

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

Fouta World Market, )  
)  
Appellant, )  
)  
v. )  
)  
Retailer Operations Division, )  
)  
Respondent. )  
\_\_\_\_\_)

**Case Number: C0192669**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is sufficient evidence to support a finding that the permanent disqualification of Fouta World Market (hereinafter Fouta or Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), as initially imposed by the Retailer Operations Division, was appropriate.

**ISSUE**

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

**AUTHORITY**

7 USC § 2021 and the implementing regulations at 7 CFR § 279.1 provide that “A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS.”

**CASE CHRONOLOGY**

In a letter dated September 16, 2016, the Retailer Operations Division charged Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of February 2016 through July 2016. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant replied to the charges by fax on September 26, 2016, and explained the transactions were not unusual based on the unique circumstance of the store and its customers shopping habits. After considering the retailer's reply and the evidence, the Retailer Operations Division issued a determination letter dated October 3, 2016. The determination letter informed Appellant that it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that Appellant was not eligible for a trafficking CMP because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated October 12, 2016, Appellant, through counsel, appealed the Retailer Operations Division's determination and requested an administrative review. The appeal was granted.

### **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a clear preponderance of the evidence, that the administrative actions should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

### **CONTROLLING LAW**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a), (c) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

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

7 CFR § 271.2 defines trafficking as: "(1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone; . . ."

7 CFR § 278.6(a) states, inter alia, that "FNS may disqualify any authorized retail food store . . . if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an *electronic benefit transfer system*, . . ." (emphasis added)

7 CFR § 278.6(b)(2)(ii) states, inter alia: “Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence . . . that establishes the firm’s eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).”

7 CFR § 278.6(e)(1) reads, in part, “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.”

7 CFR § 278.6(i) states, inter alia: “FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking . . . if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.”

**7 USC 2018 (b)(7)(e)**. Since attributing suspicious EBT transactions to credit may be an attempt to avoid a more serious sanction which is appropriate for a trafficking violation indicated by the available evidence, to refute charges of trafficking, as part of the retailer’s reply to the charge letter, the retailer must provide adequate proof that credit accounts existed at the time the suspicious EBT transactions occurred. It is imperative that the retailer provide evidence to refute charges of trafficking. Such evidence may include an accounts receivable ledger, which lists the name of each recipient, as well as the dates and amounts of each transaction the retailer claims to be a credit account transaction. The determining office shall compare the credit information provided by the retailer against the transactions outlined in the letter of charges and the recipient personal identifying information available from the State EBT administrative terminals. The retailer shall be assessed a fiscal claim for each transaction determined to be a credit account violation. If the retailer is not able to account for all of the suspicious EBT transactions for which he has been charged, the determining office must evaluate the remaining transactions and determine whether trafficking has occurred. If the retailer does not provide adequate proof, the determining office shall permanently disqualify the retailer for trafficking.

### **SUMMARY OF THE CHARGES**

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

- There were an unusual number of transactions ending in a same cents value.
- There were multiple transactions made from individual benefit accounts in unusually short time frames.
- The majority or all of individual recipient benefits were exhausted in unusually short periods of time.
- There were excessively large purchase transactions made from recipient accounts.

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking.

### **APPELLANT'S CONTENTIONS**

In its administrative review request dated October 12, 2016, and subsequent correspondence dated November 4, 2016, Appellant, through counsel, provided the following summarized contentions, in relevant part:

- Appellant requests a fine.
- Basakata's operations terminated July 31, 2016, and a new vendor's license was issued for Fouta, effective August 1, 2016.
- Fouta was not formed to avoid USDA's actions.
- Mr. Tall is the only member of Fouta.
- Mamdou Djibril is not a member of Fouta.
- During the review period, Appellant was under its predecessor entity Basakata Market LLC.
- There was misunderstanding on Mr. Tall's behalf and Fouta and not understanding that it had to apply for a separate permit accepting SNAP benefits.
- Mr. Tall's participation in Basakata from February through July 2016 increased.
- Mr. Djibril shifted his interests to other enterprises after August 1, 2016.
- Mr. Tall teaches during the day and works at Fouta at night.
- Fouta is not doing well without the ability to accept SNAP and will likely not survive if it is not permitted to accept SNAP.
- Fouta provides a necessary service to the community as it provides food selections packaged and available in a way customary to West African culture.
- On September 16, 2016, Basakata received the letter charging Basakata with trafficking.
- Fouta denies that it engaged in trafficking.
- Fouta acknowledges that there were less egregious violations due to Fouta's record keeping and its policies but they do not warrant disqualification from SNAP.
- Basakata sold SNAP eligible food items during the review period including eligible foods found in more traditional stores, like apples and peanut butter, as well as items customary to the West African culture like certain grains and whole animals.
- The store's point of sale is insufficient to document what was sold.
- Fouta's practice is to take its patrons call for orders before they arrive, which speeds up the checkout process.
- It is not uncommon for two or three households to pre-order and come in together to pick up their items and these transactions may occur rapidly and on separate cards.
- Appellant redeemed qualifying SNAP food purchases on credit and one transaction may have been to pay off a previous balance and a second for the day's food pick-up.
- To ensure there are no future credit transactions, there will be store training and education and a new POS software program that tracks each purchase.
- Transaction sets #182 through #210 occurred on separate days and occurred when families realized that additional eligible food items were needed.
- It is common for the households to make primary food purchases one or two times per

month.

- A long wait between trips combined with the store's credit practices likely account for the exhaustion of benefits.
- Families elect to buy whole animals and also make large meat purchases.
- Appellant serves a need in the Franklin County, Ohio community.
- Ownership will take the necessary steps so that all transactions are fully compliant with SNAP regulations, including registering under its own account.

In support of its contentions, Appellant submitted an affidavit of Amadou Tall that states the following summarized contentions:

- On occasion patrons will order together in advance and pick up together.
- Appellant sold eligible food items only on credit and it was unaware that this was a violation.
- There are differences in shopping habits among the patrons of Appellant from the typical grocery store.
- Appellant's customers often shop for meat, and foodstuffs, including whole animals on occasion, or significant quantities of meat, once or twice a month, which can exhaust SNAP accounts.
- Appellant has personal knowledge of most transactions after August 1, 2016, and many of the transactions conducted between February 2016 and July 31, 2016.
- Appellant denies that trafficking occurred and that it was unaware of any exchange of cash or consideration other than eligible food items for SNAP.
- Appellant plans to apply for a separate permit for Fouta.
- Appellant plans to institute a training program.
- Appellant will install a program to track what is purchased.
- Appellant serves as a rare resource for people in Columbus, Ohio from West Africa.
- Ownership did not benefit in any way from the SNAP violations.

In support of its contentions, Appellant, through counsel, also submitted a three page resume of owner, Amadou Tall.

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

## **ANALYSIS AND FINDINGS**

### **Store Visit**

FNS authorized Fouta as a small grocery on June 23, 2005. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a September 8, 2016, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's irregular SNAP

transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Fouta is approximately 2000 square feet, with a 100 square foot walk-in freezer outside of public view.
- There were some shopping baskets but no shopping carts for customer use.
- There was one cash register and one point-of-sale device.
- There was an optical scanner.
- The available checkout space was small and limited.
- The store specializes in ethnic goods.
- There were no meat/seafood specials or bundles that might sell for high prices.
- There was no fresh unprocessed meat, poultry, or fish.
- There was frozen beef, lamb, chicken, and fish.
- The walk-in freezer contained mostly boxes of frozen bread and some boxes of frozen tilapia and vegetables.
- There was limited fresh produce including limes, ginger, potatoes, onions, some tomatoes, and mangoes.
- Dairy included ice cream, sour cream, butter, cheese, cream, and canned milk.
- Other staple food available for purchase were juice, bread, cereal, pasta, grains, rice, canned goods, and snack foods.
- Much of the remaining stock consisted of accessory foods such as candy, spices, and carbonated and uncarbonated drinks.
- Ineligible items included health and beauty products and cleaning products.

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

### **Charge Letter Attachments**

**Charge Letter Attachment 1. Multiple purchase transactions were made too rapidly to be credible.** 7 USC 2018 (b)(7)(e). These types of rapid transactions in a store without the technology or infrastructure to support such transactions are indicative of trafficking in EBT benefits. The Retailer Operations Division considered this to be a strong trafficking indicator because the second purchase items would have to be transported to the limited checkout area, keyed at the register, a card swiped, a PIN entered, an approval indicated and a receipt printed. This process would also include several items being bagged and removed from the counter before the next transactions could be initiated.

In its September 25, 2016, reply to the Retailer Operations Division, Appellant explains that transactions only take a few seconds because they have more than one person serving its customers. However, there is only one cash register and the counter space is limited and unlikely to fit one of these larger orders, never mind more than one of them.

With the information submitted in support of its administrative request, Appellant also contends that it accepts phone orders and this can explain some of the rapid transactions. Appellant stated that customers shop together and place their orders together. Appellant did not submit any documentation to show that it took phone orders. There was no evidence documented at the store visit, such as orders waiting to be picked up, to support that Appellant accepted phone orders. Even if Appellant accepted phone orders, most of these transactions are still suspicious. 7 USC 2018 (b)(7)(e). First of all, the transaction amounts seem unlikely given it would be necessary to purchase the many food items necessary to reach these totals. Secondly, that these totals are even cents and dollars is quite remarkable. Furthermore, it would be next to impossible for the first customer to remove all of its bags from behind the counter and switch spots at the counter with the second customer, who will then have to have its order rung in and the card swiped.

Thus, Appellant did not provide any compelling justification or evidence that all the irregular transactions cited in Charge Letter Attachment 1 were for eligible food items only. Based on the analysis herein, it is more likely true than not true that these patterns are a result of the firm trafficking in SNAP benefits.

**Charge Letter Attachment 2. Multiple transactions were made from individual benefit accounts in unusually short time frames.** 7 USC 2018 (b)(7)(e).

Counsel explains that transactions #182 through #210 occurred the next day and occurred when families realized that they needed additional eligible food items. It is true that sometimes customers forget items however the additional transactions are too large to be for forgotten items. Moreover, 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. Although it is not uncommon for customers to have more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. Moreover, each of the transactions listed is significantly larger than the average SNAP transaction for Ohio small groceries during the review period.

Perhaps customers may have called an order in and then decided to pick up additional items while at the store. Again, the transaction amounts of the second purchases are too large to be explained as forgotten items or additional items that were so desired. 7 USC 2018 (b)(7)(e).

Appellant, though counsel, contends that these transactions are also the result of allowing SNAP recipients to make repayment on credit accounts with SNAP benefits. 7 USC 2018 (b)(7)(e). Accepting SNAP benefits for payment on credit is a violation of Section 278.2(f). It is the agency's position that credit violations constitute owner or management involvement and a one year disqualification is the base sanction. In addition, a retailer is to be assessed a fiscal claim for each transaction determined to be a credit account violation.

There was no evidence submitted to support that Appellant allowed eligible food items to be purchased on credit and repayment with SNAP benefits. However, if the initial transactions in these transaction sets were credit repayments, the additional transactions are also questionable. 7 USC 2018 (b)(7)(e).

Furthermore, about one-half of the transaction sets on Charge Letter Attachment 2 occurred

more than one hour apart from each other. If the repeat transactions are found in short temporal proximity to each other, it could indicate one transaction to pay off a credit account balance and the other for additional food items. However, many of the sets show a pattern of a transaction followed by another transaction later in the day. Customers desiring to payoff credit accounts who are already in the store would be typically be expected to pay the outstanding credit balance and then make a purchase, rather than conduct only one of these activities and then return to the store several hours or days later to do the other. Thus, a credit repayment does not explain why SNAP households made several large dollar transactions throughout one or two day periods adding up to hundreds of dollars.

**7 USC 2018 (b)(7)(e)**. The contention that the transactions listed in the attachments are credit transactions has not been substantiated by a detailed credit log, cash register receipts, or other evidence that supports the claim of such.

Appellant did not provide any compelling justification as to why households are conducting multiple transactions at Appellant or evidence that all the irregular transactions cited in the charge letter were for eligible food items only. **7 USC 2018 (b)(7)(e)**.

**Charge Letter Attachment 3. The majority or all of individual recipient benefits were exhausted in unusually short periods of time. **7 USC 2018 (b)(7)(e)**.**

Appellant states that it is common for the households to make primary food purchases one or two times per month and that a long wait between trips along with the store's credit practices likely account for the exhaustion of benefits. The Retailer Operations Division reviewed five households shopping patterns and these households were not just shopping once or twice per month during the review period. In addition, they were not shopping primarily at Basakata Market as ownership implies.

A government report on SNAP shopping patterns<sup>1</sup> indicates that on average, SNAP households have less than one-quarter of their benefits left by the middle of the month. On the day the issuance is distributed, the average household redeemed more than a fifth of its benefits. By the first week, the average household had redeemed over half of its benefits, and by the second week, over three-quarters of it. Households redeemed about an additional 10 percent of benefits by the end of the third week (exhausting 90 percent of benefits) and ultimately redeemed 97 percent of their monthly benefits by the end of the day before receiving their next issuance.

Households spent slightly 22 percent of their benefits on the first day of issuance. By day 7, the average household had redeemed 60 percent of its monthly benefit; by Day 14, it had redeemed 80 percent, and by month's end the household redeemed 97 percent of its benefit.

Appellant did not present any valid explanations or documentation that would legitimize these transactions.

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<sup>1</sup> Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program, Mathematica Policy Research, by Laura Castner and Juliette Henke, for the U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, February 2011.



**Charge Letter Attachment 4: Excessively large purchase transactions were made from recipient accounts. 7 USC 2018 (b)(7)(e).**

Appellant explains that families elect to buy whole animals and make large meat purchases. The report and the photographs from the store visit show that Appellant did not have any advertised meat packages or bundles for sale. There were no visible whole animals for sale or advertised for purchase and Appellant did not submit any evidence to support this contention. There were large bags of rice available as well as frozen meat, poultry, and fish items which could explain some of the high dollar transactions. There was no fresh meat, poultry, or fish and limited fresh produce. The store visit report does not indicate any compelling reason for customers to consider Appellant as a first choice destination to fulfill large purchases of food, or to make cumulative purchases within 24 hours resulting in large amounts. Furthermore, the firm does not have any shopping carts to transport such large orders and it has limited space at the check-out counter to place items for purchase.

The Retailer Operations Division determined that Appellant’s average SNAP transaction amount during the review period was four times more than the average SNAP transaction amount for small groceries in Franklin County, Ohio. Moreover, Appellant’s total SNAP redemptions during the review period were 2.6 times greater than the average SNAP redemption amount for small groceries in Franklin County, Ohio. The Retailer Operations Division considered this a strong indicator of trafficking.

Sometimes a firm may have higher than average SNAP transactions amounts due to the lack of access to other SNAP authorized stores. However, the Retailer Operations Division determined that within a two-mile radius of Fouta, there are 19 other SNAP authorized firms, including nine other small groceries, two medium groceries, one large grocery, three supermarkets, and four super stores. This includes two medium grocery stores that also appear to sell African specialty items that are located within a one-mile radius of Appellant.

The Retailer Operations Division compared Appellant to a similar small grocery located in the area. Each of the four transaction patterns of Appellant, described in each of the charge letter attachments, exceed the other authorized store, as seen on the table herein. The number of transactions meeting this pattern during the review period at Appellant is irregular.

Store	Attachment 1 Pattern	Attachment 2 Pattern	Attachment 3 Pattern	Attachment 4 Pattern
Appellant	65	116	84	428
Store #1	3	36	16	84

The Retailer Operations Division also conducted a shopping analysis of five of the households with transactions identified in the charge letter. These shopping analyses indicate that that these households are making what would appear to be normal food purchases at supermarkets, super stores, or other ethnic stores on the same day, day prior, or day after conducting transactions at Appellant. The Retailer Operations Division determined that this pattern is indicative of trafficking given that Appellant’s inventory and layout do not support such transactions.

Appellant contends that it extended credit to SNAP recipients and payments were made with SNAP benefits. Accepting SNAP benefits for payment on credit is a violation of Section 278.2(f). It is the agency’s position that credit violations constitute owner or management

involvement and a one year disqualification is the base sanction. In addition, a retailer is to be assessed a fiscal claim for each transaction determined to be a credit account violation. When a retailer claims credit to explain irregular transactions and data patterns, FNS requires a level of detail regarding the legitimacy of credit accounts since retailers have long admitted to credit in an attempt to garner a lesser penalty after committing more egregious violative acts. 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.

While the firm could potentially be holding some credit accounts, there is insufficient evidence to show that these transaction patterns are the result of credit repayments. 7 USC 2018 (b)(7)(e). Furthermore, the firm does not have any shopping carts to transport such large orders and it has limited space at the check-out counter to place items for purchase. The contention that the transactions listed in the attachments are credit transactions has not been substantiated by a detailed credit log, cash register receipts, or other evidence that supports the claim of such. Under review, the evidence more substantially supports a conclusion that the transaction activity as documented in the charge letter attachments was due primarily to trafficking in SNAP benefits.

In summary, Appellant's layout, business structure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Therefore, based on this empirical data, and in the absence of evidence to legitimize such transaction patterns, a conclusion can be drawn, through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation.

### **Denies Trafficking**

Appellant denies trafficking. As previously noted, Appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed. Appellant must provide a preponderance of evidence that the transactions detailed in the charge letter were more likely than not due to the legitimate sale of eligible food in exchange for SNAP benefits. In the absence of compelling information or documentation weighed in comparison to the evidence provided by Retailer Operations Division, the evidence weighs in favor of the Retailer Operations Division's determination that SNAP benefit trafficking substantially produced the transaction activity at issue in the present case.

### **Unaware Credit is a Violation**

Regarding Appellant's contention that it allowed credit and it was unaware that it was a violation, it is noted that on June 25, 2006, the owner signed the FNS-252 SNAP application for store authorization, as well as periodic reauthorization applications certifying thereby that the owner read, understood, and agreed with the conditions noted therein which includes the following statement: "I accept responsibility on behalf of the firm for violations . . . including:

- Trading cash for SNAP benefits (trafficking);
- Accepting SNAP benefits as payment for ineligible items;

- Accepting SNAP benefits as payment on credit accounts or loans;
- Knowingly accepting SNAP benefit payments from people not authorized to use them; and
- Participation can be denied or withdrawn if my firm violates any laws or regulations issued by Federal, State or local agencies . . . ”

Also, at the time of authorization each retailer is given a training guide that clearly explains that credit is not allowed. The training guide is available online and in many languages. This guide states that SNAP customers must pay for their purchases at the time of sale and that a retailer may not accept SNAP benefits as payments on credit accounts. Ownership was provided multiple and redundant resources through which a thorough knowledge of program rules and requirements could be readily obtained. Nonetheless, Appellant allowed credit, a clear violation of the SNAP regulations.

### **Change from Basakata to Fouta**

During the review period, Appellant was operating under the ownership of Basakata Market LLC and this is confirmed by counsel. Counsel reports that Basakata’s operations terminated July 31, 2016, and a new vendor’s license was issued for Fouta, effective August 1, 2016. Thus, there is no disagreement that both Amadou Tall and Mamadou Djibril were the owners of the firm during the review period; and therefore, are responsible for the charges and subject to the imposed penalty, the permanent disqualification.

Counsel contends that Fouta was not formed to avoid USDA’s actions. However, it is interesting to note that there was a FNS store visit conducted on June 25, 2016, and two days later on June 27, 2016, Fouta received a new employer identification number from the Internal Revenue Service (IRS). It is likely that the store visit prompted the ownership to transfer in an unsuccessful attempt to prevent one owner from being permanently disqualified from the SNAP.

### **Corrective Action**

Appellant ensures that there will be no future credit transactions; there will be store training and education; and it will implement a new POS software program to track each purchase. Appellant further states that it will take the necessary steps so that all transactions are fully compliant with SNAP regulations, including registering under its own account.

With regard to these contentions, it is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier determination of Retailer Operations. This review is limited to what circumstances existed at the time that was the basis of the Retailer Operations’ action. It is not the authority of this review to consider what subsequent remedial actions may have occurred or be planned so that a store may begin to comply with program requirements. 7 USC 2018 (b)(7)(e). Therefore, 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.

### **Household Hardship**

Appellant contends that Fouta provides a necessary service to the community as it provides food

selections packaged and available in a way customary to West African culture. As indicated previously, within a two-mile radius of Fouta there are 19 other SNAP authorized firms, including nine other small groceries, two medium groceries, one large grocery, three supermarkets, and four super stores where SNAP recipients can shop. Within a one-mile radius there are two other firms that appear to sell similar ethnic products. Moreover, where there is a hardship to SNAP households, FNS may impose a hardship CMP in lieu of a disqualification where there is a lack of authorized stores in the area. However, the regulations at 7 CFR § 278.6(f)(1) clearly state that “a civil money penalty for hardship to [SNAP] households may not be imposed in lieu of a permanent disqualification.” Because the Retailer Operations Division has taken action to permanently disqualify Appellant’s firm, a hardship CMP in lieu of disqualification cannot be granted.

### **Appellant Hardship**

Appellant contends that Fouta is not doing well without the ability to accept SNAP and it will likely not survive if it is not permitted to accept SNAP. With regards to the Appellant’s contention that it needs the SNAP, it is recognized that economic hardship is a likely consequence whenever a store is permanently disqualified from participation in SNAP. 7 USC 2018 (b)(7)(e) To excuse ownership from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, Appellant’s contention that the firm will incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposition.

### **Civil Money Penalty**

Appellant, through counsel, requests that a fine be imposed if there has to be any penalty. In the September 16, 2016, charge letter, the Retailer Operations Division informed Appellant of its right to request a trafficking CMP under 7 CFR § 278.6(i). Appellant was informed that it would need to provide both the request and supporting evidence within ten calendar days of receiving the charge letter and that no extension of time could be granted for making the request or for providing the required evidence. Appellant did not timely request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR § 278.6(i), even though it was informed of the right to do so in the charge letter.

Even if a timely request had been submitted, Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy to prevent SNAP violations. Therefore, the Retailer Operations Division’s decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

## CONCLUSION

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

## RIGHTS AND REMEDIES

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

Under the Freedom of Information Act (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.

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MARY KATE KARAGIORGOS  
ADMINISTRATIVE REVIEW OFFICER

January 23, 2017  
DATE