

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

**Blb Food Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0256028**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) against Blb Food Market (hereinafter “Appellant”).

**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 Blb Food Market.

**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**

Blb Food Market was initially authorized to participate in SNAP on November 6, 2020. In a letter dated December 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 between the months of November 2021 through April 2022 and information obtained during a visit to the store by an FNS contractor on June 2, 2022. The attachments enclosed with the charge letter specified the questionable and unusual SNAP transactions indicative of trafficking that were conducted at Appellant’s firm during the review period. The letter noted that the penalty for trafficking is permanent disqualification, as provided

by 7 CFR § 278.6(e)(1). It informed Appellant of the right to respond to the charges within 10 days of receipt to explain the irregular SNAP transaction patterns and provided that Appellant may request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking within 10 days of receipt of the charge letter, under the conditions specified in 7 CFR § 278.6(i).

Appellant responded to the trafficking charges in writing on nine occasions between December 12, 2022, and January 26, 2023. Appellant denied that the store engaged in trafficking. Among other contentions, Appellant attempted to explain the irregular transaction patterns as due to credit extensions to EBT customers, customers paying in advance of receiving products when the store was out of stock, sales of meat and large bags of rice and beans, the store's delivery service, SNAP customers purchasing products which they leave with Appellant to ship to Haiti, and Appellant providing a service to help individuals with their SNAP recipient application. When those individuals are approved as SNAP recipients, they buy items from Appellant. To support these explanations, Appellant submitted inventory purchase invoices, a list of some of the store's products and prices, a screenshot of an illegible document titled compliance documents, screenshots of past payments to an individual named Patrick Madan Gougousse, bank statements, and undated photographs of store stock, products in vehicles, the owner's membership cards for BJ's, Costco, and Jethro, and copies of check carbon copies.

In a letter dated December 13, 2022, received by Appellant on December 14, 2022, the Retailer Operations Division requested the submission of documentation to support Appellant's credit contention. Appellant was informed that it must submit this documentation within 10 calendar days of receipt of the December 13, 2022, letter. According to agency records, Appellant did not provide documentation, such as credit ledgers, recipient statements, or related supporting documentation, to support its contention that credit was advanced in violation of the regulations.

After evaluating 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 February 14, 2023. This letter informed 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 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 because 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 an email dated February 15, 2023, Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted. After receiving an extension of time to provide additional information in support of its position, Appellant, through counsel, submitted additional information on March 27, 2023.

## **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 § 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...

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 § 278.2(a) states, in part:

[SNAP benefits] may be accepted by an authorized retail food store only from eligible households...only in exchange for eligible food. [SNAP benefits] may not be accepted in exchange for cash...[and] may not be accepted in payment of interest on loans or for any other nonfood use.

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(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(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(e)(1)(i) states:

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

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(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.

### SUMMARY OF CHARGES

FNS charged Blb Food Market with trafficking based on an analysis of FNS records, which included observed store characteristics, recorded food stock, and store pricing gathered during a store visit, as well as Electronic Benefit Transfer (EBT) transaction data for November 2021 through April 2022. The attachments enclosed with the charge letter reflected the following transaction patterns, which may be indicators of trafficking:

- **Charge Letter Attachment 1:** Multiple transactions made from the accounts of individual SNAP households within a set time period.
- **Charge Letter Attachment 2:** EBT transactions that were large based on the observed store characteristics and recorded food stock.

### APPELLANT'S CONTENTIONS

Appellant, through counsel, submitted a voluminous brief which included a considerable number of contentions targeted to broadly question the validity of trafficking cases based on SNAP benefit redemption data, as well as the processes used to develop and decide these cases. Appellant also argues, in part, that normal SNAP household shopping behaviors, local business conditions, and other factors can explain the transactions identified in the charge letter. Appellant cites case law and past administrative review decisions in support of its contentions. For purposes of brevity, these broader arguments will not be specifically listed here.

Contentions specific to Appellant's case are summarized below:

- Appellant denies the trafficking allegations.
- The store ran a limited credit issuance program for EBT participants. The credit tracking paper was destroyed when the credit balance was paid in full. However, Appellant maintained some credit logs, which are attached to this response.
- The credit transactions caused false hits in ALERT because they are run in shorter times and for larger amounts.
- The store visit inspector missed recording some higher priced items, including 100 lbs. of black beans for \$92, 100 lbs. of pinto beans for \$89, 100 lbs. of Lucky rice for \$58, goat meat priced at \$11/lb., Fish Snapper cans for \$110, and Nido Milk which is priced at \$35.
- Many of Appellant's customers are SNAP participants from surrounding neighborhoods.

- Appellant is located near high-density and low-income housing, a bus stop, schools, and a Town of Latana Operations center.
- Regarding Charge Letter Attachment 1:
  - These transactions are the result of Appellant's business practices, forgotten items, co-shopping, and/or the habits of SNAP clientele.
  - Appellant's customers' shopping habits are like those of other SNAP households, which studies show spend more than half of its benefits in the first week and three-quarters by the second week.
  - Customer co-shopping is on the rise.
  - A number of SNAP households come into the store multiple times a day, often sending children on separate shopping trips to pick up items from time to time.
  - Customers make purchases for friends, for large gatherings, or to satisfy needs that are not obvious.
  - There are no logistic barriers to the transactions in Attachment 1.
  - Telephone orders and delivery caused transactions on this attachment. Telephone order transactions are sometimes broken up into separate orders and paid for separately at the request of the participant.
  - Appellant offered bulk discounts on food purchases.
  - Appellant's inventory is sufficient to account for the transactions.
  - SNAP participants shop at Appellant because it is more convenient, and/or they lack consistent transportation.
  - SNAP customers make back-to-back purchases at Appellant because they are unemployed, bored, or use in-person shopping as a recreation event.
- Regarding Charge Letter Attachment 2:
  - These transactions are the result of Appellant's pricing structure, local SNAP household demographics and shopping habits, inventory, co-shopping, a portion of local participants relying on Appellant as a primary grocery, and/or are the normal reflection of SNAP participants' shopping habits.
  - Appellant is not responsible for monitoring SNAP household shopping habits.
  - Sweetened beverages and salty snacks are within the top 10 expenditures for SNAP households. It is reasonable to expect SNAP customers to spend large amounts and/or the majority of their benefits at Appellant's store given its inventory.
  - Households in the charge letter are likely to be large, resulting in large transaction amounts.
  - The store visit was riddled with errors, including failing to mention that the store does deliveries, missing many expensive and bulk items, and the size of the store.
  - The store visit contractor attempted to visit the store on a Saturday. Because the store owners are Seventh-Day Adventists, the store was not open. The store is open every day except Saturday.
  - The contractor report stated the store was open sporadically because the store was briefly closed due to the owner having surgery, but the store was open during the review period.
  - Appellant has a lot of Haitian customers who purchase bulk items like rice, beans, and oil to ship back to Haiti. More is shipped during the holidays.

- The store carries meat like chicken, turkey, and goat. Goat meat can be difficult to find at other local stores.
- The transactions are tied directly to the store's inventory and its convenience for households that do not have regular access to transportation.
- Other stores nearby do not offer similar inventory and likely have the same number (or greater) of similar transactions.

Through counsel, Appellant provided the following documentation as evidence:

- An ALERT Correlation Coefficient Calculation.
- *Benefit Redemption Patterns in the SNAP in FY 2017 Final Report*, Insight Policy Research.
- *U.S. Grocery Shopping Trends Annual Report*, FMI, 2016.
- An article titled, "What does SNAP benefit usage tell us about food access in low-income neighborhoods?"
- An article titled, "Shopping pattern and food purchase differences among SNAP households and non-SNAP households in the United States."
- A one-page profile of SNAP households in Appellant's congressional district.
- *Foods Typically Purchased by SNAP Households*, FNS, November 2016.
- An article titled, "Online grocery shopping knowledge, attitudes, and behaviors among SNAP participants."
- Recent and Upcoming USDA Economic Research Service (ERS) Research presentation: SNAP and Retail.
- *Super Stores' Impact on the Availability of Supplemental Nutrition Assistance Program-Approved Stores*, ERS Report, June 2021.

Appellant made the following additional statements in its February 15, 2023, request for administrative review and subsequent communications, in summary:

- The store does not sell hot food.
- The store sent a picture of its walk-in meat cooler to the Retailer Operations Division.
- The large dollar transactions are because the store offers telephone orders, delivery, competitive prices, and respect to its customers.
- The store orders items from WEBY distribution and then delivers them to the customer.

Appellant provided the following items in support of its contentions on February 15, 2023:

- Three undated photographs,
- An invoice from Weby dated December 21, 2022, and
- A copy of one of the pages of the store visit report where changes had been marked in pen.

These explanations may represent only a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented and evidence submitted.

## ANALYSIS AND FINDINGS

This review examines the relevant information regarding the Retailer Operations Division's trafficking determination. The record must contain evidence sufficient to raise a presumption that trafficking occurred. In a trafficking determination, this evidence includes SNAP transaction data, considered together with other available information, such as store visit observations, the location and characteristics of competitor firms, and household shopping patterns. Once the presumption is established, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole, that it did not engage in trafficking. If Appellant fails to show this, the case will be sustained.

Retailers are provided opportunities to submit evidence accompanied by explanations of the legitimacy of questionable transactions, both to the Retailer Operations Division and here on administrative review. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

Based on the evidence in this case, the SNAP transactions listed in the December 9, 2022, charge letter were indicative of trafficking. Appellant has not provided reasonable explanations supported by sufficient credible and convincing evidence to demonstrate that these transactions were more likely due to reasons other than trafficking. Accordingly, the permanent disqualification is sustained. Discussed below are elements of the Retailer Operations Division's record, Appellant's contentions, and the findings of this review.

### **Administrative Reviews Independent of FOIA Process**

Appellant alleges it is unable to meaningfully respond to the charges because it is not provided with all the information on which the charges are based. Along with the charge letter, Appellant was provided with a detailed list of suspect transactions and the store visit documentation.

Appellant also contends not holding determinations in abeyance while FOIA responses are pending violates 7 CFR §278.6(b)(1) according to *Triple E Express vs. ROD*, Case No. C0191279 because Appellant is not given a full opportunity to respond. The finding in *Triple E Express* is based on outdated regulations. Since October 26, 2020, holding determinations and administrative reviews in abeyance while FOIA responses are pending is prohibited.

### **Store Characteristics**

In reaching a disqualification determination, the Retailer Operations Division considered information obtained during the June 2, 2022, store visit conducted by a USDA contractor to observe Appellant's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report documented the store size, description, available stock, and characteristics. The store visit report noted no shopping carts available for customer use, but there were some handheld shopping baskets. The report further stated the store did not round transaction totals, sell fresh meat, offer bundles/specials or packages, offer discounts for bulk purchases, offer telephone or online orders, or offer delivery of food to customers' homes. At the time of the store



visit, the contractor, in collaboration with the store owner, identified the six highest priced items available priced at \$5.00 or more. These items included a 50 lbs. bag of rice for \$70.00 and a large container of Mazola corn oil priced at \$35.00. The four remaining highest priced items were priced between \$5.00 and \$13.00. Other than the 40-pack of Wellsley Farms water bottles, priced at \$5.00, which had more than ten units in stock, each of the highest priced items identified carried limited stock at the time of the store visit. The report also described the store's checkout counter space area and noted the effect of any limitations of the available surface area on placing large purchases or processing more than one customer at a time.

In its reply to the Retailer Operations Division and on review, Appellant provided undated photographs of store stock and products in vehicles. There is no evidence of any dates affixed to the photos, so it is likely they were taken after the firm received the charge letter. The photographs appear to show greater levels of stock than what the contractor found during its inspection. However, because there is no way for this review to determine that Appellant's photos reflect store conditions at the time of the review period, this review finds them to be of little probative value.

Appellant contends it sells a variety and quantity of staple food. Given the available inventory, there was no sign that Appellant would be likely to have SNAP redemption patterns that differed significantly from those of nearby stores offering similar stock.

### **SNAP Transaction Analysis**

The charge letter attachments specify the unusual transactions and transaction patterns found at Appellant's store.

**Charge Letter Attachment 1: Multiple transactions were made from the accounts of individual SNAP households within a set time period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).** Abnormally repetitive transactions over short periods of time at rates substantially greater than expected can be an indication that trafficking violations are occurring.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

Although it is not uncommon for customers to have multiple transactions in a day or two, it is uncommon that, at a small grocery store, such multiple transactions total 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.

Appellant contends that it is located in an area with many SNAP participants. While this may be true, the Retailer Operations Division identified similar and larger stores within one mile of Appellant. There is no basis for unusually high customer attraction to Appellant, there being no great price advantage, profusion of otherwise unavailable ethnic goods, or special or custom services rendered.

Appellant contends the transactions on this attachment are due to customers sharing benefits with others, splitting food purchases, shipping SNAP eligible food purchases outside the country, or purchasing items for large gatherings. Appellant has offered no evidence to support these contentions. As to whether or not co-shopping actually affected Appellant during the review period, this argument is little more than conjecture. Appellant has provided no evidence to show that co-shopping is particularly common among SNAP recipients in Lantana, Florida. Appellant has also not provided an explanation for why, if such behaviors were occurring, these purchases would occur at Appellant rather than at nearby similarly situated or larger stores. It is unlikely that a family relying on SNAP to supplement their nutritional needs would share these benefits with another family that purchases and prepares meals separately. Unsubstantiated arguments such as these do not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Appellant contends that the store offers telephone orders and delivery. Appellant also stated that some participants request that their telephone orders are broken up into separate orders when picking them up. As previously noted, the contractor completed the store visit report in collaboration with the store owner. The contractor report indicated the store did not offer telephone orders or delivery. The photographs from the store visit do not include any signage advertising telephone orders or delivery. Other than undated photographs of food products in vehicles, Appellant has offered no evidence to support these contentions. Again, unsubstantiated arguments such as these do not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Appellant stated it offered bulk discounts on food purchases. While this may be true, Appellant did not provide any details or evidence to support this contention. It is also unclear how bulk discounts on food purchases would result in the transaction activity noted in this attachment. The store visit, completed in collaboration with the store owner, stated the store did not offer discounts or bulk food purchases. The photographs of the store visit did not show evidence of bulk or package sales or advertise any discounts for such purchases.

Appellant contends that back-to-back purchases are because SNAP customers lack access to transportation, Appellant's inventory is superior to that of nearby stores, and that SNAP participants shop at Appellant because it is more convenient. Appellant provided no evidence in support of these contentions. Agency records show that most customers conducting rapid, repetitive, and large transactions at Appellant frequently spent SNAP benefits at better-stocked and more competitively-priced grocery stores, sometimes on or about the same day they shopped at Appellant. Unsubstantiated arguments such as these do not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Finally, Appellant contends SNAP customers make back-to-back purchases at Appellant because they are unemployed and bored, because shopping is a recreational activity, or because customers return to the store to make a second purchase after going home. Again, while there are legitimate reasons why a SNAP recipient might return to a small grocery store in a short period of time, the examples in the attachment indicate a series of purchases that total to large amounts. SNAP benefits are intended to supplement the food budget for households whose net income is near or below the Federal Poverty Level. Anecdotal arguments offer little insight into the

transactions in question and do not verify what took place between the customers and the store clerks at the point of sale.

Without compelling evidence from Appellant to show that the transactions in Attachment 1 were legitimate, this review finds that trafficking was a likely cause of the unusual patterns.

**Charge Letter Attachment 2: EBT transactions that are large based on the observed store characteristics and recorded food stock. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

Appellant contends that because sweetened beverages and salty snacks are within the top 10 expenditures for SNAP households, it is reasonable to expect SNAP customers to spend large amounts and/or the majority of their benefits at Appellant's store given its inventory. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Noting that Appellant did sell a limited selection of staple foods and other SNAP eligible items, including snacks and drinks, there may be some legitimate SNAP transactions among the transactions listed in Attachment 2. However, the substantial number of high-dollar transactions in a six-month period calls into question the legitimacy of these transactions.

Within Attachment 2, there were unusual patterns of repeating transaction totals. For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Unexplained clusters of transactions in large amounts are very unusual and likely indicative of trafficking.

Appellant claims the high-priced items in the store do not require the store to have a huge amount of counter space for transactions. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). While there are no logistic barriers to the transactions listed in the charge letter, based on the store layout, infrastructure, and available inventory, it is not credible that Appellant would so frequently conduct such large transactions. 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 Appellant.

Appellant stated that larger purchases might be because the SNAP households are larger. While this may be true, this does not explain why larger SNAP households are more likely to shop at Appellant rather than other nearby stores offering similar stock.

Appellant argued that the store visit was riddled with errors, including failing to mention that the store offers delivery and missing many expensive and bulk items. Appellant also stated the store carries meat like chicken, turkey, and goat. Further, Appellant contends that the store visit report underestimated the store's square footage. Appellant stated the store has 870 square feet. The contractor report estimated Appellant had 562 square feet and 158 square feet of storage space onsite. It is not clear where the discrepancy comes from. It is possible the contractor did not include the kitchen preparation area or other non-sales areas in their estimation. While no evidence was provided to establish the exact square footage of the store, the difference between Appellant's stated square footage and the contractor's total estimated square footage does not negate the charges.

It is restated here again that store personnel worked in collaboration with the store visit contractor to complete the store visit report. According to the contractor report, the store owner verbally identified four of the six highest priced items. The contractor report and photographs reported that the store did not offer specialty stock, did not offer discounts on bulk purchases, did not offer bulk, bundle, or package sales, and did not sell fresh meats. During the store visit, Appellant indicated the meat saw was seldom used. The photographs from the store visit show an empty deli case. The contractor's photograph of the walk-in cooler/freezer appeared to show only empty boxes and trash inside the cooler/freezer.

To support its claims about the store's inventory, Appellant provided undated photographs and purchase inventory invoices. The Retailer Operations Division analyzed the inventory invoices provided. Based on the inventory invoices provided, the Retailer Operations Division determined that the store did not purchase sufficient inventory to cover its SNAP redemptions during the review period. As noted previously, Appellant's undated photographs of the store's stock appear to show greater levels of stock than what the contractor found during its inspection. However, because there is no way for this review to determine that Appellant's photographs reflect store conditions at the time of the review period, this review finds them to be of little probative value. Appellant has not provided evidence to support its contentions that the store stocked and sold higher priced items at the reported price points during the review period. Appellant has also not provided evidence to support its claims about bulk sales, whether the store's inventory was sufficient to cover its SNAP redemptions during the review period or that it carried superior inventory to other stores nearby. In fact, Appellant stated it began making deliveries to attract customers to its store because there was so much competition. Appellant did not provide evidence of 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, or an extensive variety of otherwise unavailable ethnic food items.

Appellant, through counsel, has argued that it has no control over and no obligation to monitor customer shopping habits. Appellant further argues that the store operates as a primary grocery for some households. With regard to these contentions, it is true that retailers have no regulatory or statutory obligation to monitor the spending habits of SNAP recipients, including how much a household may spend at a store at a given time. It is also true that some households may choose to spend most or all of their monthly allotment at a single store, especially if that store is conveniently located or offers food items that are not readily available elsewhere. In this case, the Retailer Operations Division identified other stores within a mile carrying comparable and superior stock, including large bags of rice and beans, large containers of oil, and fresh meats, including goat meat. As previously noted, the transactions cited in the charge letter are questionable not because they exceed any limits for use but because they display patterns of use inconsistent with the store's documented physical characteristics and food inventory. The transactions identified in the charge letter are not marginally abnormal, but decidedly so.

Appellant stated many of its customers buy items in bulk and leave them with Appellant to ship to Haiti. The shipments of food to Haiti increased during the holidays. Appellant has not provided evidence to support this statement. It is important to restate here that SNAP benefits are intended to supplement the food budget for households whose net income is near or below the Federal Poverty Level. Without evidence to support this statement, this review finds it difficult to

believe that a family relying on SNAP to supplement their nutritional needs would routinely use their EBT card to purchase and ship food to another country.

In a case such as this one, which is based on an analysis of transaction data, an Appellant must prove, through a preponderance of evidence, 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. In the absence of compelling information or documentation weighed in comparison to that provided by the Retailer Operations Division, the agency's determination must be sustained.

### **Competitor Stores:**

The Retailer Operations Division reviewed the number of SNAP authorized retailers within a one-mile radius of Appellant to determine if households living near Appellant had access to other shopping options during the review period. Mapping showed four supermarkets and two medium grocery stores within the one-mile radius. This review demonstrates that households shopping at Appellant were nearby a larger store that may have lower prices and better inventory, making it less likely that SNAP recipients would expend their SNAP benefits in large amounts at Appellant's small grocery store, and that they would do so recurrently.

The Retailer Operations Division reviewed the inventory for the two medium grocery stores located within one mile of Appellant. Both stores appeared to offer superior inventory in comparison to Appellant. Both stores offered fresh meats, including goat. Both stores also offered large bottles of oil and large bags of beans and rice.

### **Household Analysis:**

In addition to determining if households had access to other shopping options, the Retailer Operations Division conducted a household analysis to determine if households conducting suspicious transactions at Appellant actually utilized larger stores during the review period. As noted above, larger stores usually have lower prices and better inventory.

The analysis included examples of five households with unusual shopping patterns at Appellant that also regularly shopped at larger stores. The following examples show households shopped at better stocked firms on or about the same day as conducting transactions meeting the parameters in the charge letter at Appellant:

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Retailer Operations Division's analysis demonstrated that households shopping at Appellant during the review period had access to larger stores. In addition, the households' behavior further indicated that the transaction patterns in the charge letter attachments were suspect and likely included trafficking of SNAP benefits.

### **Comparison with Similarly Situated Grocery Stores:**

The Retailer Operations Division compared Appellant's average transaction of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for the review period to the average transaction for a small grocery store in Florida and Palm Beach County. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant's inventory, characteristics, and location do not appear to explain why Appellant had a notably higher average transaction.

### **Credit**

Appellant, in its response to the Retailer Operations Division and on review, stated some of the transactions in the charge letter were the result of Appellant extending credit to customers. In regard to this contention, 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.

Appellant, through counsel, stated it was providing credit logs to support its credit contention. However, no credit logs, recipient statements, or related supporting documentation was provided that credit was advanced in violation of the regulations. 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 did not identify which transactions in the charge letter were the result of the firm's credit program. The explanation provided by Appellant, without adequate supporting evidence, is insufficient for this review to eliminate trafficking as the primary reason for the unusual transaction patterns identified in the charge letter.

### **Evidence of Trafficking**

Regarding Appellant's contentions with respect to the reliability of the ALERT system and confirmation bias, 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 the local area, to render a determination as to whether or not the questionable transaction patterns were, more likely than not, the result of trafficking. SNAP 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.

Appellant argues that USDA does not know the correlation coefficient between ALERT scans and trafficking. Appellant asserts that it has calculated this based on results of undercover investigations and determined that it was a positive correlation, but the relationship between the values is weak. These contentions are pure conjecture on the part of Appellant. Appellant does not have the necessary data to perform a reliable correlation analysis.

### **Case Law and Past Administrative Reviews**

With regard to the case law cited by Appellant, it is beyond the scope and authority of this review to determine the applicability of same. This review is limited to consideration of whether or not the Retailer Operations Division duly adhered to the Food and Nutrition Act of 2008, as amended, and the implementing regulations, and whether or not the action taken is sustainable by a preponderance of the evidence. Therefore, the application of any judicial precedent is better addressed via judicial review. Accordingly, no further findings or conclusions are rendered in this regard.

With regard to the prior Final Agency Decisions cited by Appellant, this administrative review decision is based on the specific circumstances of this case as documented by the materials provided by Appellant and the Retailer Operations Division. This administrative review decision does not establish policy or supersede Federal law or regulations. The determination in this case conforms to SNAP regulations and is consistent with sanctions imposed upon other retailers that have committed similar violations.

### **CIVIL MONEY PENALTY (CMP)**

As noted earlier, the Retailer Operations Division determined that Appellant was not eligible for a CMP in lieu of permanent disqualification for trafficking because it did not submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a CMP 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 Appellant did not request a trafficking CMP or provide substantial 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**

The Retailer Operations Division's analysis of the EBT transaction record for Blb Food Market was the primary basis for its determination to permanently disqualify the retailer. 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 Appellant. Likewise, 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 Appellant, Blb Food Market, under the ownership of Romain Louis and Guerdy Louis, 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.

AMIE CHURCHILL  
Administrative Review Officer

April 10, 2023