

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review  
Alexandria, VA 22302**

**Al-Nile Grocery And Halal Meat,** )  
 )  
 **Appellant,** )  
 )  
 **v.** )  
 )  
 **Retailer Operations Division,** )  
 )  
 **Respondent.** )  
 \_\_\_\_\_ )

**Case Number: C0189298**

**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 a finding that a **Permanent Disqualification** from participation as an authorized retailer in the Supplemental Nutrition Assistance Program<sup>1</sup> was properly imposed against Al-Nile Grocery And Halal Meat (hereinafter “Al-Nile Grocery And Halal Meat” and/or “Appellant”) and its owner of record Habtom Haile Meharena by the Retailer Operations Division of the FNS.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1) in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it imposed a Permanent Disqualification against Al-Nile Grocery And Halal Meat in a letter dated July 6, 2016.

**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**

In a letter dated May 23, 2016, the Retailer Operations Division informed Appellant that it was in violation of the terms and conditions of the SNAP regulations, 7 CFR §§ 270-282, based on Electronic Benefit Transaction (EBT) SNAP benefit transactions considered to “establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm.”

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<sup>1</sup> Section 4001(b) of the Food, Conservation, and Energy Act of 2008 (P.L. 110-234; 122 Stat. 1092) amended the Food and Nutrition Act of 2008 by striking “food stamp program” and inserting “supplemental nutrition assistance program” effective October 1, 2008

The Retailer Operations Division record and letter of determination documents Appellant's owner called to indicate that a timely response to the letter of charges would be provided, however as of July 6, 2016 (six (6) weeks later) no response had been received. Therefore, the Retailer Operations Division advised Appellant of a final determination of permanent disqualification from participation in the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1) for trafficking violations, in a letter dated July 6, 2016, documented to have been delivered to Appellant on July 7, 2016.

The determination letter also stated that the Retailer Operations Division considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section § 278.6(i) of the SNAP regulations. The Retailer Operations Division determined that the Appellant was not eligible for the trafficking CMP because the Appellant did not submit timely evidence to demonstrate the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated July 18, 2016, received in the offices of the Administrative Review Branch on July 20, 2016, Appellant, through counsel, submitted an appeal of the Retailer Operations Division's assessment, requesting an administrative review of the action. The appeal was granted.

### **STANDARD OF REVIEW**

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

### **CONTROLLING LAW AND REGULATIONS**

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (the "Act")<sup>2</sup>, 7 U.S.C. § 2021 and promulgated through regulation under Title 7 of the Code of Federal Regulations (CFR),<sup>3</sup> part 278. In particular 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, *inter alia*:

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

7 CFR § 278.6(e)(1)(i) states, *inter alia*:

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

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<sup>2</sup> Effective October 1, 2008, the Food Stamp Act of 1977 was superseded by the Food and Nutrition Act of 2008, as amended through P.L. 110-246.

<sup>3</sup> Title 7 of the Code of Federal Regulations may be accessed in its entirety via the Internet at [http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title07/7tab\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title07/7tab_02.tpl)

7 CFR § 271.2 states, *inter alia*:

*“ Trafficking means the buying or selling of ... [SNAP] benefits for cash or consideration other than eligible food...”*

7 CFR § 271.2 states, *inter alia*:

*“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.”*

7 CFR § 278.6(a) states, *inter alia*:

*“FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food & 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....**”* (Emphasis added.)

7 CFR § 278.6(c) states, *inter alia*:

*“Review of evidence. The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination...”*

7 CFR § 278.6(b)(2)(ii), states, *inter alia*:

*“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).**”* [Emphasis added]

7 CFR § 278.6(i), states, *inter alia*:

*“FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 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.”* [Emphasis added]

## SUMMARY OF THE CHARGES

The Retailer Operations Division materials and the charge letter dated May 23, 2016, reveal that charges were based on an analysis of EBT SNAP benefit transaction data during the four (4) month period of December 2015 through March 2016 and involved two (2) patterns of EBT transaction characteristics indicative of trafficking as follow:

Attachment #1 lists multiple SNAP EBT transactions made from individual benefit accounts in unusually short timeframes 7 USC 2018 (b)(7)(e)

## APPELLANT'S CONTENTIONS

In a Brief in Support of Appellant's Request for Review of Permanent Disqualification (Brief) submitted on August 16, 2016 supporting Appellant's July 18, 2016 request for review counsel provides that:

- Neither of the two (2) transaction patterns identified by FNS demonstrates any level of violation on the part of Appellant that cannot be explained considering Appellant's inventory and customer base.
  - Appellant's business focus is on providing hard to come by ethnic and international food products and groceries to an ethnically diverse population from a retail store of 1,560 square feet, attached to a restaurant. Al-Nile Grocery And Halal Meat is reported to carry a complete variety of staple foods, most significantly including Halal meats.
  - Appellant's SNAP customers are of two (2) categories each experiencing limited transportation availability and to come from an area with a high concentration of households living below poverty levels with households including either elderly adults or children. Both categories of SNAP recipients are said to make purchases within 48 hours of receipt of SNAP benefits according to USDA studies.
    - The two (2) categories identified include:
      - the average local westernized households; and,
      - ethnic immigrant families of Middle-Eastern, African and Asian descent who shop in accordance with their specific cultures while conforming to western grocery patterns resulting from food scarcity and different traditions.
- Multiple transactions in short timeframes are contended to result from the Texas SNAP benefit pattern of issuance over the first nine (9) days of the month, followed by the standard practices of participants making most purchases within the first seven (7) days after receiving those benefits supported by:
  - the business advantage of bulk pricing aided with use of shopping carts and hand baskets;
  - Appellant's location in a highly residential area where SNAP customers reside and shop without access to transportation thus making repeated daily trips to coincide with other normal day activity;
  - balance speculation resulting in an initial purchase to test the SNAP balance followed by a supplemental purchase for the remaining items if balance is available;
  - impulse purchases based on stocking at the register area; and,
  - separate household transactions using the same SNAP card by different adult members of the household.
- Excessively large transactions are contended to be the result of the types of food and pricing structure combined with the clientele base.
- Appellant, through Counsel, indicates that Al-Nile Grocery And Halal Meat wishes to

continue participating in the SNAP because it will suffer financial hardship as a result of permanent disqualification up to and potentially including closure.

The Brief included six (6) Exhibits as follow:

- 1) Profile of SNAP Household for the Texas Congressional District 7 dated March 2015;
- 2) Pages xxvii and xxviii from the Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program Final Report of February 2011 recounting findings of SNAP benefit redemption patterns study by USDA;
- 3) Pages xxviii, xxxi, and xxvii from the Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program Final Report of February 2011 again recounting findings of SNAP benefit redemption patterns study by USDA;
- 4) Texas Monthly Benefit Issuance Schedule dated 07/02/2014
- 5) Eleven (11) unsworn personal affidavits from customers proving their addresses and identifying products frequently purchased at Appellant noting an approximate dollar amount and stating the transactions occur within a certain number of days from receipt of their benefits; and,
- 6) Twelve (12) color photographs of products identified as available for sale at Appellant.

The preceding represents only a brief summary of Appellant's contentions in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

### **ANALYSIS AND FINDINGS**

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

With regards to Appellant's contentions in explanation of questionable transactions, the issue in review is whether there is sufficient evidence, through a preponderance of that evidence, that it is more likely true than not true that the questionable transactions were the result of trafficking.

#### Appellant Operations:

The record reveals that Appellant was initially authorized as a SNAP retailer effective December 1, 2015, less than six (6) months prior to the issuance of the May 23, 2016 letter of charges. 7 USC  
2018 (b)(7)(e)

The record reveals that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a store visit conducted by FNS contracted personnel on May 3, 2016. The record indicates the May 3, 2016 visit was authorized by "Habtom Meharena", self-identified as "owner". Materials reflecting observations made during the store visit describe the nature and scope of the Appellant's operation, as well as the stock and facilities.

Appellant is reported to be open seven (7) days per week from 9:00AM until 9:00PM. Appellant is documented to be located in a suburban area, within a commercial neighborhood, in a freestanding building. On review it is noted that the photograph of the storefront shows a strip mall type arrangement and it is not discernable whether the restaurant identified by Appellant is part of the same business or a separate business in the same strip mall (**Photo #31 below**). The store visit

materials estimate Appellant to operate in approximately 1,500 square feet and Appellant materials indicate an approximate 1,560 square feet.

The record identifies Al-Nile Grocery And Halal Meat classified as a convenience store during December 2015 with a change in classification to small grocery store in January 2016, in accordance with FNS definitions. Because Appellant has been classified as a small grocery store in a majority of the focus period (three (3) of the four (4) months) general comparisons have been made with small grocery stores.

Appellant is noted in the store visit materials to be operating with one (1) cash register that is not equipped with scanning technology; and, one (1) point-of-sale terminal. There is no out of public view storage area reported.

The checkout area is seen in the store visit photographs to include a small area located over a glass display case with an area of approximately 3 feet by 3 feet available on which to place items for checkout. **(Photo #28 below)** The display case and the peg board display area against the back wall and in the window area show non-food items for sale such as health and beauty aids and over the counter medications.

In addition to staple foods the store visit materials indicate that Al-Nile Grocery And Halal Meat displays general merchandise for sale including tobacco products, health and beauty aids, over the counter medications, clothes and household goods such as pots and pans. There are “empty shelves” identified in the store visit materials.

The inventory at the time of the May 3, 2016 store visit is shown to include a moderate inventory in the four (4) staple food groups including:

- Five (5) varieties of dairy products consisting of between six (6) and 20 units of butter/margarine; between six (6) and 20 units of novelty ice cream/ice milk; more than 20 units of milk/cream; and more than 20 units of sour cream/yogurts; together with one (1) unit of cheese. Although the store visit report does not identify the availability of animal based infant formula **Photo #30 (see below)** clearly shows a limited supply of infant formula available. On review Appellant is found to have stocked six (6) dairy product category staple food varieties.
- Eleven (11) varieties of fruits and vegetables with three (3) of those in quantities of less than six (6) units; two (2) in units of six (6) to 20; and six (6) varieties in units of more than 20 units.
- Six (6) varieties of breads and cereals were identified as available with two (2) of those varieties available in six (6) to 20 units. The only fresh or frozen foods included loaf bread and cakes/muffins/pastries.
- Five (5) varieties of meat, poultry and fish products were identified, all indicated to be available in the fresh or frozen varieties; and, all in quantities of more than 20 units each.

The store visit documents that there are more ten (10) hand-held shopping baskets as well as more than ten (10) shopping carts available to support the delivery of purchases to the counter area. It is noted that no shopping carts were viewed in any of the 30 plus photographs taken at Appellant during the contracted store visit.

**Photos from the May 3, 2016 store visit are presented below:**

**Photo #31 - Storefront**



**Photo #30  
Infant formula**



**Photo #28  
Checkout Area**



**Photo #15  
Non Food Merchandise**



**Photo #19  
Non Food Merchandise**





**Photo #11  
Halal Chicken**



**Photo #12  
Bulk flour/rice**

Validity of Comparison Stores:

Appellant, through counsel, indicates that the Retailer Operations Division’s analysis is predicated on the idea that the data can be reasonably compared to other local stores that have similar business strategies and sales points, which is contended not to be the case in the instant matter. Appellant contends that to provide similarly situated competitors Retailer Operations Division would have had to venture outside the immediate geographic area, which would then fail to account for the dense low income population where over 19<sup>4</sup> percent is receiving SNAP benefits. [Little]<sup>5</sup> *Brooklyn Mini Market vs U.S., Case No. 12-CV-6708T (2014)* is referenced citing the findings of the court that “where the Department lacks local comparisons to the store it alleges has committed trafficking, its evidence is insufficient to amount to trafficking as the basis for the comparative data doesn’t exist.” It is important to clarify that the administrative review process is employed to determine whether or not the Retailer Operations Division followed the Food and Nutrition Act of 2008, as amended, and the regulations issued under the Act when it took action against the firm. The administrative review officer is not responsible for determining whether any legal cases cited by counsel apply to the Appellant’s situation. If the final agency decision is appealed to U.S. District Court, the judge is responsible for determining whether or not the case law and the supposed judicial precedent cited by counsel is on point and applicable to the Appellant’s case.

The record reveals that in the instant case the Retailer Operations Division did, in fact, find two (2) comparative stores selling the same types of ethnic culturally specific foods, in bulk quantities, as described to occur at Appellant. The chart below delineates the general comparisons made between Appellant, general small grocery stores within Harris County, and, the two (2) cited comparative stores.

**7 USC 2018 (b)(7)(e)**

**Attachment #1: Multiple SNAP EBT transactions made from individual benefit accounts in unusually short timeframes.**

<sup>4</sup> Exhibit #1 of Appellant’s Brief titled Profile of SNAP households, Texas Congressional District 7, dated March 2015.

<sup>5</sup> Brief materials incorrectly exclude the first word in the store title for the referenced case. Research revealed the referenced case is *Wafik Nawaf Altawel, d/b/a Little Brooklyn Mini Mart v. U.S. Department of Agriculture, Food And Nutrition Service, Benefit Redemption Division*.



7 USC 2018 (b)(7)(e)

In the instant case Retailer Operations Division identified 48 households conducting the listed transactions.

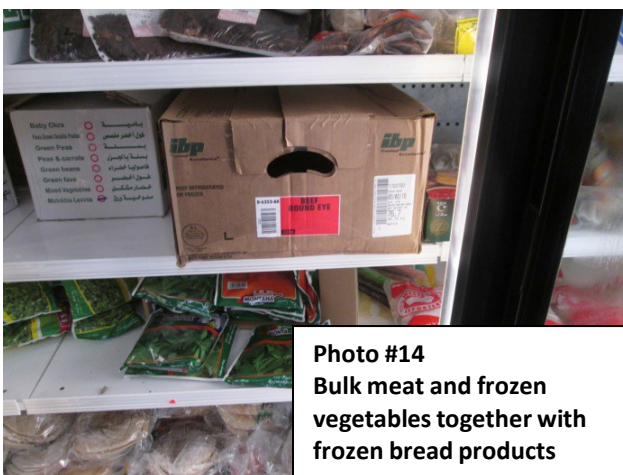
7 USC 2018 (b)(7)(e)

Appellant, through counsel, contends that the reasons for multiple transactions from individual accounts in short times frames results from factors including the Texas SNAP benefit pattern of issuance over the first nine (9) days of the month, followed by the standard practices of participants making most purchases within the first seven (7) days after receiving those benefits.

On review Appellant’s contention regarding the similarity of general shopping patterns involving use of SNAP benefits within short timeframes after receipt is affirmed as supported by the recognized Benefit Redemption Patterns in the Supplemental Nutrition Assistance Programs Final Report dated February 2011 with excerpts provided for consideration by Appellant in Brief Exhibits #2 and #3.

However, it is not found reasonable that transactions, such as those included in the Attachment #1 charge letter materials are supported by the business advantage of bulk pricing aided with use of shopping carts and hand baskets as described by Appellant. As previously indicated although there are reported shopping baskets, characterized by Appellant as pushcarts, there are none seen in the photographs supporting the contracted store visit. Further, there are fewer than 20 hand held baskets seen in the contracted store visit photos and these are not likely sufficient to transport “bulk” foods, such as 20 or 25 pound bags of flours to the check-out area. Moreover, the volume of what might be considered “bulk” foods is not supported with the inventory that is displayed such as in Photos #1 and #12 above. No evidence was advanced that the SNAP recipients who frequented Appellant sought it out due to ethnic foods or that the owner acquired a profusion of ethnic foods as would be seen via invoice receipts.

Similarly, it is not reasonable to consider that customers without transportation would hand carry bulk purchases to local residences, no matter how closely the residences may be located. Hand carrying 20 or 25 pound bags of rice or flour in enough volume to support the transaction amounts as reported is highly unlikely. Appellant provides that the transactions depicted are commonly for the purchase of Halal meat products. However, as seen in **Photo #11 (above)** and in **Photos #14 and 18 (below)** the volume of Halal meats does not appear sufficient to support multiple repeated transactions by the same households in the amounts recorded.



**Photo #14**  
Bulk meat and frozen vegetables together with frozen bread products



**Photo #18**  
Five (5) packages of leg of lamb

Although balance speculation purchases, followed by supplemental purchases for the remaining items if balance is available, is reasonable in some situations, it would be highly unusual for the second amount to routinely end in 00 dollar amounts such as is the case in 21 of the 57 transaction sets. The repeated occurrence of the total \$130.00 and \$260.00 (12 occurrences) also add to the suspicion of the transactions.

Impulse purchases based on stocking at the register area seems a highly unlikely process given the stocking of mostly non-food, SNAP ineligible foods in the checkout register area as seen in **Photo #28 above**.

That multiple SNAP transactions occur when the same SNAP card is used by different adult members of the same household was not supported with any data to confirm the practice.

Although the explanations provided bear some merit, the logic does not stand the test of review against the transactions identified in the charge letter attachment when considering the identified inventory and operational structure as depicted in the contracted store visit materials.

Appellant's quality, quantity and selection of eligible food items is limited compared to that of the two (2) local area (within a one (1) mile radius) stores that are documented to offer ethnic products similar to those identified as available at Appellant together with Halal meats. (See comparison chart above)

#### **Attachment #2: Excessively large purchase transactions made from the accounts of SNAP recipients.**

**7 USC 2018 (b)(7)(e)**

Appellant materials cite that the 684 transactions identified in Attachment #2 to the letter of charges can be found legitimate purchases recognizing that local families are purchasing food in bulk, once a month, using shopping habits derived from the household's respective cultures and ethnicities, compounded with the limited availability of the specialty type foods at other local grocers. Appellant cites that the transactions are supported with the availability of four (4) different kinds of specially prepared meat including goat, beef, lamb and chicken pre-cut and packaged in varying sizes. The meats, coupled with the availability of bulk priced varying types of flours such as Teff, Ola Ola, Barley, Corn, and Sorghum sold in 20 and 25 pound bags priced between \$23.00 and \$55.00 per bag are said to account for the size of the transactions.

Retailer Operations Division cites that Appellant's operation, as seen in the contracted store visit materials and when compared to the two (2) very similar stores located within a one-mile radius remain highly questionable.

On review it is noted that the 12 photographs provided as Exhibit #6 depict close ups of stock that appears in photos #11, #12, #14, and #15 of the contracted store visit materials, provided above. No large volume of product is identified.

#### **Hardship to Neighborhood:**

Appellant indicates that a SNAP disqualification will cause a hardship to neighborhood customers.

Retailer Operations Division documents that there are approximately 13 SNAP authorized firms within a one-mile radius of Appellant including the two (2) previously cited comparison stores; two

(2) superstores; two (2) large grocery stores; five (5) medium grocery stores; and, two (2) combination grocery stores available to meet the needs of the neighborhood SNAP customer base.

On review of the FNS Retailer Locator public website @ <http://www.fns.usda.gov/snap/retailerlocator> on November 30, 2016 shows that there are 43 alternative SNAP authorized retailers within a one-mile radius of Appellant.

Moreover, 7 CFR § 278.6(f)(1) of the SNAP regulations states, in relevant part, “A civil money penalty for hardship to Food Stamp households may not be imposed in lieu of a permanent disqualification.” Therefore, this civil money penalty provision is not applicable in the present case.

#### Household Analysis:

Appellant, through counsel, has provided that many of its customers are local neighborhood households, who use Appellant as their main source of food because of limited transportation coupled with ethnic and cultural customs that rely heavily on the types of foods offered by Appellant.

To support this position the Brief included 11 unsworn affidavits that are pre-typed documents formatted to support hand entry of: the name of the signatory; the address; the types of foods purchased at Appellant; the estimated dollar amounts of the SNAP transactions; the number of days between purchases; and the percentage of the total SNAP dollars estimated to be spent at Appellant.

The materials did not provide any information that could be directly correlated to the transactions identified in the charge letter attachments (i.e. last digits of the customer SNAP card, etc.)

Retailer Operations Division documents the analysis of three (3) randomly selected households identified as having conducted suspicious SNAP transactions at Appellant firm to the shopping patterns of those same households at alternative SNAP retailers during the focus period. The households were found to be shopping at larger and better stocked stores while at the same time exhibiting suspicious shopping patterns at Al-Nile Grocery And Halal Meat.

**7 USC 2018 (b)(7)(e)**

#### Financial Hardship:

With regard to Appellant’s contention that a disqualification will cause economic hardship to the firm, potentially including closure; it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. **7 USC 2018 (b)(7)(e)**. To allow store ownership to be excused from administrative penalties based on purported economic hardship 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, 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.

## General Information:

The data reflected in the letter of charges dated May 23, 2016 is the result of information gained primarily from the Anti-Fraud Locator using Electronic Benefits Transfer (EBT) Retailer Transactions (ALERT) system which is a fraud detection, decision support system designed to monitor and track electronically conducted retail transactions completed by SNAP recipients in authorized meal program and food retailer locations.

The ALERT System facilitates management of the program by providing transaction-level information to Federal personnel charged with the responsibility of SNAP retailer management and compliance. The system uses pre-defined criteria or patterns for potential fraud detection. Pre-formatted reports provide information on those stores and transactions meeting the criteria. ALERT supports both online analysis and online queries and reports for use by FNS. The system does not make the final determination, instead is used by Retailer Operations Division to develop information and evidence for consideration and an ultimate decision.

In the instant case, based on the available empirical data, and in the absence of any reasonable evidence supported explanations for the anomalous transaction patterns, a conclusion can be drawn, through a preponderance of evidence that the majority of the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation.

### **CIVIL MONEY PENALTY**

As previously indicated the July 6, 2016 determination letter advised Appellant of the ineligibility for consideration for a trafficking civil money penalty (CMP) according to the terms of Section §278.6(i) of the SNAP regulations.

The letter of charges dated May 23, 2016 advised Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The regulations specify that such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. The record indicates that no information was provided by Appellant for consideration and a review of the administrative record finds no evidence of materials or information timely provided. Therefore, on review the Retailer Operations Division’s determination that Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

### **CONCLUSION**

The Retailer Operations Division analysis of Appellant’s EBT transaction records, upon which charges of violations are based, together with observations made during the contracted store visits provide substantial evidence that questionable transactions during the focus period have characteristics that are not consistent with legitimate sales of eligible food to SNAP customers at a store of the nature and scope as described in the preceding materials. Rather, the characteristics are indicative of illegal trafficking in program benefits.

Based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged and that the Retailer Operations Division has provided substantial evidence of trafficking violations; and, the decision to impose a permanent disqualification from participation in the SNAP against Al-Nile Grocery And Halal Meat is sustained.

## **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If such a request is received, FNS will seek to protect, to the extent provided by law, personal information that if released could constitute an unwarranted invasion of privacy.

November 30, 2016

\_\_\_\_\_  
NANCY BACA-STEPAN  
ADMINISTRATIVE REVIEW OFFICER

\_\_\_\_\_  
DATE