

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

**Bakhtar Halal Market Inc,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0196196**

**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 that a permanent disqualification of Bakhtar Halal Market Inc. (hereinafter “Bakhtar Halal Market” or “Appellant”) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

**ISSUE**

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of SNAP, when it imposed a permanent disqualification against Bakhtar Halal 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.”

**SUMMARY OF CHARGES**

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from June 2016 through November 2016. This involved the following transaction patterns which are common trafficking indicators:

- There were an unusual number of transactions ending in a same cents value.
- There were multiple transactions made from individual household benefit accounts within unusually short timeframes.
- The majority or all of an individual recipient's SNAP benefits were exhausted in unusually short periods of time.
- Excessively large purchase transactions were made from recipient accounts.

## **CASE CHRONOLOGY**

The agency's record shows that FNS initially authorized Bakhtar Halal Market for SNAP participation as a small grocery store on August 11, 2015. In a letter dated February 16, 2017, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of June 2016 and November 2016. 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 the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In a telephone call on February 22, 2017, the Appellant responded to the charge letter, generally stating that the firm was not engaged in trafficking. The Appellant stated that it did not have any control over how SNAP households spent their benefits and provided information regarding its inventory, sales prices and markup percentages. In support of these contentions, the Appellant provided nearly 300 pages of inventory invoices and receipts.

After considering the Appellant's reply and further reviewing the evidence in the case, the Retailer Operations Division determined that the Appellant's explanations and evidence were not sufficient to justify the unusual transaction patterns listed in the charge letter. As a result, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated April 26, 2017. This determination letter informed the 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 the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but that a CMP was not appropriate in this case 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 May 4, 2017, the Appellant, now through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted. It is noted that on June 2, 2017, the Appellant asked for copies of the agency's case documents in a request submitted under the Freedom of Information Act (FOIA). The agency responded to this FOIA request on July 11, 2017. The Appellant then submitted its formal brief and additional documentation on August 4, 2017.

## STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that 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 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, *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(c) states, *inter alia*:

*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. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.*

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 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....***  
[Emphasis added.]

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, *inter alia*:

*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 § 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(b)(1) states, *inter alia*:

*Any firm considered for disqualification ... under paragraph (a) of this section... shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...*

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).*

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. [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 ... 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... In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of permanent disqualification for trafficking, the firm shall, at a minimum, establish by substantial evidence 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 the 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...*

## **APPELLANT'S CONTENTIONS**

The Appellant made the following summarized contentions in its request for administrative review, in relevant part:

- The Appellant's request for review included a compact disc containing seven exhibits, which included the following:
  - Seven affidavits from alleged SNAP households declaring that they make large and frequent purchases at the Appellant store. The affidavits each attest to what percentage of the household's EBT benefits are spent at Bakhtar Halal Market.
  - A copy of all inventory documents sent previously to the Retailer Operations Division. This involves a total of 263 pages of inventory invoices and receipts.
  - A five-page demographic report from the U.S. Census Bureau entitled "Language Spoken at Home: 2011-2015 American Community Survey 5-Year Estimates." The report focuses on languages spoken within the zip code 11367, which is the zip code for Flushing, New York, a neighborhood in the New York City borough of Queens.
  - Sixty-nine color photographs of the store's on-shelf inventory, showing a large amount of rice, spices, and other dried goods. The photos also show a variety of staple foods in quantities typical of a small grocery store, with a focus on foods commonly found in the areas of Afghanistan and Pakistan. There is also a meat preparation area, including a large saw for cutting. Meat products include whole lamb carcasses and large cuts of beef. In the storage area are bags of flour and large containers of soybean oil, as well as large packages of other items, such as rice and large flat bread that appears to be made in the store. The firm also sells large quantities of nuts, such as pistachios (\$11.99/lb.) and almonds (\$7.49/lb.).

- A copy of the 194-page Operator's and Programming Manual for the firm's Sam4s electronic cash register.
- A one-page report entitled "Profile of SNAP Households," published by USDA's Food and Nutrition Service, specifically regarding New York Congressional District 6. The report indicates that approximately 10.6 percent of the households in the district receive SNAP benefits.
- Eighteen pages of 2016 tax return documents, including IRS Form 1120, "U.S. Corporation Income Tax Return"; Form 1125-A, "Cost of Goods Sold"; Form 4562, "Depreciation and Amortization"; Form Quarterly ST-100, "New York State Local Sales and Use Tax Return" (March 2016 through February 2017).

A summary of the Appellant's 24-page brief is as follows:

- Appellant seeks reversal of the April 26, 2017 decision to disqualify the firm from SNAP participation.
- The store has been in operation under the current ownership for two years and is 1,764 square feet in size. The firm primarily serves the Afghan population and sells a wide variety of food items, including Afghan breads, cookies, teas, spices, rice, and a variety of halal meats.
- The items available in the Appellant store are not commonly found in stores such as Walmart and Target, and require specialized preparation before they can be sold. The Appellant is not aware of other stores in the area that offer similar selections.
- The effect of the store's unique clientele cannot be overstated. Only one store nearby sells the items that Bakhtar Halal Market carries, and the vast majority of the store's business comes from Afghani customers.
- Appellant estimates that roughly 90 percent of the firm's total business is SNAP-driven (both eligible and ineligible items). Approximate 66 percent are SNAP sales of eligible food, and about 24 percent are sales by SNAP households using cash, debit or credit cards.
- Most of the store's customers do not speak English and often have only minimal education. According to the Census Bureau, 42 percent of the residents in the store's zip code are foreign-born. Because of their limited proficiency in English, these customers cannot easily shop at other stores around the city, even if the stores carried the grocery items they needed.
- In the Afghani culture, households tend to make their major purchases at the beginning of the month rather than on an as-needed basis. This results in larger transactions in the first week and a half as participants load up on bulk amounts of goat, halal meats, rice, beans and other items which can be frozen or preserved over the duration of the month.
- The store functions as a medium-sized grocery store and is incredibly popular with local Afghani residents. Despite its modest size, it is treated by some customers as their primary grocer.
- While the area is replete with SNAP-authorized retailers, the business environment is more specialized than might be expected. Many local stores operate in small facilities, limiting them to focus on one group of customers or category of food. As such, businesses do not tend to be terribly competitive with the store next door.

- There are few very large stores in the area. The closest Walmart, for example, is more than nine miles away. The closest Target is 11.5 miles away. There are a few supermarkets in the area, but none specializing in Afghani foods.
- The firm's markup varies based on the type of food and its origin. The general markup range is 18 to 60 percent. Markup percentages vary month to month depending on what items are selling in a particular month.
- The pictures provided by the Appellant show the store stocked with grocery items, including rows and rows of food, as well as whole goat and other frozen meat items, much of which is Halal meats.
- FNS's store visit photos fail to show the storage area in the back, where there is substantial amounts of rice and dry goods stored. FNS's photos also fail to show freezers full of meat and wire shelves filled with groceries. FNS's photos do not capture the full scope of the groceries and meats sold by the firm.
- A whole lamb or whole goat ranges in price from \$300.00 to \$400.00, and can be expected to feed a family of four for approximately a month.
- The firm's tax documents do not distinguish eligible items from ineligible items, but shows that the store's revenue is in line with its inventory.
- Regarding the affidavits provided by the Appellant, the statements made by the affiants reflect the large, bulk purchases made at the beginning of the month in an effort to satisfy the household's entire month's grocery needs.
- This case is the poster child for why USDA needs to start sending charge letters to retailers in at least three different languages. The Appellant does not read or speak English very well, certainly not enough to understand the language in the charge letter. This is why the Appellant did not respond to the charges in writing, but spoke to the Retailer Operations Division by telephone and provided inventory invoices. The lack of explanation by the Appellant in the initial response was due to the Appellant not fully understanding the charge letter and what was needed to show that the store has been operating legitimately.
- The administrative review officer is permitted to consider new evidence, and render a new decision on whether the additional evidence changes the balance of evidence in the matter. The evidence in this matter includes the Retailer Operations Division case analysis, which is based entirely on the ALERT system; store photographs provided by the Appellant; inventory invoices; customer affidavits; and the Appellant's brief.
- Appellant believes it is important to consider the limitations of the ALERT system, as its over-utilization by USDA has created an internal belief that the system is infallibly accurate.
- To support its position that ALERT data is unreliable, Appellant's counsel summarized portions of a deposition he took of a USDA employee in October 2016 in an unrelated case which also used ALERT data as the basis for trafficking charges. Appellant's counsel believes that the Retailer Operations Division leans too heavily upon the ALERT data and often fails to account for differences in shopping habits of local participants.
- Appellant further questions whether or not appropriate comparison stores have been selected to provide a baseline set of data against which to compare the Appellant's transactions. Appellant believes that there are no meaningful stores with which the Bakhtar Halal Market can be compared.

- Appellant cites two court decisions to support its position that ALERT data is unreliable for purposes of disqualification.
- Contentions regarding transactions ending with a same cents value (Attachment 1):
  - The store is run using a variety of pricing, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Though the store photos show a number of items ending in .99, these items are often sold by the pound, and as a courtesy to the customers, total purchase amounts are often rounded down to the nearest whole dollar. This is especially true in bulk purchases. The store sometimes gives discounts on items marked as .99, .89, .69, etc., so that the transaction amounts are easier to calculate. This makes it easier to handle at the cash register.
  - Rounding down is not an every-time discount. Such discounts are based upon the circumstances of the store, the frequency of shopping the customer does, and the personal interaction between the firm's personnel and the customer.
  - There are examples where the store chose not to round down, which is its right.
  - All of the transactions in Attachment 1 are the result of the store's rounding-down discounts.
  - Smaller transactions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), could also be the result of sales at the store, such as "Buy two for \$5."
  - Whatever the reason, it is not trafficking. The rounding down discount is to make the processing easier for the cashier or to make the customer feel as though they got a good deal on the purchase.
- Multiple transactions from one account in unusually short timeframes (Attachment 2):
  - Multiple purchases 5 U.S.C. § 552 (b)(6) & (b)(7)(C) after receiving SNAP are not unusual.
  - Because the firm provides a large portion of the customers' needs (particularly Afghani customers), the store is one of the first shopping trips for SNAP recipients. These customers will likely shop elsewhere, too, but most shopping can readily and easily be done at the Appellant store.
  - Co-shopping, which is where both adult members of an average household are about 50 percent responsible for picking up groceries, is on the rise in the United States. This impacts the Appellant in the following ways: 1) different household members will shop separately using the same card; 2) different household members will travel to the store together and then make separate purchases (using the same card) to track what amount each household member has used from their account.
  - Appellant provides further commentary about the rise of "co-shopping" in the United States, particularly among multi-generational households.
  - The firm's SNAP customers exemplify co-shopping more than most given the higher rate of children and elderly living in the same household.
  - 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Instead, these transactions were pre-tabulated by the store's clerk after the items were identified by the participants. The participants broke the purchase into two different transactions as a result of co-shopping.
  - For the transactions in the example above, it is not as though the participants left the store and then returned. Rather, the clerk needed only to enter the dollar



amount, process the transaction, and then enter another dollar amount and process the second transaction.

- Other transactions in Attachment 2 are the result of balance speculation. In other words, a customer makes a small purchase to find out its available SNAP balance, and then make a larger purchase upon discovering how much is available to spend.
- The transactions which occurred over a longer period of time, such as successive days, are often the result of a household recognizing other foods that need to be purchased. There could be a thousand explanations for why the household decided to shop at the store two days in a row, none of which would be known to the Appellant.
- The transactions indicate that there were purchases of meats, beans, and rice.
- In *Skyson USA, LLC vs. U.S.*, 2010 WL 651032 (D. Hawaii 2010), the store in question did not maintain receipts (and is not required to). It also provided specific inventory records. With this evidence and because the retailer could provide an alternative explanation for the transactions, the permanent disqualification was reversed.
- Balance depletion in short period of time (Attachment 3):
  - Appellant has no control over how quickly a SNAP household expends its benefits, nor should they somehow be responsible or required to turn away their business simply because the customer chooses to make significant purchases from the store. There is no regulatory or statutory basis for FNS to punish the Appellant for such actions.
  - The store operates as a primary grocer for some households. This is confirmed by the affidavits provided by the Appellant.
  - ALERT is incorrectly treating the store as something other than a primary grocer. While a supermarket may have more square footage, the Appellant firm has the same variety of foods, if not greater due to the halal meats offered. There is no reason to expect that participants won't exhaust their benefits under these circumstances.
  - USDA does not require retailers to maintain all of their receipts. Therefore, it is more likely than not that the transactions listed in Attachment 3 are the result of legitimate purchases, and not of something more nefarious.
- Excessively large transactions (Attachment 4):
  - The affidavits show that the even the very largest transactions are the result of purchases of meat and rice.
  - The firm does not retain its receipts (and is not required to do so). The absence of receipts should not be construed against the retailer. If USDA is going to hold the absence of receipts against a store, it needs to be part of a regulation. Otherwise, the absence of a non-necessary document does not indicate anything.
  - The question regarding Attachment 4 is whether or not the transactions could be supported by the store's traditional inventory, and then whether or not the store is likely to make such sales to SNAP participants.
  - The whole goats pictured in the store visit photos are \$300.00 apiece. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Assuming the household has 6-8 members, with older-aged children, this purchase is probably for two goats (enough to feed

the household for a month), a large bag of rice, and a combination of seasonings, side dishes, and other ethnic items. The store has a shopping cart, so the rice and other supplemental items could fit in there. The two goats plus these few items could fit into the trunk of a regular car, and could be transported by a single person of average size (depending on the weight of the goat). Logistically, this largest transaction, and the smaller ones listed in Attachment 4, are thus feasible.

- The firm's inventory, tax records, and markup explanation show that the firm could easily satisfy the transactions listed in this attachment. The invoices also show that restocking occurs on a rolling basis, roughly once a week for each supplier. So the store is never without food.
  - Invoices show that purchases of meat, such as lamb, occur frequently, indicating that such items are sold in short periods of time and then restocked to keep the inventory level up.
  - Invoices also show that the store is selling large items, priced between \$200 and \$400, on a regular basis. The transactions in Attachment 4 simply show who is buying those large items and when.
  - The seven affidavits submitted by the Appellant further demonstrate that SNAP households make purchases for hundreds of dollars in a single trip.
  - 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
  - Even if households only shopped at the store once a month for convenience or to supplement other shopping trips, an average family would be expected to spend more than the amount of the majority of the transactions listed in Attachment 4, especially at a fully-stocked small grocery store.
- FNS does not have the ability to state that the transactions are not possible or even unlikely when the inventory and clientele support such transactions. FNS has no information beyond a transaction log that is reliant upon context. FNS's argument is dependent on providing substantial evidence in context to show that the transactions are, more likely than not, trafficking.
  - In this case, context is king. FNS lacks coherent context, largely due to a language and comprehension barrier, and came to the wrong conclusion as a result.
  - The RIB investigation in 2016 was conducted during the same period as the transactions in the charge letter. In each visit to the store, the investigator attempted to purchase ineligible items, traffic, and otherwise cause the clerk to commit SNAP violations. But no violations occurred. If the store was trafficking, as alleged, then it is likely that the investigator would have been able to commit a program violation of some kind. The fact that the investigator was rebuffed both times makes it unlikely that the transactions in this case were trafficking.
  - Appellant does not contend that FNS does not have the right to conduct simultaneous investigations at the same store, but argues that the evidentiary weight of direct evidence does not exceed that of circumstantial data analysis.
  - There are no violations taking place at the Appellant store. The evidence relied upon by USDA speaks more to shopping habits and ethnic food preferences than it does to violations of SNAP regulations. Rather than trafficking, it is more likely that USDA's flagged transactions are the result of incorrect context or an imperfect understanding of how Bakhtar Halal Market serves its customers.

The preceding may represent only a brief summary of the 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 explicitly referenced herein.

## **ANALYSIS AND FINDINGS**

The primary issue for consideration in a case based on SNAP redemption data is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other words, did the Retailer Operations Division, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and questionable transactions cited in the charge letter were the result of trafficking?

### **Contractor 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 two store visits, dated December 9, 2016 and February 6, 2017, which were conducted by an FNS contractor 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 reports and photographs documented the following store size, description, and characteristics:

- Bakhtar Halal Market is a small grocery store, roughly 1,800 square feet in size (including storage space), operating in an urban, commercial area of Flushing, New York.
- At the time of the visits, the firm had no shopping carts for customer use, but in one visit, there did appear to be a single handheld shopping basket.
- The store visit photographs show one cash register, while agency records indicate the use of one EBT point-of-sale device. The firm does not use an optical scanner at the checkout counter.
- The store's staple food stock is adequate in each of the four staple food categories. The type of food available in the store appears to be geared toward the firm's Afghani or Pakistani clientele, particularly the firm's halal meat offerings and large packages of rice. The firm sells limited ineligible nonfood items, consisting primarily of miscellaneous household merchandise.
- The checkout area consists of a small countertop where items can be placed to be rung up. The checkout area is not suitable for conducting large or rapid transactions as there is very little space to place more than a few items and there is no conveyor belt to expedite the purchase. There is also little room at the checkout for a customer to maneuver with large quantities of groceries, as shelving units nearly touch the counter space.
- There is no indication from the store visit reports that the firm has a special pricing structure, although several photographs show items ending in 9, such as \$0.99, \$1.89, \$3.29, etc.

Based on the store visit information, it would not be surprising for local customers to make purchases of halal meats, including whole goats or other large portions of meat. It would also not be surprising for customers to occasionally purchase 50-pound bags of rice. There is no indication, however, that SNAP households would be inclined to frequently visit the store to purchase large quantities of other grocery items, especially considering the limited stock of other staple foods and the absence of shopping carts. Apart from meat items and large bags of rice and flour, the available food was primarily of a low-dollar value. Given the available inventory, there was very little sign that the firm would be likely to have SNAP redemption patterns that differed significantly from those of similar-sized competitors, especially competitors that sell similar or identical food items.

## **SNAP Transaction Analysis**

**Charge Letter Attachment 1: There were an unusual number of transactions ending in a same cents value.** This attachment lists 239 transactions – 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Appellant, through counsel, has argued that these same-cents transactions were the result of rounding down purchase amounts, especially bulk purchases. According to the Appellant, such rounding is not only a courtesy to the customer, but makes it easier for a cashier to handle at the point of sale. The Appellant claims that rounding does not happen every time, but is based upon circumstances of the store, the frequency of a customer's shopping, and personal interaction between the customer and the firm's personnel.

While this review does not dispute that a firm has a right to charge a customer whatever amount it wants, the argument of rounding makes little sense. If rounding were easier for calculations at the cash register, then it would stand to reason that virtually all of the prices would be rounded, either at the point of sale or listed on the products themselves. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) It seems clear to this review that even-dollar pricing creates no significant convenience or advantage for either the customer or the Appellant.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Unfortunately, the Appellant has not offered any evidence whatsoever to show what was actually purchased in the transactions listed in Attachment 1. Anecdotal explanations without supporting documentation do little to convince this review that the transactions in Attachment 1 were legitimate purchases of eligible food. Accordingly, this review has little option but to side with the Retailer Operations Division, as the transactions listed in Attachment 1 are sufficiently unusual to reasonably conclude that trafficking is the likely cause.

**Charge Letter Attachment 2: Multiple transactions were made from individual benefit accounts in unusually short time frames.** This attachment lists 31 sets of transactions (66 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Appellant, through counsel, has argued that multiple purchases from a household 5 U.S.C. § 552 (b)(6) & (b)(7)(C) after receiving its monthly benefit allotment are not unusual. It

further contends that “co-shopping” is one of the reasons for the large number of repetitive transactions from the same SNAP account. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). According to the Appellant, in this example, the clerk pre-tabulated the total amount and then split the purchase into two separate EBT transactions as a result of co-shopping. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Rather, the clerk simply entered two dollar amounts, one right after the other in quick succession.

The Appellant further contends that transactions occurring over a longer period of time, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) are simply the result of a household recognizing that it needs to purchase other foods. The Appellant contends that there could be a thousand explanations for why the household decided to shop at the store two days in a row, none of which would be known to the Appellant.

Unfortunately, none of the Appellants’ assertions is supported by any kind of credible evidence. The Appellant did provide seven affidavits, one of which said the household sometimes shopped twice a day at the Appellant firm. Two others stated that they sometimes shopped at the store on consecutive days. However, the truth of such statements cannot be verified by this review. Customers engaging in trafficking violations would be unlikely to admit to this behavior. On the contrary, customer statements would be expected to attest to the legitimacy of questionable transactions regardless of whether they were, in fact, legitimate. Affidavits, even if well-intentioned, are typically not accurate depictions of a household’s shopping behavior, as households generally do not retain records of transactions and often do a poor job of recalling actual spending patterns at a particular location.

As for co-shopping and whether or not such shopping habits actually affected the Appellant firm during the review period, this argument is nothing but conjecture. The Appellant has offered no evidence to show that co-shopping is particularly common among SNAP recipients in Flushing, New York. If co-shopping truly impacted Bakhtar Halal Market as the Appellant suggests, it would stand to reason that co-shopping would affect other nearby firms as well. This would manifest itself in comparable firms having similar transaction patterns – 5 U.S.C. § 552 (b)(6) & (b)(7)(C). But this is not the case.

It should be noted that the repetitive nature of the transactions identified in Attachment 2 is substantially different in the Appellant store than in other nearby competitor firms, giving credence to the notion that trafficking may be taking place. Unfortunately, the Appellant has offered no credible evidence to support its contention that these were legitimate transactions. Such evidence could include cash register receipts to prove that the transactions cited in Attachment 2 were legitimate purchases of eligible food.

Given the common practice of violating retailers breaking up large, suspicious transactions into multiple, somewhat smaller transactions to avoid detection, a firm’s explanation for why these repetitive SNAP transactions are occurring in a small grocery store should be both rational and compelling. The Appellant’s contentions in this regard are neither.

**Charge Letter Attachment 3: In a series of transactions, the majority or all of an individual recipient’s benefits were exhausted in unusually short periods of time.** This attachment lists 73 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

It is not unusual for violating retailers to conduct trafficking transactions in which a household spends the vast majority of its allotment in a very short period of time. A suspicion of trafficking is reinforced when these balance-depleting purchases occur in small stores such as Bakhtar Halal Market, where there is limited inventory and a lack of shopping carts or baskets to help facilitate large purchases. As mentioned previously, the food available in the Appellant store is primarily of a low-dollar value. While the store does carry some expensive meat items in the store as well as large bags of rice, beans, and flour, the large number of balance-depleting transactions is very unusual, especially when compared with other nearby stores that sell similar items, including halal meats and large bags of rice or flour.

Moreover, a government report on SNAP shopping patterns indicates that on average, after the first day of benefit issuance, approximately 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It typically takes about two weeks to deplete 80 percent of one's benefits, and three weeks to deplete 90 percent.<sup>1</sup> Depleting a large portion of one's SNAP balance in a very short period of time, leaving little or no benefits for the rest of the month, is inconsistent with normal shopping behavior of SNAP households.

The Appellant, through counsel, has argued that it has no control over how quickly a SNAP household expends its benefits, nor should it somehow be required to turn away business simply because a customer chooses to make a large purchase. The Appellant contends that there is no regulatory or statutory basis for FNS to punish the Appellant for the customer's shopping habits. The Appellant further argues that the store operates as a primary grocery for some of the households and contends that the affidavits provided are evidence of this. The Appellant contends that FNS is incorrectly treating the store as something other than a primary grocery. Because the firm offers a variety of food, including halal meats, there is no reason to expect that SNAP participants would not exhaust their benefits under these circumstances.

With regard to these contentions, it is true that retailers have no regulatory or statutory obligation to monitor the spending habits of SNAP recipients, including how much a household may spend at a store at a given time. It is also true that some households choose to spend most or all of their monthly allotment at a single store, especially if that store is conveniently located or offers food items that are not readily available elsewhere. However, the transactions cited in the charge letter are questionable not because they exceed any limits for use, but because they display patterns of use that are inconsistent with the store's documented physical characteristics and food inventory, and significantly different from patterns found in nearby competitive stores – even those competitors who sell similar or identical food items. The transactions identified in the charge letter are not marginally abnormal, but decidedly so. This review does not contend that the EBT transactions detailed in each of the charge letter attachments are overtly suspicious when they occur on an occasional or intermittent basis. But when such transactions form repetitive and questionable patterns on a consistent basis over a substantial period of time, such activity is

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<sup>1</sup> See U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, *Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program*, by Laura Castner and Juliette Henke. Project officer: Anita Singh, Alexandria, VA: February 2011.

considered highly irregular, and a firm's intent to comply with program regulations is called into question.

As noted earlier, the affidavits provided by the Appellant appear to support the Appellant's narrative, but cannot be confirmed by this reviewer. None of the affidavits include EBT card numbers or household numbers or point to any specific transactions listed in the charge letter. The affidavits are general statements listing items that *may have been* purchased and amounts that *could have been* expended.

Unfortunately, the Appellant's arguments relating to Attachment 3 are anecdotal and hypothetical. The Appellant has not offered any actual evidence to prove that the specific transactions listed in this attachment are legitimate purchases of eligible food. Without such evidence, this review has little option but to conclude that the transactions listed in this attachment were, more likely than not, the result of trafficking.

**Charge Letter Attachment 4: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 247 SNAP transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with a small grocery store in the state of New York. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a small grocery store in New York was \$10.92. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

This review concedes that the Appellant firm does sell a lot of meat. The inventory records provided by the firm prove this to be true. As such, it stands to reason that the firm would occasionally have large transaction amounts, including purchases for whole goats or large quantities of beef or lamb. Store visit photos and photos provided by the Appellant also prove that the store maintains a large amount of rice, beans, and flour. Based on other food items on the store's shelves, the firm also clearly caters to the Afghani population. But so do other firms, including stores in the vicinity of Bakhtar Halal Market. For the Appellant to insinuate that Bakhtar Halal Market is the only store in the immediate area that is able to meet the dietary needs of one local ethnic population is erroneous.

The Retailer Operations Division has done a thorough evaluation of other nearby stores that sell foods similar to Bakhtar Halal Market, particularly halal meats and rice. There is clear evidence that other nearby stores sell large quantities of meat, that they also have halal preparation or butchering services onsite, that they also sell 50-pound bags of rice and flour, and that they sell freshly made bakery items. Some of these stores have greater square footage than the Appellant store, some have many shopping baskets available for customer use, and most appear – to some degree – to cater to the same demographic as Bakhtar Halal Market. And yet these comparison stores have nowhere near the volume of extremely large transactions that Bakhtar Halal Market has.

Given the available inventory at the Appellant firm and considering the demographics of the area in which the store is located, it is very likely that there would be an occasional purchase where the transaction amount is high, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ



considerably from similar-sized competitors. The frequency of high-dollar purchases in a six-month period calls into question the legitimacy of these transactions.

As with its contentions for the other charge letter attachments, the Appellant has offered anecdotal examples in an attempt to legitimize the transactions listed in Attachment 4.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Appellant states that assuming the household in question has six to eight members, including older children, such a large purchase is probably for two goats (enough, it claims, to feed the household for a month), a large bag of rice, and a combination of seasonings, side dishes, and other ethnic items. The Appellant then states that the two goats plus the other few items could fit into the trunk of a regular-sized vehicle, and could be transported by a single person of average size. Because this is feasible, the Appellant argues that the remaining transactions listed in Attachment 4 are also feasible.

The Appellant then points to inventory records, tax records, photographs of the store's inventory, and customer affidavits as evidence that the transactions in this attachment are legitimate.

5 U.S.C. § 552 (b)(7)(E)

5 U.S.C. § 552 (b)(7)(E)

This review cannot definitively determine that the two transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C) were trafficking, but the circumstances surrounding this household's shopping activities are unusual enough to suspect that trafficking was a likely draw to Bakhtar Halal Market. Unfortunately the Appellant has offered no evidence to suggest otherwise. It has offered no itemized cash register receipts or other documentation to prove that the specific transactions listed in Attachment 4 were legitimate purchases of eligible food.

The Appellant's counsel has indicated that the firm does not retain detailed cash register receipts and is not required to do so. The Appellant argues that if FNS is going to hold the absence of the detailed receipts against a store, it needs to be part of a regulation. Otherwise, the absence of a non-necessary document does not indicate anything.

It is true that FNS does not require any documentation from the firm and cannot require the firm to keep specific transaction records. This review freely acknowledges that FNS cannot require a firm to do anything but follow SNAP regulations. It has no say on the firm's hiring or firing practices; on which specific food items a store can offer; on whether the firm uses optical scanners or security cameras; on whether it has shopping carts or shopping baskets; or on the retention of a firm's receipts and other records. In truth, a firm's ownership may choose to run the store any way it wishes. However, if a firm expects to convince this review that unusual and suspicious transactions are, in fact, legitimate, some level of credible evidence is generally necessary to reach a preponderance and satisfy this reviewer that reversal is appropriate. It is the finding of this review that the Appellant's documentation, particularly its written assertions and questionable affidavits, does not constitute a preponderance of the evidence and is not sufficient to warrant a reversal of the agency's disqualification determination.



It is worthwhile to restate here that in an appeal of adverse action an appellant bears the burden of demonstrating that the administrative action should be reversed. In a case such as this one, which is based on an analysis of transaction data, an Appellant must prove, through a preponderance of evidence, that the transactions detailed in the charge letter were more likely than not due to the legitimate sale of eligible food in exchange for SNAP benefits. In the absence of compelling information or documentation weighed in comparison to that which is provided by the Retailer Operations Division, the agency's determination must be sustained.

Stores caught in trafficking violations, both during onsite investigations and in EBT analysis cases, consistently display particular characteristics or patterns. These patterns often include frequent, large transactions that cannot be supported by the retailer's inventory, store type, and structure. It is the conclusion of this review that Bakhtar Halal Market, with its limited inventory, lack of shopping carts and baskets, and its constricted checkout area cannot support the large numbers of high-dollar transactions identified in Attachment 4. Therefore, the most logical explanation for such repetitive transactions is trafficking.

Based on the above analysis, it is the determination of this review that the Retailer Operations Division has satisfactorily demonstrated that Bakhtar Halal Market likely trafficked in SNAP benefits. Similarly, the Appellant has failed to sufficiently rebut such a claim. The attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place at the firm during the review period. Conversely, the Appellant has failed to provide a rational explanation as to why such patterns might exist. As there are multiple unexplained patterns of irregular transactions, the case of trafficking is convincing.

### **Trafficking Case based on EBT Data**

The Appellant, through counsel, has argued that it is important for this review to consider the limitations of the agency's fraud detection system known as ALERT. The Appellant contends that FNS over-utilizes this system and has created an internal belief that the system is infallibly accurate.

In support of its argument that ALERT is unreliable, Appellant's counsel provided a brief summary of a deposition he took of an FNS employee in October 2016. Additionally, Appellant's counsel cited two court decisions which supposedly support this position.

With regard to these contentions, this review acknowledges that a conclusion of trafficking cannot be drawn from EBT data alone, nor would it be possible to do so in a case based primarily on inconsistent redemption data or transaction data under an EBT system. It is noted that FNS employs a computerized fraud detection tool to identify EBT transactions that form patterns having characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. The Retailer Operations Division must still analyze the transaction data and patterns with other factors, such as observations from a store visit, an analysis of customer shopping behavior, and a comparison with similar stores in the area, and

then render a determination as to whether or not the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is identified in 7 CFR § 278.6(a) which states, inter alia, “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 ....” [Emphasis added.]

Prior to a disqualification determination, the accused firm is given an opportunity to reply to the charges and provide any information it deems appropriate in justifying as legitimate the transaction activity detailed in the charge letter.

It should be noted that this reviewer thoroughly examined the documentation and evidence provided by the Retailer Operations Division and found no evidence to suggest that the agency believed the ALERT data to be “infallibly accurate.” From all indications, the Retailer Operations Division obtained the EBT data (provided by ALERT), found it to be suspicious in comparison to other area stores of similar size, and then undertook a thorough investigation before concluding that trafficking was likely occurring. The Appellant’s implication that the Retailer Operations Division simply churned out computerized data and then declared it trafficking is unfounded.

With regard to the deposition and court cases cited by the Appellant, it is outside the authority of this review to determine the applicability of such depositions and cases. This administrative review is limited to whether or not, in this particular instance, the Retailer Operations Division appropriately followed the Food and Nutrition Act of 2008, as amended, and the regulations promulgated under the Act, and whether or not the action taken is sustainable by a preponderance of the evidence. Therefore, any application of a supposed judicial precedent would best be addressed in a judicial review in a court of law. Accordingly, no further findings or conclusions are rendered in this regard.

### **Comparison Stores**

The Appellant, through counsel, argues that the comparison stores used by the Retailer Operations Division are not legitimate. The Appellant insists that the effect of its unique clientele cannot be overstated. The Appellant argues that there is only one store nearby that sells the items that Bakhtar Halal Market carries. It also argues that the vast majority of the store’s business comes from Afghani customers. Most of these customers do not speak English and as such, cannot easily shop at other stores around the city, even if other stores carry the grocery items the households need. Additionally, the store is treated by many customers as their primary grocer. The Appellant implies that because of these unique circumstances, other stores in the area are not valid comparisons.

With respect to these contentions, when the Retailer Operations Division identifies comparable stores, it contemplates a variety of factors before considering it a valid comparison. These factors include, but are not limited to, store type (e.g. convenience store, small grocery store, etc.), store size, SNAP redemption volume, physical characteristics, ethnic food inventories, and proximity to the subject store. The ALERT system plays a role in this effort by initially identifying nearby stores within the same store type.

In this case, this review is satisfied that the Retailer Operations Division made a good-faith effort to identify similar establishments with which to compare Bakhtar Halal Market. The data from these nearby stores provided adequate evidence to demonstrate that the transaction patterns at the Appellant firm were highly unusual and indicative of possible trafficking violations.

### **Prior Investigation**

The Appellant has argued that an investigation conducted at Bakhtar Halal Market by FNS's Retailer Investigation Branch (RIB) early in the review period lends credibility to the Appellant's claim that the transactions were legitimate purchases of eligible food. The Appellant contends that the evidentiary weight of direct evidence exceeds that of circumstantial data analysis.

5 U.S.C. § 552 (b)(7)(E)

5 U.S.C. § 552 (b)(7)(E)

An undercover investigation with no violations does not prohibit FNS from using other investigative methods if it is suspected that a firm may be committing program violations. As such, the presence of a negative investigation, while persuasive in some respect, is not so compelling to this review as to warrant reversal of the disqualification determination. This is because the totality of evidence leans in favor of the agency's position, which is that trafficking was likely occurring.

### **CIVIL MONEY PENALTY**

As noted earlier, the Retailer Operations Division determined that the firm was not eligible for a civil money penalty in lieu of permanent disqualification pursuant to 7 CFR § 278.6(i) because it did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In accordance with regulation at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider the sanction of a CMP in lieu of permanent disqualification, but the firm must also submit appropriate documentation within designated timeframes. Based on a review of the case record, the evidence shows that in its original response to the charges, the Appellant did not request that a CMP be considered. Additionally, the Appellant did not provide any evidence to demonstrate that it had

established and implemented an effective compliance policy and program to prevent SNAP violations as required by 7 CFR § 278.6(i).

Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii) and § 278.6(i)(1), it is the determination of this review that the Appellant is not eligible for a civil money penalty in lieu of permanent disqualification for trafficking.

## **CONCLUSION**

The Retailer Operations Division's analysis of the Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Bakhtar Halal Market from SNAP participation. This data provided sufficient evidence that the questionable transactions during the review period had characteristics that were consistent with trafficking in SNAP benefits. Government analyses of stores caught in trafficking violations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges.

In the absence of any reasonable explanation for such transaction patterns, a conclusion can be drawn through a preponderance of the evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter point to trafficking as the most likely explanation. Therefore, based on a review of all evidence in this case and based on consideration of all contentions presented, it is more likely true than not true that trafficking violations did occur as determined by the Retailer Operations Division. As such, the decision to impose a permanent disqualification against the Appellant, Bakhtar Halal Market, under the ownership of Hamidullah Ahmad, 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 the SNAP regulations. 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 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.

JON YORGASON  
Administrative Review Officer

November 22, 2017