

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

Blue Light Market,

Appellant,

v.

Case Number: C0204270

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the USDA that there is sufficient evidence to support that the Retailer Operations Division properly imposed a permanent disqualification of Blue Light Market as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

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

AUTHORITY

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

CASE CHRONOLOGY

In a letter dated December 28, 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 during the months of April 2017 through September 2017. The letter noted that the penalty

for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated the Appellant had the right to respond to the charges within 10 days of receipt to provide explanations for the irregular SNAP transaction patterns. The letter also stated that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i). The charge letter was delivered to the Appellant by UPS on December 29, 2017.

On January 4, 2018, the Appellant requested an extension of time to respond to the charge letter. The Retailer Operations Division granted an extension through January 15, 2018. However, under the SNAP regulations, the Retailer Operations Division could not grant an extension of time to request a trafficking CMP under 7 CFR § 278.6(i).

On January 5, 2018, the Appellant, through counsel, requested information and documents under the Freedom of Information Act. The agency's official response to the FOIA request was delivered to the Appellant's counsel on January 29, 2018.

In a letter dated February 13, 2018, the Appellant, through counsel, replied to the charge letter and denied that the store was trafficking in SNAP benefits. The Appellant stated, among other contentions, that many of the transactions cited in the charge letter were repayments on credit accounts. The Appellant provided four (4) statements from alleged SNAP customers stating that they had credit accounts at the store and used SNAP benefits to repay those accounts. In response, the Retailer Operations Division sent a letter dated February 16, 2018, requesting additional evidence that the store was accepting SNAP benefits as repayment on credit accounts. The letter stated that this documentation must identify specific accounts along with corresponding dates and amounts. The Appellant's counsel explained in an e-mail dated February 20, 2018 that all credit documentation had been returned to the store customers when the credit accounts were paid off.

After reviewing the Appellant's contentions and the evidence in the case, the Retailer Operations Division issued a determination letter dated March 5, 2018. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and 7 CFR § 278.6(e)(1). The determination letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of 7 CFR § 278.6(i) of the SNAP regulations. The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked March 14, 2018, the Appellant, through counsel, requested an administrative review of the Retailer Operation Division's determination. The request for administrative review was granted.

The administrative review request also contained a second FOIA request. The official agency response on this second FOIA request was delivered to the Appellant's counsel on March 21, 2018.

STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, might 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 covered in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

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

... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of 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 § 271.2 states that the definition of "coupon" includes:

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

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 defines trafficking, in part, as:

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

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

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

7 CFR § 278.6(a) states, in part:

FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation 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(i) states, in part:

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

7 CFR § 278.6(b)(2) states, in part:

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

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

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from April 2017 through September 2017. This involved the following transaction patterns which are trafficking indicators:

- **Charge Letter Attachment 1:** Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 22 sets of 55 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).**
- **Charge Letter Attachment 2:** Excessively large purchase transactions were made from recipient accounts. This attachment lists 806 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

APPELLANT'S CONTENTIONS

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

- The Appellant states that a large number of the irregular transactions were due to repayments on credit accounts. In particular, most of the transactions in Charge Letter Attachment 1 are a combination of a credit repayment and an additional purchase. The larger purchases in Charge Letter Attachment 2 are also repayments on credit accounts.
- The Retailer Operations Division did not make an effort to contact the four (4) customers who submitted affidavits to verify or rule out the veracity of their statements regarding their use of SNAP benefits as repayment on credit accounts.
- The transactions that were not credit repayments are excessively high; however, an authorized store cannot limit what a SNAP recipient purchases as provided by 7 CFR 278.2(h).
- The store carries a large assortment of food items consisting of meats, dairy, lunch meat, cheese, coffee, canned foods, dry foods, baby formula, energy drinks, juices, soft drinks, and all types of snacks. This supports the store's contention that it is more of a small market than a convenience store. The Appellant believes this is more than what is carried by its nearby competitors and that is why food sales at Blue Light Market are higher than its competitors. Although its prices are a little higher than large grocery chains, Blue Light Market is competitive.
- To some customers, Blue Light Market is their primary grocery store and they come in and out of the store several times a day. They come with

other family members and purchase groceries together or at different sales windows with the same card. SNAP customers will come into the store with other persons and make purchases

5 U.S.C. § 552 (b)(6) & (b)(7)(C) and then split the purchases inside the store or outside.

- FNS Handbook 318, Section 1020 requires that the supporting evidence be substantial and fully documented for a permanent disqualification. The case record is totally devoid of any decoy buys which would be supporting evidence that would be a valid basis for the decision to permanently disqualify the store. The conclusion of trafficking that was reached by FNS as being the only explanation for the targeted transactions is flawed and the permanent disqualification should be reversed.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

ANALYSIS AND FINDINGS

Authorization History

FNS authorized Blue Light Market for the SNAP on May 5, 2014. During the review period of April 2017 through September 2017, the Retailer Operations Division classified the store as a convenience store.

The store owner signed the SNAP application for the store on March 27, 2014 and acknowledged that the owner was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible non-food items.

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a November 10, 2017 store visit conducted by an FNS contractor to observe the nature and scope of the store's operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the store's irregular SNAP

transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Blue Light Market is approximately 840 square feet in size.
- The store had only two (2) shopping carts and no handheld shopping baskets for customer use.
- The store had two (2) cash registers and two (2) point-of-sale devices.
- The store did not have an optical scanner or conveyor belts at the checkout.
- Store personnel confirmed that there was no food in a storage area out of the public view and that no food was stored offsite.
- There were no large bulk foods, expensive international or specialty foods that might sell for a high price. There were no fresh meat/seafood bundles or large boxes of fresh fruit and vegetables for sale. The store had no signs advertising bulk purchase deals.
- The store photographs show dust on cans of food which indicates that these products are not subject to frequent turnover.
- The checkout registers were located behind a Plexiglas barrier with two (2) small turnstile windows for passing through items for purchase. There was only a very small ledge running outside the barrier which was inadequate for stacking food for large purchases.

The SNAP eligible food stocked by the store consisted mainly of inexpensive canned and packaged dry goods. The store did not carry any fresh meat, poultry, seafood or fresh produce. The store also sold a large amount of accessory non-staple foods items such as snack foods, candy, carbonated and non-carbonated drinks, coffee, tea, condiments, and spices. The stocked ineligible items included tobacco, alcohol (beer, wine and liquor), automotive products, health and beauty products, paper goods and cleaning products. The store had a kitchen where SNAP ineligible hot and cold food not intended for home consumption was prepared. The store also sold lottery tickets. Store personnel confirmed with the store visit contractor that the most expensive items sold by the store were a 12.5 ounce can of Enfamil at \$21.49; a 13.5 ounce can of Maxwell house at \$6.99; 40 ounces of sausages at \$6.99; and 28 ounces of cereal at \$6.49. Only ten (10) cans of Enfamil were visible in the store photos. Because the store was authorized for the WIC Program any purchases of formula would most likely be made with WIC benefits.

Given the available inventory as noted above, there is no indication from the store visit report that Blue Light Market would be likely to have SNAP transaction patterns significantly different from similar-sized competitors offering similar food items. Although the Appellant says that Blue Light Market is more like a grocery store, it is in fact a convenience store under FNS standards.

Credit Transactions

The SNAP regulation 7 CFR § 278.2(f) states that “SNAP benefits shall not be accepted by an authorized retail food store in payment for items sold to a

household on credit. A firm that commits such violations shall be disqualified from participation in SNAP for a period of one year.”

The Appellant claims that most of the transactions cited in the charge letter are due to repayments on credit accounts. In its February 13, 2018 letter to the Retailer Operations Division, the Appellant submitted four (4) signed form affidavits from alleged store customers stating that they had repaid credit accounts at the store with SNAP benefits. The affiants further claimed that none of their transactions involved the exchange of cash for SNAP benefits.

In response to this letter, the Retailer Operations Division requested documentation to support that food items were purchased on credit and stated that this documentation must identify specific accounts along with corresponding dates and amounts. The Appellant’s counsel responded in an e-mail that the store did not keep such documentation as it returned the credit receipts to the customers after the account was paid off.

The Retailer Operation Division examined the four (4) affidavits and determined that two (2) of the individuals could not be identified in the Michigan state terminal as SNAP recipients. The remaining two (2) individuals were identified as SNAP recipients but they had no transactions in Charge Letter Attachment 1 **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** The Appellant objects that the Retailer Operations Division did not contact the affiants before making its determination. This is not the practice of the Retailer Operations Division as experience has shown that it is highly unlikely that these individuals would admit to anything against their self-interest and thereby subject themselves to potential criminal or administrative sanctions. The Appellant has also suffered no harm from the Retailer Operations Division not calling these individuals. Even if all of them were SNAP recipients and all their transactions were credit repayments, this would still leave the large majority of transactions cited in the charge letter unexplained and undocumented.

When a retailer claims it maintains credit accounts to explain irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit violations in a bad faith attempt to obtain a lesser penalty after committing more egregious violations such as trafficking. Credit transactions must be accounted for with substantial evidence such as the dates credit was extended, to whom, for what amount, and for what items. In summary, there is insufficient evidence to support the Appellant’s contention that the irregular SNAP transactions cited in the charge letter are due to repayments on credit accounts.

Multiple Transactions by the Same Household within a Short Time Period

The Appellant states that retailers are not allowed to restrict the number of times that SNAP recipients use their SNAP benefits and cannot question whether the

cardholder is an authorized user. Both statements are true. However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, or are used by an unidentified person, but rather because they display characteristics of use inconsistent with the nature and extent of a convenience store's stock and facilities and are thus indicative of trafficking.

Violating stores often conduct multiple split transactions from the same household account as a method to avoid the detection of single high dollar transactions that cannot be supported by the retailer's food inventory and infrastructure.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). In fact, this average SNAP transaction is larger than the average SNAP transaction at a Michigan superstore during the review period. It is not credible that a convenience store with a limited selection of staple foods would have suspicious SNAP transactions more than those of a superstore. It is even less likely that these excessively large transactions would be conducted multiple times by the same household during a short time period.

The Appellant states that some of these transactions are a combination of credit repayments and legitimate SNAP purchases. Excluding for the moment the fact that there is insufficient evidence to support that any of these transactions are credit repayments, many of the transaction pairs do not look like a credit repayment followed or preceded by a smaller purchase typical of a convenience store.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Appellant states that for some customers, Blue Light Market is their primary grocery store and they come in and out of the store several times a day. They allegedly come with other family members and purchase groceries together or at different sales windows with the same card. Lastly, the Appellant states that SNAP customers will come into the store with other persons and make purchases **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** and then split the purchases inside the store or outside. Although a customer may shop at a store more than once a day, it is unlikely that a single store would have such atypically large transactions from the same household multiple times within a short time period. The store did not provide any documentation such as itemized register receipts that would explain how a convenience store with limited staple foods is legitimately conducting excessively large transactions multiple times during a short time period.

The store visit pictures show that is unlikely that SNAP customers would shop at Blue Light Market multiple times during a short time frame, or purchase such a large volume of items. In addition, the store's enclosed checkout area with turnstile windows and very limited counter space makes it unsuitable for conducting large transactions. The store also had only two (2) shopping carts and no shopping baskets for transporting food within the store. Based on the analysis above, and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

Excessively Large Transactions

The Appellant states that retailers are not allowed to restrict how much customers purchase with SNAP benefits and cannot question whether the cardholder is an authorized user. Both statements are true. However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, or are used by an unidentified person, but rather because they display characteristics of use inconsistent with the nature and extent of a convenience store's stock and facilities and are thus indicative of trafficking.

Charge Letter Attachment 2 cites 806 SNAP transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). The substantial number of high dollar purchases atypical of a SNAP authorized convenience store calls into question the legitimacy of these transactions. As noted previously, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellant states that the store is more of a food market with a large assortment of food items consisting of meats, dairy, lunch meat, cheese, coffee, canned foods, dry foods, baby formula, energy drinks, juices, soft drinks, and all types of snacks. However, the store visit report and photographs confirm that Blue Light Market is a convenience store with a limited selection of staple foods mostly consisting of canned and dry packaged goods. There is no fresh meat, poultry or seafood and there is no fresh produce. Although the store does sell a limited amount of infant formula, Blue Light Market is also WIC authorized and any infant formula would be more likely purchased with WIC benefits. Much of the food inventory consists of inexpensive accessory food items such as snack foods, candy, condiments, energy drinks, soft drinks, etc. Outside signage prominently markets the store as a selling liquor, beer and wine along with lottery tickets and a significant proportion of the store's footprint is devoted to alcohol sales. In summary, this is not the type of store that would generate legitimate SNAP transactions comparable or larger than those at a SNAP authorized supermarket or superstore.

The Appellant states that the unique circumstances of the impoverished area surrounding the store contributes to larger than normal SNAP transactions. Allegedly, the store is nestled in a location that does not have competitors within walking distance. Regarding this contention, it is true that sometimes a store may have higher than normal SNAP transactions due to the lack of access to other SNAP authorized stores in the area. However, the Retailer Operations Division determined that within a one-mile radius of Blue Light Market there are eleven (11) SNAP authorized stores including a medium grocery store and ten (10) other convenience stores. Within a two-mile radius there are five (5) supermarkets and two (2) large grocery stores all SNAP authorized. A government report on SNAP benefit redemption patterns revealed that households most often redeemed their benefits at

supermarkets and superstores with only four (4) percent of all households never shopping in a supermarket or superstore. Thus, when a supermarket or superstore is available, it is highly unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a convenience store with a limited selection of staple foods like Blue Light Market.

The Appellant claims that Blue Light Market's transactions are common occurrences throughout the Detroit area. However, the Retailer Operations Division examined the SNAP transaction patterns at six (6) nearby competitor convenience stores. None of these comparison convenience stores exhibited the same irregular transaction patterns as Blue Light Market. As noted above, the Retailer Operations Division also determined that Blue Light Market store does not appear to stock any food items not available at other retailers in the area.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three (3) households identified in the charge letter to analyze their shopping patterns at Blue Light Market compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at, grocery stores, supermarkets and/or superstores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Blue Light Market on the same day or within a few days of shopping at grocery stores, supermarkets and superstores. It is highly unlikely that a convenience store with limited staple foods would have legitimate SNAP transactions comparable or larger than these SNAP authorized grocery stores, supermarkets and superstores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the scarcity of shopping carts and shopping baskets support the Retailer Operations Division determination. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

Trafficking Case Based on Irregular Transaction Patterns

The Appellant cites FNS Handbook 318, Section 1020, that the supporting evidence for a permanent disqualification should be substantial and fully documented and that the Retailer Operations Division's determination falls far short of the substantial and fully documented standards. In particular, the Appellant states that the case record is totally devoid of any decoy buys which

would be supporting evidence that would be a valid basis for the decision to permanently disqualify the store.

First, it should be noted the FNS Handbook 318 is obsolete and is no longer used by FNS. However, with regard to the sufficiency of the evidence, FNS employs a computerized fraud detection tool to identify SNAP transactions that form patterns having characteristics indicative of trafficking. Nevertheless, 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, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior and a comparison of stores in the area, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking.

The Appellant objects that there were no “decoy” buys. It is not required that an undercover compliance buy be a part of a case involving evidence obtained through EBT transaction data. Nor would it be efficient and effective for such a requirement to be put in place. This is because, in many cases, a violating store will only conduct trafficking transactions with a subset of customers who are trusted individuals whom the retailer personally knows. Under the Appellant’s contention, only a positive undercover compliance buy would be sufficient evidence of trafficking. This is contrary to 7 CFR §278.6(a) which states, in part, “FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence **that may include** facts established through on-site investigations, inconsistent redemption data, **evidence obtained through a transaction report under an electronic benefit transfer system ...**” [Emphasis added.]

Hardship to the Firm

The Appellant contends that a permanent disqualification will create a hardship for the store as it relies on the SNAP and may be forced out of business. With regard to this contention, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in the SNAP. However, there is no provision in the SNAP regulations for a waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to either the ownership personally or the firm resulting from the imposition of such penalty. To allow stores to be excused from assessed administrative penalties based on a 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.

CIVIL MONEY PENALTY

The Appellant did not timely request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR § 278.6(i) even though it was informed of the right to do so in the charge letter. The SNAP regulation at 7 CFR § 278.6(b)(2)(ii) mandates that a trafficking CMP along with supporting documentation shall be submitted within ten (10) days of receipt of the charge letter.

The SNAP regulation at 7 CFR § 278.6(b)(2)(iii) also states, in part, that “if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days ... the firm **shall not be eligible** for such a penalty.” [Emphasis added.]

Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program prior to the violations. Therefore, the Retailer Operations Division’s decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

The Retailer Operations Division’s analysis of the Appellant’s EBT transaction record was the primary basis for its determination to permanently disqualify the retailer. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Government analyses of stores caught in trafficking violations during on-site investigations 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 explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did in fact occur as determined by the Retailer Operations Division. Based on the discussion above, the decision to impose a permanent disqualification against Blue Light Market, Appellant, is sustained.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

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

RONALD C. GWINN
Administrative Review Officer

May 24, 2018