

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

Friendship Market,

Appellant,

v.

Case Number: C0204582

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the USDA that the record indicates that Friendship Market, (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 August 31, 2018.

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 January 25, 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 May 2017 through October 2017. 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 a facsimile dated February 1, 2108, Appellant responded to the charge letter, through counsel, and generally stated that the letter fails to comply with 7 CFR 278.6(b)(1) which provides that FNS regional office shall send the firm a letter of charges before making a determination of noncompliance. Appellant, through counsel, outlined the regulatory definition of trafficking and stated that the letter does not specify which of the six definitions of trafficking that Appellant allegedly violated. Appellant, through counsel, indicated that it is axiomatic that ‘real notice of the true nature of the charge against him is the first and most universally recognized requirement of due process.’ Appellant maintains that it has not engaged in any of the six enumerated activities outlined in Section 271.1 and that there is a perfectly innocent explanation for the data that is referred to in the charge letter.

For Attachment 1, counsel states that many of the customers ask that the entire total of their purchases not be applied to the EBT card and as an example a customer may purchase 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of products and request that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) be charged to their EBT account and they pay the remaining balance 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in cash. Many customers make this request to keep an even balance of funds making it easier to track their monthly budget. For Attachment 2, Appellant has two cash registers and one EBT terminal. Customers are often at both registers and their transactions are processed through the EBT terminal within a very short time frame. For Attachment 3, an individual may enter the wrong pin and the transaction will need to be processed again, or a customer will buy additional groceries immediately after they have processed a purchase because there are additional funds remaining in the EBT account. Customers sometimes share their account with other family members or families that live in multiple apartments in a multi-family house will be part of the same EBT account but because they live in different apartments, check out separately while using the same account to keep all groceries separated. For Attachment 4, a vast majority of these activities occur on or near the first of every month. Customers purchase large quantities of bulk items and dry goods for the entire month. For Attachment 5, Appellant offers many of its products in bulk, fifty-pound bags of rice, and cases of various chicken parts or cases of canned fish. Appellant provided approximately 381 pages of purchase invoices and receipts.

After reviewing Appellants rely and the evidence in the case, Retailer Operations Division issued a Determination letter dated August 31, 2018. 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 September 4, 2018, 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 ...”

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 May 2017 through October 2017. This involved five 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. The majority or all of individual recipient benefits were exhausted in unusually short periods of time.
5. 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 request for administrative review, in relevant part:

1. The USDA violated 7 CFR 278.6(b)(1) and my clients right to procedural due process. The letter shall specify the violations or actions, which FNS believes, constitute a basis for disqualification or imposition of a civil money penalty or fine.
2. The charging letter does not specify which of the six distinct definitions of trafficking my client allegedly committed.
3. Attachment 1: Many of the customers ask that the entire total of their purchases not be applied to the EBT card and as an example a customer may purchase 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of products and request that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) be charged to their EBT account and they pay the remaining balance 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in cash. Many customers make this request to keep an even balance of funds making it easier to track their monthly budget.
4. Attachment 2: Appellant has two cash registers and one EBT terminal. Customers are often at both registers and their transactions are processed through the EBT terminal within a very short time frame.
5. Attachment 3: A customer may enter the wrong pin and the transaction will need to be processed again, or a customer will buy additional groceries immediately after they have processed a purchase because there are additional funds remaining in the EBT account. Customers sometimes share their account with other family members or families that live in multiple apartments in a multi-family house will be part of the same EBT account but because they live in different apartments, check out separately while using the same account to keep all groceries separated.
6. Attachment 4: A vast majority of these activities occur on or near the first of every month. Customers purchase large quantities of bulk items and dry goods for the entire month.
7. Attachment 5: Appellant offers many of its products in bulk, fifty-pound bags of rice, and cases of various chicken parts or cases of canned fish.

Appellant provided approximately 381 pages of invoices and receipts in support of its position. In correspondence dated September 17, 2018, Appellant also provided signed, dated (September 13, 2018), and notarized affidavits denying any involvement in SNAP violations, specifically trafficking. 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 combination grocery/other store on November 28, 2012. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during a February 21, 2017, 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:

- One cash register and one POS device with a small counter area partially obstructed by other smaller items available for sale.
- Estimated to be approximately 2600 square feet.
- More than 10 hand baskets available but no shopping carts.
- No adding machines or optical scanners were available at checkout. No specialty registers present.
- Store does not operate 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 food stored in an area 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 not take telephone or online orders and does not offer delivery
- Store stocks moderate amounts of non-food items such as but not limited to health & beauty products, cleaning products, and houseware items.
- The store's stock appears to be mainly Asian specific food products, with limited amounts of dairy products, and moderate amounts of bread and cereal products, fruit and vegetable products and meat, poultry and fish products.
- No kitchen/prepared food area with hot foods sold for onsite consumption.
- No hot food sold. No deli or prepared food section. Stock is not used in preparation of food.
- No meat or seafood specials, bundles, or fruit/vegetable boxes sold.
- Bulk items were noticed in rice, oyster sauce, and a couple of canned goods. No advertising notifying customers of bulk sales.
- The store visit documentation suggests that Appellant was deficient in the Dairy Products Category and may not have been eligible to hold SNAP authorization during the review period.

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 198 SNAP transactions that met the parameters of this attachment. 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 00 cents. When there is 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 relatively inexpensive items purchased together would routinely total to a purchase amount ending in 00 cents. In addition, a store that is rounding prices up or down or an even value would not have any transactions ending in odd values.

Appellant, through counsel, contends that many of the customers ask that the entire total of their purchases not be applied to the EBT card and as an example stated that a customer may purchase 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of products and request that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) be charged to their EBT account and they pay the remaining balance of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in cash. It is important to note that SNAP recipients receive benefits because they are in need of assistance in which to purchase eligible food. It is not logical that SNAP recipients would opt to pay for a portion of their grocery bill with cash, taking away from other household bills, when all of the eligible food purchased can be fully covered using SNAP benefits. This contention is not plausible and does not purport to the logical shopping habits of SNAP customers. It is also not plausible that SNAP recipients would have requested an even cents balance on 198 occasions.

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 115 SNAP transactions that met the parameters of this attachment. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These types of rapid transactions at a firm with only one register and limited counter space are indicative of trafficking in EBT benefits. Retailer Operations considered this to be a strong indicator because the second purchase of items would have to be transported to the limited counter area without shopping carts, keyed at the register, a card swiped, a pin entered, an approval indicated and a receipt printed.

Appellant contends, through counsel, that Appellant has two cash registers and one EBT terminal. Customers are often at both registers and their transactions are processed through the EBT terminal within a very short time frame. It is important to note that the store visit documentation and photographs indicates that Appellant only had one cash register and one POS device. There was no adding machine or optical scanner available at the checkout area. Additionally, the checkout area is obstructed by other items for sale, the register and a scale limiting the amount of space available in which to place items for purchase. Handbaskets were available but no shopping carts. Given the lack of shopping carts in which to hold the number of items needed to equal many of the larger transactions amounts and the limited counter space, it would be problematic to conduct the transactions as cited in this Attachment in the time and amounts listed.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

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 3 of the Charge Letter - Multiple transactions were made from individual accounts in unusually short timeframes.

There were 65 sets of 137 SNAP transactions that met the parameters of this attachment. Multiple transactions conducted by the same household account within a set time-period is a method which violating stores use to avoid the detection of single high dollar transactions that cannot be supported by the retailer's inventory and structure. Appellant, through counsel, contends that a customer may enter the wrong pin and the transaction will need to be processed again, or a customer will buy additional groceries immediately after they have processed a purchase because there are additional funds remaining in the EBT account. This this contention cannot be accepted as a valid basis for dismissing the charges or for mitigating the impact of those charges because only those SNAP transactions that are successfully completed are captured. If SNAP recipients entered wrong pin numbers then the transaction is declined and therefore not captured by the system or seen by Retailer Operations Division. Transactions that are not completed cannot be used as part of the transaction analysis.

Appellant, through counsel, contends that customers sometimes share their account with other family members or families that live in multiple apartments in a multi-family house will be part of the same EBT account but because they live in different apartments, check out separately while using the same account to keep all groceries separated. With regard to this contention, it must be noted that SNAP households have no limits on the number of times they may use their SNAP cards or how much eligible food they may purchase. The SNAP transactions of Appellant are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of the store's stock and facilities, the makeup and shopping patterns of SNAP household, and are indicative of trafficking.

Moreover, it is not illegal for a SNAP household to make two or more purchases, during the same store visit. However, it is unlikely that legitimate purchases of eligible foods are being

made when such transactions are of large dollar values, or cumulatively large values, and they are processed in less time than it would take to hand-carry the items to the counter and to ring up all the food items necessary to add up to those large dollar amounts. Additionally, as the time between the transactions increase to more than the required time to process a legitimate SNAP purchase, the less likely that a second household member is shopping at the same time using the same card in order to separate purchases. The household transactions in this Attachment do not contain the characteristics associated with a different family members shopping together and making separate purchases. Of the 65 transaction sets cited in this Attachment, only 23 seemed to be reasonable purchases by a different family member however, Appellant must justify all SNAP transactions in the Attachment for it to be dismissed. Sixty-four percent of the purchases were conducted in times that would appear illogical for two different family members.

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 – The majority or all of an individual recipient benefits were exhausted in unusually short periods of time.

There were 88 sets of 118 SNAP transactions that met the parameters of this attachment in which individual recipient benefits were exhausted or nearly exhausted. Appellant contends that a vast majority of these activities occur on or near the first of every month. Customers purchase large quantities of bulk items and dry goods for the entire month. With regard to this contention, studies of historical transaction data shows that SNAP recipients do not normally exhaust their benefits in one or two transactions on the same day. A government report¹ on SNAP shopping patterns indicates that after the first day of benefit issuance, on average, 80 percent of a household's allotment remains unspent.

Even after seven days, 40 percent of benefits remain unspent. It takes two weeks to deplete 80 percent of one's benefits, and three weeks to deplete 90 percent. Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefits in only a few transactions or in a single day. Depleting one's entire allotment in one or two days, or in a single large transaction, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP benefit households. Based on the analysis above and in the absence of any compelling evidence to the contrary, the irregular and unusual transaction pattern cited in the charge letter is unlikely and a strong indicator of trafficking in SNAP benefits.

Attachment 5 of the Charge Letter - Excessively large purchase transactions were made from recipient accounts.

There were 305 SNAP transactions that met the parameters of this attachment. Based on the results of the contracted store visit, the large transaction amounts are not consistent with the store's characteristics, having no shopping carts, limited counter space and no optical scanners

¹ U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, *Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program*, by Laura Castner and Juliette Henke. Project officer: Anita Singh, Alexandria, VA: February 2011

that would accommodate such large transactions. Although the firm offers a limited number of foods in bulk form, such as 50-pound bags of rice and large containers of oyster sauce, there was no observations or evidence of bulk quantities or cases of chicken or canned fish that was available for purchase by SNAP customers. There also was no advertisements advising the public of any food specials, meat bundles or any other food sale specials during the review period.

Retailer Operations Division conducted an analysis of the shopping habits of three of the households identified in the charge letter. This analysis concluded that these households also shopped at other area grocery stores including full-line supermarkets, superstores and other ethnic specific stores that offered 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 larger supermarkets, superstores and other ethnic specific stores, these households consistently conducted much higher transactions at the Appellant's firm. This is another strong trafficking indicator.

In addition, the store visit report and photographs document that the Appellant firm was deficient in dairy products category and tends to indicate that the firm may not have been eligible to maintain SNAP authorization on the day of the store visit.

Receipts/Invoices

Appellant, through counsel, provided a number of invoices and receipts in support of its contentions representing inventory purchases for the period of May 2017 through October 2017. A review of those invoices and receipts reflects that of the 381 pages submitted, 167 pages were not of any value to the analysis. Either they were outside of the review period, not legible enough to determine the identity of the purchaser of the products, or the document was a billing statement. The remaining 214 pages were used in the invoice analysis, which indicated that the Appellant's inventory was considered sufficient in supporting its SNAP redemptions with the exception of the month of June 2017, which showed a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) deficiency during the period of review.

Although the invoices and receipts analyzed show that the store purchased sufficient food inventory to account for Appellant's SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions. Patterns such as rapid and consecutive transactions by individuals during the same store visit or in a single day or transactions that rapidly deplete a household's monthly benefit allotment remain questionable even with sufficient inventory. Even the large dollar transactions would remain questionable when consideration is made of there being only a few items sold in bulk, such as rice and oyster sauce, and a greater variety of the inventory is at low prices, no shopping carts, and very limited counter space. The substantial number of high dollar purchases calls into question the legitimacy of these transactions.

Due Process

With regard to the contention that the agency violated the Appellant's right to due process, it is important to note that the letter of charges provided Appellant the opportunity to reply to the charges and provide explanations for the questionable transactions. Appellant, through counsel, did reply to the charges in writing, denying the charge of trafficking and offering various explanations for the questionable transactions. After considering the evidence of the case and Appellant's reply, Retailer Operations Division determined that a permanent disqualification was warranted. However, while administrative action is held in abeyance for most adverse actions against firms pending appeal, there can be no stay of action pending an appeal of a permanent disqualification. 7 U.S.C. at 2023(a)(18) of the Food Stamp Act of 2008, as amended, states, in part: "SUSPENSION OF STORES PENDING REVIEW. Notwithstanding any other provision of this subsection, any permanent disqualification ... shall be effective from the date of receipt of the notice of disqualification."

Furthermore, the regulations at 7 CFR § 278.6(c) state, "in the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section..." which describes disqualification for trafficking, "...the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter."

Summary

Based on the evidence of the case, 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 five attachments of EBT transaction data, 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 combination grocery/other stores in the State.

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 was notified in the charge letter dated January 25, 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. 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 Friendship Market 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 Friendship Market 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

March 5, 2019