

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

3D Investment Group, Inc.,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0254744

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 the permanent disqualification of 3D Investment Group, Inc. (Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), as initially imposed by the Retailer Operations Division, was appropriate.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6 in its administration of the SNAP, when it assessed a civil money penalty in lieu of a permanent disqualification against Appellant.

AUTHORITY

7 USC § 2021 and the implementing regulations at 7 CFR § 279.1 provide that “A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS.”

CASE CHRONOLOGY

In a letter dated September 9, 2022, the Retailer Operations Division charged Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of November 2021 through April 2022. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant replied to the charges on September 17 and September 20, 2022, and requested a CMP. After considering the retailer's reply and the evidence, the Retailer Operations Division issued a determination letter dated October 25, 2022. The determination letter informed Appellant that it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that Appellant was not eligible for a trafficking CMP because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

By letter dated November 4, 2022, Appellant, through counsel, appealed the Retailer Operations Division's determination and requested an administrative review.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a), (c) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 USC § 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 § 271.2 states that the definition of "coupon" includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

7 CFR § 271.2 states, in part, that, 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 § 271.2 defines trafficking, in part, as:

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(a) states:

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) reads, in part:

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

7 CFR § 278.6(i) states, inter alia:

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.

7 CFR § 278.6(b)(2) states, in part:

(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 a penalty. [Emphasis added.]

SUMMARY OF THE CHARGES

Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from November 2021 through April 2022. This involved the following SNAP transaction patterns which are indicative of trafficking:

- There were multiple transactions made from one or more households within a short timeframe.
- There were multiple transactions made from individual benefit accounts within a set time.
- The bulk of the households' remaining benefits were depleted within short time frames.
- There store conducted SNAP transactions that are considered large based on the observed store characteristic 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 the questionable transactions were the result of trafficking.

APPELLANT'S CONTENTIONS

In its November 4, 2022, administrative review request, and subsequent correspondence submitted on December 16, 2022, Appellant, through counsel, provided the following summarized contentions:

- Appellant never had any previous violations, and it has been authorized since 2019.
- The transactions are based on the sale of qualified merchandise.
- A photocopied booklet is provided to each of its employees and issues concerning EBT processing are addressed as they arise.
- Appellant's compliance policy clearly states that there are no SNAP exchanges for cash and Appellant only sells qualified EBT grocery items to its customers.
- The training program includes reviewing the FNS Handbook with the employees and calling the USDA or the store owner if there are any questions.
- Appellant has allowed customers to purchase items on store credit and allowed the repayment to be made with SNAP benefits.
- Customers will make a purchase and if there are SNAP benefits left they will make additional purchases.
- Most of the transactions occur early in the month at the time that the EBT is deposited.
- Appellant has invested a significant amount of time into the community by ensuring Appellant carries a large variety and stock of inventory to accommodate its customers.
- Appellant sells items with high price tags such as deli sandwiches and 12 packs of soda.
- Appellant has made sure the inventory contains a variety of bulk goods.
- A permanent disqualification would cause a significant hardship for the local community.
- Many of the customers do not have vehicles and depend on public transportation to travel or often walk to the store.

In supports of its contentions, Appellant submitted an owner affidavit, an employee affidavit, a customer affidavit, a credit log, and store photos.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced.

ANALYSIS AND FINDINGS

Store Visit

FNS authorized 3D Investment Group, Inc. as a convenience store on March 20, 2019. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an April 29, 2022, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then 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:

- Appellant is approximately 400 square feet.
- There were no shopping baskets or shopping carts for customer use.
- There was one checkout area with one cash register and three POS devices.
- There was an optical scanner.
- There was no fresh meat, poultry, or fish.
- Fresh produce consisted of some bananas.
- Dairy included milk and yogurt only.
- Other staple foods available for purchase were eggs, juice, bread, beans, individual packages of cereal and pasta, and a limited selection of canned goods.
- Much of the remaining stock consisted of accessory foods such as candy, spices, and carbonated and uncarbonated drinks.
- Ineligible items included gas, lottery, alcohol, tobacco, health and beauty products, paper goods, and cleaning products.

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 highest priced items noted on the day of the visit included: beef jerky - \$9.99; Red Bull - \$8.99 and \$5.00; and cashews - \$5.99. Given the available inventory, there was very little sign that the firm would be likely to have SNAP redemption patterns that differed significantly from those of similar-sized competitors, especially competitors that sell similar or identical food items.

Charge Letter Attachments

Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

Charge Letter Attachment 1. Multiple purchase transactions were made too rapidly to be credible. This attachment lists 31 sets of transactions totaling \$7,879.56 in SNAP benefits. On February 22, 2022, one household transacted \$5.73, and then two minutes and two seconds later transacted an even \$405.00 (transactions #41-\$42). On January 12, 2022, another household transacted \$1088.44 and then three minutes and 31 seconds later a different household transacted an even \$730.00 (transactions #25- #25). Appellant is a 400 square foot gas station convenience store with the highest priced item noted to be \$9.99. These types of rapid transactions in a convenience store without the technology or infrastructure to support such transactions are indicative of trafficking.

The Retailer Operations Division considered this to be a strong trafficking indicator because the second purchase items would have to be transported to the limited checkout area, each item scanned or entered, a card swiped, a PIN entered, an approval indicated, and a receipt printed. This process would also include several items being bagged and removed from the counter before the next transaction could be initiated.

Appellant did not provide any compelling justification or evidence that all the irregular transactions cited in Charge Letter Attachment 1 were for eligible food items only. It is more likely true than not true that these patterns are a result of the firm trafficking in SNAP benefits.

Charge Letter Attachment 2: Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 35 sets of SNAP transactions conducted by 23 different households totaling \$7,326.64 in SNAP benefits that meet the parameters of this scan. For example, on December 6, 2021, one household conducted two SNAP transactions at Appellant that total an even \$632.00 (transactions #69-#70). Similarly, on November 5, 2021, another household conducted two SNAP transactions at Appellant that total \$387.05 (transactions #93-#94). Between November 9 and November 10, a third household transacted \$586.94 at Appellant (transactions #120 - #122). 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, 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 Appellant's stock and facilities and are therefore indicative of trafficking. The photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Appellant multiple times during a short period or purchase such a large volume of items, there being no great variety of

products or price advantage. The second and third transactions in each set are too large to consist of forgotten items.

Appellant has not offered sufficient evidence to show that the transactions listed in Attachment 2 were legitimate purchases of eligible food.

Charge Letter Attachment 3: In a series of transactions, the bulk of SNAP households' remaining benefits were depleted within short time frames. This attachment lists 68 sets of SNAP transactions conducted by 13 households totaling \$18,649.39.

A government report on SNAP shopping patterns¹ indicates that on average SNAP households have less than one-quarter of their benefits left by the middle of the month. On the day the issuance was distributed, the average household redeemed more than a fifth of its benefit. By the first week, the average household had redeemed over half of its benefit, and by the second week, over three-quarters of it. Households redeemed about an additional 10 percent of benefits by the end of the third week (exhausting 90 percent of benefits) and ultimately redeemed 97 percent of their monthly benefits by the end of the day before receiving their next issuance. Therefore, transactions in which SNAP benefits are exhausted in one or a few transactions during a short period of time are suggestive of trafficking.

Counsel explains that households spend large amount of SNAP benefits when their SNAP benefits are initially deposited. This may be true but it also is likely that a household who wants to traffick their SNAP benefits is apt to do that when benefits are initially deposited as well. There is no evidence or a credible explanation for the flagged transactions listed on this Attachment. It is not unusual for violating retailers to conduct trafficking transactions in which a household spends most of its allotment at one store in a short period of time or in a single transaction. It strains credulity that a household would spend almost the entirety of its SNAP allotment in a single transaction or in a series of rapid transactions at Appellant: a gas station convenience.

Appellant did not submit sufficient evidence that the transactions conducted on the Attachment were for eligible food items only.

Charge Letter Attachment 4: Excessively large purchase transactions were made from recipient accounts. This attachment lists 247 SNAP transactions as large as \$1088.44, and that total \$37,542.75. Appellant's average SNAP transaction amount was 114% greater than the average SNAP transaction amount for convenience stores in Monterey County during the review period while conducting 12% less SNAP transactions than the average for convenience stores in the County. Appellant's total dollar redemption value was 89% greater than the average for convenience stores in the County during the review period. Appellant had no fresh meat, poultry or fish and the only produce was some bananas. The frequency of high-dollar purchases in a six-month period call into question the legitimacy of these transactions.

¹ Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program, Mathematica Policy Research, by Laura Castner and Juliette Henke, for the U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, February 2011.

Appellants contends that customers conduct all their grocery shopping at Appellant. Counsel also reports that Appellant carries a variety of bulk goods for large families. As indicated previously, Appellant is a gas station convenience store with no shopping basket or shopping carts. The owner was there at the time of the store visit and confirmed that there are no bulk packages or specials. Furthermore, there were very few items priced greater than \$5.00 on the day of the store visit. In fact, Appellant did not carry sufficient staple food items on the day to the store visit to meet SNAP authorization requirements as it was lacking one variety of dairy staple food items, with only milk and yogurt in stock. Given the quantity and quality of the stock it is highly unlikely this store can support such large and frequent transactions.

The Retailer Operations Division compared Appellant to two nearby similarly stocked convenience stores. Appellant's average SNAP transaction amount was 134% and 155% greater than the other two stores, yet Appellant conducted the least amount of SNAP transactions, between 70% and 75% less than the other two stores. The data from these nearby stores also show that the transaction patterns at the Appellant firm were unusual.

Store	Attachment 1 Pattern	Attachment 2 Pattern	Attachment 3 Pattern	Attachment 4 Pattern
Appellant	31	35	68	247
Store #1	3	3	2	144
Store #2	0	6	0	148

Appellant submitted affidavits to explain that customers frequent Appellant because it is very convenient for them. It is true that sometimes a firm may have higher than average SNAP transactions amount due to the lack of access to other SNAP authorized stores. However, the Retailer Operations Division determined that there are 18 other authorized retailers located within a one-mile radius of Appellant including one supermarket and two super stores.

The Retailer Operations Division reviewed six households identified in the charge letter to analyze their shopping patterns at Appellant compared to their shopping patterns at other SNAP authorized stores. Despite access to better stocked stores, each of the other households conducted excessively large transactions at Appellant within a short time of shopping at a supermarket or super store. For example, on April 6, 2022, Household #1, shopped at a super store and transacted \$62.66 and then went to Appellant and transaction \$15.27 and then later an even \$135.00. Similarly, on November 12, 2021, Household #2, transacted an even \$400.00 at Appellant and then visited a super store and transacted just \$8.68. Likewise, Household #3 transacted an even \$100.00 at Appellant on February 2, 2022, and then went to a super store transacting \$54.18. Lastly, on December 9, 2021, Household #5 transacted an even \$450.00 at Appellant and the following day transacted \$4.59 at a supermarket. There is no evidence that Appellant had sufficient inventory to satisfy these large dollar transactions. Moreover, there is no compelling reason for customers to consider Appellant as a first-choice destination to fulfill large purchases of food.

Credit Accounts

Appellant claims that irregular SNAP transaction patterns are due to the firm giving store credit to households needing assistance, and not due to trafficking. The practice of allowing SNAP households to purchase food items on credit is prohibited by regulation. If a firm is found to have committed credit account violations instead of trafficking, the firm would be subject to a lesser

one-year disqualification from SNAP in accordance with regulations at 7 CFR § 278.2(f).

When a retailer claims that credit accounts are a reason for the irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit accounts to obtain a lesser one-year disqualification penalty instead of permanent disqualification for trafficking. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items. Such proof should also correspond with the transactions identified in the charge letter.

Appellant, through counsel, provided an alleged credit log as evidence in support of this claim to the Retailer Operations Division or for this review. There were no names associated with the credit accounts and only the last four digits which happen to be on the Charge Letter. A credit account would only be provided to trusted store customers and would likely be in the person's name not the last four digits of their EBT card. The explanation provided by the Appellant and supporting evidence, falls far short of the acceptable documentation and is insufficient for this review to eliminate trafficking as the primary reason for the unusual transaction patterns identified in the charge letter.

No Prior Violations

Appellant contends that this is the first time that there has been any allegation of impropriety against the firm. However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

Household Hardship

Counsel submitted affidavits that indicated these households like shopping at Appellant. Counsel stated that a permanent hardship presents a hardship to the surrounding community. Appellant submitted customer affidavits stating that it relied on Appellant due to transportation difficulties as well as its hours being more convenient than the closest supermarket. As indicated, the Retailer Operations Division determined that there are 18 authorized stores located within a one-mile radius of Appellant. Moreover, where there is a hardship to SNAP households, FNS may impose a hardship CMP on a firm in lieu of a disqualification where there is a lack of authorized stores in the area. However, 7 CFR § 278.6(f)(1) clearly states that "a civil money penalty for hardship to [SNAP] households may not be imposed in lieu of a permanent disqualification." Because the Retailer Operations Division has taken action to permanently disqualify Appellant's firm, a hardship CMP in lieu of disqualification cannot be granted.

Evidence

The transactions reports are derived from the ALERT system, a computerized fraud detection tool to identify SNAP transactions that form patterns having characteristics indicative of trafficking. However, this tool does not by itself determine or conclude that trafficking has occurred. The Retailer Operations Division must still conduct an extensive analysis of the transaction data and

patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior and a comparison of stores in the area, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is supported by 7 CFR §278.6(a) which 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.]

The documentation and evidence provided by the Retailer Operations Division was thoroughly examined. From all indications, the Retailer Operations Division obtained the EBT data (provided by ALERT), found it to be suspicious in comparison to other area stores of similar size, and then undertook a thorough investigation before concluding that trafficking was likely occurring.

Appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed and that the transactions detailed in the charge letter were more likely than not due to the legitimate sale of eligible food in exchange for SNAP benefits. Appellant offered insufficient evidence to prove that the transactions listed in the Charge Letter were legitimate purchases of eligible food. In the absence of compelling information or documentation weighed in comparison to the evidence provided by the Retailer Operations Division, the evidence weighs in favor of the Retailer Operations Division’s determination that SNAP-benefit trafficking substantially produced the transaction activity at issue in the present case.

CIVIL MONEY PENALTY

Appellant did not timely request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR 278.6(i) even though it was informed of the right to do so in the charge letter. SNAP regulations at 7 CFR § 278.6(b)(2)(iii) states that “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.” [Emphasis added.]

With its administrative review request, counsel contends that the firm has an effective compliance policy in place prior to the violations and the firm has developed and set up an effective personnel training program. Appellant submitted four employee training statements and a training log with its administrative review request. In the charge letter, the Retailer Operations Division informed Appellant that it would need to provide both the request and supporting evidence within ten calendar days of receiving the charge letter and that no extension of time could be granted for making the request or for providing the required evidence. Appellant did not submit any information in support of its training program within the required time frame.

It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier determination of the Retailer Operations Division. This review is limited to

what circumstances existed at the time that was the basis of the Retailer Operations Division's action. Moreover, the timeframe for providing this documentation cannot be extended. However, even if the Appellant had submitted this documentation timely, it would likely still have been eligible for a trafficking CMP because the information submitted is insufficient.

In conclusion, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

The Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did occur as charged by the Retailer Operations Division. The determination to impose a permanent disqualification against Appellant is sustained. The Retailer Operations Division's determination that Appellant was not eligible for a trafficking civil money penalty according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations is also sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. If a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which the Appellant's owners 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, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

MARY KATE KARAGIORGOS
Administrative Review Officer

April 28, 2023