

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

Mi Casita Market,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0232387

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support that the Retailer Operations Division properly imposed a permanent disqualification of Mi Casita Market (hereinafter “Mi Casita Market” or “Appellant”) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a permanent disqualification against Mi Casita 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

The USDA investigated of the compliance of Mi Casita Market with Federal SNAP law and regulations during the period September 20, 2020, through October 11, 2020. The investigation report documents those personnel at the Appellant firm, in addition to accepting SNAP benefits in exchange for merchandise which included ineligible nonfood items on five occasions, also exchanged SNAP benefits for cash during two undercover compliance visits. The buying or selling of SNAP benefits for cash or consideration other than eligible food is trafficking as defined under 7 CFR § 271.2.

As a result of evidence compiled from this investigation, the Retailer Operations Division charged the Appellant, in a letter dated December 2, 2020, with trafficking in SNAP benefits. The charge letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated that the Appellant had the right to respond to the charges within 10 days of receipt. The letter also stated that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i). Per UPS confirmation of delivery, the charge letter was delivered to the Appellant at the store address of record on December 4, 2020.

In a response to the Retailer Operations Division of December 14, 2020, the Appellant, through counsel, replied to the letter of charges. The record reflects that the Retailer Operations Division received and considered the information provided prior to deciding.

After considering the Appellant's response and the evidence in this case, the Retailer Operations Division informed the Appellant, by letter dated May 20, 2021, that Mi Casita Market was permanently disqualified from participation as a retail store in the SNAP. The determination letter also stated that the Appellant was not eligible for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations as the Appellant did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked June 2, 2021, the Appellant, through counsel, requested an administrative review of the permanent disqualification determination. FNS granted the Appellant's request for administrative review by letter dated June 28, 2021. Via email correspondence of July 19, 2021, the Appellant, through counsel, submitted additional information in support of the request for administrative review.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling statute in this matter is covered 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. 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 ... [Emphasis added.]

7 CFR § 271.2 states that the definition of "coupon" includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

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:

Trafficking means the buying or selling of coupons, ATP cards or other benefit instruments for cash or consideration other than eligible food ...

7 CFR § 271.2 defines eligible food, in part, as:

Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption

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 based on 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(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.

7 CFR § 278.6(b)(2) states, in part:

(ii) 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 as specified in § 278.6(i), 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).

(iii) 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.

SUMMARY OF CHARGES

During an investigation conducted during the period September 20, 2020, through October 11, 2020, the USDA conducted six undercover compliance visits at Mi Casita Market. A report of the investigation was provided to the Appellant as an attachment to the charge letter dated December 2, 2020. The investigation report included Exhibits A through F which provide a narrative on the results of each compliance visit. The investigation report documents those personnel at the Appellant firm, in addition to accepting SNAP benefits in exchange for merchandise which included ineligible nonfood items on five occasions (Exhibits A, C, D, E, and F), exchanged SNAP benefits for cash during two undercover compliance visits (Exhibits E and F).

The buying or selling of SNAP benefits for cash or consideration other than eligible food is trafficking as defined under 7 CFR § 271.2. The acceptance of SNAP benefits in exchange for cash or consideration other than eligible food is in violation of Section 278.2(a) of the SNAP regulations. As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for the trafficking is permanent disqualification.

APPELLANT'S CONTENTIONS

The following represents a summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the reply to the charge letter, in the request for administrative review, and in subsequent correspondence, the Appellant, through counsel, made the following summarized contentions, in relevant part:

- During the time of the investigation, the owner's father passed away in late July and approximately two weeks later, his mother passed away. They lived out of the country and the owner had to travel out of the country to attend to their affairs and was away from the business from July 24, 2020, until September 29, 2020.
- During this time, the owner was unable to supervise and manage the store as he typically did.
- The owner also contracted COVID-19 during this time.
- The Appellant suffered a shortage in trained staff providing check-out services during this time.
- Other family members were also grieving and needed time away from the business to attend to family matters associated with their parents' passing.
- The incidents at issue were not the result of intentional gaming of the system, but rather the result of mishaps largely due to the extreme stress and grief associated with the passing of two family members in the same year.
- The Appellant takes full responsibility for its actions.
- Since receiving the charge letter, the owner has ensured his management is effectively trained on SNAP so they can supervise and train in his absence.
- This is the firm's first SNAP infraction.
- The Appellant requests leniency.
- The Appellant meets the qualifications for a civil money penalty under 7 CFR § 278.6(f)(1).
- The Appellant is a family run grocery store in the small town of Independence, Oregon.

- It is owned by the owner and his sister and employs the owner's brother as well as other family members.
- The Appellant is a staple for groceries amongst the small community it serves.
- Approximately 17% of the population that lives in the Appellant's town live below the poverty line.
- The Appellant is one of the few grocery stores in town and largely serves the farmworker and Spanish-speaking community.
- The Appellant carries a wide variety of food and grocery items at some of the most affordable prices in town. It has longstanding relationships with its customers, many of whom will only shop at the Appellant.
- A SNAP disqualification would cause extreme hardship to the families of the community that the Appellant serves during an already challenging time.
- A SNAP disqualification will impose a financial hardship on the Appellant.
- The Appellant is eligible for a civil money penalty in lieu of permanent disqualification because it has established and implemented an effective compliance policy and program to prevent violations of the SNAP under 7 CFR § 278.6(i).
- Regarding Criterion 1, the Appellant's policy and practice is for new employees to complete SNAP training upon hire. Employees, owners, and managers complete a refresher SNAP training once each year.
- Regarding Criterion 2, the Appellant had an established SNAP compliance policy and program since 2009. The Appellant does not have a formal written policy and employee handbook, but it is storing policy and practice for the owner to personally train each employee on SNAP upon hire. Moreover, the Appellant is committed to operating its SNAP in compliance in the future. Recently, the Appellant has worked to improve its SNAP training program. It has worked to prepare the submitted training forms, one for owners and managers and one for employees, so that it can track its compliance and maintain better records.
- Regarding Criterion 3, all store employees undergo training. This training entails requiring employees, owners and managers to review the *SNAP Training Guide for Retailers* and to watch the SNAP training videos. After employees complete this training, the owner has a discussion with employees to ensure they understood. New employees also typically shadow an owner or manager for a period until they have demonstrated understanding of the SNAP requirements.
- Regarding Criterion 4, the alleged trafficking violations involved the Appellant's youngest employee and the owner's family member who was grieving after losing his grandparents. This employee has since been relieved of the cashier position pending undergoing SNAP training. Additionally, store management and ownership personnel were not aware of the occurrence until receiving the charge letter and did not personally benefit in any way by the action.

In support of these contentions, the Appellant, through counsel, submitted the following documents for review:

- SNAP Training Summary which included eight employee names and their hire dates and an "X" noting that the employees were verbally trained by 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- Mi Casita Market Inc Training Form for Employees (no dates, no employee names, and no signatures included).

- Mi Casita Market Inc Training Form for Owners and Managers (no dates, no owners/managers names, and no signatures included).
- SNAP Training Forms/Certifications for ten employees dated in May 2021.
- SNAP Training Forms/Certifications for owners and managers, signed by two owners/managers, dated May 20, 2021.
- Mi Casita Market Policy on SNAP.
- New Hire Training Packet distributed to all new employees to include a cover letter, the *SNAP Training Guide for Retailers*, USDA information handout “What are Staple Foods?”, SNAP Training Form for Employees, SNAP Training Form for Managers, a copy of the Food and Nutrition Act of 2008, and 7 CFR Part 278.
- SNAP Refresher Training Form for Employees (no dates, no employee names, and no signatures included).
- SNAP Refresher Training Form for Owners and Managers (no dates, no employee names, and no signatures included).
- Two quick reference posters (“What Qualifies for SNAP?” And “Don’t Do It”, USDA/FNS). The Appellant contends that these posters are posted next to the cash registers.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) death certificates; and
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) COVID-19 medical certificate.

ANALYSIS AND FINDINGS

SNAP Violations

This review is to either validate or to invalidate the determination made by the Retailer Operations Divisions; it is limited to the facts at the basis of the Retailer Operations Division’s determination at the time it was made.

The Appellant contends that during the time of the investigation, the owner was out of the country due to the passing of his mother and father. The owner also contracted COVID-19. As such, the owner was unable to supervise and manage the store as he typically did. The Appellant also suffered a shortage in trained staff providing check-out services during this period. The incidents at issue were not the result of intentional gaming of the system, but rather the result of mishaps largely due to the extreme stress and grief associated with the passing of two family members in the same year. The Appellant takes full responsibility for its actions.

Prior to becoming authorized to participate in the SNAP, the Appellant completed and submitted a SNAP Application for Retail Stores. When store ownership signed the certification page of the SNAP retailer authorization application to become a SNAP retailer, it confirmed it understood and agreed to abide by program rules and regulatory provisions. It also agreed to accept responsibility on behalf of the firm for SNAP violations including those committed by any of the firm’s employees, paid or unpaid, new, full-time or part-time. The certification is clear that store ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP. In addition, the Appellant was provided with program training and reference materials which reinforced the statements included in the SNAP Application.

Regardless of who the store owner utilizes to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions. The regulations establish that an authorized food store may be disqualified from participating in the program when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf.

The transactions cited in the letter of charges were conducted by a USDA investigator and are thoroughly documented. Investigators sign, under penalty of perjury, that investigative reports are true and correct. All transactions are fully documented, and a complete review of this documentation has yielded no known error or discrepancy in the reported findings. The investigation report is specific and thorough regarding the dates of the violations, the specific facts related thereto, and is supported by documentation that confirms specific details of the transactions. The investigation report documents by a preponderance of the evidence that the store employee committed trafficking violations by buying or selling SNAP benefits for cash or consideration other than eligible food.

The documentation on record includes EBT receipts and photos showing that 12 ineligible nonfood items and 31 eligible food items were purchased by the investigator with SNAP benefits during the investigation. The investigation photos show the cash/bills (and their serial numbers) that were given to the investigator by the employee in exchange for SNAP benefits. Also on record is documentation that confirms that the ineligible nonfood items and the eligible food items previously noted were donated to and signed for by a charitable organization following the transaction. Such documentation includes the signature and title of the official of the charitable organization accepting the donated item, the name and address of the organization, the date the donation was made, and the official's initials next to the items donated. Moreover, the total purchase costs of each of the transactions involved in the investigation is documented on SNAP terminal receipts obtained during each transaction and matches the reported purchase totals indicated in the investigation report.

The charges of violations are based on the findings of a formal USDA investigation conducted of the compliance of Mi Casita Market with Federal SNAP law and regulations during the period September 20, 2020, through October 11, 2020. Upon review, the evidence supports that SNAP violations occurred at the Appellant firm. The store employee identified in Exhibits E and F was found to be trafficking as defined under 7 CFR § 271.2 by buying or selling of SNAP benefits for cash or consideration other than eligible food. The investigation report documents that on October 10, 2020 (Exhibit E), a male employee accepted \$40.00 in SNAP EBT benefits in exchange for \$40.00 in cash; and on October 11, 2020 (Exhibit F), the same male employee accepted \$40.00 in SNAP EBT benefits in exchange for \$40.00 in cash.

Exhibit E of the investigation report states, in part:

“5 U.S.C. § 552 (b)(7)(E).”

Exhibit F of the investigation report states, in part:

“5 U.S.C. § 552 (b)(7)(E).”

The Appellant is correct in that the firm has not been cited for prior SNAP violations. However, a record of participation in the SNAP with no previously documented instance of violations does not

constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

The Appellant requests leniency. While FNS is sympathetic to the store owner's recent personal and medical hardships, trafficking is defined in 7 CFR § 271.2 of the SNAP regulations which states that 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... The Food and Nutrition Act of 2008, at § 2021, does not allow for discretion in determining sanctions for trafficking and is specific in its requirement that "Disqualification ... shall be permanent upon ... the first occasion of a disqualification based on ... trafficking ... by a retail food store". The law and regulations do not provide for a lesser period of disqualification or sanction for this violation.

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true. The Appellant did not provide any evidence that the violations cited in the charge letter did not occur. The preponderance of the evidence in the record supports that trafficking, as defined in the regulations, did occur at the Appellant and that the permanent disqualification was properly applied.

Corrective Action

The Appellant contends that since receiving the charge letter, the owner has ensured his management is effectively trained on SNAP so they can supervise and train in his absence.

As noted previously, the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements. There is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment based on after-the-fact corrective action implemented after investigative findings of program violations. Therefore, the Appellant's contention that it has taken or will take corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

Customer Hardship

The Appellant contends that it meets the qualifications for a civil money penalty under 7 CFR § 278.6(f)(1). The Appellant is one of the few grocery stores in town and largely serves the farmworker and Spanish-speaking community. The Appellant carries a wide variety of food and grocery items at some of the most affordable prices in town. It has longstanding relationships with its customers, many of whom will only shop at the Appellant. A SNAP disqualification would cause extreme hardship to the families of the community that the Appellant serves during an already challenging time.

However, 7 CFR § 278.6(f) of the SNAP regulations provides for civil money penalty assessments in cases where disqualification would cause “hardship” to SNAP households because of the unavailability of a comparable participating food store in the area to meet their needs. However, this regulation also sets forth the following specific exception to such assessments there under: “A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification”. Therefore, since this case involves a permanent disqualification action, the civil money penalty provision is not applicable to the present case.

Financial Hardship

Regarding the Appellant’s contentions that a SNAP disqualification will impose a financial hardship on the firm, there is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment based on possible economic hardship to the firm resulting from imposition of such penalty. To allow store ownership from being excused from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, the Appellant’s contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

CIVIL MONEY PENALTY

In the December 2, 2020, charge letter the Appellant was informed by the Retailer Operations Division that, under certain conditions, FNS may impose a civil money penalty (CMP) of up to \$59,000 in lieu of permanent disqualification of a firm for trafficking. Per Section 278.6(i) of the SNAP regulations, four criteria must be met to be considered for a trafficking civil money penalty. If requesting a trafficking CMP, an Appellant must meet each of the four criteria listed and provide the documentation as specified within ten days of the Appellant’s receipt of their charge letter. As specified in 7 CFR § 278.6(i), in determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following four criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in 7 CFR § 278.6(i)(1).

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violations(s) occurred prior to the occurrence of violations cited in the charge letter.

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in 7 CFR § 278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations.

If the Appellant's request for a trafficking CMP and the required documentation are not submitted on time, it will lose its right for any further consideration for a trafficking CMP. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) that "if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified, the firm shall not be eligible for such a penalty". The regulations do not provide the agency discretion to extend the time within which documentation and evidence in support of a trafficking civil money penalty may be submitted.

In the reply to the charge letter of December 14, 2020, the Appellant, through counsel, contended that the firm is eligible for a civil money penalty in lieu of permanent disqualification because it has established and implemented an effective compliance policy and program to prevent violations of the SNAP under 7 CFR § 278.6(i):

- Regarding Criterion 1, the Appellant's policy and practice is for new employees to complete SNAP training upon hire. Employees, owners, and managers complete a refresher SNAP training once each year.
- Regarding Criterion 2, the Appellant had an established SNAP compliance policy and program since 2009. The Appellant does not have a formal written policy and employee handbook, but it is storing policy and practice for the owner to personally train each employee on SNAP upon hire. Moreover, the Appellant is committed to operating its SNAP in compliance in the future. Recently, the Appellant has worked to improve its SNAP training program. It has worked to prepare the submitted training forms, one for owners and managers and one for employees, so that it can track its compliance and maintain better records.
- Regarding Criterion 3, all store employees undergo training. This training entails requiring employees, owners and managers to review the *SNAP Training Guide for Retailers* and to watch the SNAP training videos. After employees complete this training, the owner has a discussion with employees to ensure they understood. New employees also typically shadow an owner or manager for a period until they have demonstrated understanding of the SNAP requirements.
- Regarding Criterion 4, the alleged trafficking violations involved the Appellant's youngest employee and the owner's family member who was grieving after losing his grandparents. This employee has since been relieved of the cashier position pending undergoing SNAP training. Additionally, store management and ownership personnel were not aware of the occurrence until receiving the charge letter and did not personally benefit in any way by the action.

With the reply to the charge letter, the Appellant, through counsel, submitted for review the following documents:

- SNAP Training Summary which included eight employee names and their hire dates and an "X" noting that the employees were verbally trained by 5 **U.S.C. § 552 (b)(6) & (b)(7)(C)**.
- Mi Casita Market Inc Training Form for Employees (no dates, no employee names, and no signatures included); and
- Mi Casita Market Inc Training Form for Owners and Managers (no dates, no owners/managers names, and no signatures included).

The record indicates that with the July 19, 2021, response in support of the request for administrative review, the Appellant, through counsel, submitted for review numerous documents in support of its request for a CMP in lieu of a permanent SNAP disqualification. However, this information was untimely (i.e., not within the required ten days of the Appellant's receipt of their charge letter), as required by the SNAP regulations, to meet the criteria for a trafficking CMP in lieu of a permanent disqualification. Therefore, the Retailer Operations Division properly did not consider this information when analyzing the firm's eligibility for a CMP in lieu of a SNAP disqualification.

Upon review of the timely information submitted by the Appellant in response to the letter of charges, the Retailer Operations Division determined that the Appellant was not eligible for a trafficking civil money penalty in lieu of a disqualification under 7 CFR § 278.6(i) because the 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. 5 U.S.C. § 552 (b)(7)(E).

The standards of eligibility for a trafficking CMP are high. They require substantial proof that a compliance policy and program was established and implemented prior to the occurrence of violations. These standards exist to thwart attempts to falsely present compliance policies and programs that were not actually implemented prior to violations. As the Appellant did not provide the required supporting documentation, the Retailer Operations Division's decision not to impose a civil money penalty in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

As previously stated, 7 CFR § 278.6(e)(1)(i) reads, in part, "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." Trafficking is defined, in part, in 7 CFR § 271.2, as "the buying or selling of SNAP benefits for cash or consideration other than eligible food." The law and regulations do not provide for a lesser period of disqualification for this violation.

Based on a full review of the evidence in this case, the Retailer Operations Division properly imposed a permanent disqualification of Mi Casita Market, the Appellant, as an authorized retailer in the Supplemental Nutrition Assistance Program. As such, the decision to impose a permanent disqualification against Mi Casita Market, the Appellant, is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that 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 you reside or are 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 receipt of this Decision.

Under the Freedom of Information Act, FNS is 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.

LORIE L. CONNEEN
ADMINISTRATIVE REVIEW OFFICER

August 4, 2021