

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

GNP Kisan Corp,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0221886

FINAL AGENCY DECISION

The record supports that the GNP Kisan Corp. (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the USDA that 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 Food and Nutrition Service (FNS).

CASE CHRONOLOGY

By Charge letter dated September 25, 2019, Retailer Operations informed the owner that it had compiled evidence that Appellant had violated the SNAP regulations based on electronic benefit transfer (EBT) transactions that established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the firm type. The sanction for trafficking is permanent disqualification. The record shows that no one responded to the Charge letter.

Retailer Operations issued a Determination letter dated October 21, 2019. This letter informed Appellant that it was permanently disqualified as a 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 civil money penalty (CMP) according to Section 278.6(i) of the regulations, and found it was not eligible because insufficient evidence was submitted to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program to prevent violations.

By undated letter postmarked October 25, 2019, the owner appealed Retailer Operations' determination, and requested administrative review. The appeal was granted by letter dated December 5, 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 action should be reversed. That means the Appellant has the burden of providing credible, relevant 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.

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 or wholesale food concern 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 were based on an analysis of SNAP transaction data during the period of May 2019 through August 2019. The patterns of transaction characteristics indicative of trafficking are:

- Multiple transactions were made from individual benefit accounts within a set time period.
- Large transactions based on the observed store characteristics and recorded food stock.

APPELLANT’S CONTENTIONS

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

- In the letter we received it said that we received a charge letter but I never received it.
- I spoke to the specialist and she told me an employee signed for it and it may have gotten misplaced like that.
- She told me to write this letter so I can have a chance to fix this.
- I hope we can resolve this issue.

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 34 transactions in 15 sets conducted by eight unique households (HHs). The store is typed as a convenience store. The data shows that there are 31 authorized retailers within a one mile radius of Appellant including several supermarkets and super stores.

Appellant had more data sets flagged on this Attachment than three nearby convenience store comparators that each had 0 data sets flagged on this data scan for the same timeframe. The data also supports that 62.5% of the HHs listed on this Attachment used SNAP benefits at a supermarket or super store within one day of making a transaction(s) at Appellant. Thus, recipients did access and use larger authorized retailers to transact benefits. Retailer Operations determined that Appellant's transaction activity was unusual and suspicious.

The store visit supports that the firm primarily stocks canned and boxed goods, snack items, ineligible hot foods, accessory foods, deli foods, and drinks. There was a limited quantity of fresh produce. The storage area appears to be stocked with primarily beverages and packaged goods. The onsite visit noted that there were empty shelves, empty/broken coolers, and ice crystals on frozen foods. The firm stocked nonfood items such as: tobacco, lottery tickets, alcohol, paper goods, mobile phones, party goods, gift items, health and beauty items, and cleaning supplies. The checkout area has one cash register and one POS device. There are no shopping carts or baskets for recipients use to accumulate large dollar transactions of eligible foods. The FNS contractor also noted that the firm does not accept telephone orders and does not offer delivery.

No recipient statements were provided to support that recipients shopped at Appellant multiple times a day or in set time periods for eligible foods. No vendor invoices were provided to support that Appellant stocked adequate eligible foods to cover its SNAP redemptions for the review period. No federal or state business tax returns, or banking statements were provided.

Attachment 2: Listed are 82 transactions conducted by 32 unique HHs for amounts that exceed the average transaction amount for the same store type, in the same state, by three times or more. Appellant had more flags on this Attachment as compared to three nearby same type convenience store comparators. Appellant had a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) higher SNAP dollar volume amount than authorized convenience stores in Queens County for the same timeframe. Given the stock and physical characteristics of Appellant, Retailer Operations found it more likely than not that the large dollar transactions were indicative of trafficking.

The data supports that there are authorized stores nearby that had comparable or better staple food stock, and that households listed on the Attachments did utilize these other retailers. Retailer Operations conducted a review of several HHs' shopping patterns at Appellant. The data shows that HHs made transactions at supermarkets and super stores on dates proximate to or on the same date at Appellant while conducting lower dollar SNAP transactions at these larger stores. This is suspicious, particularly as Appellant carried limited staple foods.

The regulations at 7 CFR § 278.6(a) state 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, and that 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. As noted herein, Appellant has the burden of providing credible, relevant 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. This burden has not been met.

While some households may have conducted legitimate SNAP transactions at Appellant, no evidence was presented to support this argument. No vendor invoices of eligible items acquired in inventory that might cover Appellant's SNAP redemption volume were provided. The owner provided no itemized cash register sales tapes for the review months. No listing of eligible foods with pricing was advanced. No federal business tax returns or state tax filings were provided, and no business banking statements were submitted. No recipient affidavits were offered as evidence to support shopping behaviors at the firm. Thus, the owner has not provided a preponderance of evidence that the transactions on the Attachments are for eligible foods rather than the result of trafficking.

The owner states he called Retailer Operations after he did not receive the Charge letter. The record shows that the Charge letter was signed for by "5 U.S.C. § 552 (b)(6) & (b)(7)(C)," and delivered to Appellant on September 30, 2019. The record shows that the owner emailed Retailer Operations October 25, 2019 to request the Charge letter. This was after the Determination letter was received and signed for by "5 U.S.C. § 552 (b)(6) & (b)(7)(C)." The owner was issued a letter acknowledging his appeal. This letter is clear that to meet the minimum information requirement, the owner could reference any previous correspondence with Retailer Operations, and could send additional information or documentation and include the reason(s) why he thought a review was warranted. Nevertheless, the owner never provided any information other than the email requesting the Charge letter. As such, he has not met the burden of proving, by a preponderance of the evidence, that the administrative sanction should be reversed.

CIVIL MONEY PENALTY

The regulations at 7 CFR Section 278.6(i) specify the criteria for a firm's eligibility for a trafficking CMP in lieu of permanent disqualification. The four criteria listed at the cited regulation are as a whole, specifically identified as a minimum standard that firms must meet in order to be eligible for CMP consideration. The owner did not request or provide any evidence for consideration for a trafficking CMP.

CONCLUSION

Retailer Operations' analysis of Appellant's SNAP transaction data was the primary basis for its determination to permanently disqualify Appellant. The record also included onsite store photographs, an onsite store inventory report, and households' shopping analyses that provided substantial evidence that the identified transaction patterns, as provided in the Attachments, had characteristics that are consistent with trafficking violations in SNAP benefits.

Based on empirical data, and in the absence of evidence presented by Appellant as to the legitimacy of the transaction patterns, the preponderance of the evidence supports that violations did occur as charged by Retailer Operations. Retailer Operations denial of a trafficking CMP was also proper per the applicable regulations. The owner did not submit any information to

warrant a trafficking CMP. The decision to impose a permanent disqualification against Appellant is herein sustained.

RIGHTS AND REMEDIES

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 applicable rights to judicial review of this decision. 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 Appellant's owner resides or is 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, 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

January 16, 2020