

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

**Alanteri Deli Corp.,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0223555**

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**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 Alanteri Deli Corp. (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 December 3, 2019, 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 April 2019 through September 2019. 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).

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Appellant, through its previous counsel, replied to the charges on December 23, 2019. Appellant denied the charges and explained that the firm allowed households to make payment on credit accounts with SNAP benefits. On January 6, 2020, Appellant's previous counsel submitted a request for documents under the Freedom of Information Act (FOIA). On September 29, 2021, the FOIA office responded to the FOIA request. The Retailer Operations Division provided Appellant with ten days to provide any additional information in explanation of the charges. Appellant did not submit any additional information.

After considering the retailer's reply and the evidence, the Retailer Operations Division issued a determination letter dated January 31, 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 February 8, 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 April 2019 through September 2019. This involved the following SNAP transaction patterns which are indicative of trafficking:

- 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 February 8, 2022, administrative review request, Appellant provided the following summarized contentions:

- Appellant previously requested a CMP because a permanent disqualification will permanently close the business.
- Appellant wishes to continue its business and to not have its workers become unemployed.

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 Alanteri Deli Corp. as a convenience store on April 9, 2014. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an October 26, 2019, 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 700 square feet.
- There were no shopping baskets or shopping carts for customer use.
- There was one checkout area with one cash register, one POS device, and no optical scanner.
- There was a deli and kitchen area used to make prepared food and sliced meat and cheese.
- There was an extensive hot and prepared food menu.
- There was no fresh meat, poultry, or fish.
- Fresh produce included bananas, apples, lemons, and oranges.
- Dairy included milk, almond milk, and cheese.
- Other staple foods available for purchase were 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 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: Red Bull - \$9.99; turkey - \$8.99 per pound; Swiss cheese- \$8.00 per pound; and cold tuna sub - \$8.00. 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: In a series of transactions, the bulk of SNAP households' remaining benefits were depleted within short time frames.** This attachment lists 17 sets of SNAP transactions conducted by four households totaling \$3,586.47. On May 5, 2019, one household transacted an even \$340.00 at Appellant and then ten minutes later transacted the remaining \$8.47 in SNAP exhausting all the household's SNAP benefits (transactions #1-#2). On June 5, 2019, and July 8, 2019, this same household transacted \$348.00 on one monthly transaction at Appellant (transactions #3 and #4). Similarly, another household transacted exactly \$192.00 on August 7, 2019, and September 9, 2019, at Appellant.

A government report on SNAP shopping patterns<sup>1</sup> 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 they SNAP benefits are 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 a convenience store.

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

**Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 93 SNAP transactions as large as \$500.00, and that total \$10,621.87. Appellant had no fresh meat, poultry or fish and limited fresh produce with no shopping baskets or shopping carts. The frequency of high-dollar purchases in a six-month period call into question the legitimacy of these transactions.

The Retailer Operations Division determined that Appellant's eligible food inventory was limited and primarily consisted of drinks and snacks. In fact, there were very few items priced greater than \$5.00 on the day of the store visit. Given the quantity and quality of the stock it is highly unlikely this store can support such large and frequent transactions. Thus, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from nearby, similar-sized competitors.

The Retailer Operations Division compared Appellant to a nearby similarly stocked convenience stores. Appellant's average SNAP transaction amount was 58% greater than the other store and Appellant's total SNAP redemption value was 185% greater than the other store. In addition, Appellant conducted 81% more SNAP transactions than the other store. Appellant conducted 79 SNAP transactions between \$40.00 and \$500.00, whereas the comparator store did not have any SNAP transactions in the range during the review period. The data from these nearby stores also show that the transaction patterns at the Appellant firm were unusual as seen in the chart below.

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<sup>1</sup> 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.

Moreover, if these flagged sets of transactions could be explained by household shopping patterns for this local area, then similar shopping patterns would be seen at the other two local comparable stores. However, this was not the case. 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
Appellant	17	101
Store #1	0	6

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 four 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 July 8, 2019, Household #1 transacted an even \$400.00 at Appellant and then conducted significantly smaller transactions at other stores including just \$25.44 at a supermarket. Similarly, Household #2 transacted an even \$91.00 at Appellant on April 16, 2019, and then visited a supermarket a couple hours later and transacted \$37.95. On August 13, 2019, as well as September 13, 2019, Household #3 transacted an even \$140.00 at Appellant on each day. Both days this household also visits a supermarket and transacted less than at Appellant. Similarly, on May 7, 2019, and June 7, 2019, Household #4 transacted an even \$170.00 at Appellant after transacting less than \$22.00 at a supermarket on each day. 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.

The Retailer Operations Division requested evidence of the alleged credit accounts by letter dated December 26, 2019. Appellant's previous counsel did not respond to the request for documentation of the credit accounts. The explanation provided by the Appellant without any 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.

### **Appellant Hardship**

Appellant contends that the disqualification will force Appellant out of business. It is recognized that economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for a waiver or reduction of an administrative penalty assessment based on possible economic hardship to the firm resulting from imposition of such penalty. To excuse ownership 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, Appellant's contention that the firm will 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 imposition.

### **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**

In the charge letter, the Retailer Operations Division informed Appellant of its right to request a trafficking CMP under 7 CFR § 278.6(i). Appellant was informed 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 eligibility for a CMP. 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.]

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. 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 owner resides or is

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

May 1, 2023