

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

**Christian Deli & Grocery,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0200320**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is sufficient evidence to support a finding that the permanent disqualification of Christian Deli & Grocery (Christian Deli & Grocery or Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), 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 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 USC § 2021 and the 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 July 20, 2017, the Retailer Operations Division charged 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 November 2016 through April 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided

by 7 CFR § 278.6(e)(1). The letter also noted that Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant replied to the charges by letter dated August 3, 2017. Appellant denied trafficking and explained that the transactions were normal based on the unique circumstances of the store. After considering the evidence and the retailer's reply, the Retailer Operations Division issued a determination letter dated August 23, 2017. The determination letter informed Appellant that 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 Appellant was not eligible for a trafficking CMP because 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 postmarked September 1, 2017, Appellant appealed the Retailer Operations Division's determination and requested an administrative review. The appeal was granted.

### **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a clear preponderance of the evidence, that the administrative actions should be reversed. That means the 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**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a), (c) 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 § 271.2 states, in part, that, "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 § 271.2 defines trafficking as: "(1) 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(a) states, inter alia, that “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(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(e)(1) reads, in part, “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.”

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**

Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from November 2016 through April 2017. This involved the following SNAP transaction patterns which are indicative of trafficking:

- There were multiple transactions made from individual benefit accounts in unusually short time frames.
- There were excessively large purchase transactions made from recipient accounts.

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.

### **APPELLANT’S CONTENTIONS**

In its administrative review request postmarked September 1, 2017, Appellant provided the following summarized contentions, in relevant part:

- Appellant’s owner and wife are the only employees working in the store and have been working in the store for years.
- Appellant is a neighborhood mom and pop store where customers shop a few times a day.

- Sometimes customers forget to bring their EBT card and they pay the next time.
- Grandmothers send their kids to Appellant a few times a day with their EBT card.
- Ownership never violated the SNAP with his knowledge.
- Nothing illegal happens at Appellant.

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

## **ANALYSIS AND FINDINGS**

### **Store Visit**

FNS authorized Christian Deli & Grocery as a convenience store on June 22, 1999. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a February 11, 2017, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Christian Deli & Grocery is approximately 1,150 square feet, with no additional food storage outside of public view.
- There were no shopping baskets or shopping carts for customer use.
- There was one cash register and one point-of-sale device.
- The available checkout area space is approximately 1.5 x 1.5 square feet with some of the space occupied by snack food items.
- There were no meat/seafood specials or bundles that might sell for high prices.
- There was no fresh meat, poultry, or fish.
- There was limited fresh produce including some potatoes, onions, and three mangoes.
- There was limited dairy including one gallon of milk, one container of yogurt, two boxes of butter, and some individual ice cream treats.
- There was a limited selection of staple food items including mostly canned goods.
- Much of the remaining stock consisted of accessory foods such as candy, spices, and carbonated and uncarbonated drinks.
- Ineligible items included tobacco products, lottery, clothing, health and beauty products, and household products.
- There were broken coolers and empty shelves noted.

The SNAP eligible food stocked by the store was generally of a low dollar value consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. Given the available inventory as noted above, 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.

### **Charge Letter Attachments**

Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

**Charge Letter Attachment 1. Multiple transactions were made from individual benefit accounts in unusually short time frames.** This attachment documents 20 sets of transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

Appellant explains that customers make many trips to the store and sometimes grandmothers send kids to the store many times during the day. The SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of Appellant's stock and facilities and are therefore indicative of trafficking. Although it is not uncommon for customers to have more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. The photographs from the store visit offer no legitimate explanation as to why SNAP customers would routinely shop at Appellant multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale. The second and third transactions in each set are too large to consist of a forgotten item or two.

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.

**Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 190 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transaction amounts are not consistent with the store's inventory with no fresh meat or fresh produce. Based on the store visit report, the firm does not offer food in bulk or any specialty foods that might sell for a high price. Instead, the store carries mostly inexpensive canned and packaged goods and single-serving food items. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions.

The Retailer Operations Division compared Appellant to four nearby convenience stores. The Retailer Operations Division determined that Appellant's average SNAP transaction amount was greater than each of the other four stores. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Given that Appellant

did not have any fresh meat and limited fresh produce, the Retailer Operations Division considered this an indicator of trafficking.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C).** Considering Appellant's eligible food stock, infrastructure, and proximity to larger, better stocked stores this is highly unlikely and likely indicative of trafficking. Sometimes a firm may have higher than average SNAP transactions amounts due to the lack of access to other SNAP authorized stores. However, the Retailer Operations Division determined that within a one-mile radius of Appellant, there are nine other convenience stores, nine small groceries, three medium groceries, one large grocery, and two super stores. It is not plausible that the firm's customers would regularly purchase large amounts of merchandise at Appellant when larger, better stocked stores are readily available and in the vicinity of the Appellant firm.

Lastly, the Retailer Operations Division examined four households identified in the charge letter to analyze their shopping patterns at Christian Deli & Grocery compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at supermarkets and superstores. However, despite this access to better stocked stores, each of the four households conducted excessively large transactions at Christian Deli & Grocery **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of shopping at a supermarket or super store. There is no legitimate reason why households would conduct large transactions at Appellant when these household had just visited or planned to visit larger stores with a better selection of staple foods including fresh meat and produce and likely better prices.

In summary, Appellant's layout, business structure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. 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. Therefore, based on this empirical data, and in the absence of evidence to legitimize 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.

## **Credit**

Appellant contends that sometimes customers forget their EBT card and then pay for their food next time they shop. Accepting SNAP benefits for payment on credit is a violation of Section 278.2(f). Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items. In this case, exculpatory evidence would be in the form of an accounts receivable ledger, which lists the full name of each recipient, their SNAP number, address or other contact/identifying information, as well as the dates and amounts of each credit transaction, and what eligible items were purchased and what transactions were to repay outstanding balances. Absent this type of detailed documentation, it is not possible to compare alleged credit payments against the transactions outlined in the charge letter attachments to determine if these were legitimate.

There is insufficient evidence to show that the charge letter transaction patterns are the result of credit repayments. Under review, the evidence more substantially supports a conclusion that the transaction activity, as documented in the charge letter attachments, was due primarily to trafficking in SNAP benefits.

### **Intent**

Appellant contends it did not intend to violate any rules. However, the definition of trafficking contained in the SNAP regulations at 7 CFR § 271.2 does not require an element of intent on the part of the violator.

### **Denies Trafficking**

Regarding Appellant's denial of the trafficking allegations, this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is to determine whether the owner demonstrates by a preponderance of the evidence that the permanent disqualification should be reversed. Assertions that the firm has not violated program rules, by themselves and without sufficient supporting evidence do not constitute valid grounds for dismissal of the current charges of violations or mitigate their impact.

Appellant must provide 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. While the owner contends that the transactions on the Attachments are legitimate, no itemized cash register receipts were advanced as evidence of eligible foods sold at Appellant during the review period. Further, no vendor invoices or receipts were provided as evidence of Appellant's acquisition and stock of eligible foods to support its SNAP redemptions. No evidence of credit accounts was advanced. No bank records or federal or state tax records were provided. No customer affidavits were submitted.

In the absence of compelling information or documentation weighed in comparison to the evidence provided by the Retailer Operations Division, the evidence weighs in favor of the Retailer Operations Division's determination that SNAP-benefit trafficking substantially produced the transaction activity at issue in the present case.

### **CIVIL MONEY PENALTY**

In the charge letter, the Retailer Operations Division informed Appellant of its right to request a trafficking CMP under 7 CFR § 278.6(i). Appellant was informed that it would need to provide both the request and supporting evidence within ten calendar days of receiving the charge letter and that no extension of time could be granted for making the request or for providing the required evidence. Appellant did not 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 criteria for a trafficking CMP in lieu of disqualification is defined under 7 CFR §278.6(i) which reads, inter alia:

*In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of a permanent disqualification for trafficking, the firm shall, at a minimum, establish by **substantial evidence** [emphasis added] 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 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; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm*

....

Appellant indicated that it did not have any employees besides the owner's wife. On February 3, 2006, Ownership signed the application for SNAP re-authorization and agreed to the following:

*“Owners/Officers must ensure that the training materials are reviewed by all firm's owners and all employees (whether paid or unpaid, new, full-time or part-time) and that all employees will follow SNAP regulations.”*

Moreover, all authorized retailers were mailed a notice in 2013 reminding them of the available SNAP training materials and resources to assist them in ensuring that all employees, including owners, paid and unpaid employees, are following the rules. This notice described what a minimally acceptable SNAP training program should include and how a firm should document its SNAP training program. There is no provision in the regulations to waive the training requirements for a firm in which there are only two employees of the firm, including the store owner.

In summary, the Appellant firm fell short of the regulatory standard for a trafficking CMP as it did not provide substantial evidence that it met all four criteria required by 7 CFR §278.6(i). 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 Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. 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 occur as charged by the Retailer Operations Division. The determination to impose a permanent disqualification against Appellant is sustained.

The Retailer Operations Division also determined that Appellant was not eligible for a trafficking civil money penalty according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations. Under review, the denial of a trafficking CMP was deemed correct and proper.

## **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. 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'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.

Mary Kate Karagiorgos  
Administrative Review Officer

December 27, 2017