

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

**Harry's Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0204411**

**FINAL AGENCY DECISION**

It is the decision of the USDA that the record indicates that Harry's 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 January 25, 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 December 18, 2017, 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 June 2017 through November 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 correspondence dated December 27, 2017, Appellant replied to the charge letter and generally stated that it strongly opposed the charges and stated that it was also similarly charged back in 2006 and was able to prove that the allegations were wrong. Harry's Market has been in business with SNAP approval for 50 years and we never had any such allegations proven. Appellant stated that in Attachment 1 it is the purchaser's liberty how many times they want to shop, I have no control over their buying habits. They may stag a lot of items together and ask me to charge them the way they feel comfortable. Appellant also stated that of the 104 entries only 55 belong to its store and the rest belong to another store under the second EBT terminal number.

Appellant stated that in reference to Attachment 2, only 108 of the 215 entries belong to my store. My store carries expensive items that are even sold at Costco and/or SAMS Club so it is not unusual that my SNAP purchasers buy expensive items from my store. No SNAP guidelines show such regulations that I cannot sell expensive items to the SNAP recipients. I have attached a number of declarations from the frequent SNAP recipients of my store showing their various shopping patterns. My store is the only SNAP authorized store in the neighborhood which could be another reason SNAP shoppers keep coming to my store for their various needs. Appellant stated that it offers free rides home to shoppers that spend **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**

After giving consideration to the Appellant's reply and evidence of the case, Retailer Operations Division issued a determination letter dated January 25, 2018. This letter informed ownership that they were permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also states that Retailer Operations 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 February 2, 2018, Appellant, through counsel, 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 1977, 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 1977, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an *electronic benefit transfer system...*” (*Emphasis added*)

7 CFR § 278.6(c) reads, in part, “*Review of Evidence.* The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1)...the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS...”

7 CFR § 278.6(e)(1) reads, in part, “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.” Trafficking is defined, in part, in 7 CFR § 271.2, as “the buying or selling of SNAP benefits for cash or consideration other than eligible food.”

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

## SUMMARY OF THE CHARGES

The charges on review were based on an analysis of SNAP electronic benefit transfer (EBT) transactions dated during the six month period of June 2017 through November 2017. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from individual benefit accounts in usually short time frames.
2. Excessively large purchase transactions were made from recipient accounts.

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

## APPELLANT'S CONTENTIONS

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

1. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) has owned and operated Harry's Market for almost 20 years without violations of any kind related to SNAP. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) also owned and operated another Market prior to Harry's where he participated in SNAP and has never been cited for any violations of the SNAP regulations for over 18 years. Thus he has owned and operated markets for over 38 years without ever being found in violation of the SNAP regulations.
2. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was charged in 2006 for similar types of transactions however 5 U.S.C. § 552 (b)(6) & (b)(7)(C) explained the transactions to the satisfaction of the OIC and it was found that there were no trafficking violations that had occurred. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) did not have any opportunity here to explain himself vocally, and his reply did not properly express the various details that demonstrate how these transactions in question were legitimate and not in violation of any trafficking regulations.
3. In Attachment 1: The location of Harry's Market brings in patrons that sometimes return several times a day and some of the customers make multiple purchases while hanging out inside the store. Also, there is no photo or identification on the SNAP cards so an individual may use their card and then give their card and code to someone else to use. There is no way to verify the proper recipient of a particular card.
4. The photographs provided show that the store is stocked with lots of bulk goods for shopping needs. A disqualification will have a detrimental effect on many SNAP recipients who have evidently grown up shopping at Harry's Market. Letters from customers provided.
5. In Attachment 2: I have provided receipts of wholesale purchases of goods for purposes of resale at Harry's Market. These may appear to be expensive purchase items, but that is due to their size. These items are actually more cost-efficient for an end buyer to purchase in a retail store because the price per unit decreases when buying a larger quantity of goods.
6. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) does not order meat often but, when he does, he can most often get special large orders in advance. Once customer made a very large order once, in advance, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of meat products, these large transactions are profitable for the store and beneficial for the customer because the price is decreased due to the quantity purchased.

In subsequent correspondence dated March 7, 2018, Appellant provided with its review request, 4 sheets of photo negatives, 248 color photographs of the stores stock (many of which are duplicates), 39 customer statements, seven pages of 25 purchase receipts, 13 pages of EBT receipts and an owner affidavit in support of its position.

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 initially authorized the business as a small grocery store on August 12, 1998. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during the October 16, 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:

1. Two checkout areas and two cash registers. One POS device and the counter area partially obstructed by other smaller items available for sale. Photographs only show one counter area that was clear for purchases. Second register had no clear counter area.
2. Estimated to be approximately 1782 square feet.
3. Approximately 10 hand baskets and two shopping carts available for customers.
4. No adding machines or optical scanners were available at checkout. No specialty registers present.
5. Store does not operate through a night window or plastic barrier with food stock behind the barrier.
6. No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
7. No unusual pricing structure such as ending most products with 00 cents and does not round transaction totals.
8. Food is stored in an area outside of public view with approximately 15 square feet of space.
9. Store has storage freezers or coolers but not food stored off site.
10. Store is not primarily selling one food type such as meat, poultry, dairy, seafood, fruits, baked goods or vegetables.
11. Store does not take telephone, online or other orders and does not offer delivery
12. Highest priced eligible food items were Cereal (\$11.99), Coffee (\$19.99), and Coffee Mate (\$10.99) and canned Abalone (\$14.99).
13. Store stocks a significant amount of non-food items such as but not limited to paper products, household products, tobacco products, alcohol products, clothing items, footwear, party items, automotive products, health and beauty aids, lottery tickets, mobile phones, charcoal, lighter fluid and cleaning products.
14. Store stocks ample amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products. No fresh fruits or produce, no fresh meat or poultry. Most meats are canned, packaged or frozen.
15. One freezer noted with unmarked meat items wrapped in plastic bags. Also a roll of beef was cut in half and uncovered in the freezer which is unsanitary.

16. Some stock contained a layer of dust and ice crystals were formed on some frozen foods.
17. Some stock items had faded or missing labels.
18. A kitchen/prepared food area but no hot foods sold for onsite consumption.
19. No deli or prepared food section and stock is not used in the deli/prepared food section.
20. No meat or seafood specials or bundles or fruit/vegetable boxes sold.

The store visit reports states that the store is over crowded with merchandise. There are cases of water stacked in front of the beverage coolers and a large carton of shoes in individual boxes in front of the coffee and wine shelf. The aisles, shelves and ceiling rafters were so cluttered with merchandise, it was difficult to gain a perspective on items that were regularly sold. There was only about two feet between the aisles due to the extra merchandise in boxes stored on the floor. Some of the canned goods had dust on them and some had rust around the edges. The expiration dates were difficult to read (faded) and there were no shelf prices, only individual pricing stickers. There were no signs for deli meat pricing and no signs on the meat/frozen meals/vegetable freezer to identify contents. The storage area contained drinks and non-food items.

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 - Multiple transactions were made from individual accounts in unusually short timeframes.**

There were 44 sets of 104 SNAP transactions that met the parameters of this attachment. Appellant stocks a limited quantity of fresh produce and what appear to be frozen individually bagged, unmarked, meat products. Multiple transactions conducted by the same household account **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** is a method which violating stores use to avoid the detection of single high dollar transactions that cannot be supported by the retailer's inventory and structure.

Appellant, through counsel, contends that the location of Harry's Market brings in patrons that sometimes return several times a day and some of the customers make multiple purchases while hanging out inside the store. Also, there is no photo or identification on the SNAP cards so an individual may use their card and then give their card and code to someone else to use. There is no way to verify the proper recipient of a particular card. With regards to these contentions, 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 transactions in this Attachment occurred in multiples of 2 or 3 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** and do not contain the characteristics associated with a recipient purchasing forgotten items a short time after checking out or households returning to purchase a forgotten item or two. Additionally, though some SNAP recipients may allow another

household member to utilize their EBT card, it is unlikely that SNAP households would hang out inside the store to make multiple large transactions or hand their card to another household member to make large purchases when, based on the contractor store visit photographs, the store does not offer any specialty or ethnic food products that would cause SNAP households to make Harry's Market their first choice destination to fulfill large purchases of food, or that they would have made relatively large purchases at the store **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

The stock consisted mostly of canned foods, snacks, soft drinks, bagged beans, bagged rice, boxed foods, sauces, and spices. The store offers deli meats (no prices posted); limited stock of individually packaged frozen meat (unmarked), frozen meals, and limited fresh produce (some which seemed past its freshness point). The store visit photographs also show that the store does not stock any special packages or expensive food products that would generate multiple large purchases nor does it indicate that Appellant sold items in bulk. Although the store visit information indicates that there are two cash registers, there was only one checkout counter area visible in the photographs. This checkout area was limited and crowded with other smaller items for sale making large purchase transactions extremely difficult to process. Due to the store being extremely crowded with unpacked stock items, it would be difficult to maneuver to comfortably process large transactions or to have SNAP households hanging out inside the store. Although Appellant provided 10 hand baskets and two shopping carts, it is questionable that these could be utilized to help customers transport items around the store as the store visit reports indicates that the store aisles were cluttered and it would be seemingly very difficult to maneuver shopping carts full of food around the store. Additionally, some of the transaction sets occurred in a timeframe that would make it difficult to complete given the amount of food items no doubt needed for the purchase amounts and the very limited counter space at the register. In conclusion, it is therefore more likely true than not true that the irregular transactions cited in the charge letter Attachment 1 are due to trafficking in SNAP benefits.

**Attachment 2 of the Charge Letter - Excessively large purchase transactions were made from recipient accounts.**

There were 215 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 inventory of low priced foods. The firm does not offer food in bulk or any ethnic or specialty foods that sell for a high price. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. There appears to be no basis for customer attraction to Harry's Market with there being no great price advantage or specialty food offerings.

Appellant, through counsel, contends that the photographs provided show that the store is stocked with lots of bulk goods for shopping needs. Appellant, through counsel also contends that it provided receipts of wholesale purchases of goods for purposes of resale at Harry's Market. These may appear to be expensive purchase items, but that is due to their size. These items are actually more cost-efficient for an end buyer to purchase in a retail store because the price per unit decreases when buying a larger quantity of goods.

With regard to these contentions, based on the contractor pictures it was observed that the store did not have any specialty food items that would justify large transactions. The store stocked limited fresh produce that appeared to be mostly expired. The store also has a small stand-alone freezer that contained bagged frozen meats (unmarked) however; these items were not stocked in abundance to justify the transactions in this Attachment. The store is a typical small grocery store that does not appear to stock any expensive food products. Although the store stock limited deli items, there were no prices posted to suggest that the items are extremely expensive or in high demand. Furthermore, there were some bulk non-food items noticed in the store visit photographs, cases of drinks were also noted in the storage area but no indication that they are sold in that state. Also there were a few bulk size boxes of cereal but the photographs also show bulk items open on the shelves and items being sold individually from the bulk box. Again it was stated in the store visit documentation that there were rusty, dusty cans with faded expiration dates which is an indication of a slow turnover rate or stock items that may have been expired. Given the unremarkable food stock offered at the store, it is unlikely that households are utilizing the store for all their eligible grocery needs.

Retailer Operations Division also conducted an analysis of the shopping habits of three of the households identified in the charge letter as well as 19 of the customer statements provided by Appellant. This analysis concluded that these households also shopped at other area grocery stores including full-line supermarkets and superstores that offer a much larger quantity and variety of eligible food items for likely better prices either on the same day or within days of visiting Appellant's firm. The record also reflects that there are 39 other small grocery stores, 16 medium grocery stores, four (4) large grocery stores, eight (8) supermarkets and four (4) superstores within a 2-mile radius of Appellant's store.

The analysis conducted on the customer statements found that of the 21 total statements provided, two were duplicates. The remaining 19 were reviewed and it was determined that nine (9) could not be verified as being SNAP households or that they shopped at Appellant's store. The analysis showed that the remaining 10 households did shop at Appellant's store during the review period but that they also shopped at supermarkets and superstores most of them shopping at other larger stores more than at Appellant's store. This again indicates that lack of access to other stores is not at issue. However, despite this access to large supermarkets and superstores, these households consistently conducted much higher transactions at the Appellant's firm than at better stocked supermarkets/superstores in and around the Los Angeles County area of California. This is another strong trafficking indicator.

### **Purchase Receipts**

Appellant, through counsel, contends that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) does not order meat often but when he does, he can, often times, get special large orders in advance. One customer made a very large order once, in advance, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of meat products, these large transactions are profitable for the store and beneficial for the customer because the price is decreased due to the quantity purchased. With regard to this contention, Appellant provided seven pages of 18 purchase receipts and seven individual receipts. Of the 25 receipts



provided, 11 were dated outside of the review period or the date was missing and therefore could not be considered as evidence during this review.

It is important to note that the receipts, to include those undated or dated outside of the review period, contained mainly snack items and accessory foods. Only one contained meat items, allegedly attributed to one customer's order however, it could not be determined when those items may have been purchased as no date was visible on the receipt and it cannot be determined if the SNAP household mentioned was the household that actually ordered and purchased those items. It is also important to note that the store visit report indicates that the store does not accept telephone, online or other orders which is a contradiction to the Appellant's statement that it takes meat orders from customers.

Appellant, through counsel, also states that it provides soul meats such as Pig Feet, Chitlins, Hog Maws, Ham Hock, Oxtail, Smoked Slab Bacon, Salt Pork and Pig Lips however, there were not purchase invoices/receipts to show that Appellant every purchased or sold these items. It is unlikely that the photographs of the blocks of cheese, liverwurst, deli hams, salami and bologna are sold in that state but are instead cut and sold sliced by the pound.

### **EBT Receipts**

The EBT receipts provided as well as those attached to customer statements, though used as examples, were dated outside of the review period and cannot corroborate the SNAP transactions cited in the charge letter. Therefore they cannot be considered as evidence during this review. In subsequent correspondence, Appellant, through counsel, provided two customer statements along with 14 EBT receipts for six SNAP recipients. Of the 14 receipts provided, eight (8) were dated outside of the review period and therefore not considered as evidence of the SNAP transactions cited in the charge letter. Additionally, the remaining six (6) EBT receipts did not have the corroborating register receipts to show items purchased. It cannot be determined by the EBT receipt alone, if the purchase amounts were purely for eligible staple foods. It is important to note that customer statements and EBT receipts dated 2006 are not relevant to the current case.

### **Previous Charges**

The Appellant, through counsel, contends that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) has owned and operated Harry's Market for almost 20 years without violations of any kind related to SNAP. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) also owned and operated another Market prior to Harry's where he participated in SNAP and has never been cited for any violations of the SNAP regulations for over 18 years. Thus he has owned and operated markets for over 38 years without ever being found in violation of the SNAP regulations. Appellant, through counsel, also contends that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was charged in 2006 for similar types of transactions however he explained the transactions to satisfaction and it was found that no trafficking violations occurred. In this case, ownership did not have an opportunity to explain himself vocally, and his reply did not properly express the various details that demonstrate how these transactions in question were legitimate and not in violation of any trafficking regulations.

With regard to these contentions, it is important to note that a record of participation in SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of the present serious charge of trafficking. There is no provision in the Act or regulations that reverses or reduces a sanction based upon a lack of prior violations by a firm and its owners, managers and/or employees. Additionally, it is important to note that the record reflects that ownership was previously charged and permanently disqualified from the SNAP program in 1997 and in 1999 on previous stores that were SNAP authorized therefore, Appellant's contention that it has never been found in violation of the SNAP regulations is incorrect. The record also reflects that, in the present case, ownership spoke with Retailer Operations Division, via a telephone conversation, and the charges were explained, via a translator; however an extension of time to reply was not requested. Appellant did however, reply to the charge letter and submitted a substantial amount of information in support of its position. It is noted that most of the documents provided by counsel were submitted as original documents in Appellant's reply to the charge letter.

## **Summary**

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

The transaction data and overall firm record convincingly demonstrate repetitive patterns of unusual, irregular, and inexplicable SNAP activity for this type of firm indicative of trafficking. Once Retailer Operations Division established a convincing case against Appellant, ownership bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true. If this is not demonstrated, the case is to be sustained.

As noted, 7 CFR § 278.6(a) states that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 1977, 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 two attachments of EBT

transaction data, the inadequacy of the firm's eligible food stock as observed and recording during the onsite visit to support such large transactions, the lack of evidence of invoices of foods in inventory to cover SNAP redemption totals for the review months, the lack of explanation for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant, and the irregular SNAP transaction data of Appellant as compared to other small grocery stores in the State.

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 for the legitimacy for 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. While ownership was afforded the opportunity to provide valid explanations and evidence that support that the questionable transactions were the result of legitimate purchases of eligible food items, Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence in the record.

The purpose of the administrative review process is to ensure that firms aggrieved by Retailer Operations Division's adverse actions have the opportunity to have their position fairly considered by an impartial review authority prior to that adverse action becoming final. Appellant has been duly given, and has taken the opportunity to present to USDA through the administrative review process whatever evidence and information it deems pertinent in support of its position that Retailer Operations Division' 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 December 18, 2017, 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 Harry's 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 Harry's Market is sustained.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 1977, 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

May 9, 2018