

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

Global Market of PA, LLC,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0214279

FINAL AGENCY DECISION

It is the decision of the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS) that the preponderance of the evidence supports that Global Market of PA, LLC, (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support that the permanent disqualification of Appellant from participation as an authorized retail food store in the program, as imposed by the Retailer Operations Division, (Retailer Operations) was appropriate.

ISSUE

The issue accepted for review is whether Retailer Operations 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 U.S.C. § 2023, and the implementing regulations at 7 CFR § 279.1, provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6, or § 278.7 may file a written request for review of the administrative action with the FNS.

CASE CHRONOLOGY

By Charge letter dated January 30, 2019, Retailer Operations informed the owners that USDA had compiled evidence that Appellant had violated the SNAP regulations. The analysis of Appellant's electronic benefit transaction (EBT) records established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity. Based on this information, Appellant was

charged with trafficking as defined in Section 271.2 of the regulations. The sanction for trafficking is permanent disqualification.

Counsel replied to the Charge letter by letters dated February 5, 2019, and March 4, 2019. Retailer Operations issued a Determination letter dated March 28, 2019. This letter informed the owners that Appellant was permanently disqualified as a SNAP retail food store in accordance with Sections 278.6(c) and 278.6(e)(1) of the regulations. Retailer Operations considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to Section 278.6(i) of the regulations, and deemed it was not eligible because insufficient evidence was submitted to demonstrate that Appellant had established and implemented an effective SNAP compliance policy and program to prevent violations.

By letter dated April 5, 2019, counsel requested review of the determination, and made a FOIA request. The request for appeal was granted by letter dated April 18, 2019. The FOIA reply dated April 29, 2019, was delivered to counsel April 30, 2019. Counsel provided additional information by letter dated May 21, 2019.

STANDARD OF REVIEW

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

CONTROLLING LAW AND REGULATIONS

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Sections 278.6(a) and (e)(1) 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(e)(1) states: "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: "Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food products prepared for immediate consumption."

7 CFR § 278.6(a) states: "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.”

7 CFR § 278.6(b)(2)(ii) states: “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(i) states: “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.”

SUMMARY OF THE CHARGES

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. The charges on review were based on an analysis of SNAP EBT data during the period of May 2018 through November 2018. This involved two patterns of EBT transaction characteristics that are indicative of trafficking:

1. Multiple transactions made from individual benefit accounts within a set time period.
2. Excessively large purchase transactions were made from recipient accounts.

APPELLANT’S CONTENTIONS

In reaching a decision consideration has been given to all contentions presented, including any not specifically referenced here.

- I adhere to a high standard of ethics and do not engage in illegal activity.
- There was scant statistical analysis, none of which demonstrated the Market had trafficked in SNAP benefits. There was no eyewitness testimony that the Market had trafficked in SNAP benefits.
- It remains wholly unclear how the USDA progressed from a conclusion of possible trafficking in SNAP benefits to permanently disqualifying the Market from participating in SNAP.
- The owner recalls the reason that only a single receipt, from the more than 100 he presented, lists the method of payment as “food stamps” is because he was testing his POS to determine if he could manually enter the method of payment for a transactions. Apparently he could, but he had to manually enter “food stamps” as the payment method, so he abandoned that method as overly cumbersome.

- The store caters to a local population of African immigrants because it offers halal meats and food items commonly used to prepare African dishes. The majority of the Market's customers receive SNAP benefits.
- The owner vigorously denies any allegation that the store traffics in SNAP benefits.
- The Market only charges a customer's SNAP card when the customer purchases eligible foods.

The owners provided: vendor invoices, purchase receipts, customer statements, a manager affidavit, an owner affidavit, and a letter from a seafood market in Columbus, OH.

ANALYSIS AND FINDINGS

Retailer Operations presented a case that Appellant trafficked 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 Appellant during the review period. As patterns of unusual transactions appear across multiple Attachments the case of trafficking becomes more convincing.

Attachment 1: Listed are 44 transactions in 22 data sets of two or more transactions conducted by 13 different households (HHs). Multiple transactions made from individual benefit accounts in set time frames are indicative of trafficking.

Contentions:

- Attachment 1 does not evidence trafficking. 7 C.F.R. § 271.2 does not define trafficking as a firm that accepts multiple purchases by SNAP recipients within a set period of time. Additionally, the USDA presented no anecdotal, testimonial, or circumstantial evidence that any of the SNAP recipients obtained anything other than eligible food during any of the transactions listed in Attachment 1.
- Customers occasionally forget items and go back through the line for the register to make an additional purchase. This results in multiple transactions on their SNAP card within a short period of time.
- Many of the Market's customers are African immigrants who have little or no transportation. They attempt to purchase all of the groceries they need for the month during a single visit. It is generally burdensome or impossible for them to return to the store for subsequent minor purchases. Thus, if they forget to purchase an item or two after their initial purchase, the customers often go back through the store to purchase the additional items, resulting in a second transaction for SNAP benefits on the same day.
- The affidavits and receipts from the Market's Square brand POS show the firm actually tallied individual food items in real time before charging customers' SNAP benefits.
- The invoices also show the store ordered and received food items to sell to its customers.
- The Market is not responsible for its customers' schedules or shopping habits. If a customer visits the Market in the morning and purchases items and returns later that evening, or the following day to purchase additional items, there is no indication of anything illegal occurring. Indeed, it would be a poor business practice for the Market to

unilaterally impose a limitation on the frequency with which its customers may visit the store and purchase eligible food items.

- There is nothing in Attachment 1 that demonstrates the Market engaged in trafficking.

Counsel contends that the Market is not responsible to control how people spend their SNAP benefits or how often they use them. Given the access to larger authorized stores, Retailer Operations questioned the legitimacy of the set time transactions at this small grocery store. The data supports that 100% of the SNAP recipients that transacted benefits at Appellant also conducted transactions at supermarkets and super stores within one day of making a transaction(s) at Appellant. Thus, the HHs listed did frequent other authorized stores.

The owners provided cash register tapes to support the legitimacy of the purchase of eligible foods at Appellant. It should be noted that these tapes are not itemized such that a reviewer can ascertain what was supposedly purchased. The tapes show “Custom Amount” which is not discernable as only eligible foods. The register tapes as presented do not confirm that eligible food items, or any items, were purchased at Appellant. The record shows that during an official USDA investigation from October 4, 2017 through January 31, 2018, Appellant did sell two ineligible items on one store visit of three total visits. This resulted in Appellant being issued an official USDA warning letter dated March 8, 2018.

Five customer affidavits were advanced for the record. The affidavits enumerate six statements and state a name, state, county, and signature along with a notary seal and signature. The affidavits are not sworn under penalty of perjury. The statements do not “show the firm actually tallied individual food items in real time before charging customers’ SNAP benefits.” Other than the names, there are no addresses or SNAP ID information to verify that the individuals are SNAP recipients as claimed. As such, the affidavits could not be used by Retailer Operations to match against SNAP participant information in the state administrative terminal. There is no time period stated for when these individuals conducted transactions at Appellant. These statements do not explain the transaction patterns detailed in the Attachment.

Insufficient exculpatory documentation was advanced to meet Appellant’s burden to support its contentions by a preponderance of the evidence.

Attachment 2: Listed are 238 individual EBT transactions conducted by 56 households that are for amounts that exceed the average transaction amount for the same store type in the same state by at least three times. The record shows that Appellant stocks ineligible items such as: health and beauty products, houseware, gift items, party goods, souvenirs, blankets and apparel. The checkout area appears to have limited counter space, with one cash register. The store visit report indicated there were no shopping baskets or carts to assemble food and other purchases.

The data shows that 91% of the households listed made a transaction(s) at a supermarket or super store, within one day of conducting a transaction(s) at Appellant, and 100% of the HHs made a transaction at a supermarket or super store type within two days of a transaction(s) at Appellant. The data shows that Appellant’s average SNAP dollar transaction amount was 801% higher than the average SNAP transaction amount in the state, and 383% higher than in Erie County. This is irregular.

Contentions:

- Global Market’s customers who use SNAP benefits often purchase items in bulk because of their limited access to transportation. Thus, there are sometimes large purchases using their SNAP benefits.
- Global Market occasionally must return food items from the customers’ carts to the store’s shelves because the value of the groceries the customers bring to the checkout lane exceeds the remaining balance on their SNAP cards.
- I was unable to produce receipts for all transactions because Global Market has experienced technical issues with its POS. It is a Square brand POS that requires Wi-Fi to function properly. However, the Market has experienced issues with its internet and has switched Internet Service Providers more than once to try to remedy the issue. Thus, not all of the transactions were stored in Global Market’s Square account.
- Attached are itemized receipts that demonstrate Global Market calculated customer’s totals using individual items they purchased with their SNAP benefits. Global Market only charges a person’s SNAP card when he purchases eligible food.
- Global Market offers halal meats, which is attractive to the local community of African immigrants, but whose members often do not have vehicles for transportation. Thus, they cannot afford to make multiple trips every time they forget something or need an additional item.
- Columbus Fish and Seafood explained it could not deliver product from Columbus to Erie. Attached is a letter from Columbus Fish and Seafood that confirms that.
- Not only does 7 C.F.R. § 271.2 not include “large” purchases in the definition of trafficking, but it is unclear what the USDA’s threshold is for determining whether a purchase is “large.”
- Of the 238 transactions the USDA flagged as “large,” only 19 of them 5 U.S.C. § 552 (b)(6) & (b)(7)(C). In fact, more than 70 percent of the transactions flagged as “large” are under 5 U.S.C. § 552 (b)(6) & (b)(7)(C). There is nothing extraordinary about SNAP recipient purchasing less 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in eligible foods in a single transaction. There is certainly no evidence of trafficking merely because a SNAP recipient bought less 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in eligible food either.
- Global Market often sells goat meat by the pound, which can constitute a large portion of a customer’s purchase. It is originally packaged in boxes that weigh 40 to 55 pounds. The box contains and single goat cut into six sections, referred to as a “six-way cut” goat. Customers can purchase the entire box of goat meat at a retail price of \$5.99 per pound. Customers can also purchase less than the whole box at a retail price of \$6.99 per pound. Accordingly, if a customer’s purchase includes bulk goat meat, the total price of the transaction could easily fall into the range of “large” purchases the USDA flagged.

The responding owner claims that the transactions cited are typical and legitimate grocery transactions. The regulations allow for disqualification of a retail food store on the basis of evidence that may include facts established through inconsistent redemption data and/or evidence obtained through a transaction report under an electronic benefit transfer system. 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.

Retailer Operations assessed Appellant on this Attachment to a similarly stocked store within less than a one mile radius from Appellant. Retailer Operations verified through store photographs that the comparator retailer offered similar food items as Appellant, including pre-bagged meats and produce. This store also offers similar if not the same canned foods and snack items as Appellant. While the comparator store is similar and nearby, it did not have nearly as many transactions on this Attachment at 54 as did Appellant with hundreds of transactions flagged. This is suspicious.

The owner submitted invoices from three vendors: Columbus Fish and Seafood, Noor's Food & Meat, and ITN Food USA. Retailer Operations did not assess the invoices outside of the review period to include: Noor's Food & Meat for the months of January 2018 and December 2018, ITN Food USA for the months of January 2018, February 2018, and March 2018, and Columbus Fish and Seafood for the month of February 2018. Invoices for April 2018 were used since that the stock would be available for purchase in May 2018.

Retailer Operations' invoice analysis shows that the store did not advance sufficient food stock vendor documentation to support the SNAP redemptions for the review period. Retailer Operations found that the invoices supported that meat was purchased sporadically throughout the review period. Invoices to support canned foods and other items seen in the store visit photos were not presented. There was no markup information provided by the owners, and therefore Retailer Operations applied a 40% markup to the invoice totals. Even with the April invoices added to the analysis, Retailer Operations determined that this documentation was not adequate to cover the SNAP redemptions in the months of May through November 2018, with the exception of October, when the documentation of stock acquired exceeded SNAP redemptions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Retailer Operations determined that the documentation of eligible food totaled less than SNAP redemptions for the review period **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

In appeal of this matter, Appellant has the burden of providing relevant, credible evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true. Appellant has not met this burden.

CIVIL MONEY PENALTY

7 CFR § 278.6(i) specifies the criteria for a store's eligibility for a civil money penalty in lieu of permanent disqualification for trafficking. The criteria listed therein are, as a whole, specifically identified as a minimum standard that firms must meet in order to be eligible for such a penalty. Appellant did not provide substantial credible evidence that it met all of the regulatory criteria for a trafficking CMP in lieu of permanent disqualification. Accordingly, Retailer Operations determined that Appellant did not qualify for a civil money penalty in lieu of a permanent disqualification.

CONCLUSION

Retailer Operations' analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. Appellant's data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. The record also includes suspicious household shopping patterns, an onsite visit report, store photographs, and other analysis of the transaction data. The store had a 2018 USDA warning letter issued to it due to the sale of ineligible items.

The contentions offered for the transaction patterns were not persuasive by a preponderance of the evidence. The customer affidavits were not adequately detailed to identify the supposed SNAP recipients to data in the state terminal. So the affiants could not be matched to transactions listed in the Attachments to support their claims. No federal business taxes or state sale tax forms were advanced. No business banking records were provided. The cash register tapes provided were not itemized such that what might have been purchased was listed; only "Custom Amount" is seen. The invoices of eligible stock advanced did not total to an amount that covered the SNAP redemption total at Appellant for the review months. Therefore, by a preponderance of evidence, a conclusion can be drawn, that the unusual, irregular, and inexplicable transaction patterns cited in the letter of charges evidence trafficking at Appellant as the most likely explanation.

Retailer Operations also properly determined that Appellant was not eligible for a trafficking CMP according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations. Therefore, based on the discussion herein, the decision to impose a permanent disqualification against Appellant is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 and to 7 CFR § 279.7 of the Regulations with respect to the applicable rights to a judicial review of the determination. Please note that if 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 a Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, 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.

M. Viens
ADMINISTRATIVE REVIEW OFFICER

July 29, 2019