

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

C J Supermarket,)	
)	
Appellant,)	
)	
v.)	Case Number: C0189822
)	
Retailer Operations Division,)	
)	
Respondent.)	
_____)	

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 C J Supermarket 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 C J Supermarket.

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 November 2015 through April 2016. This involved the following transaction patterns which are common trafficking indicators:

- There were multiple transactions made from individual household benefit accounts within unusually short timeframes
- Excessively large purchase transactions were made from recipient accounts.

CASE CHRONOLOGY

The agency's record shows that C J Supermarket was originally authorized as a SNAP retailer on July 12, 2011. According to the record, the current store owner, Mr. Finney Philip, assumed store ownership on June 1, 2015.

In a letter dated May 18, 2016, 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 November 2015 and April 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 and appropriate documentation submitted within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In a letter dated May 26, 2016, the Appellant responded to the charge letter, stating that it takes the law and regulations very seriously and that it did not and would not commit such violations. The Appellant owner argued that he and his wife were full-time employees elsewhere and were not in the store on a regular basis. Because of this, they hired a manager to oversee the firm's day-to-day operations.

As for multiple transactions made by individual households in short periods of time, the Appellant argued that its increased and improved inventory and its marketing techniques resulted in a boost in sales, which necessitated creating a system to differentiate between items purchased from the kitchen and items purchased from the store shelves, and then ringing up the different items in separate transactions. This helped the Appellant keep track of inventory going in and out of the store as well as how much the Appellant was spending on merchandise.

As for excessively large transactions, the Appellant argued that it cannot control how much is spent by a customer and it is not fair to hold the firm accountable for the spending choices made by SNAP customers. The Appellant further contended that most of the large purchases were made during the holiday season, during which there was an increase in sales.

Finally, the Appellant owner stated that as of May 2016, he has resigned from his full-time employment to concentrate on the store and is willing to make any necessary changes to prevent such discrepancies from happening again.

After considering the Appellant's replies and reviewing the documentation in the case, the Retailer Operations Division determined that the Appellant's explanations were not sufficient to justify the unusual transaction patterns listed in the charge letter attachments. As a result, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated June 15, 2016. 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 June 21, 2016, the Appellant appealed the Retailer Operations Division's determination and requested an administrative review. The appeal was granted.

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 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.

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:

- Appellant owner and his wife purchased the store in June 2015 as an investment for retirement. Both are professionals with active careers. The owner's wife is a state employee working for the Department of Health, and the owner is a human resources (HR) professional.
- Since the store owners are not in the store full-time, they hired a manager to oversee the day-to-day operations. The Appellant owners take the law and maintenance of state regulations very seriously and have not and would not commit such illegal acts.
- The Appellant contends that the following policy changes have been made:
 - The previous manager and staff that were employed during the period in question have been fired.
 - The firm will conduct regular audits of its records and its employees to ensure it is in compliance with state regulations.
 - Appellant has removed many of the business strategies that were noted in the response to the Retailer Operations Division and which may have contributed to the discrepancies.
 - The firm is following SNAP regulations as mandated and has reviewed them and emphasized them with the current employees.
 - The Appellant is willing to apply any other suggestions recommended by FNS to ensure that it is in compliance with all state regulations.

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 specifically referenced herein.

ANALYSIS AND FINDINGS

The primary issue for consideration 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 an April 19, 2016 store visit which was 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 report and photographs documented the following store size, description, and characteristics:

- C J Supermarket is a small convenience store, roughly 600 square feet in size, operating in an urban commercial area of Philadelphia, Pennsylvania.
- At the time of the visit, the firm had no shopping carts or shopping baskets for customer use.
- The store visit photographs show one cash register and one EBT point-of-sale device.
- The store does not appear to use optical scanners to process transactions.
- The store's staple food stock is moderate in each of the four staple food categories. The store also sells SNAP-eligible, non-staple accessory food items, such as carbonated and uncarbonated drinks, condiments, snacks and candy. Additionally, the store sells ineligible nonfood items, such as tobacco, lottery tickets, and other miscellaneous household merchandise.
- There is evidence that the firm sells meat and cheese by the pound, ranging in price from \$3.49 to \$5.99 per pound. The firm also sells a variety of hot food items which are not eligible for purchase with SNAP benefits. These include hot coffee, French fries, onion rings, breakfast meals, omelets, hot sandwiches and burgers, chicken wings, cheesesteaks, etc. Hot foods range in price from \$1.00 for a cup of tea or coffee to \$11.25 for a platter of buffalo wings. The firm also sells a variety of cold sandwiches, wraps and hoagies.
- The checkout area consists of a small countertop (approximately 24 inches by 24 inches) 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 no indication that the firm has a special pricing structure for SNAP-eligible foods, although judging by the store visit photos, the majority of prices appear to end in 9, such as \$0.99, \$4.99, etc.
- The store visit contractor also noted that there were a number of empty shelves and empty coolers, indicative of a store with a marginal amount of inventory.

The available inventory of SNAP-eligible food items at the time of the visit showed stock that would be typical of a small convenience store. There was no indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of grocery items. The available SNAP-eligible food was not unique to C J Supermarket and was primarily of a low dollar value or single-serving size and there was no hint that the firm sold any high-priced meat or seafood bundles or other bulk items.

Given this information, there was no sign that the firm would be likely to have SNAP redemption patterns that differed significantly from those of similar-sized competitors.

SNAP Transaction Analysis

Charge Letter Attachment 1: Multiple transactions were made from individual benefit accounts in unusually short time frames. [7 USC 2018 (b)(7)(e)]

The transactions cited in Attachment 2 are noteworthy because they are highly irregular and stand out significantly from normal shopping patterns at convenience stores such as C J Supermarket. As noted earlier, the store visit photographs show a very small store with a moderate amount of staple food inventory, most of which is low-priced or single-serving items. [7 USC 2018 (b)(7)(e)]. The store offers no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale.

It is important to note that according to FNS records, there are at least 60 SNAP authorized retail stores within one mile of C J Supermarket, including four superstores, four supermarkets, one large grocery store, two medium grocery stores, and more than four dozen small grocery stores and convenience stores. Therefore, it is not reasonable that so many SNAP households, many of which are doing all they can to stretch their SNAP benefit dollars, would prefer to shop at a convenience store like C J Supermarket multiple times a day, [7 USC 2018 (b)(7)(e)] rather than shopping at a nearby supermarket or superstore where prices are likely lower and where shopping carts or shopping baskets would help facilitate the purchase of large numbers of food items.

The Appellant has argued that new marketing techniques and its increased and improved inventory, such as fresh meat from Dietz & Watson and the sale of “party trays,” resulted in a boost in sales, which necessitated the creation of a system to differentiate between items purchased from the kitchen and items purchased from the store shelves. The Appellant contends that the clerks would then ring up the different items in separate transactions. The Appellant argues that this helped the firm keep track of inventory going in and out of the store as well as how much it was spending on merchandise.

Unfortunately this argument was not corroborated with any kind of evidence, such as inventory receipts, sales records of “party trays,” or cash register receipts to show what was actually purchased by SNAP customers. It is notable that there was no evidence from the contractor’s store visit that the firm even sold party trays. No signage or any other evidence was visible to suggest that party trays were a significant portion of the firm’s business.

Additionally, the Appellant’s contention seems extremely unlikely considering the small amount of staple food inventory in the store and the lack of shopping carts and baskets. There is no evidence that the firm has sufficient inventory or the physical wherewithal to be able to accommodate customers wishing to purchase several hundred dollars of merchandise. The repetitive transactions found in Attachment 1 are often mere seconds apart, which means that the total amount of food that would have to be accumulated by a customer is significant. Without evidence to show what was actually purchased, it is the position of this review that such transactions are very likely not legitimate purchases of eligible food.

Further, the transaction amounts found in Attachment 1 are extraordinarily similar. [7 USC 2018 (b)(7)(e)]

[7 USC 2018 (b)(7)(e)]

[7 USC 2018 (b)(7)(e).7 USC 2018 (b)(7)(e).]The Appellant's explanation and evidence in this regard are neither.

Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts. [7 USC 2018 (b)(7)(e)]

[7 USC 2018 (b)(7)(e)]

[7 USC 2018 (b)(7)(e).] 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, especially considering the absence of shopping carts or shopping baskets and the store's severely constricted checkout area. The substantial number of high-dollar purchases in a six-month period and the unusual repetitiveness of many of the transaction amounts call into question the legitimacy of these transactions.

[7 USC 2018 (b)(7)(e)] Based on the store type, structure, and available inventory, it is simply not credible that the Appellant would so frequently conduct transactions that more closely resemble those of a supermarket or superstore. It is not plausible that the firm's customers would carry large amounts of merchandise around the store without the benefit of shopping carts or shopping baskets, especially since larger, better stocked stores are readily available and in the vicinity of the Appellant firm. As noted earlier, there are at least 60 SNAP- authorized retail stores within a one mile radius of the Appellant firm, including four supermarkets and four superstores. It is doubtful that a SNAP household making a legitimate purchase would choose to spend a large portion of its monthly allotment at a convenience store with likely higher prices and substantially less inventory than what would be found at a nearby supermarket or superstore.

As for why such large transactions occur so frequently, the Appellant has argued that it cannot control how much is spent by a customer and that it is not fair to hold the firm accountable for the spending choices made by SNAP customers. The Appellant further contends that most of the large purchases were made during the holiday season, during which there was an increase in sales.

In regards to the contention that most large purchases occurred during the "holiday season," it is true that there were more large transactions in November and December than the other four months of the review period. But the difference is not so significant as to draw a conclusion that all of the transactions must have been legitimate during November and December. For example, there were 62 transactions in November that can be found in Attachment 2. In December there were 67. In January there were 56, which is not significantly less than either November or December. By April, the number of large transactions was back up to 59. Further, as noted earlier, there is no evidence that the firm carries any unique or expensive

food items that might be more attractive during the holidays than any other time of year. Judging by the firm's inventory and physical characteristics, it is difficult to imagine what would compel SNAP households to spend large portions of their benefits at a small, moderately stocked convenience store without shopping carts or shopping baskets and with a severely constricted checkout area which is not conducive to conducting large transactions.

As for the argument that the Appellant has no control over how much a household chooses to spend during a single purchase, it is correct that SNAP regulations do not provide limitations on the number of transactions that can be made by SNAP households or how large individual transactions can be. However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display patterns of use that are inconsistent with the store's documented physical characteristics, pricing policy, and food inventory. It should be further noted that the transactions identified in the charge letter are not marginally abnormal, but decidedly so. The Retailer Operations Division does not contend that the EBT transactions detailed in the charge letter 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, the legitimacy of such transactions is called into question.

It is worthwhile to restate, as noted above, that in appeals of adverse actions an appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions 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 legitimate sales 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 determination made by the Retailer Operations Division must be sustained.

It is noted that stores caught committing trafficking violations, both during on-site 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 C J Supermarket, with its low-dollar inventory, lack of shopping carts and baskets, and its constricted checkout area cannot support the large numbers of high-dollar transactions identified in Attachment 2. Therefore, the most logical explanation for such repetitive transactions is trafficking.

Based on the analysis above, it is the determination of this review that the Retailer Operations Division has satisfactorily presented a case that C J Supermarket 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 offered no rational explanation as to why such patterns might exist. As there are multiple unexplained patterns of irregular transactions, the case of trafficking is convincing.

Appellant Owners Not Involved in Violations

The Appellant contends that the store owners were not frequently in the store during the review period due to their full-time employment in other professions. Because they could not be in the store at all times, they hired a manager to oversee the day-to-day operations. The Appellant owners insist that they take the law and regulations very seriously and have not and would not commit such illegal acts as cited in the charge letter.

This contention implies that because the owners were not involved in the violations or were unable to consistently be on the premises to oversee operations, the firm should not be punished for the actions of someone else.

With regard to this contention, the record shows that the Appellant owners have owned the store since June 1, 2015. As recently as February 24, 2016, the Appellant owner signed a reauthorization application to participate as a retailer in SNAP. By signing this application, the owner(s) agreed to accept responsibility on behalf of the firm for compliance with all statutory and regulatory requirements associated with participation in SNAP. The record clearly establishes that the Appellant agreed to abide by program rules, including taking responsibility for violations committed by any of the firm's employees, whether paid or unpaid, new, full-time or part-time. An owner is not free of responsibility simply because he or she was not in the vicinity at the time the violations occurred or because he or she was uninvolved in the violations. Regardless of which clerks are operating the cash register at a given time or whom firm ownership authorizes to handle store business, the ownership of the firm is ultimately responsible for the proper training of staff and the monitoring and handling of SNAP benefit transactions. To allow store ownership to disclaim accountability for the acts of its employees would render virtually meaningless the provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of USDA.

Therefore, the insinuation that the violations were not the fault of the owners does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Remedial Actions Taken

The Appellant contends that the following policy changes have been made by the firm to ensure that it is in compliance with SNAP laws and regulations:

- The previous manager and staff that were employed during the period in question have been fired.
- The firm will conduct regular audits of its records and its employees to ensure that it is in compliance with state regulations.
- Appellant has removed many of the business strategies that were noted in the response to the Retailer Operations Division and which may have contributed to the discrepancies.
- The firm is following SNAP regulations as mandated and has reviewed them and emphasized them with the current employees.
- The Appellant is willing to apply any other suggestions recommended by FNS to ensure that it is in compliance with all state regulations.

The Appellant further contends that as of May 2016, the owner has resigned from his full-time employment to concentrate solely on managing and overseeing the firm.

Regarding these contentions, it is important to clarify for the record that the purpose of this review is to either validate or invalidate the earlier determination of the Retailer Operations Division. This review is limited to what circumstances existed at the time the Appellant was charged with committing program violations, and at the time that the Retailer Operations Division made its determination. It is not the authority of this review to consider what subsequent remedial actions may be taken so that a store may enhance or begin to comply with program requirements. In addition, there are no provisions in the SNAP regulations or internal agency policy directives for a waiver or reduction of an administrative penalty on the basis of alleged or planned after-the-fact corrective actions implemented subsequent to findings of program violations. Therefore, the Appellant's contention that corrective action has taken place or that further remedial actions are planned does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

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 as required by the regulation. As best as can be determined, the Appellant did not request consideration of a CMP in its response to the Retailer Operations Division or submit any documentation to support its eligibility for such a sanction. Additionally, the Appellant made no mention of a trafficking CMP in any portion of its request for administrative review. Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii), 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 C J Supermarket 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 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 or credible explanations 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 of the evidence in this case, it is more likely true than not true that program violations did occur as determined by the Retailer Operations Division. Based on the analysis above, the decision to impose a permanent disqualification against the Appellant, C J Supermarket, 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 (FOIA), it may be necessary to release this document and related correspondence and records upon request. If such a request is received, FNS will seek to protect, to the extent provided by law, personal information that if released could constitute an unwarranted invasion of privacy.

JON YORGASON
ADMINISTRATIVE REVIEW OFFICER

December 6, 2016

DATE