

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

A & B Quickstop #3,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0214294

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) finds there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification of A & B Quickstop #3 (hereinafter “Appellant”) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The purpose of this review is to determine whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against A & B Quickstop #3.

AUTHORITY

7 U.S.C. § 2023 and implementing regulations, at 7 CFR § 279.1, provide that “A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may . . . file a written request for review of the administrative action with FNS.”

CASE CHRONOLOGY

The record shows that FNS initially authorized A & B Quickstop #3 for SNAP participation as a convenience store on November 2, 2017. In a letter dated December 7, 2018, the Retailer Operations Division charged Appellant with trafficking, as defined in Section 271.2 of SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of June 2018 and October 2018 and information obtained during a visit to the store by an FNS contractor on November 20, 2018. The attachments enclosed with the charge letter specify 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). The letter also stated 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).

Appellant responded to the trafficking charges by phone on December 10, 2018, and in writing on December 11, 2018. During the phone conversation, the owner said that after reviewing the transactions listed in the charge letter, it was obvious one of the employees was probably giving cash to friends or family members. During the conversation, the owner was informed of the process for requesting a CMP. In writing, the owner said he owns five convenience stores, is well aware of SNAP regulations, and was unaware of any situation in which his relations with SNAP benefits would be put in jeopardy. The letter further said that employees are held to high standards, and, if anything, the owner is guilty of trusting his employees, whom he consistently reminds to follow the rules. The owner has taken steps to ensure that every SNAP transaction will have the corresponding receipt. Also, the firm will conduct a mandatory quarterly meeting for every employee to ensure each is up to date with any new rules or regulations involving SNAP and every employee will be required to sign a detailed letter to ensure they understand their responsibilities. The letter said the firm has parted ways with the employees responsible for the questionable transactions. In addition, Appellant sent the Retailer Operations Division a store shift report giving a breakdown of sales by tender type dated October 19, 2018 and two SNAP transaction receipts, 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

After considering Appellant's reply and further analyzing the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated December 13, 2018. 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 Appellant was not eligible for a trafficking CMP in accordance with paragraph § 278.6(i) because Appellant failed to submit sufficient evidence to demonstrate the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked December 14, 2018, Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted. Additionally, Appellant was subsequently granted an extension to March 21, 2019, to provide any contentions and evidence in support of its case. Appellant submitted its response prior to this deadline.

STANDARD OF REVIEW

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

CONTROLLING LAW

The controlling statute in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and the law is 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 for trafficking of SNAP benefits.

7 U.S.C. § 2021(b)(3)(B) states, in part:

[A] disqualification under subsection (a) shall be...permanent upon...the first occasion or any subsequent occasion of a disqualification based on the purchase of [SNAP benefits] or trafficking in [SNAP benefits] or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards....

7 CFR § 271.2 states, in part:

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

Trafficking means:

The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone....

7 CFR § 278.2(a) states, in part:

[SNAP benefits] may be accepted by an authorized retail food store only from eligible households...only in exchange for eligible food. [SNAP benefits] may not be accepted in exchange for cash...[and] may not be accepted in payment of interest on loans or for any other nonfood use.

7 CFR § 278.6(a) states, in part:

FNS may disqualify any authorized retail food store...if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, **inconsistent redemption data, [or] evidence obtained through a transaction report under an electronic benefit transfer system....** Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for [a] period of 12 months to 10 years for a firm's second sanction; and **disqualification shall be permanent for a disqualification based on paragraph (e)(1) of this section.** [Emphasis added.]

7 CFR § 278.6(b)(2)(ii) states, in part:

Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence... that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).

7 CFR § 278.6(b)(2)(iii) states:

If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty.

7 CFR § 278.6(e)(1)(i) states, in part:

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

7 CFR § 278.6(i) states, in part:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking...if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.

SUMMARY OF CHARGES

A & B Quickstop #3 was charged with trafficking, and subsequently permanently disqualified from participating in SNAP, 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 June 2018 through October 2018. Government analyses has found that transactions involving trafficking consistently display particular characteristics or patterns. In this case, the data for Appellant reflected the following transaction patterns, which commonly indicate trafficking:

- **Charge Letter Attachment 1:** Multiple transactions were made from the accounts of individual SNAP households within a set time period; and
- **Charge Letter Attachment 2:** Excessively large purchase transactions were made from recipient accounts.

APPELLANT'S CONTENTIONS

Appellant submitted the following summarized contention for administrative review, in relevant part:

- Appellant is willing to comply with everything requested of the business to ensure a continued relationship with SNAP.

In support of this contention, the Appellant submitted the same information previously sent to the Retailer Operations Division, including the December 11, 2018, letter of explanation, and the shift report and two SNAP transaction receipts, all dated October 19, 2018.

The preceding may represent only a brief summary of the Appellant's contentions. However, in reaching a decision, full attention was given to all contentions and evidence presented, including any not specifically summarized or explicitly referenced herein.

ANALYSIS AND FINDINGS

This review examines the relevant information regarding the trafficking determination. Once a trafficking determination is made based upon EBT data and information obtained during a store visit, 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. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

Store Visit

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm's EBT transactions, but also information obtained from a store visit conducted by an FNS contractor on November 20, 2018, to observe the nature and scope of the firm's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- A & B Quickstop 3 is a convenience store, approximately 1,750 square feet in size, with no storage outside of public view. The store did have storage freezers for deli use and storage coolers and freezers used to store foods for hot and/or cold food preparation;
- At the time of the store visit, the firm had no shopping carts or shopping baskets for customers to use;
- The store visit photographs show one cash register for food purchases and agency records reflect the use of one EBT point-of-sale device;
- It appears that the firm uses optical scanners to process transactions;
- The checkout area consists of a very small and cluttered counter space where items can be placed for purchase;
- The store's staple food stock falls short of meeting SNAP program eligibility requirements; the food selection is typical of a convenience store. The store does not sell specialty items such as bundles of meat or seafood or large boxes of fruit and vegetables;
- The store has a large kitchen/deli area, where hot and cold foods, including pizzas, are available for purchase. The store also has booth tables for in-store dining;
- There is no indication from the store visit report that the firm has a special pricing structure, except that most prices appear to end in 9, such as \$0.99, \$1.99, etc.;
- The firm does not appear to round prices up or down at checkout;
- SNAP-eligible, non-staple accessory food items available at the store include carbonated and uncarbonated drinks, snacks, candy, and condiments. The store also sells ineligible, nonfood items, including gasoline, tobacco products, automobile

products, health and beauty aids, paper goods, and miscellaneous household merchandise;

- The store does not take telephone or online orders, nor does it offer delivery; and
- The most expensive food items for sale at the store include a 7-ounce package of Mingua jerky for \$13.99; an 11.5 ounce package of JFG coffee for \$5.99; a 12-ounce container of Clover honey for \$6.19; and a four-pack of Red Bull drink for \$7.99.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be typical of a convenience store, where households normally purchase a limited number of items to complement their overall dietary needs. Given the size of the store and availability of food items, it appears unlikely that households would frequently visit A & B Quickstop #3 to purchase large quantities of groceries, especially considering the absence of shopping carts and baskets, and the constricted checkout area with little counter space to place more than a few items at a time. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns would differ significantly from those of nearby, similarly-sized stores.

SNAP Transaction Analysis

Charge Letter Attachment 1: Multiple transactions were made from the accounts of individual SNAP households within a set time period. This attachment lists 13 sets of transactions (38 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Violating stores often conduct multiple transactions from the same household account in short time periods to avoid the detection of single high-dollar transactions that cannot be supported by the retailer's inventory, store type, or structure.

For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These transactions are not only quite large for a convenience store, but also suspiciously end in even-dollar amounts. Often trafficking violations include multiple transactions that end in even-dollar amounts, or in same-cents values.

Further, the record shows that customers conducting rapid, repetitive, and large transactions at Appellant frequently spent SNAP benefits at better-stocked and more competitively-priced grocery stores, often within a day of shopping at Appellant. Customers that have access to larger stores are unlikely to spend large amounts of SNAP benefits at a convenience store.

For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Another household 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

While there are legitimate reasons why a SNAP household might return to a convenience store in a short period of time, the examples in Attachment 1 indicate a series of purchases that total to large amounts. SNAP benefits are intended to supplement the food budget for households whose net income is near or below the Federal Poverty Level. It is unlikely that customers who must rely on SNAP benefits to make ends meet prefer to pay higher prices and spend considerable amounts of their benefits at a convenience store, when they have access to larger stores carrying a greater variety of foods at a lower cost.

Moreover, households listed in this attachment conducted this strange shopping pattern of making substantial purchases at Appellant multiple times during the review period. Given the common practice of violating retailers breaking up large, suspicious transactions into multiple, smaller transactions to avoid detection, a firm's explanation and evidence for why these transactions are occurring in a short time period in a convenience store should be both rational and compelling. Unfortunately, Appellant has provided no explanation or evidence as to why these transactions may have taken place.

Because Appellant has offered no evidence to prove that the questionable rapid transactions were legitimate purchases of eligible food, this review concludes that trafficking was a likely cause of the transaction patterns listed in Charge Letter Attachment 1.

Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts. This attachment lists 109 large purchase SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transactions are not consistent with other convenience stores in the state of Kentucky. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a convenience store in Kentucky was \$7.03. In Knox County, the average was slightly higher, at \$8.14 per transaction. For Appellant, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, which is at least **5 U.S.C. § 552 (b)(7)(E)** higher than the average amount for this store type. The frequency of high-dollar purchases in a six-month period calls into question the legitimacy of these transactions.

SNAP households have no limit on the amount of eligible food they may purchase (subject to the remaining balance on the card). However, the SNAP transactions noted in the charge letter are questionable not because they exceed any regulatory limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a convenience store's stock and facilities and are thus indicative of trafficking.

The store visit pictures show that the store layout is not conducive to these excessively large transactions. There were no shopping carts or handheld shopping baskets for transporting food around the store and the checkout counter space is limited and not conducive to stacking multiple items for purchase. In addition, the store's stock is mainly inexpensive canned and packaged goods, snack foods, single serving food items and accessory food items. The store visit report and pictures do not show that the firm offered any specialty or international items, fresh meat/seafood bundles, or boxes of fresh produce that would justify high dollar transactions atypical of a convenience store. The Retailer Operations Division properly considered these factors in making its determination that the transaction patterns cited in the charge letter are, more likely than not, due to trafficking.

As noted previously, households that shopped at Appellant also had access to, and shopped at larger stores. The Retailer Operations Division conducted an analysis of the 38 households conducting excessively large purchase transactions in Attachment 2 and found that 32 of the 38 households (84 percent) conducted a transaction at a large grocery store, supermarket, or super store **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of conducting an excessively large transaction with Appellant. Further, 36 of the 38 households (95 percent) completed a transaction at a large

grocery store, supermarket, or super store 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of conducting an excessively large transaction with Appellant.

Based on the store layout, infrastructure, and available inventory, it is not credible that the Appellant would so frequently conduct large transactions closely resembling those typically found at a supermarket or superstore. Further, it is not plausible that the firm's customers would regularly carry very large amounts of merchandise around the store without the benefit of shopping carts or shopping baskets, or that they would choose to purchase a large number of items frequently, especially since these households had access to larger, better stocked stores. There are no legitimate bases for SNAP customers' unusual attraction to the firm such as a superior selection of staple foods, price advantages, package specials, bulk or promotional items, an extensive variety of otherwise unavailable ethnic food items, or special services rendered. Appellant failed to provide convincing evidence to establish the legitimacy of these excessively large transactions, such as itemized cash register receipts. Based on all of the factors discussed in this section, the large volume of transactions for high-dollar amounts is unlikely to indicate a pattern of legitimate food purchases.

Appellant's Evidence

In support of its case, Appellant submitted as evidence a shift report and two SNAP transaction receipts, all dated October 19, 2018. The transaction receipts are for two individual transactions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), that are part of a set of transactions listed in Charge Letter Attachment 1. These transaction receipts do not give an itemized accounting of items purchased, but rather just total sales amounts. The shift report simply breaks down sales for the day by type of tender, and again, provides no information regarding the items sold during individual transactions.

Unfortunately this scant evidence, reflecting only one day of information with very little detail, does little to explain the numerous (over 100) questionable transactions listed on Charge Letter Attachments 1 and 2, covering a 5-month time period. Accordingly, this review finds that Appellant's submission does not provide a valid basis for reversing the permanent disqualification decision or for mitigating the penalty imposed.

Appellant's Responsibilities

On administrative review, Appellant submitted the letter it had previously sent to the Retailer Operation Division in response to the charge letter. In this letter, Appellant said the owner was unaware of any situation that would put the firm's relationship with SNAP benefits in jeopardy, employees are held to high standards, and, if anything, the owner is guilty of trusting his employees, whom he consistently reminds to follow the rules.

Although Appellant may not have been aware when the trafficking violations took place, when ownership signed the FNS application to become an authorized SNAP retailer, this included a certification and confirmation that the owner(s) would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The violations listed on this

certification document include maintaining credit accounts and trafficking. Regardless of whom the ownership of a store may choose to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions.

Remedial Actions Taken

Appellant's response to the charge letter also stated that the firm will conduct a mandatory quarterly meeting for every employee to ensure each is up to date with SNAP rules or regulations and that employees will be required to sign a detailed letter to ensure they understand their responsibilities. Appellant said the firm had parted ways with the employees responsible for the questionable transactions.

With regard to these remedial steps taken by the Appellant, it is important to clarify that the purpose of this review is to either validate or invalidate the earlier determination of the Retailer Operations Division. This review is limited to the circumstances that existed at the time the Appellant was charged with committing program violations and at the time that the Retailer Operations Division made its determination. It is not the authority of this review to consider what subsequent remedial actions may have been taken or will take place so that a store may enhance or begin to comply with program requirements. In addition, there are no provisions in the SNAP regulations for a waiver or reduction of an administrative penalty on the basis of alleged or planned corrective actions implemented subsequent to findings of program violations.

Therefore, the Appellant's contention that corrective action has taken place or that further remedial actions are planned does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Summary

It is the finding of this review that the attachments furnished with the charge letter adequately identify irregular patterns of SNAP transactions, thereby indicating that trafficking was likely taking place. Based on these and other factors, such as the store's physical characteristics and inventory, the case for trafficking is convincing.

In an appeal of adverse action, the onus is on the Appellant to prove, by a preponderance of the evidence, that the administrative action should be reversed. This means submitting sufficient and compelling evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter were not caused by trafficking. Unfortunately, the Appellant offered little reliable evidence to support its contentions regarding specific transactions listed in the charge letter. This is wholly insufficient to warrant reversal of the agency's permanent disqualification determination. In the absence of reasonable evidence from the Appellant, it is the conclusion of this review that the transactions listed in the charge letter attachments were, more likely than not, the result of trafficking violations committed by the Appellant.

CIVIL MONEY PENALTY

As noted earlier, the Retailer Operations Division determined that the Appellant firm was not eligible for a trafficking 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 training program to prevent SNAP violations. Although the store owner claims to be well aware of SNAP regulations and to have taken remedial actions, he did not submit any documentation supporting these claims.

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 documentation within designated timeframes. The case record shows that Appellant did not request a CMP when it replied to the charge letter and there is no evidence that the Appellant submitted any documentation that would indicate that the firm had a compliance policy or training program of any kind.

Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii) and § 278.6(i), a CMP in lieu of permanent disqualification for trafficking is not an option in this case.

CONCLUSION

The Retailer Operations Division's analysis of the Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify the retailer. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Store visit photographs and documentation further supported the trafficking determination.

In the absence of reasonable explanations and evidence for such transactions patterns, a conclusion can be drawn through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter evidence trafficking as the most likely explanation. Accordingly, it is more likely true than not true that trafficking of SNAP benefits occurred, as charged by the Retailer Operations Division. Based on the discussion above, the determination by the Retailer Operations Division to impose a permanent disqualification against A & B Quickstop #3, under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), 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 SNAP regulations. 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 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.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

MICHELLE WATERS
Administrative Review Officer

August 8, 2019