

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

Star Food Market,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0196337

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 Star 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 Star 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

Star Food Market was initially authorized to participate in SNAP on July 3, 2007. In a letter dated May 17, 2017, 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 September 2016 through February 2017 and information obtained during a visit to the store by an FNS contractor on December 6, 2016. 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).

In response to the charge letter, on May 30, 2017, Appellant's counsel requested an extension of time for providing a response to the letter of charges. The Retailer Operations Division granted the extension.

On June 20, 2017, Appellant, through counsel, requested documents under the Freedom of Information Act (FOIA). The FOIA Office responded to Appellant's FOIA request on August 1, 2017. On October 30, 2017, Appellant, through counsel, appealed the FOIA response. The FOIA Office responded to Appellant's FOIA appeal request on January 23, 2020.

The record reflects that on February 11, 2020, Appellant's counsel requested an extension of time for providing a response to the letter of charges. The Retailer Operations Division granted the extension.

Appellant, through counsel, responded to the trafficking charges by email on February 20, 2020. Appellant denied that the store engaged in 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, and the availability of inventory and staple food items at the store. To support these explanations, Appellant submitted customer affidavits, undated photographs of the store, purchase invoices, and studies about SNAP benefit redemption patterns and grocery shopping trends. Although after the deadline specified in the charge letter, Appellant also requested a CMP in lieu of a permanent disqualification.

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 April 27, 2020. 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.

On May 7, 2020, Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

On June 5, 2020, Appellant, through counsel, requested documents under the Freedom of Information Act (FOIA). The FOIA Office responded to Appellant's FOIA request on November 30, 2022.

In an email correspondence of January 10, 2023, Appellant, through counsel, submitted additional information in support of the request for administrative review.

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 § 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(e)(1)(i) states:

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

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 § 278.6(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(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(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(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 Star 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 September 2016 through February 2017. The attachments enclosed with the charge letter reflected the following transaction patterns, which may be indicators of trafficking:

- **Charge Letter Attachment 1:** An unusual number of transactions ending in a same cents value.
- **Charge Letter Attachment 2:** Multiple purchase transactions made too rapidly to be credible.
- **Charge Letter Attachment 3:** Multiple transactions made from individual benefit accounts in unusually short time frames.
- **Charge Letter Attachment 4:** Excessively large purchase transactions made from recipient accounts.

APPELLANT'S CONTENTIONS

- Appellant denies the trafficking allegations.
- FNS bears the burden of proof, not the retailer.
- Appellant carries more expensive items than were listed in the store visit report.
- The inspector's notes show the store to be sufficiently stocked.
- SNAP household shopping habits are different than those of non-SNAP households.
- Appellant is located in an economically depressed area surrounded by poverty and many low-income families. It is within walking distance from places that draw, house, or places a significant number of SNAP participants.
- Appellant quoted studies that stated that superstores and supercenters accounted for 90% of redemptions, but in eight neighborhoods, convenience stores accounted for 15% of

SNAP redemptions. Further, mid-sized grocers in southern Minneapolis account for as much as 60% of SNAP redemptions.

- SNAP households' demographic and geographic characteristics affect their shopping habits.
- Households with particular demographic information are more likely to be disqualified, which shows a bias towards smaller grocers.
- SNAP participants are more likely to shop at convenience stores and small grocery stores.
- In certain geographic areas of SNAP households, the co-utilization of convenience stores with large store types is not inherently suspicious and does not indicate trafficking.
- The precise location of a convenience store, population composition, competition saturation, and ease of accessibility factor can have a significant impact on the store's performance and drive differences in SNAP transaction totals at different businesses.
- It is likely that a confirmation bias exists within retailer disqualifications.
- The analyst made incorrect assumptions about customer shopping patterns and circumstances and failed to take into account local differences.
- Past administrative review decisions have identified a number of explanations that adequately explain the presence of unusual transaction patterns in the charge letter.
- Regarding Charge Letter Attachment 1:
 - There are generally accepted explanations for an unusual number of transactions ending in the same cents. For example, a store's pricing structure, customers asking to have set amounts taken off their EBT card, and rounding transactions.
 - The transactions in Attachment 1 are a statistical anomaly that occurs in both standard (non-charge letter) and charge letter transactions.
 - Same cent transactions, even in significant numbers, are not suspicious.
- Regarding Charge Letter Attachment 2:
 - Multiple households pool their goods to be calculated; then, participants portion out what part they are going to pay for.
 - Appellant's clerks can manually process 13 items and complete a transaction in 54 seconds.
- Regarding Charge Letter Attachment 3:
 - These transactions are the result of the store's business practices, co-shopping, and/or the habits of SNAP clientele.
 - Multiple transactions occurring over the span of hours are not inherently suspicious according to *Onukwugha v. U.S.*
 - In Connecticut, SNAP benefits are issued on the first through the third of each month.
 - Appellant's customers' shopping habits are like those of other SNAP households. Studies show it is standard for SNAP households to spend 14% of their SNAP benefits within the first 24 hours of receiving them. Then another 38.2% of benefits are expended in the following days, up to seven days after issuance.
 - 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 3.

- Appellant's inventory is of such a variety it is reasonable to assume a household could satisfy all of their needs on a single shopping trip.
 - SNAP participants shop at Appellant because it is more convenient.
 - SNAP customers shop at Appellant because 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 4:
 - These transactions are the result of Appellant's inventory and convenience, the store's pricing structure, co-shopping, a minuetia of local participants relying on the store as a primary grocer, and/or are the normal reflection of SNAP participants' demographics and 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 of their benefits at Appellant's store given its inventory.
 - Households shopping at Appellant are likely to be large, resulting in large transaction amounts. Customers shopping at the store are of demographics that conduct large transactions.
 - These are not very large transactions. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Given the higher-priced items in the store, it is not difficult to imagine this amount of groceries being purchased in a single trip.
 - The high-priced items in the store do not require the store to have a huge amount of counter space for transactions. The transactions were facilitated by households who shopped in groups.
 - The expensive items at the store are more than enough to account for the large purchases flagged.
 - Other stores nearby do not offer similar inventory.

In support of its contentions, 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.”
- *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.

The following additional contentions were provided to the Retailer Operations Division in the February 10, 2020, retailer reply.

- Regarding Charge Letter Attachment 1:
 - The “00” and “50” cent transactions were a result of the store’s practice of rounding out transactions and/or are simply an innocent anomaly wherein a substantial number of the products sold at the store are for an amount ending in .00 cents or .50 cents.
 - Nearly every item in the store is priced to have a high likelihood of resulting in a .00 ending cent price.
- Regarding Charge Letter Attachment 2 & 3:
 - Transactions were incrementally gathered and calculated in overlapping timeframes, with the bagging occurring on a rolling basis.
- Regarding Charge Letter Attachment 4:
 - Customers transport large orders with their own personal carts or strollers.

Appellant previously provided the Retailer Operations Division with the following additional documents as part of its retailer reply.

- *Know Your Core, Protect Your Core, Convenience Store News for the Single Store Owner*, April 2016.
- Fifteen Customer Affidavits describing their shopping habits at Appellant.
- Approximately 25 pages of undated photographs of the store’s stock.
- Approximately 31 pages of purchase inventory invoices and receipts.

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 May 17, 2017, 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 during the December 6, 2016, 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 there were no shopping carts or baskets available for customer use. 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 addition, Appellant provided 25 pages of undated photographs of the store. 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. 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 items. The available inventory of SNAP-eligible food items at the time of the visit showed stock that would be typical of a small convenience store. There was no indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of grocery items. The available SNAP-eligible food was not unique to Star Food Market and was primarily of a low dollar value or single-serving size and there was no hint that the firm sold any high-priced packages or other bulk items.

SNAP Transaction Analysis

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

Charge Letter Attachment 1: An unusual number of transactions ending in a same cents value. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Abnormally repeating ending cent patterns can be an indication that trafficking violations are occurring.

Appellant stated that the store's pricing structure regularly prices items ending in "00" cents. The photographs from the December 6, 2016, store visit do not support this contention. Outside of the impulse items located at checkout, the majority of the pricing visible in the store visit photographs ended in a .X9 pricing strategy. The purchase of multiple items with prices ending in .X9 cents would not routinely result in the repeating ending cent value of "00" or "50". Even

if many of Appellant's prices were for even-dollar amounts, the purchase of even a single additional item that was not priced at an even-dollar amount would rule out an even-dollar transaction.

Appellant stated it is the store's practice to round out transaction totals; however, Appellant provided no evidence to support this contention. The transaction activity noted in the other attachments did not support this statement. Patterns of transactions ending in same-cent amounts indicate that SNAP transaction amounts are contrived. Random data, which legitimate transaction activity approximates, is extremely difficult to produce intentionally; it is very difficult to avoid repetitive patterns when attempting to create the appearance of normal, near-random transactions. That various customers each repeatedly had totals with identical cents values during the review period strains the credibility of Appellant's declaration that this activity reflected the acceptance of SNAP benefits in exchange for eligible food items.

As Appellant has not offered compelling evidence or rationale that the transaction activity on Attachment 1 was the result of legitimate food purchases, it is reasonable to conclude that these same-cent transactions are the result of trafficking.

Charge Letter Attachment 2: Multiple purchase transactions made too rapidly to be credible. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant's contention that there are no logistic barriers to the transactions included in the charge letter is incorrect. The store has a very small checkout area, just one cash register, one EBT point-of-sale device, no shopping carts or shopping baskets available for customer use, and no conveyor belt. Considering the number of items that it would typically take to add up to the dollar amounts found in this attachment, it is unlikely that legitimate transactions could have occurred in such short periods of time. These transactions were conducted with implausible speed. Appellant boasts its clerks can manually process 13 items and complete a transaction in 54 seconds.

The steps required to process a legitimate SNAP purchase include, in part, the following:

1. Transport a large number of food items by hand to the checkout area without the benefit of a shopping cart or basket;
2. Place each item on the very limited counter space for processing;
3. Separate food items from nonfood items;
4. Scan or manually enter the price of each item into the cash register;
5. Bagging the items for carry out;
6. Handing the customer bagged items to make room for more food items on the counter;
7. Informing the customer of the eligible food and ineligible food totals; and
8. Removing products from the checkout area so the next customer in line can begin another transaction.

While such transactions may well be conducted in succession, performing these actions on large transactions cannot be done rapidly. The amount of time required is generally proportional to the dollar amount of the transaction; typically, the larger the dollar amount transacted the longer the

time period between transactions. Limited counter space and a lack of shopping carts and baskets add additional time to transactions.

Appellant contends multiple transactions are because multiple households pool their goods to be calculated, then participants portion out what part they are going to pay for. Appellant provided no explanation why different households would engage in such unusual behavior. An unsubstantiated argument such as this does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Appellant also contends multiple transactions are because clerks pre-tabulate items as customers bring additional items to the register. The register area is surrounded by glass or Plexiglas; there is no room to assist two customers at the same time.

As described above, the rapid processing of large transactions of eligible food items at Appellant is improbable. Yet, the questionable transaction data cited in Attachment 2 reveals consecutive transactions involving large-dollar amounts occurring within a span of only seconds or a few minutes. It is highly unlikely that the rapid, multiple, large transactions described above involve solely the sale of eligible foods.

Charge Letter Attachment 3: Multiple transactions made from individual benefit accounts in unusually short time frames. 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, it is uncommon that, at a convenience 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 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, or purchasing items for large gatherings. Appellant has offered no evidence that the store's SNAP customers share their cards or benefits with others, split food purchases, or purchase items for large gatherings. 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 New Britain, Connecticut. 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 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. 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 convenience 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 3 were legitimate, this review finds that trafficking was a likely cause of the unusual patterns.

Charge Letter Attachment 4: Excessively large purchase transactions made from recipient accounts. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Notably, these large transactions accounted for 16% of the firm's SNAP purchase transactions during the review period.

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 of their benefits at Appellant's store given its inventory. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Given the available inventory and the store's characteristics noted during the store visit, this review could find no reason why the subject firm's SNAP redemption patterns differed so significantly from those of similar-sized competitors.

Within Attachment 4, there were unusual patterns of repeating transaction totals 5 U.S.C. § 552 (b)(6) & (b)(7)(C). According to the store visit completed at the firm, there were no special packages or bulk sales that would result in these transaction amounts. Consequently, when transactions cluster in large dollar totals without explanation, it appears that these amounts are contrived and, in the absence of compelling evidence to the contrary, are suggestive 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. Additionally, Appellant stated that households who shopped in groups and brought their portable carts facilitated the transactions in this attachment. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As noted above, Appellant's checkout area sits behind a glass or Plexiglass barrier, and transactions are conducted through a small opening. 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 large amounts of merchandise around the store without the benefit of shopping carts or shopping baskets, especially since larger, better stocked stores are readily available and in the vicinity of Appellant. Appellant did not provide evidence to suggest that customers brought their own portable carts to transport the large transactions in Attachment 4.

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 at other nearby stores.

Although Appellant claims that the store visit inspector missed some high-priced items, Appellant has not provided any information to suggest what was missed during the visit.

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 large amounts 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. However, as noted above, the transactions in the charge letter are inconsistent with the store's documented physical characteristics and food inventory. The transaction activity and patterns noted in the charge letter are not marginally abnormal, but decidedly so.

In a case such as this one, which is based on an analysis of transaction data, 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 identified twelve additional convenience stores within a one-mile radius of Appellant. In addition, the Retailer Operations Division reviewed the number of larger SNAP authorized retailers within a two-mile radius of Appellant to determine if households living near Appellant had access to other shopping options during the review period. Mapping showed multiple supermarkets, superstores, large grocery stores, medium grocery stores, and small grocery stores within the two-mile radius. This review demonstrates that households shopping at Appellant were nearby other SNAP authorized retailers, including larger stores 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 convenience 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 three households with unusual shopping patterns at Appellant that also regularly shopped at larger stores. These examples included 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Despite their access to larger, better stocked stores, these sampled households conducted unusual transactions at Appellant.

Comparison with Similarly Situated Stores:

The Retailer Operations Division compared Appellant's transaction activity, during the review period, to the transaction activity of three nearby convenience stores identified as carrying similar or superior stock and to the average convenience store in Connecticut. Appellant's average transaction was between 118% and 223% higher than these other stores. Its total dollar volume was between 59% and 222% higher for the same period. The table below summarizes the Retailer Operations Division's findings.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Appellant's inventory, characteristics, and location do not explain why Appellant had a notably higher average transaction and total dollar volume as compared to nearby convenience stores. If Appellant's arguments about store location and SNAP household shopping habits were causing the questionable transactions at the subject store, it would be expected that similar patterns would exist at other nearby convenience stores. However, that is not the case.

Invoices

Appellant submitted approximately 31 pages of purchase inventory receipts and invoices to the Retailer Operations Division to substantiate the firm's inventory and demonstrate that there was adequate eligible food items to account for the transactions during the review period. The Retailer Operations Division compared the store's SNAP redemptions to the available inventory for the review period, as documented by the inventory purchase invoices provided. With a 40 percent markup, the invoice analysis revealed the firm lacked sufficient purchased food stock to cover its SNAP redemptions for the review period. The invoices do not explain the questionable transactions at Appellant.

It is important to note that even if the results of the invoice analysis had indicated that Appellant had purchased sufficient food inventory to account for the firm's SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions noted in the charge letter.

Affidavits

Appellant submitted fifteen affidavits to the Retailer Operations Division. Although customer affidavits attested to these households frequenting Appellant as their preferred store, analyzed shopping patterns show that households shopping at Appellant, in fact, also shopped at larger, better stocked, and more competitively priced grocery stores, often within a day or so of their transactions at Appellant. After reviewing the affidavits and conducting a search in the State administrative terminal using the names and addresses provided, the Retailer Operations Division determined the affidavits did not explain or justify the unusual transaction patterns in the charge letter.

Written affidavits or declarations, by themselves and without supporting documentation relative to the specific transactions in question, offer little to no insight into the actions that occurred between the customer and the store clerk at the point of sale.

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.

Civil Money Penalty

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 any 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.

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.

CONCLUSION

The Retailer Operations Division's analysis of the EBT transaction record for Star 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, Star Food Market, under the ownership of Najma Khalid Khan, 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 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

March 3, 2023