not have occurred when the store was closed and was about to be closed for a week, and its insistence that FNS's resulting analysis was flawed and inaccurate, this review does not agree. FNS is perfectly within its authority to conduct an unannounced store inspection during posted business hours. According to the firm's SNAP application, the store was open 7 a.m. to 10 p.m. Monday through Friday, and 10 a.m. to 6 p.m. on Saturday. In this case, the store visit occurred during business hours on a Friday. The record further shows that while there was a short disruption in SNAP redemptions (presumably due to the owner's vacation), SNAP transactions resumed on May 2, 2017. This review doubts that this three-day pause would have affected the firm's inventory in a meaningful way, particularly since most of the food on the bus was non-perishable.

SNAP Transaction Analysis

Charge Letter Attachment 1: Multiple transactions were made from individual benefit accounts in unusually short timeframes. This attachment lists 66 sets of transactions (152 transactions in all) totaling \$13,264.26 in SNAP benefits, averaging \$87.26 per transaction, or \$200.97 per set of

transactions. Abnormally repetitive transactions over short periods of time at rates substantially greater than expected can be an indication that trafficking violations are occurring.

For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

It is notable that none of these amounts match any of the prices on the meat price list that was supposedly used by the Appellant. Additionally, it is highly unlikely that a large number of non-taxed items ending with a cents-value of 9 would so frequently end in .99 or .00.

These are extraordinary transactions for a firm that appears to be little more than a mobile convenience store with a single freezer for meat. It is difficult to comprehend why any household would repeatedly choose to spend such large amounts of SNAP benefits in a store with limited overall inventory and no evidence that its frozen meat was cheaper or of better quality than anywhere else. That such repetitive transaction sets occurred at a store like Black Goodie Bus is highly suspicious and indicative of likely trafficking.

The Appellant has provided several contentions related to Attachment 2, including a claim that the transaction sets are physically possible, that frequent transactions from the same household are not unusual or inherently suspicious, and a claim that the transactions may be the result of co-shopping. The Appellant also contends that a combination of convenience, price, and food quality results in customers making repeat visits to the store.

Unfortunately, the Appellant's contentions are little more than conjecture and are presented without relevant evidence directly relating to the listed transactions. For instance, the Appellant's report about co-shopping may show how customer behavior has evolved on a national scale, but there is nothing in the report which specifically indicates that co-shopping is prevalent at Black Goodie Bus or that it would lead to the transaction patterns listed in Attachment 1. Without evidence from the Appellant related to the particular transactions in question – thus explaining how the patterns are plausible – it is reasonable for this review to conclude that trafficking was a likely cause of the unusual patterns found in Attachment 1.

Charge Letter Attachment 2: In a series of transactions, the majority or all of a household's EBT benefits were exhausted in unusually short periods of time. This attachment lists 55 sets of SNAP transactions totaling \$10,561.74.

It is not unusual for violating retailers to conduct trafficking transactions in which a household spends the vast majority of its remaining allotment at one store in a short period of time or in a single transaction.

For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As noted above, this review cannot envision a legitimate scenario in which a SNAP household would spend that amount of money in a store like Black Goodie Bus.

The Appellant has combined its arguments related to Attachment 2 with its contentions for Attachment 3, so this review will address those arguments below. Suffice it to say that this

review is persuaded that the transaction patterns found in Attachment 2 are likely the result of trafficking violations.

Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts. This attachment lists 36 SNAP transactions for an average transaction amount of \$220.69. These large transactions are not consistent with a delivery route in the state of Maryland. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a delivery route in Maryland was \$49.71. The average transaction in Attachment 3 is more than four times larger than the average purchase amount for this store type.

Given that the Appellant firm has a modest inventory of SNAP-eligible items, particularly snacks and drinks, and given that it does sell some high-priced meat products (such as a frozen T-bone steak for \$23.99 each) it is likely that there would be an occasional instance where the transaction amount is high, perhaps exceeding \$100.00. As such, it is possible that there are a few legitimate SNAP transactions sprinkled among the transactions listed in Attachment 3. However, the substantial number of high-dollar transactions in a six-month period calls into question the legitimacy of these transactions.

Attachment 3 lists five transactions for \$300.00 or more during the review period, including a high of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Another 18 transactions were between \$200.00 and \$299.99. Considering how many food items it would typically take to add up to \$200.00 or more, and considering that the store appears to have very limited inventory outside of low-priced snack foods, this review finds it difficult to believe that every large transaction in Attachment 3 was a legitimate purchase of eligible food.

Many of the Appellant's arguments pertaining to Attachments 2 and 3 relate to the firm's supposed abundant inventory and its reference to and submission of inventory invoices. For instance, the Appellant argues that sweetened beverages and salty snacks are top expenditures for SNAP households. Thus, it is reasonable to expect SNAP customers to spend large amounts or the majority of their benefits at the Appellant store on sweetened soda and snack items.

Based on the store inspection report, most of the food in the store is snack food and beverages. However, nearly all of the food items appear to be sold in single-serve packages, and are likely sold at low cost. A customer would likely have to purchase dozens of items to reach the large amounts found in Attachments 2 and 3. This review finds it very doubtful that SNAP customers would spend hundreds of dollars at a time or in a short series of transactions on snack foods. Unfortunately, the Appellant has offered no evidence, such as cash register receipts, to show what was actually purchased during the transactions in question.

While arguing that its customers purchase large quantities of snack foods, the Appellant simultaneously claims that it typically focuses on selling meat packages. The firm undoubtedly sells meat, but the evidence suggests that meat is not as big a seller as the Appellant implies. For instance, as noted earlier, the bus appears to have but a single small floor freezer dedicated to meat inventory. The store visit report further indicates that there is no offsite storage. Further, the inventory receipts submitted by the Appellant suggest that the vast majority of food purchased by

the firm is snack food. Only small quantities of meat can be found. In the Sam's Club receipts, for example, the firm purchased chicken, meatballs, and seafood, but less than \$200.00 total for the six-month period.

Other inventory receipts, such as those from Champion Meats, are highly questionable, as they do not indicate what was purchased. And whatever the Appellant bought from this vendor strangely cost exactly \$20.00 each. This price did not deviate over the entire six-month period. These receipts would require a great deal more information and specificity before this review could consider them credible. Another vendor, B. Green Cash & Carry showed the purchase of more than \$40,000 in cigarettes and other tobacco products. Sam's Club also showed over \$6,000 in tobacco products purchased during the review period. This is likely far more tobacco inventory than could be for personal use, and yet both the store inspection and the Appellant's original SNAP application indicate that Black Goodie Bus does not sell tobacco products. Such discrepancies call into question all of the inventory in the Appellant's receipts. Do the inventory reports indicate purchases for Black Goodie Bus purposes alone, or do they include purchases for personal use or even inventory for another business? It is impossible for this review to determine.

Inventory records can be useful to demonstrate to FNS that a firm had sufficient stock to cover the total amount of its SNAP redemptions during a review period or to confirm that it purchased certain products. However, the invoices in this matter do not persuade this review to reverse the disqualification determination as they offer little insight into what transpired at the point of sale and do not adequately explain the unusual transaction patterns listed in the charge letter.

This review does not doubt that Black Goodie Bus sells eligible food items and conducts legitimate SNAP business. There is no evidence that this has ever been questioned. But when unusually large transactions form patterns that are substantially different from similarly-stocked stores, further evidence from the Appellant is warranted to verify that there is not something more, such as trafficking or other program violations, taking place. In this case, the Appellant has not offered adequate evidence, which might have included cash register receipts or other accounting records, to better explain what took place between the customer and the clerk at the point of sale for the specific transactions listed in the charge letter.

As to the nine affidavits, in which a few of the firm's customers claim to conduct large and frequent transactions, such documentation is largely unconvincing. Customers engaging in trafficking violations are unlikely to admit to such conduct. Furthermore, affidavits, even if well-intentioned, do not typically represent a household's actual shopping behavior, as households generally do not retain records of transactions and often do a poor job of recalling spending patterns at a particular location.

The transactions identified in the charge letter are highly irregular and indicative of trafficking. In an appeal of adverse action, the onus is on the Appellant to prove, by a preponderance of the evidence, that the administrative action should be reversed. This means submitting sufficient and compelling evidence that would lead a reviewer to conclude that trafficking likely did not occur. The Appellant's evidence does not meet this standard.

Other Evidence

As noted earlier, the Appellant submitted reports from USDA and the Food Marketing Institute, as well as an article from a periodical entitled *Convenience Store News*.

While informative, this review finds that the reports and magazine article offer little substantive value, as they do not address the specific transactions listed in the charge letter. The reports address demographic information and customer behavior and habits, which play a role in SNAP transaction patterns generally, but their lack of specificity in relation to Black Goodie Bus renders them ineffectual in this matter.

Trafficking Case based on EBT Data

Another key argument by the Appellant relates to FNS's use of a fraud detection system known as ALERT. The Appellant contends that the system is inaccurate and unreliable for purposes of disqualification.

Regarding counsel's criticisms of ALERT, this administrative review offers no findings or opinions. The objections are noted, but unless compelled by statute, regulation or the courts to abandon its methodologies in such cases, FNS will likely continue using ALERT and related investigative techniques to identify potential trafficking violations, and an administrative review officer has no authority in the matter. The legality of such methods is identified in SNAP regulations at 7 CFR § 278.6(a) which states, in part, "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, [or] evidence obtained through a transaction report under an electronic benefit transfer system**" [Emphasis added.]

Appellant's counsel has also identified court cases and prior administrative review decisions where rulings in EBT transaction cases have favored complainants. Similarly, public records show that many administrative review decisions and court rulings in EBT transaction cases have favored the agency. This diversity in decisions suggests that each ruling is based on the merits and facts of the individual case rather than the virtues or shortcomings of the ALERT system or FNS's methodologies in identifying potential program violators. This review is conducted in a similar manner. Prior decisions do not compel this review to render findings one way or another. The decision in this case is based on the evidence compiled by FNS for the store in question as well as the contentions and evidence submitted by the Appellant. As long as the agency has presented sufficient evidence to support a case of trafficking, the burden of proving that the administrative action should be reversed lies with the Appellant, using the "preponderance of the evidence" standard.

This review has thoroughly examined the documentation and information related to Black Goodie Bus as provided by the Retailer Operations Division and has found it to be compelling and indicative of trafficking. This documentation includes a compilation of ALERT data

(including SNAP transaction records) as well as an analysis of other factors, such as observations from a store inspection and shopping patterns of the Appellant's customers. Based on this data, this review finds that FNS has adequately presented a likely case of trafficking. Conversely, the Appellant's evidence in this case is unpersuasive and does little to convince this review that trafficking was not occurring.

Civil Money Penalty

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider a trafficking CMP in lieu of permanent disqualification, but it must also submit appropriate supporting documentation within 10 days of receipt of the charge letter. The case record shows that the Appellant did not request a trafficking CMP or provide any evidence of a compliance policy or training program within the required 10-day period.

Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii) and § 278.6(i), a civil money penalty in lieu of permanent disqualification for trafficking is not an option in this case.

CONCLUSION

An analysis of the Appellant's EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify Black Goodie Bus from SNAP participation. This data provided sufficient evidence for this review to conclude that the questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by the Appellant. Likewise, the Appellant has not proven, by a preponderance of the evidence, that the administrative action should be reversed.

Based on a review of all available information in this case, the decision to impose a permanent disqualification against the Appellant, Black Goodie Bus, under the ownership of Juwann Smith and Renee K. Smith, is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt of this decision. The judicial filing timeframe is mandated by the Act, and this office cannot grant an extension.

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.

JON YORGASON
Administrative Review Officer

August 9, 2022