

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

J & J Market,

Appellant,

v.

Case Number: C0205697

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a permanent disqualification of J & J Market (hereinafter “Appellant”) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against J & J Market.

AUTHORITY

7 U.S.C. § 2023 and its 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.”

SUMMARY OF CHARGES

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from August 2017 through December 2017. This involved the following transaction patterns which are common trafficking indicators:

- There were multiple transactions made from individual household benefit accounts within unusually short timeframes.
- The majority or all of an individual recipient’s SNAP benefits were exhausted in unusually short periods of time.
- Excessively large purchase transactions were made from recipient accounts.

CASE CHRONOLOGY

The agency's record shows that FNS initially authorized J & J Market for SNAP participation as a convenience store on October 31, 2006. In a letter dated January 31, 2018, the 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 between the months of August 2017 and December 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In a telephone call on February 13, 2018, the Appellant, through counsel, responded to the charge letter and explained that the firm was not engaged in trafficking, but rather had a practice of extending credit to its SNAP customers. In this arrangement, SNAP customers would obtain food items on credit and then pay the store back with SNAP benefits at a later time.

In response to the Appellant's claim that it allowed credit accounts at the store, the Retailer Operations Division sent the firm a letter dated February 14, 2018. In this letter, the Appellant was asked to provide documentation to support its claim of credit accounts. The letter stated that the documentation must identify specific accounts along with corresponding dates and amounts. It should be noted that the practice of allowing SNAP households to purchase food items on credit is prohibited by regulation. If a firm is found to have committed credit account violations instead of trafficking, the firm would be subject to a one-year disqualification from SNAP in accordance with regulations at 7 CFR § 278.2(f) and § 278.6(e)(4)(ii).

On March 5, 2018, the Appellant submitted just over 30 pages of itemized cash register receipts, which the Appellant argued was evidence of the firm's credit account activity. According to the Appellant, the itemized receipts reflect the date and time of the original purchases on credit, along with a listing of the specific food items that were obtained. Next to each group of receipts is a handwritten date indicating the date that the SNAP customer paid its debt. Next to each "date of reconciliation" are four numbers representing the "last four digits of the customer's EBT/SNAP card associated with the transaction."

Along with its credit account evidence, the Appellant submitted a letter in which it argued that the practice of allowing credit accounts is widespread among small shops in poor communities, and claimed that the Appellant was "simply attempting to provide goods to lower-income individuals and their families who were in desperate need of products at the time they were extended credit." The Appellant stated that while it was never the firm's intention to violate program rules, it did, in fact, commit violations; only the violations were not trafficking, but the less severe violation of extending credit to SNAP customers. Finally, the Appellant argued that a permanent disqualification rather than a one-year suspension would put the store out of business and leave a void for grocery items in the neighborhood.

After considering the Appellant's documentation and arguments and further reviewing the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated March 19, 2018. This letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but that a CMP was not appropriate in this case because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked March 22, 2018, the Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted. It is noted that on May 4, 2018, the Appellant supplemented its request by submitting an additional letter of explanation along with 14 more pages of itemized cash register receipts.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that 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 AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against 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 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, [or] evidence obtained through a transaction report under an electronic benefit transfer system....

7 CFR § 278.6(e)(1)(i) states:

FNS shall 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 and personal identification 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 § 271.2 states, in part:

Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption...

7 CFR § 278.6(b)(1) states, in part:

Any firm considered for disqualification...under paragraph (a) of this section...shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...

7 CFR § 278.6(c) states, in part:

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) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

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

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(b)(2)(iii) states:

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.

7 CFR § 278.6(i) states, in part:

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...

APPELLANT'S CONTENTIONS

The Appellant, through counsel, made the following summarized contentions in its request for administrative review, in relevant part:

- It is the Appellant's position that the firm was not engaged in trafficking, but rather was engaged in the practice of extending credit to SNAP customers. Thus, the Appellant should face a maximum penalty of a one-year suspension from SNAP participation in accordance with regulations at 7 CFR § 278.6(e)(4)(ii).
- The firm submitted an extensive and comprehensive chart where the questioned transactions were matched up to the store's extension of credit receipts. The firm now submits additional receipts covering the remainder of the questioned transactions. This submitted evidence clearly demonstrates that the store engaged in extending credit, not trafficking.
- The practice of extending credit to SNAP customers is widespread among small shops all over poor communities. J & J Market was simply attempting to provide goods to low-income individuals who were in desperate need of products at the time they were extended credit.
- Customers from all over the community shop for their grocery needs at J & J Market. A permanent disqualification is not only inappropriate, but will almost assuredly put the store out of business and will leave a void for grocery items in the neighborhood.
- J & J Market does not dispute that it should be subject to a penalty for its actions; however, it does contest the sanction of permanent disqualification since no trafficking has occurred. While no-interest credit might be a violation of SNAP rules, it does not constitute trafficking, and thus is not subject to permanent disqualification.

In support of its contentions, the Appellant submitted 14 pages of itemized cash register receipts beyond what it had already submitted to the Retailer Operations Division.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically summarized or explicitly referenced in this document.

ANALYSIS AND FINDINGS

The primary issue for consideration in a case based on suspicious SNAP redemption data is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other words, did the Retailer Operations Division, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and unusual transactions cited in the charge letter were the result of trafficking?

Contractor Store Visit

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm's EBT transactions, but also information obtained from a January 20, 2018, store visit which was conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- J & J Market is a convenience store, approximately 1,800 square feet in size, operating in the city of Roseburg, Douglas County, Oregon.
- At the time of the contractor's visit, the firm had no shopping carts for customer use and had just two handheld shopping baskets, which is not uncommon for stores of this size. Customers shopping in such stores generally do not purchase more food than they can carry in their arms.
- The store visit photographs show two cash registers, one of which is next to the drive-thru window, and agency records reflect the use of one EBT point-of-sale device.
- The store appears to use optical scanners to process transactions.
- The store's staple food stock is sufficient in each of the four staple food categories and appears fairly typical of a convenience store. The majority of SNAP-eligible items sold in the store appears to be snack foods and beverages.
- The store includes a small kitchen and deli where hot, prepared food items are available for purchase. Hot and prepared foods made by the firm include items such as cheeseburgers, sandwiches, salads, chicken strips, burritos, etc. It should be noted that hot food items are not eligible for purchase with SNAP benefits.
- The store sells ineligible nonfood items, including tobacco products, alcoholic beverages, lottery tickets, and miscellaneous household merchandise.
- The checkout area consists of one small countertop. The constricted checkout area is not very conducive for conducting large or rapid transactions as there is little space on the counter to place more than a few small items at a time.
- There is no indication from the store visit report that the firm has a special pricing structure, although most items appear to end in 9, such as \$0.99, \$1.69, \$6.49, etc. The contractor indicated that a few items are evenly priced (ending in .00), but these items are not visible in the store visit photographs. According to store personnel, transaction totals are not rounded up or down at checkout.
- The report indicates that the most expensive items sold were frozen pizza for \$8.99; beef jerky for \$6.99; a can of coffee for \$6.49; and breakfast cereal for \$5.99.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be typical of a convenience store, where households normally purchase a limited number of items. There was no indication that SNAP households would be inclined to regularly visit the Appellant store to purchase large quantities of groceries, especially considering the absence of shopping carts, the limited staple food inventory, the constricted checkout area, and the availability of larger grocery stores in the area.

Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed significantly from those of nearby, similar-sized competitors.

SNAP Transaction Analysis

Charge Letter Attachment 1: Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 16 sets of transactions (35 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E)

Charge Letter Attachment 2: In a series of transactions, the majority or all of an individual recipient's benefits were exhausted in unusually short periods of time. This attachment lists 30 sets of SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). It makes little sense that a household would spend almost the entirety of its SNAP allotment in a single transaction or in a series of rapid transactions at this store.

Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts. This attachment lists 260 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with a convenience store in the state of Oregon. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a convenience store in Oregon was \$7.12. In Douglas County, the average was slightly higher, at \$7.30 per transaction, 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Given that the Appellant firm does have a moderate inventory of staple foods items and other eligible foods, it is probable that there would be an occasional purchase where the transaction amount is high, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As such, there are likely some legitimate SNAP transactions sprinkled among the transactions listed in Attachment 3. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from similar-sized competitors, especially considering the absence of shopping carts and the constricted checkout area. The substantial number of high-dollar transactions in a five-month period calls into question the legitimacy of these transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Considering the firm's limited inventory and the fact that there are much larger supermarkets and superstores in the area with substantially greater inventory and variety, this review finds it unlikely that SNAP households would legitimately choose to spend large portions of their benefit allotments at a convenience store such as J & J Market.

Credit Accounts

The Appellant's chief argument regarding the unusual transaction patterns listed in the charge letter is that it was the firm's practice to allow SNAP customers to buy food items on credit and then pay off the debt with their SNAP benefits at a later time. The Appellant acknowledges that it committed credit account violations and argues that the firm should be subject to a maximum

suspension of one year pursuant to SNAP regulations at 7 CFR § 278.6(e)(4)(ii). In support of this argument, the Appellant submitted a large number of itemized cash register receipts. According to the Appellant, the itemized receipts are an accurate depiction of the original credit transactions, including the date and time of the purchase and a list of the specific food items that were received by the household. Next to each group of credit account receipts is a handwritten date indicating the date that the SNAP customer paid its debt. Next to each “date of reconciliation” are the “last four digits of the customer’s EBT/SNAP card associated with the transaction.”

After a lengthy analysis of the receipt documentation and explanation provided by the Appellant and comparing that with the available evidence from FNS, this review finds that credit accounts were probably occurring at J & J Market to some extent. This review also finds that most of the smaller transactions listed in the charge letter (generally those smaller than 5 U.S.C. § 552 (b)(6) & (b)(7)(C)) were more likely than not legitimate purchases of eligible food. The itemized receipts that were not connected to any credit transactions appear to appropriately correspond, by date, time and amount, to some of the transactions listed in the charge letter. Thus, they are very persuasive in leading this review to believe that many of the transactions were not the result of trafficking. However, the evidence relating to the larger and much more suspicious transactions is insufficient to prove that trafficking was not also taking place at the Appellant store.

The 62 largest transactions during the review period range in size from 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Of those 62 transactions, the Appellant submitted only four receipts from the specific transactions (5 U.S.C. § 552 (b)(6) & (b)(7)(C)). A review of these four receipts suggests that they were individual purchases of food items and were not part of any kind of credit account. The Appellant appears to imply that transactions without receipts were payments of credit accounts. As stated earlier, each alleged credit account payoff is evidenced by a series of itemized receipts along with a handwritten note identifying the date and amount of the payoff and the last four digits of the household number. See Figure 1, below, for an example of this.

Figure 1:

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

In this example, the Appellant has indicated that the four receipts, which total 5 U.S.C. § 552 (b)(6) & (b)(7)(C), are credit purchases that correspond to a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) credit account payment made on 5 U.S.C. § 552 (b)(6) & (b)(7)(C) (see line 137 of the charge letter, below).

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Unfortunately, the receipts lack significant information that is necessary to tie them directly to the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) transaction. For example, it is highly unusual that the firm would not have written any identifying information on the receipts themselves, such as a customer name or phone number or last four digits of the EBT card. None of the receipts provided by the Appellant identify who made the purchase. This is typically very important information so that when a household visits the store to settle its debt, the clerk on duty knows how much is owed on that particular credit account. Unfortunately, nothing on the receipts

explicitly states or even alludes to a credit transaction. The only thing each receipt shows is that a cash purchase took place. There is also no evidence of a credit ledger or log that corresponds to the specific receipts. In the example above, how is it known that these four receipts actually belong to household 5 U.S.C. § 552 (b)(6) & (b)(7)(C)? Since the individual purchases on the receipts were not SNAP transactions, there is no way for FNS to identify them as belonging to household 5 U.S.C. § 552 (b)(6) & (b)(7)(C). For all this review can tell, these could be any cash transactions from any customer that shopped at the store on the dates listed on the receipts and may not have been credit transactions at all. This is true for all of the receipt groupings which the Appellant attributes to credit accounts.

It is further perplexing that almost none of the receipts add up to the total amounts paid. For example, in Figure 1, above, the four receipts, which the Appellant alleges to be purchases of food on credit, add up to 5 U.S.C. § 552 (b)(6) & (b)(7)(C). But the alleged credit payment is only 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This review cannot think of any reason why the Appellant would not have expected full payment from the customer. At the time of the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) SNAP transaction, household 5 U.S.C. § 552 (b)(6) & (b)(7)(C) had almost 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of benefits in its account.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Appellant submitted eight credit receipts that supposedly correspond to this transaction. The receipts are dated between 5 U.S.C. § 552 (b)(6) & (b)(7)(C) (one receipt was undated, but this review will assume that it was also dated between 5 U.S.C. § 552 (b)(6) & (b)(7)(C)). However, the purchase on 5 U.S.C. § 552 (b)(6) & (b)(7)(C). So this means that at the time of the SNAP transaction (5 U.S.C. § 552 (b)(6) & (b)(7)(C)), there was only 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of credit receipts. Why, then, would the household pay 5 U.S.C. § 552 (b)(6) & (b)(7)(C)?

5 U.S.C. § 552 (b)(6) & (b)(7)(C). But the Appellant provided only 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of receipts that allegedly correspond to this transaction. There is no explanation from the Appellant for why the household paid more than twice as much as it apparently owed. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

These are just a few of many examples where the credit receipts and the large SNAP transactions do not match up, and the Appellant has offered no explanation for why this is the case. There is no evidence of a tab or ledger with a running balance to help explain these differences.

As mentioned earlier, next to each grouping of credit receipts is a small amount of handwritten information (see the top of Figure 1). In its response to the charge letter, the Appellant stated that the four-digit number written there is the “last four digits of the customer’s EBT/SNAP card associated with the transaction.” However, 5 U.S.C. § 552 (b)(7)(E). It appears that the Appellant obtained the last four digits of each household number from the charge letter itself, which was not sent to the Appellant until well after the transactions in question occurred. It is very unlikely that the firm was using household case numbers to maintain a record of unpaid credit balances. Unfortunately, there is no evidence that any kind of tracking or accounting system was used by the firm. Had the customers’ names or EBT card numbers been written in some kind of ledger or on the receipts themselves, it could have been proven that the receipts did, in fact, correspond to

specific SNAP transactions. Without such information, however, this review has no way of concluding that the receipt data was legitimately related to credit transactions.

When a retailer claims that credit accounts are a reason for the irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser one-year disqualification penalty after committing more egregious violations such as trafficking. Credit transactions must be accounted for with substantive and credible evidence, such as the date credit was extended, to whom, for what amount, and for what items. Such proof should also correspond with the transactions identified in the letter of charges. Unfortunately, the documentation provided by the Appellant falls short of these expectations. The documentation provided by the Appellant is not enough for this review to conclude that the firm was, more likely than not, committing credit account violations rather than trafficking.

Based on the analysis above, this review has serious concerns about the credibility of the evidence related to the largest and most suspicious transactions from the review period. While the Appellant's explanation regarding credit accounts is reasonable to a certain degree, its evidence is not adequate enough for this review to eliminate trafficking as a key reason for the unusual transaction patterns identified in the charge letter. It is therefore the determination of this review that the Appellant has not proven, by a preponderance of the evidence, that trafficking was not occurring at J & J Market. The large transactions listed in the charge letter are of such an unusual nature – especially at a standard convenience store – that trafficking seems to be a very likely reason.

Hardship to Appellant and SNAP Recipients

The Appellant has stated that customers from all over the Roseburg community shop for their grocery needs at J & J Market. According to the Appellant, a permanent disqualification would almost assuredly put the store out of business and leave a void for grocery items in the neighborhood. This argument implies that not only will the Appellant suffer financially, but the SNAP households who shop at the firm will experience hardship if they are not able to use their benefits at the store any longer.

With regard to the insinuation that the community would experience hardship if the firm was disqualified, it is recognized that some degree of inconvenience to SNAP households is likely whenever a SNAP-authorized store is disqualified and households are forced to use their benefits elsewhere. Regulations at 7 CFR § 278.6(f) do allow, in some circumstances, for a civil money penalty to be imposed in lieu of disqualification when there is an absence of other SNAP-authorized retailers in the area. However, the regulations are clear that a CMP for hardship to SNAP households may not be imposed in lieu of permanent disqualification for trafficking.

As for the assertion that the firm itself would suffer if the disqualification were to be upheld, Federal statute at 7 U.S.C. § 2021(b)(3)(B) makes it clear that disqualification for trafficking shall be permanent, even on the first occasion. It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an

administrative penalty on the basis of possible economic hardship to either the ownership personally or to the firm resulting from the imposition of such a penalty.

To allow store ownership to be excused from being assessed administrative penalties based on a purported economic hardship to the store's ownership or to the firm itself would render virtually meaningless the provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA. Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with Program regulations, but also to those retailers who have been disqualified from the Program in the past for similar violations.

Therefore, the Appellant's claim that the community will be adversely affected and that the firm may incur economic hardship based on the assessment of an administrative sanction do not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Civil Money Penalty

As noted earlier, the Retailer Operations Division determined that the Appellant firm was not eligible for a civil money penalty in lieu of permanent disqualification for trafficking because it did not submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and training program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider a trafficking CMP in lieu of permanent disqualification, but it must also submit appropriate documentation within designated timeframes. The case record shows that the Appellant did not request a civil money penalty when it replied to the charge letter and there is no evidence that the Appellant submitted any documentation that would indicate that the firm had a compliance policy or training program of any kind.

Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii) and § 278.6(i), a civil money penalty in lieu of permanent disqualification for trafficking is not an option in this case.

CONCLUSION

An analysis of the Appellant's EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify J & J Market from SNAP participation. This data provided sufficient evidence for this review to conclude that the questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by the Appellant. Likewise, the Appellant has not proven, by a preponderance of the evidence, that the administrative action should be reversed or modified in any way.

Based on a review of all available information in this case, the decision to impose a permanent disqualification against the Appellant, J & J Market, under the ownership **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 the Appellant owner resides or is 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 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.

JON YORGASON
Administrative Review Officer

September 12, 2018