

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

Discount Cigars,

Appellant,

v.

Case Number: C0200056

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 to support a finding that a Permanent Disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Discount Cigars by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a Permanent Disqualification against Discount Cigars on July 13, 2017.

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 June 9, 2017, the Retailer Operations Division informed the Appellant that her firm was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 – 282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm."

In letters received by the Retailer Operations Division on June 26, 2017 and July 10, 2017, the Appellant denied the trafficking allegations and cited credit extension to SNAP customers as the explanation for the questionable SNAP transactions that were outlined in the June 9, 2017 Charge Letter. After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated July 13, 2017, informing the Appellant that Discount Cigars was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations.

In a letter postmarked July 24, 2017, the Appellant requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated August 2, 2017.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a 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, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

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(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, evidence

obtained through a transaction report under an electronic benefit transfer system ...
[Emphasis added].

7 CFR § 278.6(e)(1)(i) states:

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 § 278.2(f) states, inter alia:

SNAP [Food Stamp] 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 the SNAP [Food Stamp Program] for a period of one year.

7 CFR § 278.6(f)(1) states, inter alia:

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR § 278.6(i) states, inter alia:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 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 ...

7 CFR § 278.6(b)(2) states, inter alia:

- (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 penalty. [Emphasis added].

SUMMARY OF CHARGES

The 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 transactions patterns which are indicative of trafficking:

- There were multiple transactions made from individual benefit accounts in unusually short timeframes; and
- There were excessively large purchase transactions made from recipient accounts.

APPELLANT'S CONTENTIONS

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

In the Appellant's replies to the Charge Letter and in the review request postmarked July 24, 2017, the Appellant stated the following summarized contentions, in relevant part:

- The Appellant denies that trafficking of SNAP benefits took place at Discount Cigars.
- The Appellant has been running Discount Cigars for six years and has never previously been cited for any SNAP violations.
- The multiple purchase transactions made from individual household accounts in short timeframes are the result of Discount Cigars accepting SNAP benefits as repayments on credit accounts from SNAP customers upon receipt of their monthly EBT benefit allotments. First the SNAP customer paid off the credit previously extended to them and then they made a second SNAP transaction for additional food items. The Appellant does not have any documentation to provide FNS in support of the credit contention as when the SNAP customers paid off their credit accounts, the Appellant handed the customers the itemized list.
- The excessively large purchase transactions are the result of Discount Cigars accepting SNAP benefits as repayments on credit accounts from SNAP customers upon receipt of their monthly EBT benefit allotments. At the time of FNS' investigation, the store's Point of Sale (POS) device only listed the total amount of items purchased and did not list individual items purchased. The Appellant does not have any documentation to provide FNS in support of the credit contention as when the SNAP customers paid off their credit accounts, the Appellant handed the customers the itemized list.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized Discount Cigars as a convenience store on October 31, 2011. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a March 10, 2017 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information obtained from the store visit was also 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:

- Approximately 800 square feet in size with a storage room/area outside of public view that is approximately 50 square feet in size. The storage room/area stocks drinks, empty boxes, empty display shelves, and a shopping cart that appears to be for store use only;
- Located in an urban commercial area of Orlando, Florida;
- No shopping carts or hand-held baskets available for customer use;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- No optical scanner;
- Minimally stocked convenience store with a food stock that includes predominantly drinks, snack foods, canned and prepared foods, cakes/pastries, etc.
- No meat/seafood specials or bundles that might sell for high prices;
- Not a WIC Program vendor and does not sell any infant foods or infant formula;
- Store visit observations indicate that Discount Cigars does not appear to extend credit to customers;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include specialty/ethnic foods;
- Limited checkout counter area and it is surrounded by a Plexiglas barrier. As such, the checkout counter does not provide adequate space for the large amounts of individual food items necessary to make up many of the large transactions cited in the Charge Letter Attachments;
- No fresh or frozen meats, poultry, or fish items;
- Does not have a deli case/section and it does not sell deli meats and cheeses by the pound;
- Meat items include canned/potted meat, canned fish, self-serve pickled sausages, and eggs;
- Does not have a kitchen and the only ready-to-eat hot food offered for sale is boiled peanuts;
- The only frozen food item is single-serving ice cream;
- No fresh produce;
- A minimal variety and amount of both canned fruits and canned vegetables;
- Other staple foods available for purchase include such items as 100% juice, canned soups/stew, milk, cheese, loaf bread, pasta, rice, cereal, baking mix, cakes/pastries, snack foods, etc.;
- Much of the remaining food stock consisted of accessory foods such as candy and gum, carbonated and non-carbonated drinks, condiments, coffee, sugar, and vegetable oil; and

- A large supply of ineligible nonfood items such as tobacco products, alcohol, lottery tickets, hardware items, paper products, household cleaning supplies, laundry detergent, gift items, health and beauty aids, clothing, automotive supplies, party goods, souvenirs, cell phone accessories, etc.

It is worth noting that the average SNAP purchase in a convenience store in Orange County, Florida (the county in which Discount Cigars is located) during the analysis period was \$6.75, reflecting that the large purchases identified in the Charge Letter Attachments are not routinely made in area authorized SNAP stores.

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

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. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges is trafficking. Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellant’s contentions did not outweigh the evidence. The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Denial of Trafficking Allegations

Regarding the Appellant’s contention that she denies the trafficking allegations, this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is, as noted above, to determine whether the Appellant demonstrates by a preponderance of the evidence that the permanent disqualification should be reversed. In this case, therefore, if the Appellant demonstrates by a preponderance of the evidence that trafficking did not occur in the Appellant’s firm, then trafficking will be considered not to have occurred and the disqualification reversed. If this is not demonstrated the case is to be sustained. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact.

First Time Violator

The Appellant contends that she has been running Discount Cigars for six years and has never previously been cited for any SNAP violations. However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges. Trafficking in SNAP benefits is an extremely serious violation and both 7 U.S.C. § 2021(b)(3)(B) and 7 CFR § 278.6(e)(1)(i) state that a first time violation warrants a permanent disqualification.

Credit Transactions

The Appellant contends that the questionable SNAP transactions that were listed in the Charge Letter Attachments are the result of Discount Cigars accepting SNAP benefits as repayments on credit accounts from SNAP customers upon receipt of their monthly EBT benefit allotments. First the SNAP customer paid off the credit previously extended to them and then they made a second SNAP transaction for additional food items. At the time of FNS' investigation, the store's Point of Sale (POS) device only listed the total amount of items purchased and did not list individual items purchased. The Appellant does not have any documentation to provide FNS in support of the credit contention as when the SNAP customers paid off their credit accounts, the Appellant handed the customers the itemized list.

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 in an attempt to obtain a lesser penalty after committing more egregious violations such as trafficking. 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.

The Appellant indicated to FNS that Discount Cigars does not have any documentation to provide FNS in support of the credit contention as when the SNAP customers paid off their credit accounts, the Appellant handed the customers the itemized list. FNS reviewed the statement/information provided from the Appellant and properly determined that the information was insufficient to support the Appellant's credit extension contention for the following reasons:

- The Appellant provided no documentation to indicate that Discount Cigars had kept records of credit extension to SNAP customers via an itemized list other than her statement of such;
- The Appellant did not provide FNS with any SNAP recipient identifiable information for the SNAP customers to whom credit had been extended;
- The Appellant provided no documentation/information that FNS could use to match the questionable SNAP transactions outlined in the Charge Letter to individual credit purchases;
- There was no documentation provided listing the individual foods that were purchased on credit and by which SNAP customer;
- No documents were provided that validate whether the alleged credit was paid off by cash, credit card or SNAP benefits;

- No documentation was provided that indicates when the food items were purchased on credit and when the credit was paid off;
- No documentation was provided that validates that the credit extended to each SNAP customer was done so during the six month review period;
- No documentation was provided that validates the amount of credit that was extended to each customer during the six month review period.

In conclusion, although Discount Cigars may have, on a rare occasion, accepted SNAP benefits as repayment on credit accounts, the evidence submitted by the Appellant does not support the Appellant's contention that the irregular SNAP transactions listed in the Charge Letter are due to repayment on credit accounts.

Repeat Transactions by the Same Household

Charge Letter Attachment 1 lists 14 transaction sets (36 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. It is not credible that the subject store would have so many suspicious SNAP transactions greatly exceeding the average SNAP transaction for convenience stores in Orange County during the review period. Violating stores often conduct multiple transactions from the same household account to avoid detection of single high dollar transactions that cannot be supported by the firm's food inventory and infrastructure.

The Appellant contends that the multiple purchase transactions made from individual household accounts in short timeframes are the result of Discount Cigars accepting SNAP benefits as repayments on credit accounts from SNAP customers upon receipt of their monthly EBT benefit allotments. First the SNAP customer paid off the credit previously extended to them and then they made a second SNAP transaction for additional food items. The Appellant does not have any documentation to provide FNS in support of the credit contention as when the SNAP customers paid off their credit accounts, the Appellant handed the customers the itemized list. With regard to the Appellant's claim that these questionable SNAP transactions are due to SNAP benefits being accepted as repayment on credit accounts, as noted above, the information provided by the Appellant is not sufficient to support that these transactions were due to repayments of credit accounts.

While there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, the SNAP transactions noted in the Charge Letter are questionable because they display characteristics of use inconsistent with the nature and extent of the store's stock and facilities and are indicative of trafficking. Although it is not uncommon for customers to conduct more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. Discount Cigars is not set up to provide for all of one's food needs with no fresh or frozen meats, poultry, or seafood, no frozen fruits or vegetables, no fresh produce, a minimal variety and amount of canned fruits and canned vegetables, and it lacks an abundant depth and breadth of staple foods. Also, the store visit observations indicate that there is no evidence of a price advantage or custom or special services rendered at the subject

store. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). In addition, Discount Cigars does not stock any high priced food items so the majority of food items stocked at the store are low priced items.

A review of client shopping data for the review period shows that clients shopping at Discount Cigars are also shopping at other area grocery stores, as well as full-line supermarkets and super stores that most likely offer customers a much larger quantity and variety of eligible food items for better prices. Based on these shopping patterns, transportation to other stores is not an issue for these SNAP customers. Yet, these customers continue to shop and spend suspiciously high dollar amounts in short timeframes at Discount Cigars, where the eligible food stock is limited, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at better stocked stores. This is a strong indicator of trafficking.

Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are 6 SNAP authorized retailers located within 1.0 mile of Discount Cigars including a super store. In addition, there are 25 SNAP authorized retailers located within 2.0 miles of Discount Cigars that can meet the nutritional needs of SNAP customers. These authorized SNAP retailers include 18 convenience stores, 1 small grocery store, 2 large grocery stores, 2 supermarkets, and 2 super stores. As mentioned above, SNAP customers who shopped at Discount Cigars during the six month review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores does not appear to be an explanation for Discount Cigars' abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

The Appellant did not provide any compelling justification as to why SNAP households are conducting multiple transactions at Discount Cigars or evidence that all of the irregular transactions cited in the Charge Letter were for eligible food items only. 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 Purchases

Attachment 2 of the Charge Letter cites 97 EBT transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 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 contends that the excessively large purchase transactions are the result of Discount Cigars accepting SNAP benefits as repayments on credit accounts from SNAP customers upon receipt of their monthly EBT benefit allotments. At the time of FNS' investigation, the store's Point of Sale (POS) device only listed the total amount of items purchased and did not list individual items purchased. The Appellant does not have any documentation to provide FNS in support of the credit contention as when the SNAP customers paid off their credit accounts, the Appellant handed the customers the itemized list. With regard to the Appellant's claim that these questionable SNAP transactions are due to SNAP benefits

being accepted as repayment on credit accounts, as noted above, the information provided by the Appellant is not sufficient to support that these transactions were due to repayments of credit accounts.

The store visit report and photos show that Discount Cigars was stocked with a limited quantity and variety of staple foods as it stocked no fresh or frozen meats, poultry, or seafood, no frozen fruits or vegetables, no fresh produce, and a very minimal quantity and variety of processed meats. The inventory report and photos also show that the subject store stocked no expensive staple foods indicating that there are no expensive eligible foods in stock that would account for these large amounts as well as showing the store has limited checkout counter space, no optical scanner, and no shopping carts or hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The record shows that there are 25 SNAP authorized retailers located within 2.0 miles of Discount Cigars. Several of these stores are larger than Discount Cigars and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. An analysis of the shopping patterns for all of the SNAP households listed in this Attachment shows that the households shopping at Discount Cigars have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and supermarkets, located a few miles distance from the Appellant's location. While Discount Cigars does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located within a few miles of the Appellant's business offering a greater quantity and variety of products, including fresh meats/seafood and produce, at lower prices. Therefore, the store has nothing to attract SNAP customers as there are no special or custom services offered.

FNS analyzed the SNAP transactions conducted at Discount Cigars during the review period compared to four other authorized convenience stores located within a 2.0 mile radius of the subject store. These other authorized convenience stores offer a similar variety and amount of foods at comparable or better prices as compared to Discount Cigars. The analysis shows that compared to these other area convenience stores, Discount Cigars has a high average transaction amount and a higher total purchase transaction count. FNS' ALERT data also indicates that Discount Cigars was the only store that generated a large number of hits during the review period with regard to "multiple purchase transactions made from individual household accounts in short timeframes" and "excessively large purchase transactions" in comparison to the other area convenience stores.

The Appellant did not submit any vendor invoices to FNS for foods that were purchased for Discount Cigars during the six month review period to help substantiate that the subject store purchased enough staple food items to cover the SNAP transactions that occurred during the review period. Therefore, a vendor invoice analysis could not be conducted by FNS. It is important to note that even if the Appellant had provided vendor invoices to FNS that were during the review period and the invoices indicated that Discount Cigars had purchased sufficient food inventory to account for the firm's SNAP redemption volume, sufficient

inventory alone does not explain the suspicious patterns of SNAP transactions such as consecutive transactions by individuals during the same store visit or in a single day. Even the large dollar transactions would remain questionable if there were sufficient food inventory to support such transactions when consideration is made of there being only a limited variety of stock in the store, no fresh or frozen meats, poultry or seafood, no fresh produce, no frozen fruits or vegetables, a minimal variety and amount of canned fruits and canned vegetables, a greater variety of foods at comparable or lower prices at other stores, no shopping carts or hand-held baskets available for customer use, and very little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at Discount Cigars to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to shop there, a convenience store, in some cases traveling a few miles to do so, and spend substantial amounts of their SNAP benefits.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of four SNAP households identified in the Charge Letter to analyze their shopping patterns at Discount Cigars compared to their shopping patterns at other SNAP authorized stores. Each of these households had access to, and shopped at larger stores including super stores and/or supermarkets. It is obvious that these SNAP households had transportation available to them to reach these other authorized stores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Discount Cigars **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of shopping at the larger stores where they conducted much smaller SNAP purchases. It is highly unlikely that a convenience store with minimal staple foods would have legitimate SNAP transactions greater than these larger and better stocked stores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average 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 offering of no shopping carts or hand-held baskets support the Retailer Operations Division's determination. It is not plausible that the store's customers are carrying large amounts of food around the store without the benefit of shopping carts and hand-held baskets. 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 the 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.

CIVIL MONEY PENALTY

As previously indicated, the July 13, 2017 Determination Letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated June 9, 2017 advised the Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The regulations specify that such documentation must, in part, 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. The letter indicates that no information was

provided by the Appellant for consideration; therefore, on review the Retailer Operations Division's determination that the Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

CONCLUSION

The Retailer Operations Division's analysis of the Appellant's EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellant's contentions do not outweigh this evidence.

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against Discount Cigars 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 Section 279.7 of the Regulations (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, 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.

LORIE L. CONNEEN
Administrative Review Officer

April 9, 2018