

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

**Dollar Warehouse, LLC,**

**Appellant,**

**v.**

**Case Number: C0206692**

**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 the permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP) imposed upon Dollar Warehouse, LLC (hereinafter “Appellant”) by the Retailer Operations Division, Investigations and Analysis Branch, hereinafter “ROD Office” is hereby sustained.

**ISSUE**

The issue accepted for review is whether the ROD Office took appropriate action, consistent with 7 U.S.C. § 2021, 7 CFR § 278.6(a) and 7 CFR § 278.6 (e)(1) and (i) in its administration of the SNAP when it imposed a permanent disqualification upon Appellant.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 C.F.R. § 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 March 7, 2018, the ROD Office 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 during the months of October 2017 through January 2018. The letter noted that the sanction for trafficking is permanent disqualification, as provided by 7 CFR §278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR §278.6(i). The record reflects that the SNAP Office received and duly considered Appellant’s replies to the Charge Letter. By a letter dated March 29, 2018,

Appellant was informed that it was permanently disqualified from participation as a retail store in the SNAP, effective upon Appellant's receipt of said letter; the letter further instructed Appellant that it may request an administrative review of the decision. On April 3, 2018, Appellant requested an administrative review of the ROD Office's decision; the request was granted.

### STANDARD OF REVIEW

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. That 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

The controlling statute in this matter is contained in the **Food & Nutrition Act of 2008**, as amended, at 7 U.S.C. § 2021 and in Part 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.

7 U.S.C. § 2021(b)(3)(B) states, in part:

...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, in part:

FNS may disqualify any authorized retail food store ... if the firm fails to comply with the **Food & 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, in part:

**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, (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(f)(1) states, in part:

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, in part:

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)(iii) states, in part:

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.

### **SUMMARY OF THE CHARGES**

- A series of multiple SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from the accounts of individual SNAP households within a set time period (Attachment 1).
- A series of excessively large SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from recipient accounts (Attachment 2).

### **APPELLANT'S CONTENTIONS**

In Appellant's reply to the Charge Letter, in its written request for review dated April 3, 2018, and in subsequent correspondence, it was argued that:

1. The Owner of the Appellant firm does not work in the store. The store is run by a manager, who says the transactions are legitimate.
2. Stores are not required to ask SNAP customers for identification, so the Owner doesn't know whose cards are being used.
3. The Owner has been buying large amounts of meat and seafood through a vendor on a monthly basis, which is then sold at the store. One client makes purchases several times a month to buy meat and seafood for her restaurant. Some customers buy several pounds of jumbo shrimp each month. The vendor the Owner buys meat from doesn't provide invoices, but the Owner keeps a journal of purchases. Appellant later provided invoices for the meat products purchased from said vendor during the analysis period.

## ANALYSIS AND FINDINGS

At the outset it should be noted that the ROD Office ordered a contracted store visit to the Appellant firm as part of its investigation into Appellant's questionable transaction activity; the visit was conducted on January 31, 2018, as a result of which documentation was obtained including photographs of the interior and exterior of the store, a store layout diagram and a store inventory survey. This documentation reflected the following:

- Estimated 1800 square feet of store space.
- Optical scanners used.
- Shopping baskets and carts provided.
- No night window used.
- No evidence of wholesale business.
- Prices in standard retail variations of \$.x9.
- One check-out area; one cash register, one card reader.
- No food stored outside of public view.
- No storage coolers/freezers.
- No food stored offsite.
- No phone, online or other orders taken.
- No transaction rounding.
- Fewer than 4 SNAP-eligible items priced at \$5.00 or higher. There is nothing for sale in the store priced over \$5.00.
- All above questions were answered in collaboration with store personnel.
- The firm also sold tobacco products, automotive products, health and beauty products, paper goods, cleaning products, housewares, gift items, jewelry, party goods, souvenirs and other non-food products. The firm operated primarily as a general store/dollar store.
- No kitchen/food preparation area.
- No hot food sold.
- No deli section.
- No meat/seafood bundles/specials or fruit/vegetable boxes.
- Food inventory was very small and limited to that of a small convenience store. Photos: 7, 20, 22, 25, 26 and 31.
- The firm was a typically to marginally-stocked combination grocery/other store in all relevant respects. There was very little food inventory; most inventory was non-food items. Store operated primarily as a general/dollar store. Photos: 1, 3, 4, 6, 10, 11, 14, 15, 16, 17, 21, 23, 24, 27, 29 and 32.
- Checkout counter approximately 1.5 X 1.5 feet and surrounded by party supplies, candy, snack food items, cell phone accessories, tobacco products and other non-food items. Photos: 5, 13, 18 and 28.

The documentation presents no indication of advertised specials, promotions, bulk or expensive food items. As noted above, photographs reflect that several visible prices of food and other items were in standard retail variations of \$.x9. The checkout area was set up in convenience store fashion, utilizing a small check-out area (approximately 1.5 by 1.5 feet of useable space)

but was otherwise surrounded by party supplies, candy, snack food items, cell phone accessories, tobacco products and other non-food items. This documentation reflects that the firm was a typically to marginally-stocked combination grocery/other store in all relevant respects. It is worth noting that the average SNAP purchase in a combination grocery/other store in the state of California during the analysis period was \$11.41, reflecting that large purchases are not routinely made in such stores.

In regard to contention 1 above, Appellant may imply that the Owner of the firm had no knowledge of violations of the SNAP regulations, did not personally commit violations thereof and/or that an employee committed the violations. This contention cannot be accepted as a valid basis for dismissing any of the charges or for mitigating the impact of the violations upon which they are based. Appellant is liable for all violative transactions handled by full or part-time, paid or unpaid store personnel, whether or not ownership is aware of such transactions. Regardless of whom the ownership of a store may utilize to handle store business, ownership is accountable for the proper handling of SNAP transactions. To allow store ownership to disclaim accountability for persons to whom it delegates responsibility to act on behalf of the firm would render virtually meaningless the enforcement provisions of the **Food & Nutrition Act of 2008** and the enforcement efforts of the USDA. Additionally, ownership of the Appellant firm signed an FNS-252, SNAP Application for Stores, on October 29, 2016, by means of which Appellant acknowledged and agreed to accept responsibility to prevent violations of the program by any and all employees of the firm. Owners may indeed be held accountable for the actions of employees, sanctions may be imposed for trafficking regardless of the owner's lack of knowledge of violations and permanent disqualification of even an "innocent owner" is consistent with the legislative history of the statute and regulations. Furthermore, culpability need not be imputed to an owner through the actions of an employee if the owner was involved in the violative activity, whether accidental or otherwise. Again, to allow store ownership to disclaim accountability for the acts of persons to whom the responsibility to handle store business has been assigned would render inert the enforcement provisions of the **Food and Nutrition Act of 2008** and corresponding provisions of the regulations.

Regarding contention 2 above, the transactions in Attachment 1 being repetitive, large and within short timeframes, and the transactions in Attachment 2 being excessively large and thus implausible given the firm's food inventory and logistical wherewithal, the identity of SNAP card holders is of marginal relevance; moreover, Appellant's inability to determine card holder identity does little to explain how the transactions more likely represent the sale of eligible food items than the trafficking of SNAP benefits.

With regard to contention 3 above, the store visit referenced above and conducted on January 31, 2018, found that the firm did not offer bulk or expensive food items and, in fact, through collaboration with the store manager by store visit staff, offered no SNAP-eligible products priced at over \$5.00. No such items were seen by store visit personnel and none were visible in any of the 32 photographs taken during the visit. One carton of eggs and one package of what appeared to be polish sausage or bratwurst were in inventory on the day of the visit. No signage, flyers or other advertising announced the availability of any bulk or packaged meat items. Appellant provides no sales or inventory records of such products.

In its reply to the Charge Letter, Appellant noted that it purchased large quantities of meat from a single vendor but that the vendor did not provide invoices. Appellant stated that it kept a journal, however, of its bulk meat purchases. Neither the journal nor invoices were provided to the ROD Office in Appellant's reply to the Charge Letter to support the firm's assertion that it purchased and resold large amounts of bulk or expansive meat items.

In support of its request for review, however, Appellant provided four handwritten receipts/invoices for meat purchases it claims it obtained through said meat vendor. The record reflects that:

- Each invoice is dated on the first day of each month. One invoice was dated October 1, 2017, which occurred on a Sunday when many businesses are closed. Another invoice was dated January 1, 2018, which occurred on a Monday but also on a holiday (New Years' Day) when many businesses are closed.
- The invoices have the following serial numbers: 471804, 47803, 47806 and 47807, which are nearly sequential; however, the first two are out of sequence (471804 was dated October 1, 2017, while the receipt dated the following month, November 1, 2017, had the receipt sequence number 47803).
- The close sequence of invoice serial numbers suggests that the Appellant firm was the only customer, or one of very few customers, for the meat vendor; over the course of four months, using the invoice numbers noted above, only one other invoice number, 47805, could exist between 47803 and 47807.
- The address noted on the invoices is a vacant lot, according to Los Angeles County tax records.
- The ROD Office called the number listed on the invoices. A male answered "Hello," didn't state a business name and didn't answer as if representing a business. When asked about the firm name appearing on the invoices, he said "that's me." When asked what he sells he said "meat and hot links." When asked where the business was located, he said "5 U.S.C. § 552 (b)(6) & (b)(7)(C) LA," but then corrected himself and said a visitor "should go to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) Los Angeles." When asked about hours, he said "Monday through Thursday, 7 AM to Noon." Note that the receipt dated December 1, 2017 reflects a date that occurred on a Friday, whereas the vendor stated that the firm was not open on Fridays.
- The address at 5 U.S.C. § 552 (b)(6) & (b)(7)(C) Los Angeles was researched by the ROD Office and found to house three different businesses, none of which appeared to be a meat/seafood vendor. There was no result indicating a meat business was or had been located at this address.
- The Owner of the Appellant firm said she had been buying large amounts of meat from this vendor for many years, though the Appellant firm had been in business only since November 5, 2016 and thus had been operating only one year and four months at the time of the Charge Letter.
- None of the invoices provided by Appellant list the purchase of shrimp or of any seafood, despite Appellant's assertions that it sold several pounds of jumbo shrimp each month.

- That Appellant first stated the vendor provided no invoices and later, in support of its review request, provided such invoices, further calls the veracity of the documentation into question.

For the above reasons, the receipts/invoices of meat purchases provided by Appellant are not viewed as a reliable or accurate representation of inventory purchased for resale at the store during the analysis period at issue.

While there are legitimate reasons why a SNAP recipient or household member might return to a combination grocery/other store during a short period of time, such purchases are more typically in small amounts and for obtaining just a few items. The examples in Attachment 1 indicate a series of repetitive purchases that total large amounts. Customers spending such substantial amounts of SNAP allotments in a marginally-stocked combination grocery/other store, when there are other larger food stores nearby which carry substantially larger varieties of food at lower costs, is implausible. Multiple transactions over a short period of time, especially of high dollar value, are very suspicious because they are typical of stores and SNAP customers which are attempting to diminish attention to signs of SNAP-benefit trafficking.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C).** Frequent and large transactions conducted in order to purchase eligible foods at Appellant's store are highly unlikely given Appellant's logistical wherewithal and store stock. There is no compelling rationale to explain why only, or primarily, Appellant's customers made repetitive visits spending large amounts in short timeframes. The record reflects, as noted above, that the Appellant firm was a typically to marginally-stocked combination grocery/other store in all relevant respects and provides no plausible bases for customers' unusual attraction to the firm and unorthodox transaction patterns.

The ROD Office notes that, at the time of the sanction decision, there were 35 SNAP-authorized stores within a one-mile radius of the Appellant firm, including one super store, one medium grocery store, two small grocery stores, one combination grocery/other store (Criterion B store), three other combination grocery/other stores (Criterion A stores) and 27 convenience stores. Similar to Attachment 1, Appellant's number of Attachment 2 transactions was multiple times that of three comparable combination grocery/other stores within a one-mile radius. The ROD Office further points out that many customers clearly had access to and routinely shopped at better-stocked super stores and supermarkets in the area, often on the same day as conducting implausible transactions at the Appellant firm, calling into question what customers were able to obtain at Appellant's marginally-stocked combination grocery/other store that they were not able to obtain at much better-stocked and more competitively-priced stores. As noted, the record further indicates that these customers were conducting implausible transactions only at or primarily at the Appellant firm. The Appellant store was clearly not the only store in the immediate area offering food items to SNAP customers; as noted above, it was clearly not the best-stocked firm in the area and it was clearly not the only store being visited by Appellant's customers.

The firm's average SNAP redemption was nearly three times that of the store-type average in Los Angeles County and in the state of California during the analysis period; moreover, Appellant's average SNAP transaction was substantially higher than even super stores and super markets during the same period. The ROD Office further notes that the Appellant firm had

multiple times the number of transactions in specific transaction bands (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) compared to the state and county store-type averages. As noted, the firm is a typically to marginally-stocked combination grocery/other store in all relevant respects; there exists in the record no legitimate basis for the nature and level of the firm's transaction and redemption activity.

Lastly, once trafficking is established, there is no latitude to impose a lesser sanction, with the exception of a trafficking civil money penalty. There is provision at 7 CFR §278.6(i) for the imposition of a civil money penalty in lieu of permanent disqualification for trafficking. Appellant was advised of this provision in the ROD Office's Charge Letter dated March 7, 2018, which also advised that documentation of eligibility for that alternative sanction was to have been provided within a specific time limit. In the absence of any such documentation, a civil money penalty was not imposed in lieu of permanent disqualification by the SNAP Office. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) in that "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 (within 10 days of receiving the letter of charges), the firm shall not be eligible for such a penalty." As Appellant did not request such consideration and provided no evidence or information in support thereof, the ROD Office's decision not to impose a civil money penalty is sustained as appropriate pursuant to 7 CFR §278.6(b)(1), §278.6(b)(2)(ii), §278.6(b)(2)(iii) and §278.6(i).

### **CONCLUSION**

In view of the above, the decision of the ROD Office to permanently disqualify Appellant from participation in the SNAP is hereby sustained. The decision will become final upon the 30<sup>th</sup> day following Appellant's receipt of this document.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

Under the provisions of the Freedom of Information Act (FOIA), 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.

DANIEL S. LAY  
Administrative Review Officer

October 15, 2018