

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

Braf Brothers LLC #1,

Appellant,

v.

Case Number: C0217490

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The record supports that the Braf Brothers LLC #1 (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the USDA that there is sufficient evidence to support that the permanent disqualification of Appellant from participation as an authorized retail food store in the Program, as imposed by the Retailer Operations Division, (Retailer Operations) was appropriate.

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.6(a), (c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant.

AUTHORITY

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1 provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 may file a written request for review of the administrative action with the Food and Nutrition Service (FNS).

CASE CHRONOLOGY

By Charge letter dated May 29, 2019, Retailer Operations informed the owners that it had compiled evidence that Appellant had violated the SNAP regulations based on electronic benefit transfer (EBT) transactions that established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the firm type. The sanction for trafficking is permanent disqualification.

One owner responded to the Charge letter by letter dated July 1, 2019. Retailer Operations issued a Determination letter dated July 17, 2019. This letter informed the owners that Appellant was permanently disqualified as a retail food store in accordance with Sections 278.6(c) and 278.6(e)(1) of the regulations. Retailer Operations considered Appellant's eligibility for a civil money penalty (CMP) according to Section 278.6(i) of the regulations, and found it was not eligible because insufficient evidence was submitted timely to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program to prevent violations.

By letter dated July 23, 2019, one owner appealed Retailer Operations' determination. The appeal for administrative review was granted by letter dated August 8, 2019.

STANDARD OF REVIEW

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

CONTROLLING LAW AND REGULATIONS

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Sections 278.6(a) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(e)(1) states: "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." Trafficking is defined, in part, in 7 CFR § 271.2, as "the buying or selling of SNAP benefits for cash or consideration other than eligible food."

7 CFR § 271.2 states: "Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food products prepared for immediate consumption."

7 CFR § 278.6(a) states: "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."

7 CFR § 278.6(b)(2)(ii) states: “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(i) states: “FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.”

SUMMARY OF THE CHARGES

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges were based on an analysis of SNAP transaction data during the period of August 2018 through January 2019. The patterns of transaction characteristics indicative of trafficking are:

1. Multiple transactions made from individual benefit accounts within a set time period.
2. EBT transactions that are large based on the observed store characteristics and recorded food stock.

APPELLANT’S CONTENTIONS

In reaching a decision, consideration has been given to all contentions, including any not referenced.

- Based in information EBT transactions multiple transactions were made from the account individual SNAP households within a set time period. This answer customer say need separate transaction. My store have some customer by monthly food large count one time.
- You say my store conducted EBT transactions that are large based on the observed store not that much food stock. This store is small and we have separate room in food stock. Such as big bag chips case water case soda.
- Based your Attachment we don’t have register receipt.

ANALYSIS AND FINDINGS

Retailer Operations presented a case that Appellant trafficked SNAP benefits. Each Attachment furnished with the Charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking that were conducted at Appellant during the review period. As patterns of unusual transactions appear across multiple Attachments the case of trafficking becomes more convincing.

Attachment 1: Listed are 71 transactions in 23 sets conducted by 13 unique households (HHs). Multiple transactions within a set time period are a method stores use to avoid high dollar transactions and are indicative of trafficking.

The data shows that within a one mile radius of Appellant there are six other authorized retailers including three convenience stores, one medium grocery store, and two super stores. The data supports that 85% of the HHs listed on this Attachment shopped at a supermarket, or super store within one day of making a transaction(s) at Appellant. Thus, recipients did use other authorized shopping options to transact SNAP benefits.

No itemized cash register tapes to support SNAP eligible food sales at Appellant were provided. No vendor invoices to support the acquisition of SNAP eligible foods were advanced by the responding owner to support the dollar volume of SNAP redemptions at Appellant during the review period. The responding owner provided no recipient statements regarding their shopping behavior at the store. No federal tax records or state sales tax reports were advanced to counter the trafficking charge. No business banking records were offered to support that trafficking was not occurring at Appellant.

Attachment 2: Listed are 332 transactions conducted by 107 unique households, for amounts that exceed the average transaction amount for the same store type in the same state by three times or more. Besides SNAP-eligible food items, the firm sells ineligible lottery tickets, tobacco products, alcohol, health and beauty aids, paper goods, and cleaning products. The photos in the record support that Appellant is a convenience store stocked with common canned goods, packaged goods, snacks, and drinks. Appellant does not appear to be stocked with significant staple food inventories in the four staple food categories. The store's food inventories mostly consist of accessory foods that do not count towards eligibility to be a retail food store in SNAP. Appellant does not appear to offer specialty or ethnic food items. There does not appear to be anything unique about Appellant that would persuade a SNAP recipient to consider it as the primary or a main source for their staple food needs, or to generate large transaction amounts. The store's own application shows that ownership estimated 40% of his total retail sales to be in staple foods, while 30% of his sales were noted to be for lottery, tobacco, alcohol, and other non-food items that are not allowed for SNAP purchase, and 30% for accessory foods.

5 U.S.C. § 552 (b)(7)(E).

Of the households flagged on this Attachment, 86% conducted a transaction(s) at a supermarket, or super store within one day of making a transaction(s) at Appellant. This indicates that the households were aware of other nearby authorized retailers, and transacted benefits at larger stores.

Retailer Operations presented shopping histories of recipients that had flagged transactions at Appellant. The households appear to have adequate transportation to travel to conduct SNAP transactions at various retailers. The households conducted high dollar SNAP transactions at Appellant on the same day or next day from conducting transactions at super stores.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

No vendor invoices of SNAP eligible items acquired in inventory were advanced to support Appellant's SNAP dollar volume redemption total for the review months. Ownership provided no itemized cash register tapes of SNAP sales for the review months. No SNAP customer affidavits were advanced. No federal business tax returns or state tax filings were provided, and no business banking statements were submitted. Thus, the responding owner has not provided a preponderance of evidence that the transactions on the Attachments are for eligible foods rather than the result of trafficking.

The evidence that Appellant violated the SNAP regulations is furnished in the Charge letter Attachments. SNAP transaction data is provided to FNS via each State's EBT processor on a daily basis in a single layout and format that is standardized nationwide. The USDA uses pre-defined criteria or patterns for potential fraud detection. A computer system provides a series of reports that compare a specific store's data to the average for its firm type or to user-selected comparison stores. Retailer Operations' staff developed the case of trafficking on the basis that the transaction patterns cannot more likely be explained due to the store size, layout, inventory, and other factors.

Based on Appellant's data, and in the absence of compelling evidence for such transaction patterns, a conclusion can be drawn that the patterns cited in the letter of charges evidence trafficking as the most likely explanation. Nevertheless, transactions having such characteristics are sometimes the result of legitimate purchases of eligible food items, and opportunities were afforded to the charged owners to provide evidence of the legitimacy of the questionable transactions cited. While some households may have conducted legitimate SNAP transactions at Appellant, insufficient evidence was presented to support this argument.

The regulations at 7 CFR §278.6(a), establish the authority upon which FNS may disqualify any authorized retail food store. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through inconsistent redemption data and evidence obtained through a transaction report under an electronic benefit transfer system. In this case, Retailer Operations determined that the responding owner's contentions did not outweigh the evidence in the record. Retailer Operations used transaction data and system reports, in addition to an onsite store visit report, and an analysis of household shopping behavior, in rendering a finding that violations indicative of trafficking were occurring at Appellant, and it acted to permanently disqualify Appellant.

CIVIL MONEY PENALTY

The regulations at 7 CFR Section 278.6(i) specify the criteria for a firm's eligibility for a CMP in lieu of permanent disqualification for trafficking. Ownership failed to submit substantial documentation timely to show that Appellant met the four regulatory criteria to qualify for a CMP. Accordingly, Retailer Operations determined that Appellant was not eligible for a trafficking civil money penalty.

CONCLUSION

Retailer Operations' analysis of Appellant's SNAP transaction data was the primary basis for its determination to permanently disqualify Appellant. The record also included onsite store photographs, an onsite inventory and store visit report, HH shopping analyses and other reports that provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits.

Based on empirical data and in the absence of a preponderance of evidence of the legitimacy of the transactions presented by Appellant, it is more likely than not that violations did occur as charged by Retailer Operations. The record confirms that Retailer Operations' denial of a trafficking CMP was also proper per the applicable regulations. Therefore, the decision to impose a permanent disqualification against Appellant is sustained. This decision will be effective 30 days after receipt.

RIGHTS AND REMEDIES

Attention is called to Section 14 of the Food and Nutrition Act of 2008 and to 7 CFR § 279.7 of the regulations with respect to applicable rights to a judicial review of this decision. If a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which Appellant's owners 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, 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.

M. Viens
ADMINISTRATIVE REVIEW OFFICER

September 18, 2019