

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

**Casablanca Meat Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0202230**

**FINAL AGENCY DECISION**

It is the decision of the USDA that the record indicates that Casablanca Meat Market. (hereinafter Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retailer in the program, as initially imposed by the Retailer Operations Division was appropriate.

**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 Appellant in a letter dated August 12, 2020.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1 provides 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**

The Ohio Department of Public Safety Enforcement Agents conducted an investigation of the compliance of Casablanca Meat Market with Federal SNAP law and regulations from August 23, 2017 through October 13, 2017. The investigation report documents the following:

1. On August 23, 2017, unidentified clerk verified and transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP EBT benefits for

- 5 U.S.C. § 552 (b)(6) & (b)(7)(C); who exchanged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) cash for the SNAP EBT benefits.
2. 2. On September 6, 2017, unidentified clerk verified and transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP EBT benefits for 5 U.S.C. § 552 (b)(6) & (b)(7)(C); who exchanged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) cash for the SNAP EBT benefits.
  3. 3. On October 13, 2017, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) verified and transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP EBT benefits for 5 U.S.C. § 552 (b)(6) & (b)(7)(C); who exchanged 5 U.S.C. § 552 (b)(6) & (b)(7)(C)0 cash for the SNAP EBT benefits.

As a result of evidence compiled from this investigation, the Retailer Operations Division informed the Appellant, in a letter dated July 8, 2020, that it was charged with violating the terms and conditions of the SNAP regulations. The letter stated, in relevant part, that:

Your firm is charged with trafficking, as defined in Section 271.2 of the SNAP regulations. As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for the trafficking violation(s) ... is permanent disqualification.

The charge letter also stated that:

Under certain conditions, FNS may impose a civil money penalty (CMP) of up to \$59,000.00 in lieu of permanent disqualification of a firm for trafficking. The SNAP regulations, Section 278.6(i), list the criteria that you must meet in order to be considered for a CMP. If you request a CMP, you must meet each of the four criteria listed and provide the documentation as specified within 10 calendar days of your receipt of this letter.

In email correspondence dated July 21, 2020, Appellant, through counsel, responded to the charge letter and identified himself as the attorney for the Appellant. Counsel generally stated that he represented the Appellant in 2018 for the exact charges in Case No. 18-CR-553 and Appellant entered into a Diversion agreement with the prosecution and is scheduled to have the case successfully terminated within weeks. Counsel stated that Appellant has not association with the SNAP program at this time. The record reflects that a letter of representation was requested with Appellant's signature. In email correspondence dated July 31, 2020, counsel informed Retailer Operations Division of Appellant's intent to appeal the decision and additional information was forthcoming. In email correspondence dated August 4, 2020, counsel provided Retailer Operations Division with a copy of court documents from the Franklin County Court of Common Pleas, dated July 13, 2020, dismissing the State's case against Appellant.

After considering the Appellant's reply and the evidence in the case, the Retailer Operations Division issued a determination letter dated August 12, 2020. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 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 Section 278.6(i) of the SNAP regulations. The Retailer Operations Division determined that the Appellant was not eligible for the trafficking CMP because the Appellant 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 dated August 24, 2020, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's determination. The appeal was granted.

### STANDARD OF REVIEW

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

### CONTROLLING LAW

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). In particular, 7 CFR § 278.6(a) and (e)(1)(i) establishes 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 § 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 § 278.6(e)(1)(i) states, in relevant part, "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in §271.2."

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*...." [Emphasis added]

7 CFR § 278.6(f)(1) states, inter alia: "FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm's disqualification would cause hardship to [SNAP] households because there is no other authorized retail food store in the area selling as large a

variety of staple food items at comparable prices... A civil money penalty for hardship to [SNAP] households may not be imposed in lieu of a permanent disqualification.”

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(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.”

### SUMMARY OF THE CHARGES

During an on-site investigation, the Ohio Department of Public Safety Enforcement Agents conducted compliance visits at Appellant from August 23, 2017 through October 13, 2017. The investigation report documents the following:

1. On August 23, 2017, unidentified clerk verified and transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP EBT benefits for 5 U.S.C. § 552 (b)(6) & (b)(7)(C); who exchanged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) cash for the SNAP EBT benefits.
2. On September 6, 2017, unidentified clerk verified and transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP EBT benefits for 5 U.S.C. § 552 (b)(6) & (b)(7)(C); who exchanged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) cash for the SNAP EBT benefits.
3. On October 13, 2017, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) verified and transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP EBT benefits for 5 U.S.C. § 552 (b)(6) & (b)(7)(C); who exchanged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) cash for the SNAP EBT benefits.

### APPELLANT’S CONTENTIONS

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

1. Casablanca Meats never exchanged money for SNAP benefits and proved that to the State of Ohio in a previous action. No factual determination for SNAP benefits for cash ever has been proven.
2. Supporting documentation will be filed in a subsequent transmission.

Appellant, through counsel, did not provide any additional information during the review process. However, counsel provided Retailer Operations Division with a copy of court

documents from the Franklin County Court of Common Pleas, dated July 13, 2020, dismissing the State's case against Appellant.

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**

Appellant, through counsel, contends that Casablanca Meats never exchanged money for SNAP benefits and proved this to the State of Ohio in a previous action and no factual determination for SNAP benefits for cash has ever been proven. With regard to these contentions, it is important to note that the record reflects that FNS does not refute counsel's contention that ownership has no association with the SNAP program. However, the owner's voluntary withdrawal of Casablanca Meat Market on November 1, 2018 does not circumvent the administrative proceedings for acceptance of SNAP benefits in exchange for cash during the August 23, 2017 through October 13, 2017, which was a clear violation of the provisions at 7 CFR 278.2(a).

FNS also does not refute that ownership entered into a Diversion Agreement with the Franklin County Court of Common Pleas nor does FNS refute that the criminal case brought before Appellant, having met the terms of the Diversionary Agreement, was "dismissed" on July 13, 2020. It is important to note that the State's criminal proceedings do not preclude FNS from reviewing this matter and rendering an administrative resolve. The Ohio Department of Public Safety State Law Enforcement Bureau Retail Case Summary Report provided evidence that Appellant engaged in acts of trafficking between August 23, 2017 and October 13, 2017. Counsel has provided no contentions to these charges, but rather confirmed that the criminal actions in this case are final and were dismissed by the State; therefore, a permanent disqualification is the appropriate sanction in accordance with §278.6(c) and §278.6(e)(1) of SNAP regulations.

It is the determination of this review that Appellant's contentions do not constitute valid grounds for dismissal of the current charges of trafficking or for mitigating the impact of those charges.

### **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. 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 compliance policy to prevent SNAP violations. Appellant was advised of this provision in the charge letter of July 8, 2020, which also advised that documentation of eligibility for that alternative sanction had to be provided within a specific time limit. Such documentation must establish that there

was an effective compliance policy and training program and that both were in effect and implemented *prior* to the occurrence of violations. In the absence of any such documentation, Retailer Operations Division did not impose a civil money penalty in lieu of permanent disqualification.

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**

As previously stated, 7 CFR § 278.6(e)(1)(i) reads, in part, "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." The law and regulations do not provide for a lesser period of disqualification for this violation.

Based on a review of the evidence in this case, there is no question that program violations did occur during an Ohio Department of Public Safety Enforcement investigation. All transactions cited in the letter of charges were conducted or supervised by an Agent with the Ohio Department of Public Safety Enforcement and all are thoroughly documented. A review of this documentation has yielded no indication of error or discrepancy in any of the reported findings. Rather, the investigative record is specific and accurate with regard to the dates of the violations, including the exchange of cash for food products previously purchased with SNAP benefits, and in all other critically pertinent details. The decision to impose a permanent disqualification against Casablanca Meat Market is sustained.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) with respect to 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 (FOIA), it may be necessary to release this document and related correspondence and records upon request. If the USDA receives such a request, it will seek to protect, to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.

Monique Brooks  
ADMINISTRATIVE REVIEW OFFICER

January 19, 2021