

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

Tanzeela Inc.,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0248598

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 Tanzeela Inc. (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 Tanzeela Inc.

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

Tanzeela Inc. was initially authorized to participate in SNAP on July 20, 2016. In a letter dated November 4, 2021, 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 March 2021 through August 2021 and information obtained during a visit to the store by an FNS contractor on August 2, 2021. 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).

The record reflects that on November 12, 2021, 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 in a letter dated December 6, 2021. 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 lack of other SNAP authorized stores offering comparable stock in the area. To support these explanations, Appellant submitted studies about SNAP benefit redemption patterns and grocery shopping trends, articles about shopping trends, customer affidavits, tax records, bank statements, photographs of the store, and invoices.

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 January 20, 2022. 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 January 21, 2022, Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted. In an email correspondence of February 18, 2022, 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 Tanzeela Inc. 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 March 2021 through August 2021. 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 denies the trafficking allegations.
- The store is 1,700 square feet with 700 sq. ft. of storage space and sells a variety and quantity of staple food items.
- 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.
- Most SNAP households redeem nearly all their benefits within the first two weeks of the month.
- SNAP participants are more likely to shop at convenience stores and small grocery stores.
- Convenience stores have seen a 3% increase in customers utilizing them as primary grocers since 2015.
- SNAP household shopping habits are different than those of non-SNAP households.
- Appellant carries more expensive items than were listed in the store visit report. Counsel provided a list of approximately 14 high-priced items missed during the store inspection, which included a 360-count container of Frooties priced at \$7.99 and a 24-count container of Frito-Lays priced at \$47.76.
- The store offers a sufficient variety and quantity to meet the needs of several households all at once without having to replenish inventory.
- It is likely that a confirmation bias exists, and ambiguous and contradictory evidence has been disregarded or interpreted in such a way that favors the hypothesis that trafficking is occurring at Appellant.
- FNS bears the burden of proof, not the retailer.
- 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.

- USDA does not know the correlation coefficient between ALERT scans and trafficking. Appellant has calculated this based on the results of undercover investigations and determined that it was a positive correlation, but the relationship between the values is weak.
- The ALERT system has not been independently proven accurate in finding fraud. Data analysis is prone to error without accurate context. The analyst overly relied on the results of the ALERT system when issuing a charge of trafficking because of confirmation bias. The analyst made incorrect assumptions about customer shopping patterns and circumstances and failed to take into account local differences.
- Prior administrative review cases have established that "the determination of permanent disqualification must be supported to such a degree as to conclude that trafficking is the only plausible explanation."
- 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:
 - 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 Illinois, SNAP benefits are issued on the 1st, 3rd-10th, 13th, 17th, and 20th of every month based on a combination of the type of case and the case name.
 - 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.
 - Data shows certain demographics shop in ways that increase the likelihood of scan hits. Customers of this store fit those demographics.
 - There are no logistic barriers to the transactions in Attachment 1.
 - Appellant's inventory is superior to that of nearby stores.
 - 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 and bored.
- Regarding Charge Letter Attachment 2:
 - These transactions are the result of Appellant's inventory and convenience, the store's pricing structure, co-shopping, and a minutia of local participants relying on the store as a primary grocer.
 - 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 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 and brought their own portable carts.
- The expensive items at the store are more than enough to account for the large purchases flagged.
- The store's expensive items account for the transactions in Attachment 2. Appellant listed 14 high priced items offered by Appellant, including a 40-count bag of Takis priced at \$59.99.
- Appellant offers food bundles where the more you buy, the greater the discount for foods like cereal, clear fruit water, Faygo, candy, and pickles.
- Other stores nearby are not as conveniently located.
- It is likely the Department has misidentified legitimate transactions as a result of an errant assumption about the store's inventory and clientele.

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.
- *Know Your Core, Protect Your Core, Convenience Store News for the Single Store Owner*, April 2016.
- An article titled, "What does SNAP benefit usage tell us about food access in low-income neighborhoods?"
- Seven pages of statements dated November 2021 attesting that the store's employees SNAP training.
- 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.
- Forty-seven photographs of the store's stock.
- Two pages of flyers advertising store sales.
- A four-page list of highest priced items.
- Approximately 30 pages of tax records from 2020 for Tanzeela, Inc.
- Approximately 56 pages of bank statements for Tanzeela, Inc.
- One page named "SPNC Sales Tax Data Input" of handwritten sales data for 2021.

- Twenty-nine Customer Affidavits describing their shopping habits at Appellant.
- Approximately 344 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 November 4, 2021, 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 August 2, 2021, 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 visit also noted that the store did not round transaction totals or offer telephone or online orders. 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 47 undated photographs of the store. There is no evidence of any dates affixed to the photographs, 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. Appellant also included two flyers advertising box or case sales with the sale ending dates in June and August 2021. However, because there is no way for this review to determine that Appellant's photographs or flyers 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. 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 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 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, 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 Riverdale, Illinois. Appellant has also not provided any explanation for why, if such behaviors were occurring, these purchases would occur at Appellant much more frequently than at nearby similarly situated 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 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. The record reflects that customers conducting rapid, repetitive, and large transactions at Appellant frequently spent SNAP benefits at better-stocked and likely more competitively-priced grocery stores, sometimes on or about the same day they shopped at Appellant. Appellant provided 29 customer affidavits in support of these claims. The Retailer Operations Division analyzed the customer affidavits and found that none of the SNAP households that submitted an affidavit conducted an Attachment 1 transaction. 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. 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).

In reviewing the inspection report, this review also noticed that the firm sold infant formula, which is typically quite expensive, often between \$15.00 and \$25.00 per can. The inspector appeared to make no effort to discover the prices of these items. It is noted, however, that while infant formula is eligible for purchase with SNAP benefits, this item is also part of the food package for participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). It is unlikely that SNAP households would frequently spend limited SNAP funds on expensive infant formula when they could make such a purchase with WIC benefits in a WIC-authorized store.

The available inventory of SNAP-eligible food items at the time of the visit showed stock that would be typical of a 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 Appellant and was primarily of a low dollar value or single-serving size. At the time of the store visit, there was no hint that the firm offered bulk, case, or promotional sales. With the exception of the formula, the firm had a total of four units in stock priced at more than \$6.99 during the store visit.

Within Attachment 2, there were unusual patterns of repeating transaction totals. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). According to the store visit photographs and contractor report, the store did not offer stock, promotions, or bundles at these price points. On review, Appellant contended it offered bulk items at the \$40.00 price point. No explanation was offered for the other repetitive transaction totals. Clusters of transactions in large amounts, when Appellant prices individual items ending in 9-cents and there is no rounding, is very unusual and 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. 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). 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 2. The record reflects 68% of the SNAP households conducting a large transaction in this attachment visited a large grocery store, supermarket, or superstore within one day of an Attachment 2 transaction at 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 or superior stock.

Although Appellant claims that some high-priced items were missed by the store visit inspector, the contractor report was completed in collaboration with store personnel. The store visit photographs supported the contractor report. Appellant has provided no evidence that the items mentioned were stocked and sold in these quantities and noted price points during the review period.

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 grocer 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 at a single store, especially if that store is conveniently located or offers food items that are not readily available elsewhere. However, the transactions cited in the charge letter are questionable not because they exceed any limits for use, but because they display patterns of use that are inconsistent with the store's documented physical characteristics and food inventory, and significantly different from patterns found in nearby competitive stores – even those competitors who sell similar food items. The transactions identified 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:

According to agency records, nine additional SNAP authorized retailers were within a one-mile radius of Appellant. 5 U.S.C. § 552 (b)(7)(E) and eight additional convenience 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 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 a household that lived more than 10 miles from Appellant that shopped at ten different supermarkets or superstores, conducting 18 transactions at these larger store types during the review period. The supermarkets and superstores were between 1.41 and 10.04 miles from Appellant, indicating the household had regular access to transportation and larger store types. Despite access to larger, better stocked stores, this household regularly completed rapid, repetitive, and large transactions at Appellant on the same day or within a day or two of transactions at supermarkets or superstores. Each of the households examined had access to and shopped at larger stores, including superstores and/or supermarkets. Despite this access to larger, better stocked stores, these sampled households conducted multiple transactions in set time frames and transactions that were large based on the observed store characteristics and recorded food at Tanzeela Inc.

Comparison with Similarly Situated Stores:

The Retailer Operations Division compared Appellant's transaction activity to the transaction activity of four nearby convenience stores identified as carrying similar stock. Appellant had substantially more SNAP transactions meeting the parameters of multiple transactions from the same household in set time frames and transactions that were large based on the observed store characteristics and recorded food.

The Retailer Operations Division also completed a comparison of Appellant's redemption data to the redemption data for the four nearby similarly stocked convenience stores using ten-dollar increments from \$30.00-\$39.99 through \$90.00-\$99.99. Appellant's transaction count and dollar

volume were significantly higher than the comparison store's in all dollar ranges. For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is unusual for a convenience store to recurrently conduct higher dollar transactions so frequently as compared to other similarly situated stores.

Appellant's inventory, characteristics, and location do not explain why Appellant had more frequent transactions meeting the parameters in the charge letter. If Appellants arguments about store location and SNAP customer 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 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. On review, Appellant submitted additional invoices. The Retailer Operations Division conducted an analysis of the invoices provided for March 2021, April 2021, and May 2021. Inventory invoices that did not identify what was purchased were not included in the invoice analysis. Purchases of ineligible nonfood items were excluded from the invoice analysis as well. With a 40 percent mark-up, the invoice analysis indicates that the firm lacked sufficient purchased food stock to cover its SNAP redemptions for the three review period months. On review, the newly submitted invoices were considered. Oddly, some of the invoices provided by Appellant on review appeared to be for other businesses. However, even if all of the additional invoices provided were credited to Appellant in their entirety (including eligible and ineligible nonfood items) with a 40 percent mark-up, the invoice analysis still indicates the firm lacked sufficient purchased food stock to cover its SNAP redemptions for the three review period months. The analysis also does not account for any non-SNAP purchases (cash, credit and debit card, etc.) of food items at Appellant. In sum, 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 such as repeat transactions by the same household during the same store visit or in a short period of time. Even the large dollar transactions would remain questionable if there were sufficient food inventory to support such transactions when consideration is made of there being only a limited variety of eligible food items in the store and no shopping carts or shopping baskets. Even if there were sufficient food stock at Tanzeela Inc. to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to shop there, a convenience store, in some cases traveling a few miles to do so, and spend substantial amounts of their SNAP benefits.

Business Records

Appellant also submitted bank statements, sales tax records, and income tax records 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 bank statements provide general

descriptions of transactions made by Appellant but do not provide detailed transactions that would allow FNS to evaluate the store's inventory. Similarly, the income and sales tax documents provide general information about Appellant's business but do not provide details that would allow FNS to evaluate the store's inventory or provide an explanation for the unusual transaction patterns listed in the charge letter.

Customer Affidavits

Appellant submitted twenty-nine customer affidavits to support its contentions. In these affidavits, customers attested to the frequency that they shopped at Appellant, the dollar amount of large purchases made, the reasons for multiple transactions in one shopping trip, that more than one member of the household shops at the store, and the types of items purchased at the store.

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 on the same day. Additionally, the Retailer Operations Division conducted a search in the State administrative terminal using the names and addresses in these affidavits. Twenty-one households were confirmed to be SNAP households. Six of the households completed transactions in the charge letter. These six households combined completed a total of 28 Attachment 2 transactions. These 28 transactions accounted for just 4.7% of the Attachment 2 transactions. None of the SNAP households conducted an Attachment 1 transaction from the charge letter. Agency records show that each of these six households was also shopping at larger, better stocked stores during the review period. 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. The affidavits do not explain or justify the unusual transaction patterns 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.

Civil Money Penalty

Appellant requests, in the alternative, that it be assessed a trafficking CMP and contends to have implemented an effective compliance program to prevent SNAP violations. 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 Tanzeela Inc. 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, Tanzeela Inc., under the ownership of Tanvirhusen Yusufbhai Vohra, 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

March 3, 2023