

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

Four Brothers Food & Liquor Inc,

Appellant,

V.

Retailer Operations Division,

Respondent.

Case Number: C0212999

FINAL AGENCY DECISION

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

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant by letter dated April 2, 2019.

AUTHORITY

7 U.S.C. § 2023 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 December 13, 2018, 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 during the months of March 2018 through August 2018. 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 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).

In correspondence dated December 18, 2018, Appellant, through counsel, requested an extension until January 2, 2019. In correspondence dated December 20, 2018, the extension was granted. Appellant was also notified that the time to request a civil money penalty in lieu of permanent disqualification and to provide the documentation to support such a request could not be extended.

In correspondence dated January 2, 2019, the Appellant responded to the charge letter and generally stated that it was requesting the imposition of a civil money penalty (CMP in lieu of a permanent disqualification. Four Brothers has been in business over 41 years and there have been no complaints during that time. Appellant stated that Four Brothers is a grocery store with a very extensive fresh meat department that occupies the entire rear of the store. It has a full time butcher who cuts and packages the meat for customers. The store is a major source of fresh meat in the neighborhood. Counsel indicated that the assistant manager was dismissed for cause in August 2018, for not following the store rules however he had not been able to discuss his actions with him and whether he violated any SNAP regulations. The manager was on vacation from February 28, 2018 through April 12, 2018, and in December 2018, one conveyer belt and cash register were removed. There currently are two cash registers each with its own terminal. Appellant stated that a review of the facts will lead to the conclusion that there was no violation of the SNAP regulations and no trafficking at Four Brothers. Any improper actions, if any, were committed by the dismissed assistant manager prior to his discharge. All allegations were based upon a statistical analysis or computer model and there was no observed improper behavior.

Charge 1: Four Brothers sells many items ending in 99. In particular, there are 14 different meat packs that all end in 99. Charge 2: Meat packs are priced with a set price for an entire package. Therefore, it actually only takes seconds to sell the item. A cashier only has to punch in the price and then hit the meat button. Also, often they are only purchasing one, two or three items which are quickly punched in the cash register. Additionally there were two conveyer belts with two cash registers and both are in use only during very heavy volume business. Only a few items would have to be rung up since there was a meat pack. This can be accomplished very rapidly. Charge 3: We agree that this occurred. It is a customer's right to purchase items whenever and whatever SNAP eligible items they want. On a daily basis, customers decide to purchase additional items after the initial items have been charged. Sometimes the customers are still in line, sometimes in the store, sometimes they just left the store and sometimes they come back later. Store owners do not question customers as to why they are purchasing additional items. Charge 4: Very few items were purchased for more 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Less than two pages were for more 5 U.S.C. § 552 (b)(6) & (b)(7)(C). When customers purchase large meat packs the purchased amounts will also be large. In summary there was no trafficking. There is no other store in the area selling as large a variety of meat at comparable prices. The meat packs are the reasons why there seemed to be unusual activity.

Appellant, through counsel, stated that Four Brothers has a compliance program. The manager has met with the employees and reviewed all the rules and regulations concerning SNAP. Any violations will cause suspension and termination. There is a no tolerance policy. Four Brothers is implementing a video recording policy and will record all purchases. This program is to prevent any violations of the SNAP program. Appellant provided a number of invoices, circulars, and register receipts in support of its position.

After considering Appellant's response to the charge letter and the evidence of the case, Retailer Operations Division issued a determination letter dated April 2, 2019. The letter informed Appellant that it was permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also stated that Retailer Operations Division considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. However, Retailer Operations Division determined that Appellant was not eligible for the CMP because it failed to submit sufficient evidence to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated April 11, 2019, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted.

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 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, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a) (c) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(a) states, *inter alia*, that "FNS may disqualify any authorized retail food store...from further participation in the program 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(c) reads, in part, "*Review of Evidence.* 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)...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..."

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.” Trafficking is defined, in part, in 7 CFR § 271.2, as “the buying or selling of SNAP benefits for cash or consideration other than eligible food.”

7 CFR § 271.2 states in part that, “Eligible foods mean: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption.”

SUMMARY OF THE CHARGES

The charges on review were based on an analysis of SNAP electronic benefit transfer (EBT) transactions dated during the six month period of March 2018 through August 2018. This involved four patterns of EBT transaction characteristics indicative of trafficking:

1. Unusual number of transactions ending in the same cents value.
2. Multiple transactions were made too rapidly to be credible..
3. Multiple transactions were made from the accounts of individual SNAP households within a set time period.
4. Excessively large purchase transactions were 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

The Appellant, through counsel, made the following summarized contentions in its response to the permanent disqualification letter issued by Retailer Operations Division, and its request for administrative review, in relevant part:

1. We are seeking the imposition of a civil money penalty (CMP) in lieu of permanent disqualification of Four Brothers Food & Liquor Inc. The fact that there are no other similar stores in the neighborhood is an important reason that a CMP should be granted.
2. Four Brothers has a training and compliance program. The manager has intensified the training and compliance program, has met individually and as a group with employees. They reviewed all the rules and regulations concerning SNAP and were reminded that there is a no tolerance policy for any SNAP violations. Any infraction would result in immediate suspension and/or termination.
3. The Gresham neighborhood where Four Brothers is located, is a known food desert. The large family transactions is due to the geographic fact that there is no other store of this size in the neighborhood.
4. We have mailed all invoices from the violation period. Meat has a 50-75% markup, frozen food has a 40-50%, fresh produce 40-50%, dairy 40-50% and grocery 35-40% respectively.

Appellant provided a nine page customer petition dated April 3, 2019 thru April 6, 2019 with signatures and phone numbers, one page was dark illegible. In subsequent correspondence dated

May 3, 2019, Appellant also provided three (3) black and white pictures of the deli and meat case dated April 3, 2019, a picture of the 6th District Business Sub-Committee Meeting for 2018 containing a handwritten note for patrons to contact the 6th District police and ask about Four Brothers in the neighborhood for the past 40 years, a copy of an Honorable Mention award for Four Brothers from the 6th District Chicago Police, a copy of a Certificate of Appreciation dated June 1, 2018 and a copy of a Certificate of Appreciation dated January 28, 2000.

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

ANALYSIS AND FINDINGS

The FNS authorized the business as a medium grocery store on March 6, 1995. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during a September 24, 2018 and September 28, 2018, store visit to the business 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 EBT transactions at Appellant that formed patterns indicative of trafficking. The firm review summary documented the following store size, description, and characteristics:

- Three cash registers and three POS devices with no optical scanners.
- Two conveyor belts however one was completely blocked with what appeared to be a table, a cart and boxes of items and inoperable.
- Estimated to be approximately 4800 square feet.
- There were 18 hand baskets and 9 shopping carts available for customer use.
- No adding machines or optical scanners were available at checkout. A specialty register on site dedicated to lottery sales.
- Store operates through a night window or plastic barrier with food stock behind the barrier.
- No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
- No unusual pricing structure such as ending most products with 00 cents and does not round transaction totals.
- There is an area approximately 2,400 square feet for food storage outside of public view.
- Store has storage freezers or coolers but not food stored off site.
- Store is not primarily selling one food type such as meat, poultry, dairy, seafood, fruits, baked goods or vegetables.
- Store does offer meat bundles.
- Store does not take telephone or online orders but does offer delivery.
- Excluding the meat bundles, the highest priced eligible food items were Enfamil (\$21.99), Luciani Olive Oil (\$14.99), Dutch Farms Seasoned Beef Patties (\$12.99) and Jemm Beef Patties (\$14.99).

- Store stocks a significant amount of non-food items such as but not limited to paper products, household products, tobacco products, automotive products, health and beauty aids, lottery tickets, and cleaning products.
- Store stocks ample amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products.
- Some empty/partially stocked shelves observed.
- A kitchen/prepared food area with hot foods sold for onsite consumption.
- No hot food sold but food is sold for on-site consumption with a microwave available for heating.
- A deli or prepared food section with prices posted for meats/cheeses and other refrigerated foods. Stock is not used in preparation of food.

The issue for consideration is whether Retailer Operations Division has presented a convincing case that Appellant likely trafficked in SNAP benefits. 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.

Attachment 1 of the Charge Letter – There were an unusual number of transactions ending in a same cents value.

There were 1,251 SNAP transactions that met the parameters of this attachment. These transactions accounted **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP redemptions during the review period. When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits.

The store visit documentation indicates that Appellant does not have a special pricing structure that would account for the percentage of transactions that ended in 99 cents. When there are a disproportionate amount of transactions ending in same cent value it appears the transactions are contrived and absent any compelling rationale to the contrary it is a strong indicator of trafficking. Especially when item prices end with a standard *9 it is implausible that several of these items purchased together would routinely total to a purchase amount ending in 99 cents. It is noted that, according to counsel and the Appellant, most items in the store end in .99 therefore it would take 101 items ending in .99 to equal a total ending in .99. It is doubtful that the 1,251 transactions in this Attachment were as a result of SNAP households all purchasing 101 items, all ending in .99 cents. It should also be noted that the record reflects that after the charge letter, dated December 13, 2018, and was delivered, Appellant's transactions ending in .99 cents either decreased significantly or no longer existed. This is another indicator that these unusual transactions were not all legitimate SNAP transactions and are indicative of trafficking.

While Appellant sells meat plans as high as \$299.99, it is unlikely that 20 transactions for this amount were all from the purchase of this meat plan. This plan consists of over 100 pounds of meat along with other items. With Appellant's meat purchases for the review period as indicated from the invoices provided, it would be difficult to justify the sale of a large number of Appellant's meat plans or even this plan in particular.

While some of the transactions in this Attachment may have been for legitimate staple food purchases there is insufficient evidence that these repeating same cent transactions are legitimate especially if SNAP households are purchasing other items in addition to meat plans and the pricing end in the *9 cents value. Generally, when many transactions end in a same cents amount, it appears that these transaction amounts are contrived and therefore, in the absence of compelling evidence to the contrary, are suggestive of trafficking. As such, the transactions in Attachment 1 have not been adequately documented as legitimate and therefore do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact.

Based on the analysis above, it appears that the transactions cited in the charge letter are contrived and therefore, in the absence of plausible evidence to the contrary, are likely the result of trafficking in SNAP benefits.

Attachment 2 – Multiple transactions were made too rapidly to be credible.

There were 445 SNAP transactions that met the parameters of this attachment. Each transaction set was completed anywhere **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. In considering the time required to process a legitimate purchase and the numerous steps involved, including the cashier's handling of individual items to determine the price which can involve manual keying of amounts, bagging the items for carry out, and processing the transaction, these multiple purchase transactions appear to have been made too rapidly to be credible and are indicative of trafficking. Based on the store visit, Appellant has two EBT machines. Based on the photos, one EBT machine appears to be set up on one of the conveyor belts, and the other is behind the counter. If this is the case, it is highly unlikely that clerks would be ringing the transactions up on the register behind the counter, running out to the conveyor belt check-out and swiping the card, or vice versa. This appears to be the only way to explain the rapid sets of transactions since they were completed on the same EBT processor. It is highly unlikely that this process could be completed in as short a time frame as is indicated on the charge letter.

Attachment 3 of the Charge Letter - Multiple transactions were made from the accounts of individual SNAP households within a set time period.

There were 317 sets of 720 SNAP transactions that met the parameters of this attachment. Multiple transactions conducted by the same household account **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** is a method which violating stores use to avoid the detection of single high dollar transactions that are usually unsupported by the retailer's inventory and structure. Appellant provided circulars from 2004 and 2018, however upon review, there was nothing in the circulars that would adequately justify the transactions found in the charge letter. While they do show meat plans and other items for sale, there is nothing in the circulars that FNS was not made aware of from the contracted store visit and before issuing the charge letter. It was noticed that although the circulars advertise meat plans, there was only one meat plan found posted in the store during the contracted store visit. The store has Meat Plan #12 posted for \$299.99 however, the circulars highest priced meat plan was advertised as Meat Plan #11 at \$219.99. The circular advertised all meat plans except for number 12. There were signs for meat sold by the pound but only one for an actual meat plan. It is questionable why Appellant would advertise meat plans in a circular but not in the store itself especially when there is no evidence

that the circulars were consistently distributed throughout the neighborhood.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). It's questionable that this household would purchase three separate meat plans rather than to make one single purchase. No register receipts were provided as evidence in any of the SNAP transactions cited in the charge letter.

In conclusion, it is therefore more likely true than not true that the irregular transactions cited in the charge letter Attachment 3 are due to trafficking in SNAP benefits.

Attachment 4 of the Charge Letter - Excessively large purchase transactions were made from recipient accounts.

There were 1,550 SNAP transactions that met the parameters of this attachment. Although the firm offers meat plans, it does not have any other food sold in bulk or any ethnic or specialty foods that sell for a high price. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions given that the number of meat plans sold would need to be significant to justify Appellant's SNAP redemptions during the review period.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Although Appellant is an ample stocked medium grocery store with meat plans and other grocery items, the transactions cited in the charge letter are at least 29 times higher than the average transaction amount for medium grocery stores in the Cook County area of Chicago.

Retailer Operations conducted an analysis of the shopping habits of three of the households identified in the charge letter. This analysis concluded that these households as well as other, also shopped at other area grocery stores including full-line supermarkets and superstores that offer a much larger quantity and variety of eligible food items for likely better prices either on the same day or within days of visiting Appellant's firm. This again indicates that lack of access to other stores is not at issue. However, despite this access to large supermarkets and superstores, these households consistently conducted much higher transactions at the Appellant firm than at better stocked supermarkets/superstores in and around the Cook County area of Chicago. This is another strong trafficking indicator

All of the meat packages advertised appeared to end in 99 cents and combining any number of the packages ending in this cent amount statistically would not produce a high number of transactions ending in the 99 cents value. The record reflects that although there was a small drop in the transaction amounts after the assistant manager was allegedly dismissed, there was a significant drop after the charge letter was issued. It is important to note that if all of the SNAP transactions cited in the charge letter were legitimate SNAP transactions, then they would have remained constant even after the charge letter was issued.

Appellant, through counsel, contends that it mailed all invoices from the violation period. Meat has a 50-75 percent markup, frozen food, fresh produce and dairy has a 40-50 percent markup and grocery has a 35-40 percent markup. As previously stated, a circular provided shows meat package specials and has a sale date listed from February 26 through April 29, 2018 which only covers two months of the review period. The invoices and receipts provided by Appellant were reviewed and it was found that Appellant's eligible SNAP purchases during the review period

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). When 20 percent is subtracted for cash and other forms of payment Appellant's total allowable eligible food expenses 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant's total SNAP redemptions for the review period 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and when the allowable eligible food expenses 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is subtracted, there is a difference 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP redemptions.

Likewise, when an analysis of Appellant's meat purchases was completed, it was found that Appellant had a total 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in meat purchases during the review period. With a 40 percent markup equaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C), Appellant's allowable meat expenses 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Again subtracting 20 percent, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), for cash and other forms of payment, Appellant's total allowable meat expenses for the review period 5 U.S.C. § 552 (b)(6) & (b)(7)(C). If 55 percent of Appellant's sales were in meat purchases 5 U.S.C. § 552 (b)(6) & (b)(7)(C), there is a difference 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in total SNAP redemptions for the review period. It is noted, that even if there was a 100% markup value on the meat purchases, Appellant would have a difference in its total allowable meat sales 5 U.S.C. § 552 (b)(6) & (b)(7)(C) compared to the number of SNAP redemptions for the review period. In summary, Appellant's meat purchases and eligible staple food purchases for the review period do not justify Appellant's SNAP redemptions.

Based on this empirical data, and in the absence of sufficient evidence as to the legitimacy of such transactions, a conclusion can be drawn, through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter evidence trafficking as the most likely explanation. In this case, ownership did not provide sufficient evidence to legitimize Appellant's transaction data as outlined in the Attachments. Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence that the store was trafficking and concluded, through a preponderance of evidence, that trafficking is the most probable explanation for the questionable transactions listed in the charge letter attachments.

The transaction data and overall firm record convincingly demonstrate repetitive patterns of unusual, irregular, and inexplicable SNAP activity for this type of firm indicative of trafficking. Once Retailer Operations Division established a convincing case against Appellant, ownership bears the burden of proving, by a preponderance of the evidence, that the administrative action 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. If this is not demonstrated, the case is to be sustained.

As noted, 7 CFR § 278.6(a) states 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 inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

Retailer Operations Division has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns in four attachments of EBT transaction data, the inadequacy of the firm's eligible food stock as observed and recording during the onsite visit to support such large transactions, the lack of evidence of invoices of foods in inventory to cover SNAP redemption totals for the review months, the lack of explanation for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant, and the irregular SNAP transaction data of Appellant as compared to other medium grocery stores in the State.

Generally, stores caught in trafficking violations consistently display particular characteristic transaction patterns including those cited in the charge letter and, in the absence of evidence for the legitimacy of such transaction patterns, based on information submitted by the Appellant and a comparison of the store's characteristics and available stock to the transaction patterns cited in the charge letter, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns evidence trafficking as the most likely explanation. While ownership was afforded the opportunity to provide valid explanations and evidence that support that the questionable transactions were the result of legitimate purchases of eligible food items, Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence in the record.

The purpose of the administrative review process is to ensure that firms aggrieved by Retailer Operations Division's adverse actions have the opportunity to have their position fairly considered by an impartial review authority prior to that adverse action becoming final. Appellant has been duly given, and has taken the opportunity to present to USDA through the administrative review process whatever evidence and information it deems pertinent in support of its position that Retailer Operations Division's adverse action should be reversed. Therefore, any evidence and information that Appellant presented to Retailer Operations Division, as well as any such information submitted subsequently, have now been considered in this administrative review in rendering the final agency administrative decision in this case. The record does not indicate any departure from established policy or procedures with regard to Appellant's right to a fair and thorough review.

CIVIL MONEY PENALTY

Appellant, through counsel, states that it is seeking the imposition of a civil money penalty (CMP) in lieu of permanent disqualification of Four Brothers Food & Liquor Inc. The fact that there are no other similar stores in the neighborhood is an important reason that a CMP should be granted. Additionally, Four Brothers has a training and compliance program. The manager has intensified the training and compliance program, has met individually and as a group with employees. They reviewed all the rules and regulations concerning SNAP and were reminded that there is a no tolerance policy for any SNAP violations. Any infraction would result in immediate suspension and/or termination.

With regard to these contentions, the record reflects that Appellant was notified in the charge letter dated December 13, 2018, that it had 10 calendar days upon receipt of the charge letter to provide required documentation in order to be considered for the trafficking CMP. Appellant

failed to provide Retailer Operations Division with the required documentation to be considered for a trafficking CMP in lieu of disqualification. Merely providing a statement that a compliance program exists and summarizing the program is insufficient evidence that the program was in existence prior to the cited SNAP violations. Therefore, Retailer Operations Division correctly determined that Appellant was not eligible for a trafficking CMP as set forth in the SNAP regulations.

CONCLUSION

Ownership has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. As such, the SNAP regulations are specific with regard to the action that must be taken if personnel of the firm have trafficked, which is that FNS shall disqualify the firm permanently.

Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Four Brothers Food & Liquor Inc. from participation in the SNAP. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Therefore, based on a review of all the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged by Retailer Operations Division. Based on the discussion herein, the determination to impose a permanent disqualification against Four Brothers Food & Liquor Inc. is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act (FOIA), 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.

Monique Brooks
ADMINISTRATIVE REVIEW OFFICER

October 16, 2019