

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

Los Catrachos Deli Corp.,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0227158

FINAL AGENCY DECISION

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

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against Los Catrachos Deli Corp.

AUTHORITY

7 U.S.C. § 2023 and 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 SUMMARY

Los Catrachos Deli Corp. was initially authorized to participate in SNAP on August 15, 2017. In a letter dated March 25, 2020, the Retailer Operations Division charged Appellant with trafficking, as defined in § 271.2 of SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of August 2019 and January 2020 and information obtained during a visit to the store by an FNS contractor on February 14, 2020. 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 in 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).

The record reflects that on April 9, 2020, Appellant's counsel requested an extension of time for providing a response to the letter of charges. The request was granted. Subsequently, Appellant, through counsel, requested documents under the Freedom of Information Act (FOIA). The FOIA Office responded to the FOIA request on December 1, 2021. Counsel then responded to the trafficking charges on December 9, 2021.

In the response, Appellant denied trafficking. Among other contentions, Appellant attempted to explain the irregular transaction patterns as due to the statistical results of the store's normal business operations and circumstances, local demographics, particular shopping habits of the store's clientele, the store location, and the availability of inventory and staple food items at the store. To support these explanations, Appellant submitted studies about SNAP benefit redemption patterns and grocery shopping trends. Appellant did not request a CMP in lieu of a permanent disqualification.

After considering Appellant's reply and further evaluating the evidence, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated January 10, 2022. This letter informed Appellant that the firm 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 Appellant was not eligible for a trafficking CMP in accordance with § 278.6(i) because Appellant failed to submit sufficient evidence to demonstrate the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a January 18, 2022, letter, Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted. In supplemental correspondence dated February 16, 2022, Appellant, through counsel, submitted additional information in support of the request for administrative review.

STANDARD OF REVIEW

In an appeal of an adverse action, the appellant bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. This 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 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 [SNAP benefits] or trafficking in [SNAP benefits] 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....** Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for [a] period of 12 months to 10 years for a firm's second sanction; and **disqualification shall be permanent for a disqualification based on paragraph (e) (1) of this section.** [Emphasis added.]

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, 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, 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 Los Catrachos Deli Corp. 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 August 2019 through January 2020. The attachments enclosed with the charge letter reflected the following transaction patterns, which commonly indicate trafficking:

- **Charge Letter Attachment 1:** Multiple transactions were made from the accounts of one or more SNAP households within a short timeframe.
- **Charge Letter Attachment 2:** EBT transactions that are 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 and exhibits 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:

- The store offered deli food items, which are more expensive than typical eligible items. People made trips to the store more regularly because of deli foods. Because of this, SNAP transactions went up in frequency and amount.
- Nearby stores are different from Appellant in operations, location, and inventory. They are stacked one upon another, resulting in fewer SNAP participants shopping in each because of the direct competition.
- In the alternative, Appellant request a CMP as the store's effective compliance policy and program is reflected by the Store's significant compliance history since becoming a SNAP authorized retailer.

Appellant did not submit any exhibits specific to its transactions, but rather only submitted the exhibits referenced above.

The preceding represents a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any that have not been specifically listed here.

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 March 25, 2020, 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.

Store Characteristics

In reaching a disqualification determination, the Retailer Operations Division considered information obtained from a store visit conducted by an FNS contractor on February 14, 2020, to observe the nature and scope of the firm'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 and photographs documented that the Appellant store is a small grocery store with about 800 square feet of sales space and an 800 square foot storage room that contained non-foods. The store had minimal fresh fruits and vegetables and while it had deli meats, processed meats, and frozen meats, it had no fresh meats for sale. The store sold hot foods and cold sandwiches in addition to the deli meats and cheeses.

The store visit report shows the highest priced item at sold at the store was a 2.5-pound package of salami sold for \$14.99. The remaining three highest priced items at the store were deli meats and cheeses, which ranged in price from \$7.99 to \$9.99 per pound.

With a few exceptions, 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. Given the available inventory, there was very little sign that the firm would likely have SNAP redemption patterns that differed significantly from those of similarly sized competitors, especially competitors that sell similar or identical food items.

SNAP Transaction Analysis

While SNAP households are not limited in the number of times they may use their SNAP benefit card or how much eligible food they may purchase in SNAP transactions, government analyses have found that stores likely trafficking SNAP benefits have particular transaction patterns or characteristics that are inconsistent with the transaction patterns and characteristics of similarly situated stores. The Charge Letter Attachments specify the unusual transactions and transaction patterns found at Appellant's store, which are considered together with other available information, such as store visit observations, the location and characteristics of competitor firms, and household shopping patterns, to determine if the anomalies can be explained based on circumstances specific to the store.

Charge Letter Attachment 1: Multiple transactions were made from the accounts of one or more SNAP households within a short timeframe. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Violating stores often conduct multiple transactions from the same household account in short time periods

to avoid the detection of single high-dollar transactions that cannot be supported by the retailer's inventory, store type, or structure.

The transactions in Charge Letter Attachment 2 contained sets of transactions that were very large for a small grocery store, including two sets of transactions for over \$200 each. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Several of the transactions within sets were close together, taking place within minutes or hours despite one or more of the transactions being a large purchase that would likely last for a significant period of time. 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. 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 to purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale.

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).

Since the store sold primarily low dollar value items, it would take a very large volume of items to reach some of these transaction amounts. Given that the store had no shopping carts or baskets and had limited counter space at checkout, the store was not conducive to large purchase transactions. Again, the store's inventory and characteristics did not support the frequency of large transactions reflected in this Charge Letter Attachment. Additionally, there is nothing notable about the store that would make its redemption patterns differ so significantly from those of similarly-sized competitors offering similar food items.

In addition to the transactions in this attachment being unusually large, transaction totals recurred in the attachment an unusual number of times. In large purchase transactions, where multiple items are being purchased, it is unusual for the same transaction total to naturally recur multiple times. This can indicate that transaction totals are being contrived, which happens when stores are trafficking SNAP benefits. The table below shows the frequency of recurrent SNAP redemption amounts during the review period.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

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 a supermarket just over a tenth of a mile away, as well as two other supermarkets, a large grocery store, and nine other small grocery stores within the one-mile radius. This comparison demonstrated that households shopping at

Appellant likely had access to larger stores that may have lower prices and better inventory. With these shopping options, it is unlikely that SNAP recipients would expend their SNAP benefits in large amounts at Appellant's small grocery store, and that they would do so recurrently.

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. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). If the household had access to a supermarket on the same day as shopping at Appellant, it would be more likely to buy more at the supermarket because of its lower prices and larger inventory. Another household conducted transactions only at Appellant and two other SNAP authorized stores, both of which have since been permanently disqualified from SNAP for trafficking benefits. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Given the household shopped at only two other stores, both of which trafficked SNAP benefits, it may be likely that this household strategically chose stores that were known for trafficking SNAP benefits.

A third household regularly did balance checks at Appellant and then redeemed large benefit amounts. This is a pattern commonly indicative of trafficking, particularly where the time period between the balance check and the redemption is short. A household would likely conduct a balance check before selecting food items so that it would know how much to shop for. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Given Appellant's inventory, which primarily consisted of low dollar value items, it would likely take more than three minutes to select this amount of groceries, much less have the clerk ring them up at the register 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This pattern, of conducting a balance check and then redeeming a large benefit amount, occurred five times during the review period.

Comparison with Similarly Situated Small Grocery Stores

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Given that there were a number of shopping options near Appellant, the Retailer Operations Division selected four small grocery stores near Appellant that were SNAP authorized during the review period to compare to Appellant. Because the stores are close in proximity to Appellant and are all similarly categorized as small grocery stores, then the sales patterns should be comparable.

Appellant claimed that its sales of deli meats and cheeses and its unique location were the cause of the repetitive and large transactions. However, each of the four comparison stores also sold deli meats and cheese. And, although Appellant claims that its location is farther from competition than other similar SNAP authorized stores, mapping shows that besides one of the comparison stores, Appellant is closest to a large store type, like a supermarket. Three of the

comparison stores are located much larger from larger store types and do not have direct competition very close by as Appellant claims.

In this comparison, the Retailer Operations Division found that Appellant had significantly more transactions that met the parameters of the charge letter attachments than the four comparison small grocery stores. Appellant had 27 transactions that met the parameters of Charge Letter Attachment 1, while the other four stores, collectively, had just 8. Appellant had 128 transactions that met the parameters of Charge Letter Attachment 2, while the four comparison stores each had 67, 49, 26, and 9. While the Charge Letter Attachments identified Appellant's transaction patterns as significantly aberrant when compared against the averages for small grocery stores, the Retailer Operations Division's analysis confirmed that Appellant's transaction patterns were likewise strongly inconsistent with very similarly situated small grocery stores.

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 local area, to render a determination as to whether or not the questionable transaction patterns were, more likely than not, the result of trafficking.

The regulations at 7 CFR § 278.6(a) state that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, and that such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through, inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system. This review has thoroughly examined the documentation provided by the Retailer Operations Division and finds that the identified EBT transactions along with other relevant information support the presumption that trafficking was likely occurring. Appellant has failed to provide sufficient evidence to show it did not engage in trafficking.

Case Law and Past Administrative Reviews

With regard to the case law cited by the 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 the Appellant, this administrative review decision is based on the specific circumstances of this case as documented by the materials provided by the 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.

Summary

This review finds that the attachments furnished with the charge letter adequately identify irregular patterns of SNAP transactions, thereby indicating that trafficking was likely taking place. The transactions listed in the charge letter are highly unusual and substantially different from comparable stores in the area. Based on these and other factors, such as the store's physical characteristics and inventory and household shopping patterns, the case for trafficking is convincing.

On review, the Appellant failed to prove, by a preponderance of the evidence, that the administrative action should be reversed. The Appellant has not offered sufficient and compelling evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter were not caused by trafficking. In fact, the Appellant offered no reliable evidence to support its contentions regarding specific transactions listed in the charge letter. Given the totality of the record, this review finds the transactions listed in the charge letter attachments were, more likely than not, the result of trafficking violations committed by the Appellant. Therefore, the Retailer Operations Division's decision to impose a permanent disqualification against Los Catrachos Deli Corp. is sustained.

CIVIL MONEY PENALTY (CMP)

Appellant now requests, in the alternative, that it be assessed a trafficking CMP and contends to have implemented an effective compliance program to prevent SNAP violations. However, Appellant did not request consideration for a trafficking CMP in lieu of a permanent disqualification within 10 days of the receiving the charge letter dated March 25, 2020, even though it was informed of the requirement to do so.

SNAP regulations, at 7 CFR § 278.6(b)(2)(ii), mandate that a request for a trafficking CMP along with supporting documentation shall be submitted within 10 days of receipt of the charge letter. SNAP regulations, at 7 CFR § 278.6(b)(2)(iii), also state, in part, 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 ... the firm shall not be eligible for such a penalty." Even if Appellant had submitted a timely request, it likely would not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program prior to the violations. Therefore, the Retailer Operations Division correctly determined that Appellant is ineligible for a trafficking CMP in lieu of disqualification.

CONCLUSION

The Retailer Operations Division's analysis of the EBT transaction record for Los Catrachos Deli Corp. was the primary basis for its determination to permanently disqualify the retailer. This review finds this data provides substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Store visit photographs and documentation further support the trafficking determination. Appellant has not proven, by a preponderance of evidence, that the administrative action should be modified or reversed.

Based on a review of all the information available in this case, the determination by the Retailer Operations Division to impose a permanent disqualification against Los Catrachos Deli Corp., under the ownership of Jackeline J. Zepeda, is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this determination are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in SNAP regulations, at 7 CFR § 279.7. If 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 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.

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.

MICHELLE WATERS
ADMINISTRATIVE REVIEW OFFICER

March 10, 2023