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

J. Pooja LLC, BDA **Park News Convenient Grocery,** **Appellant,** **v.** **Office of Retailer Operations and Compliance,** **Respondent.**	**Case Number: C0245712**

FINAL AGENCY DECISION

The record supports that J. Pooja LLC, BDA Park News Convenient Grocery (Appellant), committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the USDA that there is sufficient evidence to sustain the permanent disqualification of Appellant from participation as an authorized retail food store in the SNAP, as imposed by the Office of Retailer Operations and Compliance (Retailer Operations).

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.6(a), (c), and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant.

AUTHORITY

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1, provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6, or § 278.7, may file a written request for review of the administrative action with the Food and Nutrition Service (FNS).

CASE CHRONOLOGY

By Charge letter dated June 3, 2021, Retailer Operations informed the owner that it had compiled evidence that Appellant had violated the SNAP regulations based on electronic benefit transfer transactions that established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the firm type. Retailer Operations charged Appellant with trafficking. The sanction for trafficking is permanent disqualification. By email dated June 7, 2021, the owner request an extension to reply to the charges for 30 days. Retailer Operations

granted an extension by letter dated June 7, 2021. The retailer replied to the Charge letter and advanced information for Retailer Operations' consideration.

Retailer Operations issued a Determination letter dated August 4, 2021. The letter informed Appellant that it was permanently disqualified as a retail food store in accordance with Sections 278.6(c), and 278.6(e)(1) of the regulations. Retailer Operations considered Appellant's eligibility for a civil money penalty (CMP) according to Section 278.6(i) of the regulations, and found it was not eligible because insufficient evidence was submitted timely to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program to prevent violations.

The owner requested administrative review by email dated August 7, 2021. The review was granted by letter dated September 28, 2021.

STANDARD OF REVIEW

In an appeal of an adverse action, the Appellant bears the burden of demonstrating, by a preponderance of the evidence, that the administrative action should be reversed. That means the Appellant has the burden of providing credible, relevant evidence, which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and § 278 of Title 7 of the Code of Federal Regulations (CFR). Sections 278.6(a) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(e)(1) states: "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." Trafficking is defined, in 7 CFR § 271.2, as: "(1) 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, 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;…
(4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food; (6) Attempting to buy, sell, steal, or otherwise affect 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 signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone."

7 CFR § 271.2 states: "Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food products prepared for immediate consumption."

7 CFR § 278.6(a) states: "FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system."

7 CFR § 278.6(b)(2)(ii) states: "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(i) states: "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 THE CHARGES

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true, that the questionable transaction patterns were the result of trafficking. The charges were based on an analysis of SNAP transaction data during the period of October 2020 through March 2021. The transaction patterns indicative of trafficking are:

- Multiple transactions made from individual benefit accounts within a set time period.
- EBT transactions that are large based on the observed store characteristics and recorded food stock.

APPELLANT'S CONTENTIONS AND SUBMISSIONS

In reaching a decision, consideration has been given to all contentions as presented, and submissions, including any not referenced.

- Individual households have made numerous purchases on the same day, I will enter into discussion with said households to restrict such behavior in the future.
- It has been alleged that due to the COVID pandemic there were a number of purchases which went from third party retail establishments direct to recipient's household without going through the store. Given the abatement of the COVID emergency, my store will discontinue this practice.
- Copies of my credit card purchases from these other retailers are attached.
- I was not aware of that I can't take a special order in the COVID pandemic situation. I didn't know that by helping customer I can be in a big problem like this.

- I was helping elderly customers because the store is around the corner for them. Most of the customer does not have a car to go to big grocery store. Some of the customers are handicapped so they did not want to go out in COVID.
- Store is in very poor neighborhood. In this COVID pandemic, people were placing a special order. Some families has a multiple children so they were placing order couple times a week. I will attach the bills of the special order purchase.
- Since the government gave them extra help in COVID they were making a purchases because everybody stayed home and they were all out of jobs.
- Signed statements stating: "I am a customer at this convenient store. I make a special order for my household every couple of days and pay with my EBT card. Because of pandamic [sic] thanks to government is helping us with extra help we are able buy extra stuff for my family the store is around the corner so it's very convenient for my family."
- Customer will call me or come with a list of items they need and place an order. After I get it from several stores they will come to pick it up my credit card purchase receipts was sent to you. It was very hard for me to get the items, nobody was delivery. I didn't know I was not supposed to take a special order. I was helping them by picking up items once or twice.

ANALYSIS AND FINDINGS

Retailer Operations uses data patterns, onsite store photographs, shopping histories, and other analyses to evaluate the type and extent of potential SNAP violations by authorized retailers. This case review encompasses the examination of the information to determine whether the owner demonstrates by a preponderance of the evidence, that the permanent disqualification for trafficking should be reversed.

Store Characteristics

Appellant was authorized as a SNAP retail food store on February 25, 2016, and typed as a small grocery store. A contracted onsite store visit was conducted on March 8, 2021. The store report shows Appellant had no shopping handbaskets or shopping carts. Appellant was estimated to be 720 sq. feet, with another 80 sq. ft. for out-of-site storage, used mainly for soda/beverages. The inventory report indicated there was limited fresh produce, mostly canned and packaged goods, snacks, and drinks. The store photos did not reveal any large, single purchase meat or produce food bundles or packages, or the presence of any specialty meats or ethnic/international foods. The store carried a variety of snack foods, accessory beverages, and non-food items including: lottery tickets, tobacco products, paper items, hats and miscellaneous items, and health and beauty products. The visit report indicates that the store had one grocery register, and one POS device. The checkout area had a small counter space to conduct transactions. There was no deli or prepared foods section. The highest priced food item was listed at $6 for ice cream. The contractor indicated that the store did not have an unusual pricing structure.

Retailer Operations reviewed five pages of receipts from five different retailers, and noted that the products on these receipts were nearly all beverages such as Coke and Sunny D. The purchase at a pharmacy-type store for unknown "birthday rainbow" items, and another receipt at a different store listed plastic cups. The combination of low overall dollar value, plus the inclusion of non-eligible items supported for Retailer Operations, that the retail receipts were not sufficient credible evidence to explain the unusual patterns in the Attachments to Charge letter.

Appellant advanced insufficient vendor invoices, even with an applied mark-up percentage, to demonstrate that it purchased adequate eligible food inventory to support the SNAP redemption totals listed on the Attachments. Retailer Operations' review of the credit statements noted that there was no evidence to show that the items highlighted on the statements were eligible foods, as the report totals are not itemized. Retailer Operations found that insufficient information was submitted that the items purchased on the credit statements were sold directly to specific SNAP recipients, or if the items purchased were used to stock Appellant. As such, the vendor invoices/credit documents advanced were not persuasive to Retailer Operations that the charged trafficking did not occur. Retailer Operations did not find that the explanations advanced adequately addressed the Attachment patterns at Appellant to more show that they were the result of legitimate SNAP transactions for solely eligible foods, than the result of the charged trafficking.

Retailer Operations determined that SNAP households that made transactions at Appellant had many retailers to choose from, many of which carry a larger inventory of staple food items. The data supports that there were at least 15 authorized retailers within a one mile radius of Appellant, including several medium groceries, and three super stores, one of which is located a mere .01 miles from Appellant, across the street. Retailer Operations compared Appellant to three same type stores located in proximity to the store, and determined that Appellant had more transactions flagged on each of the two Attachments than the comparator stores for the same period. This is unusual and irregular.

Customer Statements
The owner submitted four customer statements to support that the Attachment patterns were the result of special orders. Retailer Operations determined that each of the signed statements were identical and had the same misspelling of "pandamic," with the same date in the upper right corner (6/8/2021). Beyond customer names, no identifying information was provided in the statements, therefore Retailer Operations was unable to confirm that these customers are SNAP recipients, or that the three names matched are the actual individuals that signed the statements. Overall, Retailer Operations did not find that the statements were persuasive as explanations for the Attachment patterns.

- One matched name made 23 transactions at Appellant during the review period; 15 of which were flagged. The household's highest transaction amount was 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The household (HH) made transactions at supermarkets, super stores, medium groceries, and large groceries. Retailer Operations found that the transaction information did not support that this customer used Appellant as its primary shopping place, and that the owner's explanation of "special orders" was not convincing.
- One statement had a name that is the same as many others in the SNAP data, so its shopping history could not be determined.
- One person with the same name as the name on a statement, made 38 transactions at Appellant during the review period. The HH made transactions at supermarkets and super stores. Retailer Operations asserts that the customer's statement did not adequately explain the Attachment patterns charged against Appellant.
- A possible match indicated that a fourth HH made 46 transactions at Appellant during the

review period, 13 of which were flagged. The HH made transactions at super stores, supermarkets, a large grocery, and a medium grocery. This name match could not be verified due to insufficient information. Retailer Operations did not find the assertion of special orders to adequately explain the data patterns.

Patterns

Attachment 1: Listed are 32 sets of two or more transactions, conducted by 11 different households in less than 48 hours. The data sets totaled to high dollar amounts that ranged from 5 U.S.C. § 552 (b)(6) & (b)(7)(C). In some flagged sets, the second transaction amount, or combined subsequent transaction amounts, exceeded the initial transaction amount. This is not characteristic of a recipient purchasing a forgotten item(s). The transaction pattern is deemed unlikely and indicative of trafficking.

Retailer Operations determined there were no particular eligible food items highlighted in the store survey and photographs which would warrant multiple return trips to Appellant. That SNAP households in the area are in poverty, does not preclude Appellant from participating in trafficking activity with said households. Retailers electronically exchange SNAP benefit amounts with households for a range of cash, such transactions can occur in set times, and conducing multiple transactions with the same HHs can be evidence of such trafficking.

Retailer Operations analyzed the shopping histories of some flagged households, and determined that the shopping patterns were irregular. The data supports that 91% of the HHs flagged on this Attachment made a transaction(s) at an authorized supermarket or super store on the same day as the HH made a flagged transaction(s) at Appellant. This supports that the households flagged did seek out and use other SNAP authorized locations.

Retailer Operations identified several households in this Attachment that transacted benefits at multiple better stocked stores such as supermarkets and super stores, in times proximate to conducting multiple large SNAP transactions within a set period of time at Appellant. This is unusual and suspect. The owner advanced insufficient information to support that Appellant was not trafficking. For example, no detailed cash register tapes were advanced to support the sale of eligible foods at Appellant.

Attachment 2: Listed are 112 transactions conducted by 22 unique HHs that are large based on the observed store characteristics and recorded food stock, ranging in amounts from 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Almost 35% of the transactions on this pattern are for amounts exceeding $150.00. Retailer Operations' review of the vendor invoices provided by the owner did not support that the firm purchased adequate eligible foods to meet the SNAP redemptions in this Attachment. The average SNAP transaction amount in this Attachment is $135.18, considerably more than the state average SNAP transaction amount for authorized supermarkets, $45.71, and super stores, $62.31, for the review period. Retailer Operations did not find the argument regarding special orders convincing, or that the transactions were more likely for eligible foods, than the result of trafficking.

Retailer Operations' review of some households' shopping patterns at Appellant supported that they had access to larger and better stocked stores, and that transportation did not appear to be a

constraint. The analyzed household data supported that these HHs routinely transacted benefits at supermarkets and super stores. Nevertheless, they made high dollar transactions at Appellant, often at times that were proximate to transactions made at the larger stores.

Appellant has the burden to provide evidence in support of its position. 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. It is decided that the owner has not provided a preponderance of evidence to support that the Attachment patterns represent transactions for eligible foods rather than that the patterns are the result of the charged trafficking.

CIVIL MONEY PENALTY

The regulations at 7 CFR Section 278.6(i) specify the criteria for a firm's eligibility for a CMP in lieu of permanent disqualification for trafficking. The criteria are identified as a minimum standard that firms must meet to be eligible for CMP consideration. Retailer Operations determined Appellant did not provide a substantial submission of documentation which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program. Retailer Operations determined that the regulations were not met, and denied the CMP.

CONCLUSION

Retailer Operations' analysis of Appellant's SNAP transaction data was the primary basis for its determination to permanently disqualify Appellant. The record also included onsite store photographs, an onsite store report and inventory, households' shopping histories, and other data that provided evidence that the questionable transaction patterns had characteristics that are consistent with trafficking violations in SNAP benefits. Based on the entirety of the record, the preponderance of the evidence supports that violations did occur at Appellant as charged by Retailer Operations.

Retailer Operations denial of a trafficking CMP was also proper per the applicable regulations. Therefore, the decision to impose a permanent disqualification against Appellant is sustained. This decision is effective thirty (30) days from its delivery to Appellant.

RIGHTS AND REMEDIES

Attention is called to Section 14 of the Food and Nutrition Act of 2008, and to 7 CFR § 279.7 of the regulations, with respect to the applicable rights to judicial review of this decision. 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's owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of delivery 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.

M. Viens December 23, 2021
ADMINISTRATIVE REVIEW OFFICER