

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

**Z & H Smokers Llc,**

**Appellant,**

**v.**

**Case Number: C0249939**

**Retailer Operations Division,**

**Respondent.**

**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 finding that a permanent disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Z & H Smokers Llc (hereinafter “Z & H Smokers Llc” or “Appellant”) by the Retailer Operations Division of FNS.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a permanent disqualification against Z & H Smokers Llc.

**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.

**CASE CHRONOLOGY**

In a letter dated March 4, 2022, the Retailer Operations Division informed the Appellant that Z & H Smokers Llc was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 – 282, based on EBT SNAP benefit transactions that “establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm.” The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i). Per UPS confirmation of delivery, the charge letter was delivered to the Appellant at the store address of record on March 7, 2022.

The record reflects that the Appellant did not provide the Retailer Operations Division with a response to the letter of charges within the 10-day required timeframe.

After considering the evidence in the case, the Retailer Operations Division issued a determination letter dated March 28, 2022, informing the Appellant that Z & H Smokers Llc was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations. The letter also stated that the Appellant was not eligible for a trafficking civil money penalty (CMP) in accordance with 7 CFR § 278.6(i) as the Appellant did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked April 5, 2022, the Appellant requested an administrative review of the Retailer Operations Division's determination. FNS granted the Appellant's request for administrative review by letter dated April 22, 2022.

### **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 covered 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. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

7 U.S.C. § 2021(b)(3)(B) states, inter alia:

... 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, 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 ... [Emphasis added].

7 CFR § 278.6(e)(1)(i) states:

Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, inter alia:

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 § 278.6(f)(1) states, inter alia:

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR § 278.6(i) states, inter alia:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 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 ...

7 CFR § 278.6(b)(2) states, inter alia:

(ii) 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 as specified in § 278.6(i), 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). [Emphasis added].

(iii) 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 penalty. [Emphasis added].

### **SUMMARY OF CHARGES**

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from April 2021 through September 2021. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from the accounts of individual households within a set time period; and
- There were EBT transactions conducted that are large based on the observed store characteristics and recorded food stock.

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking.

### **APPELLANT'S CONTENTIONS**

The following represents a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the request for administrative review, the Appellant stated the following summarized contentions, in relevant part:

- Per the submitted United States Postal Service receipt, all of the requested sufficient evidence to explain the alleged violations was mailed on March 11, 2022.
- The Appellant researched every transaction documented in the charge letter and has provided all supporting EBT register receipts.
- A SNAP disqualification would impose a financial hardship on the firm.

In support of these contentions, the Appellant submitted the following information for review:

- A United States Postal Service receipt dated March 11, 2022 with a delivery destination of Alexandria, Virginia; and
- 151 itemized EBT register receipts.

### **ANALYSIS AND FINDINGS**

#### **SNAP Authorization**

FNS authorized Z & H Smokers Llc for participation in the SNAP on February 27, 2017. During the review period of April 2021 through September 2021, Z & H Smokers Llc was classified as a convenience store. The owner signed a SNAP application for the store and acknowledged he was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible items.

#### **Store Visit Observations**

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an August 28, 2021 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. The available inventory of SNAP-eligible food at the time of the store visit showed food stock that would be typical of a convenience store, where households normally purchase a limited number of items. The SNAP-eligible food stocked by the store was generally of a low dollar value, consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. This information obtained from the store visit was also used to ascertain if there were

justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 2,450 square feet in size with approximately 350 square feet of storage area outside of public view which stocked predominantly nonfood items;
- Had storage coolers/freezers in which foods for hot or cold food prep were stored;
- No shopping carts and 10 hand-held baskets available for customer use;
- Two small checkout counter areas with limited check-out counter space;
- Two cash registers and two EBT point-of-sale (POS) devices for use in ringing-up SNAP transactions;
- Had optical scanners;
- Had several empty/broken/unused coolers/freezers;
- Had some scantily-filled shelves for dry goods as well as cooler shelves;
- Had an ATM or money transfer service;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- Did not utilize an unusual pricing structure, such as prices ending in \$.x9 or \$.00;
- Transaction totals were not rounded up or down at the checkout counter;
- Telephone orders were taken;
- Delivery was not offered;
- The six most expensive (i.e., costing \$5.00 and above) SNAP-eligible food items in stock were Banquet fried chicken at \$9.99 per 29 ounces (2 units in stock); Banquet chicken nuggets at \$6.99 per 15 ounces (3 units in stock); Tony's cheese pizza at \$5.99 per 18.9 ounces (2 units in stock); Hungry Man Salisbury steak at \$5.99 per 16 ounces (8 units in stock); Hungry Man turkey at \$5.99 per 16 ounces (4 units in stock); and Hungry Man Smokin Backyard BBQ at \$5.99 per 16 ounces (2 units in stock);
- No fresh or frozen unprocessed meats, poultry, or seafood with the exception of a few frozen ground beef patties that did not appear to be packaged for retail sale;
- Frozen food stock included such items as ice cream, pizza, waffles, potato puffs, chimichangas, meals, cheese sticks, and pot pies;
- Had a kitchen; however, hot foods were not sold at the time of the store visit;
- Did not have a deli or prepared food section and deli meats and cheeses were not sold by the pound;
- Pre-packaged deli sandwiches were sold;
- Meat items included units of canned/potted meat, meat jerky, packaged lunch meat, eggs, and canned fish;
- Dairy included milk, margarine, yogurt, sour cream, and cheese;
- Had a very minimal variety and amount of fresh produce stock;
- Other staple foods available for purchase included such items as juice, pasta, cereal, oats, baking mix, loaf bread, corn meal, flour, rice, buns/rolls, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, condiments, cakes/pastries, snack foods, and spices; and
- Ineligible nonfood items included health and beauty aids, paper products, household cleaning supplies, tobacco products, clothing, gift items/party goods/souvenirs, cell phone/computer

accessories, pet supplies, and jewelry. The firm also had several gaming machines located in the store.

### **Charge Letter Attachments**

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges is trafficking. Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellant’s contentions did not outweigh the evidence. The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

### **Repeat Transactions by the Same Household (Charge Letter Attachment 1)**

This charge letter Attachment documents 33 sets of transactions (73 total transactions) that total \$7,359.48 in SNAP benefits to meet the parameters of this scan. These transactions were conducted by 24 different SNAP households. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer’s inventory and structure.

Although it is not uncommon for customers to have more than one transaction per day and there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, it is not common that such multiple transactions are for large dollar amounts. The SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of the Appellant’s stock and facilities and are therefore, indicative of trafficking.

**5 U.S.C. § 552 (b)(7)(E).**

Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefit allotment in just one or two days, especially from a convenience store like the Appellant firm that has a moderate food stock, a very minimal variety and amount of fresh produce stock, no fresh or frozen unprocessed meats, poultry, or seafood other than a few frozen ground beef patties that did not appear to be packaged for retail sale, and a moderate variety and amount of frozen food stock.

The store visit report, which was completed in collaboration with and signed by the store owner, as well as the store visit photos offer no explanation as to why SNAP customers would routinely shop at Z & H Smokers Llc multiple times during a short period or purchase such a large volume of items, there being no great variety or advertisements of products, price advantage, profusion of large packages, or significant bulk items or food cases for sale. The store visit observations also indicate that the firm did not offer a profusion of specialty or ethnic goods which would entice SNAP customers to utilize the subject store over other area authorized retail stores. The store visit observations also indicate that the firm's checkout area was limited in size, there no shopping carts available to customers for transporting large quantities of food within the store, and there were no conveyor belts to expedite high dollar or rapid consecutive purchases. The customers have no place to put multiple purchases or carry the items while shopping.

The available inventory of SNAP-eligible food is typical of a convenience store, where households normally purchase a limited number of items. The SNAP-eligible food stocked by the store was generally of a low dollar value, consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. The second, third, and fourth transactions in each set are too large to consist of forgotten items. While research reports acknowledge the rapid spending habits of SNAP participants as normal practices, it is expected SNAP benefits are expended in establishments with adequate inventory to support purchases. Such inventory was not confirmed in the subject store.

It is recognized that sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, during the review period there were 18 SNAP authorized retailers located within a 1.0 mile radius of Z & H Smokers Llc, including 1 medium grocery store, 3 small grocery stores, and 14 other convenience stores, and 31 SNAP authorized retailers located within a 1.5 mile radius of Z & H Smokers Llc, including 1 large grocery store, 3 medium grocery stores, 4 small grocery stores, and 24 other convenience stores, that could meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than Z & H Smokers Llc and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

The record indicates that SNAP customers who shopped at Z & H Smokers Llc during the review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores or the availability of other food stores does not appear to be an explanation for the Appellant's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

The Appellant has not provided any evidence to show that the transactions listed in this Attachment were legitimate purchases of eligible foods and not the result of trafficking of SNAP benefits. The arguments presented by the Appellant hold little weight without some kind of evidence to substantiate its claims. The Appellant has the burden to provide relevant evidence to rebut the trafficking charges. This burden has not been met.

### **Excessively Large Purchase Transactions (Charge Letter Attachment 2)**

This charge letter Attachment documents 181 SNAP transactions, as large as \$299.26, that total \$16,956.95. These transactions were conducted by 63 different SNAP households. These large transaction amounts are not consistent with the store's observed characteristics and food inventory.

The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

The food stock and facilities of the Appellant as reported in the store visit documentation do not appear sufficient to provide for all of one's food needs. People generally do not spend large sums at such stores. They usually stop at convenience stores to pick up a few staple food items, such as bread, milk, or a can or two of food that they may consider are not worth a trip to the supermarket to purchase. The Appellant contends that the large transactions are not the result of trafficking of SNAP benefits. However, it is rare for a convenience store such as Z & H Smokers Llc to have purchases like those included in this Attachment to the charge letter.

The store visit report, which was completed in collaboration with and signed by the store owner, as well as the store visit photos indicate that the Appellant is a convenience store of approximately 2,450 square feet in size with approximately 350 square feet of storage out of public view which stocked nonfood items. The store also had storage coolers/freezers; however, the food stock kept in these coolers/freezers was used for hot or cold food preparation.

The FNS store visit report and photos indicate that Z & H Smokers Llc offers a moderate stock of SNAP-eligible foods with no fresh or frozen unprocessed meats, poultry, or seafood other than a few frozen ground beef patties that did not appear to be packaged for retail sale, a very minimal variety and amount of fresh produce stock, a moderate variety and amount of frozen food stock, and a lack of an abundant depth and breadth of staple foods. In addition, the store had some scantily-filled shelves for dry goods as well as in the coolers. There were also several empty/broken/unused coolers/freezers in the store.

The store visit observations also show only a few expensive eligible foods in stock, most of which were in limited quantities, that would account for these large amounts, no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, specials such as buy one food item and get one for free, and grocery package deals, no evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers.

While there is no definition in the SNAP regulations for an excessively large purchase or transaction, FNS makes its determination based on the store type, characteristics and stocked inventory. The burden is on the Appellant to prove transactions FNS identified as large for the store type (in this case, a convenience store) are for legitimate purchases. According to the store visit, the subject store did not have inventory to support the numerous large transactions. The Appellant did not provide any evidence, 5 U.S.C. § 552 (b)(7)(E), of continuously purchasing inventory throughout the review period to satisfy the large transactions.

The Appellant contends that it researched every transaction documented in the charge letter and has provided all supporting EBT register receipts. The 151 itemized EBT register receipts provided by the Appellant were given consideration in the administrative review. However, the EBT register receipts are not as detailed as needed to show that the transactions listed in the charge letter Attachments were for legitimate purchases of SNAP-eligible food products. 5 U.S.C. § 552 (b)(7)(E).



While some of the register receipts may be for legitimate purchases of SNAP-eligible food products, the majority are suspicious, and it is likely that they are contrived in an effort to support the transactions noted in the charge letter. Therefore, they do not validate that they were legitimate, bona-fide transactions as the register receipts can simply be trafficking data under the guise of eligible food sales. As noted previously, the Appellant did not provide any evidence, such as inventory purchase invoices, of continuously purchasing inventory throughout the review period to satisfy the large transactions.

This charge letter Attachment documents 22 transactions with repeated dollar values of \$99.xx and 10 transactions with repeated dollar values of \$100.xx. Typically, the frequency of transactions peak at the average for that store type. Thereafter, the frequency of store transactions gradually decreases as the amounts in the transactions increases. The frequency of transactions do not typically spike at specific amounts. Patterns of transactions spiking at particular dollar amounts indicate that SNAP transaction amounts are contrived. Random data, which legitimate transaction activity approximates, is extremely difficult to produce intentionally; it is very difficult to avoid repetitive patterns when attempting to create the appearance of normal, near-random transactions. That various customers each repeatedly had totals around certain dollar amounts during the review period strains the credibility of Appellant's declaration that this activity reflected the acceptance of SNAP benefits in exchange for eligible food items.

#### 5 U.S.C. § 552 (b)(7)(E).

Based on the store layout, infrastructure, and available inventory, it is not credible that the Appellant would so frequently conduct large transactions closely resembling those typically found at a supermarket or super store. It is not plausible that the firm's customers would regularly carry very large amounts of merchandise around the store without the benefit of shopping carts, especially since larger, better-stocked stores are readily available and in the vicinity of the Appellant firm. The Appellant is not set up to process high-dollar transactions, as indicated by its lack of equipment to facilitate large transactions and limited counter space. There are no legitimate bases for SNAP customers' unusual attraction to the firm such as a superior selection of staple foods, price advantages, package specials, bulk or promotional items, an extensive variety of otherwise unavailable ethnic food items, or special services rendered. The Appellant failed to provide convincing evidence to establish the legitimacy of these excessively large transactions. Based on all of these factors discussed in this section, the large volume of transactions for high-dollar amounts is unlikely to indicate a pattern of legitimate food purchases.

Based on the discussion above and in the absence of credible evidence for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Nevertheless, transactions having such characteristics do sometimes have valid explanations that support that they were the result of legitimate purchases of eligible food items, and this is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, however, the Retailer Operations determined that the Appellant's contentions did not outweigh the evidence. Assertions that the firm has not violated program regulations, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations. As noted herein, the Appellant has the burden of providing credible, relevant evidence, which a reasonable mind, considering the record as a whole,

would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true. This burden has not been met.

USDA employs a computerized fraud detection tool to identify EBT transactions that form patterns that have characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. The Retailer Operations Division analyzes the transaction data and patterns along with other documentation such as, information from the onsite store visit report including photographs of stock and the store layout, an analysis of recipient shopping behavior, and comparisons with similar store types in local area, to render a determination as to whether or not the questionable transaction patterns were, more likely than not, the result of trafficking. The regulations at 7 CFR § 278.6(a) state that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, and that such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through, inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

### **Financial Hardship**

With regard to the Appellant's contention that a SNAP disqualification would impose a financial hardship on the firm, there is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm resulting from imposition of such penalty. To allow store ownership from being excused from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, the Appellant's contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **CIVIL MONEY PENALTY**

As previously indicated, the March 28, 2022 determination letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated March 4, 2022 advised the Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The regulations specify that such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. The letter indicates that no information was provided by the Appellant for consideration; therefore, on review the Retailer Operations Division's determination that the Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

## **CONCLUSION**

The Retailer Operations Division's analysis of the Appellant's EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellant's contentions do not outweigh this evidence.

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against Z & H Smokers Llc is sustained.

## **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that 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 you reside or are 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 (30) days of receipt of this Decision.

Under the Freedom of Information Act, FNS is 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.

LORIE L. CONNEEN  
ADMINISTRATIVE REVIEW OFFICER

June 17, 2022