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

Iris Grocery,	
Appellant,	
v.	**Case Number: C0201992**
Retailer Operations Division,	
Respondent.	

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS) that the permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP) imposed upon Iris Grocery (hereinafter "Appellant") by the Retailer Operations Division, Investigations and Analysis Branch, hereinafter "ROD Office" is hereby sustained.

ISSUE

The issue accepted for review is whether the ROD Office took appropriate action, consistent with 7 U.S.C. § 2021, 7 CFR § 278.6(a) and 7 CFR § 278.6 (e)(1) and (i) in its administration of the SNAP when it imposed a permanent disqualification upon Appellant.

AUTHORITY

7 U.S.C. § 2023 and the implementing regulations at 7 C.F.R. § 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 October 24, 2017, the Retailer Operations Division charged the Appellant with SNAP benefit trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of February through July 2017. The letter noted that the sanction 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). The record reflects that Appellant did not reply to the Charge Letter. By a letter dated November 7, 2017, Appellant was informed that it was permanently disqualified from participation as a retail store in the SNAP and was ordered upon

receipt of the letter to cease accepting SNAP benefits; consequently, Appellant ceased to accept said benefits. On November 8, 2017, Appellant requested an administrative review of the SNAP Office's decision; the request was granted.

STANDARD OF REVIEW

In appeals of adverse actions an appellant bears the burden of demonstrating 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, at 7 U.S.C. § 2021 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6 (e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, in part:

> …a disqualification under subsection (a) shall be…permanent upon…the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards…

7 CFR § 278.6(a) states, in part:

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

7 CFR § 278.6(e)(1)(i) states:

> Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in §271.2

7 CFR § 271.2 states, in part:

> **Trafficking** means the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card

numbers, (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

7 CFR §278.6(f)(1) states, in part:

> A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR §278.6(i) states, in part:

> FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 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…

7 CFR §278.6(b)(2)(iii) states, in part:

> If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in §278.6(b)(1), the firm shall not be eligible for such a penalty.

SUMMARY OF THE CHARGES

- A series of 100 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) ended in a same cents value
(Attachment 1).
- A series of multiple SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from individual benefit accounts in unusually short time frames (Attachment 2).
- A series of 154 excessively large SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from recipient accounts (Attachment 3).

APPELLANT'S CONTENTIONS

In Appellant's written request for review dated November 8, 2017, and in subsequent correspondence, it was argued that:

1. Appellant has never had any complaints or problems with local, state or federal government in the U.S.
2. Appellant states that it has never engaged in SNAP-benefit trafficking and that the charges are based on mere suspicion or mere alerts by a computer system.
3. Appellant provides SNAP, credit card and cash sales figures, the cost of inventory purchases, the firm's gross profits and the costs of operations during January through November 17, 2017.

ANALYSIS AND FINDINGS

At the outset it should be noted that the ROD Office ordered a contracted store visit to the Appellant firm as part of its investigation into Appellant's questionable transaction activity; the visit was conducted on July 18, 2017, as a result of which documentation was obtained including photographs of the interior and exterior of the store, a store layout diagram and a store inventory survey. This documentation reflected the following:

- Estimated 500 square feet of space.
- No optical scanners.
- No shopping carts or baskets.
- No night window present.
- No evidence of wholesale business.
- Prices in standard retail variations of $.x9.
- One checkout area, one cash register and one card reader.
- Food stored out of public view, approximately 400 square feet of storage space.
- No storage coolers or freezers.
- No food stored offsite.
- Not a specialty food store.
- No telephone, online or other orders taken.
- No delivery offered.
- No transaction rounding.
- Four most expensive SNAP-eligible items:
    - Rice - $6.39 for 5 pounds.
    - Corned beef - $5.99 for 12-ounce can.
    - Bacon - $5.99 for one-pound.
    - Buffalo chicken - $6.99 for one-pound.
- All above questions were completed in collaboration with store personnel.
- The firm also sold health and beauty products, paper goods, cleaning products, laundry detergent, housewares and other non-food items.
- Kitchen/food preparation area present.
- Food sold for on-site consumption (microwave oven(s) present).
- Made to order sandwiches sold.
- Deli meat/cheese sold in the prepared food section.
- No meat/seafood bundles/specials or fruit/vegetable boxes.
- Storage area contained primarily soda/soft drink inventory. Photos 35.
- Checkout counter area was approximately 1 X 1 feet and surrounded/cluttered by candy, snack foods, miscellaneous non-foods and an ice cream freezer was directly in front of and below the counter. Photos: 5 and 39.

The documentation presents no indication of advertised specials, promotions, bulk or expensive food items. The checkout area was set up in convenience store fashion, utilizing a small check-out area, approximately 1 X 1 feet and surrounded/cluttered by candy, snack foods and miscellaneous non-foods; an ice cream freezer was directly in front of and below the counter. There were no shopping carts or baskets with which customers could transport large orders to

the small check-out area or to waiting transportation. It is worth noting that the average SNAP purchase in a convenience store in the state of Pennsylvania during the analysis period was $8.18, reflecting that large purchases are not routinely made in such stores.

In regard to contention 1 above, Appellant may imply that this case represents the firm's first and only SNAP violation (or series of same); however, a record of program participation with no previously or subsequently documented violations does not constitute valid grounds for dismissing the present serious charges or for mitigating the impact of the violations upon which they are based. There is no provision in the Act, regulations or agency policy that reverses or reduces a sanction based upon a lack of prior and/or subsequent violations or assurances of future compliance by a firm and its owners, managers and/or employees; likewise, sanctions for prior violations are not prerequisite to sanctions due to later violations. Moreover, prior sanctions may precipitate an increase in the severity of a later sanction (see §278.6(e)(6)). Further, as noted above, the **Food & Nutrition Act of 2008** provides that a store's disqualification "*shall be* (emphasis added) permanent upon ... the first occasion of... trafficking."

Regarding contention 2 above, Appellant bears the burden of demonstrating through a preponderance of the evidence that the violations as charged, including SNAP-benefit trafficking, in fact did not occur and that the sanction imposed by the SNAP Office should therefore be reversed (see page 2 above). Appellant offers statements of denial indicating that the firm did not participate in said violations; such does not constitute compelling evidence that the firm accepted SNAP benefits in exchange for eligible foods only. It is acknowledged that demonstrating that trafficking did *not* occur does indeed place a difficult burden upon Appellant; however, that the burden is considerable does not render invalid the evidence of SNAP benefit trafficking existing in the record or the actions taken by the SNAP Office on the basis of that evidence.

Charge Letters are not required by regulation or agency policy to provide investigative techniques/case analysis standards or even to provide a totality of the evidence contained in the case file, but rather to present a firm with transactions the ROD Office has found to be implausible given various considerations and to provide the firm the opportunity to explain how such transactions may be legitimate. The record reflects that the ROD Office has provided a comprehensive case in support of its sanction determination, as is discussed in further detail herein. Appellant implies that the substance of the ROD Office's case against the firm is derived from data only and implies that there were no independent witnesses to affirm the trafficking allegations. 7 CFR §278.6(a), noted above, establishes the authority upon which FNS may disqualify any authorized retail food store on the basis of evidence obtained through a transaction report under an electronic benefit transfer system. Such cases are developed with the standard in mind that a *prima facie* preponderance of evidence is sufficient in order to charge a firm with SNAP-benefit trafficking. Various statistical tools and graphical reports are utilized, as well as store visit documentation reflecting the firm's nature and extent of inventory and the firm's logistical wherewithal. Compliance history and household data are evaluated. The record reflects that Appellant's firm was chosen for analytical investigation based upon numerous detailed and rigorous mathematical algorithms applied not only to Appellant's firm but to all SNAP-authorized firms, including all firms of a like type (convenience stores, in this case) in the

state of Pennsylvania. As noted, the record contains documentation, including photographs of the firm's interior and exterior, an inventory survey and a layout diagram, of a visit to Appellant's firm conducted on July 18, 2017. These documents reflect the firm to have been a typically-stocked convenience store. The firm also maintained a substantial inventory of prepared, ready-to-eat food and accessory food items (candy, beverages, etc.), which is typical of convenience store stock.

This and other data presented the ROD Office with a statistically valid prima facie indication of highly unusual transaction activity; the activity therein identified is not marginally aberrant, but markedly so. Properly analyzed and interpreted, the ROD Office does not contend that the EBT (electronic benefits transfer) transactions detailed in its Charge Letter are overtly suspicious when they occur on an occasional or intermittent basis, but when such transactions form repetitive patterns on a consistent and comparative basis over substantial periods of time such activity is identified for further analysis. Only after a careful, comprehensive and complete analysis, from which appropriate conclusions are logically derived, will the firm be issued a Charge Letter. The firm is then given the opportunity to reply to those charges and provide any information it deems appropriate in justifying as legitimate the transaction activity detailed in the Charge Letter. In the present case, these procedures are shown by the record to have been duly performed in all relevant and appropriate detail. Moreover, as noted above, the regulations at 7 CFR § 278.6(a) state that FNS may disqualify any authorized retail food store *on the basis of evidence obtained through a transaction report under an electronic benefit transfer system*; consequently, transaction data as a basis for the charges at issue is as valid as evidence obtained through an undercover investigation. ROD Offices are not required to apply any other standard, including an evaluation of case law, than that described herein. Accordingly, the case against the firm is not reflected by the record to lack evidentiary value or to fail to adhere to established investigative methodology, but rather to be comprehensive, analytic, logically derived and specific in its charges of SNAP benefit trafficking, an egregious violation of the Act and the regulations, as noted above.

Furthermore, the case presented by the ROD Office does not rest solely upon transaction data and printouts thereof and was indeed obtained through a formal investigative process. As summarized herein, the record contains a comprehensive array of documentation and analytical work well beyond the data presented in the Charge Letter. The transaction data is indeed factual and specific, the existence and accuracy of which is not in dispute; redundant systems confirm numerous data points for each transaction including the date, time, store authorization number, terminal ID, amount transacted, prior balance and other particulars. It is worthwhile to restate as well that, as noted above, in appeals of adverse actions an appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed; Appellant must provide a preponderance of evidence that the transactions detailed in the charge letter were more likely than not due to the legitimate sale of eligible food in exchange for SNAP benefits. In the absence of compelling information/documentation weighed in comparison to that provided by the ROD Office, the evidence preponderates in favor of the ROD Office's determination that SNAP-benefit trafficking substantially produced the transaction activity at issue in the present case.

It should be noted as well that while the ROD Office is required to consider and evaluate all evidence and responses that are provided by the retailer in accordance with 7 CFR § 278.6(c), however, Appellant did not reply to the Charge Letter. The Determination Letter clearly states that consideration was given to the information and evidence available to the ROD Office. After an evaluation of all available information, the ROD Office determined that the violations cited in the charge letter had occurred at the firm. Implied in the letter is the determination that the evidence or response by the Appellant was either not credible or was insufficient to prove that trafficking had not occurred; in this case, no response was received. This review finds that due process was appropriately provided and that there was no negligence on the part of the ROD Office with regard to the manner in which it explained its disqualification decision.

Lastly, SNAP authorization is an administrative privilege, granted upon initial and continued proof of eligibility and compliance with the governing rules and regulations, and not an unencumbered right or entitlement, and does not extend said privilege in perpetuity when a firm is at least once granted a license to participate. USDA has the obligation to safeguard the public's trust and financial interest and labors to do so by operating the program in accord with the statute enacted by Congress and the regulations promulgated by USDA to implement the provisions thereof. Within this context, while due process is honored, the agency is not burdened with proving to Appellant's satisfaction that FNS has correctly imposed the sanction at issue, but rather it is Appellant's burden to demonstrate that it has not engaged in SNAP-benefit trafficking by presenting a preponderance of evidence of same. As such, contentions that the agency hasn't proven its case are a largely irrelevant and ineffective means by which to demonstrate that Appellant has not engaged in violative activity. While errors on the agency's behalf are indeed relevant and must be addressed, corrected and can result in a reversal during administrative review, an Appellant must focus a substantial amount of its probative efforts on explaining why the transaction activity at issue is in fact not due to SNAP-benefit trafficking.

With regard to contention 3 above, Appellant does not directly address the Charge Letter attachments or provide any explanation or rationale for same. The sales, purchase and expense figures provided by Appellant are of little probative value and do not constitute evidence of SNAP compliance; both a trafficking or non-trafficking firm could produce the figures.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

While there are legitimate reasons why a SNAP recipient or household member might return to a convenience store during a short period of time, such purchases are more typically in small amounts and for obtaining just a few items. The examples in Attachment 2 indicate a series of repetitive purchases that total large amounts. Customers spending such substantial amounts of SNAP allotments in a typically-stocked convenience store, when there are other larger food stores nearby which carry substantially larger varieties of food at lower costs, is implausible. Lastly, large transactions for the purchase of legitimate food items (which at this store would have been a substantial number of lower priced items), using no shopping carts and very little checkout-counter space, is additionally implausible. Multiple transactions over a short period of time, especially of high dollar value, are very suspicious because they are typical of stores and SNAP customers which are attempting to diminish attention to signs of SNAP-benefit trafficking. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Frequent and large transactions conducted in order to purchase eligible foods at Appellant's store are highly unlikely given Appellant's

logistical wherewithal and store stock. There is no compelling rationale to explain why only, or primarily, Appellant's customers made repetitive visits spending large amounts in short timeframes. The record reflects, as noted above, that the Appellant firm was a typically-stocked small grocery store in all relevant respects and provides no plausible bases for customers' unusual attraction to the firm and unorthodox transaction patterns.

Similarly, the record reflects that the firm provided no shopping carts or baskets with which large orders could be transported to the small check-out counter or to waiting transportation. The firm was a typical convenience store in all relevant respects and not set up to handle large transctions. As noted, the average SNAP transaction in a convenience store in the state of Pennsylvania during the analysis period was $8.18; Attachment 3 contains numerous transactions multiple times that amount.

The record reflects that the ROD Office compared the Appellant firm during the analysis period with other similarly stocked firms in the immediate area and found that Appellant's number of same-cents, repetitive and excessivly-large transactions was multiple times that of the other nearby comparable firms. In several instances the other firm's conducted no same-cents or repetitive transactions during the same time period; Appellant's number of excessively large transactions were from over four to over 150 times that of the other firms. The ROD Office conducted an analysis of household activity and found that customers conducting implausible transactions at the Appellant firm were also shopping at much better-stocked super stores and supermarkets on or about the same day, calling into question what these customers could obtain at Appellant's convenience store that they could not obtain at the better-stocked and very likely more competitively-priced stores.

The SNAP Office notes that, at the time of the sanction decision, there were 67 SNAP-authorized stores within a one mile radius of the Appellant firm, including three super stores, two supermarkets, four medium grocery stores, 22 small grocery stores, 10 combination grocery/other stores and 26 other convenience stores. As noted, the record reflects that many customers clearly had access to and routinely shopped at better-stocked super stores and supermarkets in the immediate area. This information further indicates that these customers were conducting implausible transactions only at or primarily at the Appellant firm. The Appellant store was clearly not the only store in the immediate area offering food items to SNAP customers; as noted above, it was clearly not the best-stocked firm in the area and it was clearly not the only store being visited by Appellant's customers.

The information in the record reflecting the firm's business operations does not explain the transaction activity; information in the record regarding the firm's inventory, including the store visit referenced above, reveals no legitimate basis for SNAP customers' attraction to the firm, there being no superior selection of staple foods, no evidence of a price advantage, no compelling evidence of package, bulk or promotional items, no extensive variety of otherwise unavailable ethnic food items and no evidence of custom or special services rendered.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Lastly, once trafficking is established, there is no latitude to impose a lesser sanction, with the exception of a trafficking civil money penalty. There is provision at 7 CFR §278.6(i) for the imposition of a civil money penalty in lieu of permanent disqualification for trafficking. Appellant was advised of this provision in the SNAP Office's Charge Letter dated October 24, 2017, which also advised that documentation of eligibility for that alternative sanction was to have been provided within a specific time limit. In the absence of any such documentation, a civil money penalty was not imposed in lieu of permanent disqualification by the SNAP Office. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) in that "if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified (within 10 days of receiving the letter of charges), the firm shall not be eligible for such a penalty." As Appellant did not request such consideration and provided no evidence or information in support thereof, the SNAP Office's decision not to impose a civil money penalty is sustained as appropriate pursuant to 7 CFR §278.6(b)(1), §278.6(b)(2)(ii), §278.6(b)(2)(iii) and §278.6(i).

CONCLUSION

In view of the above, the decision of the ROD Office to permanently disqualify Appellant from participation in the SNAP is hereby sustained. The decision will become final upon the 30th day following Appellant's receipt of this document.

RIGHTS AND REMEDIES

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

Under the provisions of the Freedom of Information Act (FOIA), FNS is 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.

DANIEL S. LAY June 26, 2018
Administrative Review Officer