

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

**African Jamaican Caribbean Foods Fish  
and Meat Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0223055**

**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 African Jamaican Caribbean Foods Fish and Meat Market (“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 Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against African Jamaican Caribbean Foods Fish and Meat Market.

**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**

African Jamaican Caribbean Foods Fish and Meat Market was initially authorized to participate in SNAP as a convenience store on April 16, 2014. Between January 16, 2020, and March 12, 2020, the USDA conducted an undercover investigation of African Jamaican Caribbean Foods Fish and Meat Market to ascertain the firm’s compliance with Federal SNAP law. Agency records show that during the investigation, the Appellant firm violated SNAP regulations by

engaging in trafficking. Appellant exchanged SNAP benefits for cash on one occasion. The firm also reportedly allowed ineligible non-food items to be purchased with SNAP benefits on two occasions.

In a letter dated May 29, 2020, the Retailer Operations Division informed Appellant that the firm was being charged with trafficking, as defined in Section 271.2 of SNAP regulations. This charge letter also informed Appellant that the violations warranted a permanent disqualification from SNAP, as provided in 7 CFR § 278.6(e)(1). The letter further stated that under certain conditions, and in accordance with § 278.6(i), FNS may impose a civil money penalty (CMP) in lieu of a permanent disqualification. To be eligible, the firm would have to request the CMP and submit supporting documentation within 10 days of receipt of the charge letter.

In a letter received by FNS on June 12, 2020, Appellant replied to the charges through counsel. In the letter, Appellant said that an employee had admitted to selling ineligible items to an undercover agent, but the employee denied giving the agent cash back during an Electronic Benefit Transfer (EBT) transaction. Appellant claimed there was no option to give cash back on EBT purchases on the store's EBT machine. Appellant said there was never any intent to ignore SNAP rules or purposely violate them, nor was there intent to defraud the USDA, and that Appellant did not benefit from any misuse of EBT.

The remainder of the Appellant's response focused on its request for a trafficking civil money penalty in lieu of permanent disqualification. In summary, Appellant claimed to have an effective compliance policy since going into business and becoming SNAP authorized in 2014. Appellant claimed the policy was clear, current, and understood by each employee and that Appellant has tried her best to protect her business interest by complying with all laws. Appellant said the training program was a combination of practical training and a review of the SNAP manual.

In support of its contentions, Appellant submitted exhibits to the response letter, including the following:

- An undated affidavit from the store owner saying that an employee had mistakenly sold a non-food item that he thought was meant for consumption, but that the employee had also denied that trafficking occurred. The employee had been retrained.
- An affidavit, dated June 11, 2020, from the store employee who allegedly had committed the SNAP violations that said he had worked at the store since January 2020 and had been trained on the SNAP regulations guide and had watched the training videos. The employee said he made a big mistake by selling CBD lip balm twice, which he thought was for consumption. The employee claimed the cash back situation never happened, and that the store did not have that option even for debit cards.
- An affidavit, dated June 5, 2020, from the store owner, saying that after an employee is hired, the employee undergoes a week of training regarding SNAP rules.
- An affidavit, dated June 12, 2020, from the store owner, that said the store owner had trained his employee for five days, from January 5, 2020, to January 10, 2020, on SNAP policy, regulations, and training videos, including frequently asked questions. The owner attested that before reinstating the employee, the employee was retrained

from June 3, 2020, through June 10, 2020, and the employee passed a quiz prior to reinstatement.

- An affidavit, dated June 6, 2020, from the store employee that said he went through extensive training for three weeks, including SNAP training, before starting his job on January 10, 2020.
- An employment agreement, dated January 5, 2020, for the store employee.
- A “Convenience Store Training Log” listing store employees and dates of training, with signatures from each employee.
- Three affidavits from store customers listing food items available at the store.

After considering the Appellant’s response and further evaluating the evidence in the case, the Retailer Operations Division issued a determination letter, dated July 30, 2020. This letter informed the Appellant that the Retailer Operations Division found that the violations did occur as outlined in the charge letter and that a permanent disqualification would be imposed, in accordance with 7 CFR § 278.6(c) and (e)(1). The determination letter also stated that a trafficking CMP was considered, but that the firm was ineligible for a CMP 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.

In a letter postmarked August 12, 2020, Appellant, through counsel, appealed the Retailer Operations Division’s determination by requesting an administrative review. The request was granted.

### **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 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 [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: (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 (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....

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.... 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 INVESTIGATION

During an undercover investigation conducted between January 16, 2020, and March 12, 2020, the USDA completed three compliance visits at African Jamaican Caribbean Foods Fish and Meat Market. A report of the investigation was provided to Appellant as an attachment to the charge letter, dated May 29, 2020. The investigation report included Exhibits A through C and provides full details on the results of each compliance visit. SNAP violations documented during two of the three visits included trafficking on one visit and the sale of ineligible items on two visits. The same clerk committed all of the violations. The report shows the following ineligible non-food items were purchased by an investigator using SNAP benefits:

- One unit of CBD balm (Muscle MX brand), Exhibit A
- One unit of CBD balm (Muscle MX brand), Exhibit C

Trafficking activities occurred during the last visit to the store, on March 12, 2020, as reported by the investigator in Exhibit C:

I entered the store and selected a bottle of marinade (*sic*) from the shelf. I placed the item on the counter and selected container of CBD balm from a display rack. I showed the clerk my EBT benefits card and the clerk entered the items into the cash register and then the EBT POS machine. I swiped the EBT benefits card and completed the transaction. I was provided the receipt and collected my purchased items. I then asked the clerk if I could get some cash back from my EBT benefits card. The clerk said "sure". I asked for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) back. A second transaction was conducted 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The clerk provided me a receipt for the transaction and the cash.

Exhibit C indicates that for the trafficking transaction, the store charged the investigator's EBT card a total 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

### APPELLANT'S CONTENTIONS

Appellant, through counsel, made the following summarized contentions as part of its request for administrative review, in relevant part:

- Appellant intends to prove that a compliance policy was clearly in place prior to the alleged allegations.
- Since the onset of the store, there were never any violations of USDA and SNAP law and Appellant has never been under investigation by the USDA for SNAP trafficking.
- Appellant's business has serviced its local population for over six years.
- The USDA determined that the reason the firm was permanently disqualified from SNAP was due to an ineffective implemented compliance program, which essentially diffuses the original allegations of trafficking. Appellant will focus directly on the store's compliance program requesting a CMP in lieu of permanent disqualification.
- Appellant provides verbal training, in-store training and a copy of the SNAP manual to all employees and store operators upon hiring and discusses/reviews the contents of the manual with them on an annual basis, when there are updates to the manual, and when the need for additional training is required.
- Appellant implemented an effective compliance policy as described above. A photocopied booklet is provided to each employee and issues concerning EBT processing are addressed annually, when updates are published, and upon the hiring of each new employee.
- The training log clearly shows that a compliance policy was in place prior to the alleged violations. The USDA has the burden of proof to justify that a compliance policy was not in place prior to the alleged trafficking charges. Appellant has met her obligations to clearly prove that a compliance policy was already in place prior to the allegations.
- Appellant has had its compliance policy in place since receiving the SNAP license in 2014.
- The training program is a combination of verbal and practical training, and a review of the SNAP manual as a group. Store employees have their own manuals which they use to review their store process annually or when there are updates to the manual.
- Appellant has never been in trouble with the USDA for a SNAP trafficking violation. Appellant successfully ran the business in accordance with SNAP law from 2014 until present, excluding the period of investigation in the charge letter.
- As there is significant proof of the store having a compliance policy in place prior to the initial trafficking allegations, the Appellant requests that the USDA allow the store to continue using EBT and be issued a CMP.
- By permanently disqualifying the Appellant, this would cause serious hardship to both the store and its customers that solely depend on this location to do shopping and the USDA would not gain additional funds from payment of a CMP nor future funds from ongoing EBT transactions.
- Appellant has vowed to never ever let an incident such as this happen in the future.

Appellant provided no additional evidence in support of its contentions on administrative review. The preceding may represent only a summary of Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically summarized or referenced herein.

## ANALYSIS AND FINDINGS

Trafficking is defined in SNAP regulations, at 7 CFR§ 271.2, as “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...” Trafficking is an extremely serious violation and both 7 U.S.C. §2021(b)(3)(B) and 7 CFR §278.6(e)(1)(i) provide that even one trafficking violation warrants a permanent disqualification. In this case, a preponderance of the evidence indicates that the violation described in Exhibit C of the investigation report meets the definition of trafficking and warrants a permanent disqualification.

The investigation report documents that the violation charged against Appellant is based on the findings of a formal USDA investigation. The transactions cited in the charge letter were conducted under the direction of a USDA investigator and are thoroughly documented. A complete review of this documentation has yielded no known error or discrepancy. The investigation report is specific and thorough regarding the date of the violation, the specific facts related thereto, and is supported by documentation that confirms specific details of the transaction in which trafficking occurred.

While Appellant made no contentions regarding the trafficking charge on administrative review, Appellant did argue to the Retailer Operations Division that the firm’s employee denied giving the undercover agent cash back, saying there was no option to give cash back on EBT purchases. Appellant submitted affidavits from the store owner and a store employee to this effect. However, the evidence contradicts Appellant’s denial of the trafficking allegation.

All the transactions under investigation at Appellant were conducted by the same male clerk. On March 12, 2020, the clerk conducted two SNAP benefit transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The first was for the sale of one SNAP eligible item and one ineligible item, while the second transaction was for trafficking of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** cash. This second transaction is corroborated by the EBT sales receipt obtained during the investigation, which reflects the transaction amount and date that corresponds exactly to that shown on the investigation report. The record also clearly identifies the serial number of the cash bill exchanged for SNAP benefit in the trafficking violation. Although Appellant claimed to the Retailer Operations Division that there was no option to give cash back on EBT purchases, this is usually not an option given that trafficking is illegal. Rather, trafficking typically occurs when a store clerk processes an EBT sales transaction, but instead of the customer receiving store merchandise for their SNAP benefit redemption, the customer receives cash. This appears to have been exactly what occurred in this case; Appellant has provided no evidence to the contrary.

### **Hardship to Appellant and Community**

Appellant contends that a permanent disqualification will cause serious hardship to both the store and its customers who solely depend on the store for shopping. In support of this contention,

Appellant submitted three customer affidavits to the Retailer Operations Division listing food items these customers purchase at the store; one customer said the foods listed could not be found anywhere else.

With regard to hardship to the Appellant, Federal statute at 7 U.S.C. § 2021(b)(3)(B) and SNAP regulations at 7 CFR § 278.6(e)(1), makes it clear that disqualification for trafficking shall be permanent. It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP; however, there is no provision in the statute or regulations for a waiver or reduction of an administrative penalty on the basis of possible economic hardship to either the ownership personally or to the firm resulting from the imposition of such a penalty. Likewise, there is no permitted waiver or reduction of an administrative penalty for trafficking due to hardship to the community served by the store.

### CIVIL MONEY PENALTY

In the charge letter, Retailer Operations informed Appellant of its right to request a trafficking CMP under 7 CFR §278.6(i). Appellant was informed that it would need to provide both the request and supporting evidence within 10 calendar days of receiving the charge letter and that no extension of time could be granted for making the request or for providing the required evidence.

The criteria for a trafficking civil money penalty in lieu of permanent disqualification is defined under 7 CFR §278.6(i) which reads, *inter alia*:

In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of a permanent disqualification for trafficking, the firm shall, at a minimum, establish by **substantial evidence** [emphasis added] its fulfillment of each of the following criteria:

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

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

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in §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; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm ....

Although Appellant, through counsel, submitted its request for a trafficking CMP timely, the Retailer Operations Division found the firm was ineligible because Appellant failed to submit sufficient evidence to demonstrate the firm had established and implement an effective compliance policy and program to prevent SNAP violations, as required under 7 CFR §278.6(i). This review agrees.



Appellant contends the owner has had an effective compliance and training program in effect since being SNAP authorized in 2014, with all employees being trained shortly after being hired. As evidence of this program, Appellant submitted affidavits to the Retailer Operations Division provided by both the owner and a store employee that attested to training, along with a “Convenience Store Training Log.” Appellant also claimed to have retrained the employee who committed the trafficking violation and provided an affidavit from both the owner and the employee that said the employee had been retrained; an employment agreement for this employee was also submitted.

This review does not find these submissions credible. Counsel for Appellant submits identical backdated training logs and employment agreements for almost every case in which he request a trafficking CMP before the USDA. At the same time, Counsel submits dated letters of representation in each case documenting the date of his appointment for each client. In this case, Counsel was appointed on June 10, 2020, yet the training logs and employment agreements, identical to those submitted in a number of other cases, are backdated to as far as March 4, 2014, and January 5, 2020, respectively. Appellant and counsel are reminded that backdating documents to perpetrate fraud is not only unethical, but also illegal.

In addition, Appellant did not submit a copy of the firm’s SNAP compliance policy and program, any dated training curricula, records of training sessions, or any other compelling evidence supporting the existence of the compliance policy and program to establish that the firm meets Criterion 3 above.

Based on the analysis above, the Retailer Operation’s Division’s decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

## **CONCLUSION**

Based on a review of all available information in this case, this review finds, by a preponderance of the evidence, that program violations of 7 CFR § 278.2(a) did occur at African Jamaican Caribbean Foods Fish and Meat Market during a USDA investigation. Accordingly, the determination by the Retailer Operations Division to impose a permanent disqualification against African Jamaican Caribbean Foods Fish and Meat Market, under the ownership **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, is sustained. The determination that Appellant is ineligible for a trafficking CMP is also sustained.

## **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this determination are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in SNAP regulations, at 7 CFR § 279.7. If a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which Appellant owner resides or is engaged in

business, or in any court of record of the State having competent jurisdiction. If a Complaint is filed, it must be filed within 30 days of receipt of this decision.

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

December 10, 2020