

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

JC Food Market Corp,

Appellant,

v.

Case Number: C0204261

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 there is sufficient evidence to support that the permanent disqualification of JC Food Market Corp. (Appellant) from participation as an authorized food retailer in the Supplemental Nutrition Assistance Program (SNAP), as imposed by the Retailer Operations Division (Retailer Operations), was proper.

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.6(a), (c), and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant.

AUTHORITY

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

CASE CHRONOLOGY

By Charge letter dated January 19, 2018, Retailer Operations informed the owner that Appellant was in violation of the terms and conditions of the SNAP regulations based on electronic benefit transfer (EBT) transactions that establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the type of firm. The sanction for trafficking is permanent disqualification.

The owner replied to the Charge letter January 29, 2018. Retailer Operations issued a Determination letter dated February 7, 2018, that informed the owner that Appellant was permanently disqualified from participation in the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. Retailer Operations considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the regulations and found the firm was not eligible because insufficient evidence was submitted to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP. By letter dated February 10, 2018, the owner appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated February 23, 2018.

STANDARD OF REVIEW

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

CONTROLLING LAW AND REGULATIONS

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Parts 278.6(a) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 271.2 states: "Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot foods and hot food products prepared for immediate consumption."

7 CFR § 278.2(f) states: "Food stamp benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in the Food Stamp Program for a period of one year."

7 CFR § 278.6(a) states: "FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system..."

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

SUMMARY OF THE CHARGES

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges on review were based on an analysis of EBT transaction data during the period of May 2017 through October 2017. The patterns of transaction characteristics indicative of trafficking are:

1. An unusual number of transactions end in same cents values.
2. Multiple individual benefit account transactions within unusually short time frames.
3. Excessively large purchase transactions made from recipient accounts.

APPELLANT’S CONTENTIONS

The following may represent a summary of the contentions however, in reaching a decision, attention has been given to all contentions advanced, including any not specifically referenced.

- We are a small store that is well stocked and operating in a very high traffic residential area.
- The variety and volume of items we carry ensures that we are always well stocked and customers rely on the store to fulfill most of their daily needs for products and groceries.
- We provide credit to a few select households.
- We hold training sessions with employees on a bi-annual basis to ensure they are familiar with the SNAP regulations. We keep a log of our training and signed proof of continuing training.
- The disqualification of the business would inevitably lead to the closure of the store and would be a disservice to the community residents.
- This grocery has always been a rule abiding business and I have always observed the rules and regulations of the SNAP and under no circumstances would I violate them.
- I once again request a CMP.

The owner provided copies of credit sheets kept to record the balance due and payments by customers and affidavits from customers claiming that they received credit from the store during the review period. He provided a SNAP training log and store photos. Retailer Operations stated that the photos were blacked-out and could not be used in its determination. The owner provided vendor receipts and a letter from Jetro and Restaurant Depot that the store purchased **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in items from May 1 to October 1, 2017.

ANALYSIS AND FINDINGS

Retailer Operations presented a case that Appellant trafficked SNAP benefits. Each Attachment represents the questionable and unusual patterns of SNAP transactions conducted at Appellant during the review period which were indicative of trafficking. As patterns of unusual transactions appear across multiple Attachments the case of trafficking becomes more convincing.

Attachment 1: Listed are 329 transactions t5 U.S.C. § 552 (b)(6) & (b)(7)(C).
5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Contentions:

- There are many products sold by whole dollar amounts not only at this store but in all stores and supermarkets, such as plantains and other fruits and vegetables ranging in price of \$1.00 to \$2.00 per lb. or piece, juices and drinks from \$1.00 to \$4.50, and snacks like cookies, cakes and chips cost anywhere between \$0.75 and \$2.00. Cold cuts are usually requested by dollar amount and sandwiches range in price from \$1.00 (buttered roll) to \$5.00, a purchase of several different cold cuts or sandwiches can easily add up. The store has many items that cost \$0.75, 2 x \$5.00, 3 x \$1.00, 2 x \$1.25, which makes it easy for purchases to end up in whole dollar amounts.
- The only supermarket that is within walking distance from the location is over four blocks away, which makes it very inconvenient distance for senior citizen clients and disabled clients.
- We also do deliveries to our customers.
- The purchase of any two or three sandwiches and 2 or 3 sodas and cold cuts make up many of these purchases.
- Due to the relationships we have with many of our customers, when they ask for discounts we usually round off the amount to make it an even number to keep them satisfied.

The onsite store visit report in the record does not support the claim that the owner rounded totals. Question 19 asks: Does the store round transaction totals up or down at check out? This question was answered in the negative. Question 18 asks does the store offer deliveries, and this question was also answered in the negative. No comprehensive listing of store prices was presented other than the prices noted in the contentions. No itemized cash register receipts were presented. No affidavits from employees or recipients were provided as to pricing and/or rounding practices. There is no change provided with SNAP transactions and as such, there is no reason to round the totals. The owner has not by a preponderance of the evidence made the argument that these transactions are more likely legitimate than the result of trafficking.

Attachment 2: Listed are 47 transactions in 18 sets of two or more transactions ranging conducted by 12 different households (HHs). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Contentions:

- Customers come back multiple times throughout the day. Sometimes a customer will come to make a large purchase and return for lunch for a sandwich and some cold cuts.
- Extended families very often share their benefits and buy groceries together. It is not uncommon for these families to keep track of their purchases separately and request that we divide the cost into two swipes so they can track what is being purchased. This is evident by the close proximity of amounts when transactions are swiped in short frames.
- Many of the larger transactions are repayments of not one large transaction, but is the accumulation of many smaller transactions added together. Based on the receipts provided, only eligible food items were allowed to be purchased on credit.
- The store is located in a neighborhood composed of a vastly diverse and large residential area and a large portion of which are immigrants with their extended families. They cook together, buy groceries together and very often share their SNAP benefits with each other. Despite bundling and sharing their benefits as a family, it is not uncommon for them to keep track of their purchases separately. Sometimes these families will have a large amount of groceries, and request that he divide the cost into two swipes of their card so as to keep track of what is being purchased.

Data shows that within a one mile radius of Appellant there are more than 125 authorized super stores, supermarkets, and small, medium and large grocery stores. Five of the 12 households (HHs) flagged (42%) conducted SNAP transactions at larger authorized food stores the same day they made a transaction at Appellant. Within two days of making a transaction at Appellant, 75% of the HHs listed conducted a transaction at a supermarket, a large grocery store, or a super store. Thus, the data supports that the flagged households did access other larger stores to use their SNAP benefits.

If credit accounted for many data sets then it would be logical to see sets where one transaction would be to pay off the credit account and a second transaction would be the result of the food items the recipient purchased on that date. However, the sets of transactions listed in the Attachment show multiple high dollar purchases **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of one another as seen in transactions numbered 442 - 444 two transactions for the exact same amount and one for one dollar more, and 428/429.

Credit is often claimed by retailers in an effort to garner a lesser sanction than permanent disqualification. A firm that commits a credit violation is sanctioned with a one year disqualification period. If the retailer does not provide adequate proof of credit, the retailer shall be permanently disqualified for trafficking. A one year disqualification for credit cannot be entertained when by a preponderance of evidence it is determined that trafficking has more likely than not occurred.

The owner provided a total of 20 handwritten customer statements in support of his position. Retailer Operations determined that 15 of the statements did not have an EBT card number and

were not used for analysis. Five of the 20 statements included EBT card numbers and were further analyzed.

1. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
2. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
3. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
4. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
5. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

When the owner signed the certification to become a SNAP retailer, he confirmed his understanding of and agreement to abide by program rules and regulatory provisions. He agreed to accept responsibility on behalf of the firm for violations of the SNAP including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. These include violations such as accepting SNAP benefits as payment on credit accounts or loans and trafficking. The certification is clear that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal or disqualification from the SNAP. Despite agreeing to abide by SNAP rules and regulations, the owner now claims he allowed credit accounts, a violation of SNAP regulations and rules.

At the time of authorization each retailer is provided a USDA SNAP training guide that states that credit and trafficking are not allowed. The training guide is available online and in many languages. This guide states that SNAP customers must pay for their purchases at the time of sale and that a retailer may not accept SNAP benefits as payments on credit accounts. The training packet includes:

- A video and book that explain the SNAP rules.
- Information that the store owner is responsible for carefully reviewing the program rules and making sure all employees fully understand these rules.
- Information that failure to follow the rules can result in disqualification, fines, civil and/or criminal action.

Enclosures provided by FNS to retailers when authorized include:

- A SNAP Permit
- SNAP Training Guide for Retailers and a training video
- Report Abuse of the SNAP Poster - MUST BE POSTED IN YOUR STORE
- We Accept SNAP Benefits - Window Sticker and Poster
- Using SNAP Benefits Poster
- Dos and Don'ts for Cashiers/Penalties for Violations of the SNAP: Double-sided sign
- EBT Fact Sheet
- From the "SNAP EBT Dos and Don'ts card (FNS-136, included in the authorization package) "Do not accept SNAP benefits (EBT) as payment on credit accounts."
- From the SNAP Training Guide for Retailers (page 9): "SNAP customers must pay for their purchases at the time of sale. You may not accept SNAP benefits as payments of

credit accounts. You may not hold customers' SNAP EBT cards or card account information at your store for future use.”

Thus, the owner was provided multiple and redundant resources through which a thorough knowledge of program rules and requirements could be readily obtained.

Given that the readable receipt numbers provided are in sequence, it is more likely than not that these handwritten tabs listing foods were produced after the fact to match the transaction amounts. It is unlikely that the tabs accurately represent what was allegedly purchased on the stated dates at the time the transactions were actually made. Retailer Operations determined that the information presented as proof of credit was not adequate to convince it that the suspicious transactions represent credit account transactions more likely than transactions as the result of trafficking. While some of the transactions may be explained as credit, the owner failed to provide a preponderance evidence for the legitimacy of the data.

Attachment 3: Listed are 156 transactions conducted by 52 different households **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(7)(E)**.

Retailer Operations determined that the check-out counter was situated above a deli cooler display case cluttered with snack items that had approximately 1 ft. x 1 ft. to place items. The store report noted that the most expensive food item carried at Appellant was oil priced at \$11.89 with a limited supply on display. There were no handheld baskets and no shopping carts to assist recipients to move large numbers of groceries. It appeared to Retailer Operations that Appellant's main source of business was the sale of deli food items.

Contentions:

- We have clients that special order such as a box of chicken cutlets for \$39.70, a box of fish at \$45.00, a box of pork chops \$35.40, ribs at \$150.18, 50 lb. and bags of rice to name a few.
- Large amount transactions are common practice and not an indication of trafficking.

Retailer Operations found that the owner failed to provide any documents/invoices for products mentioned in his response such as fish, pork chops, chicken cutlets, and ribs. Other invoices were provided and assessed by Retailer Operations. During the review months, the invoices document that Appellant acquired an estimated **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** worth of eligible inventory. During the review period Appellant redeemed **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits. Even with a 40% markup applied to the invoices provided, Retailer Operations determined that Appellant did not advance sufficient vendor invoice evidence to support its redemptions.

As to the owner's contention that the store “has always been a rule abiding business,” the record supports that Appellant as issued an official USDA “Warning Letter” dated January 27, 2017, for exchanging a nonfood item for benefits, a SNAP violation, during an onsite investigation.

Regarding the owner's denial of the trafficking allegations, this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is to determine whether the owner demonstrates by a preponderance of the evidence that the permanent disqualification should be reversed. Assertions that the firm has not violated program rules, by themselves and without sufficient supporting evidence do not constitute valid grounds for dismissal of the current charges of violations or mitigate their impact. While the owner contends that the transactions on the Attachment are legitimate, no itemized cash register receipts were advanced as evidence of eligible foods sold at Appellant during the review period. Further, the vendor invoices provided as evidence of Appellant's acquisition and stock of eligible foods to support its SNAP redemptions were not sufficient to cover Appellant's SNAP redemptions. No bank records or federal or state tax records were provided.

The evidence that Appellant violated the SNAP regulations is furnished on the Charge letter Attachments. Government analyses of stores caught in trafficking violations during actual 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. SNAP transaction data is provided to FNS via each State's EBT processor on a daily basis in a single layout and format that is standardized nationwide. The EBT transactions are validated and loaded into a database for subsequent analysis. USDA has a system that scans all retailer transactions at the beginning of each month for the prior month. The system uses pre-defined criteria or patterns for potential fraud detection. Pre-formatted reports provide information on those authorized stores and transactions meeting the pre-established criteria.

The system provides a series of spreadsheets and graphs that compare a specific store's data to the average for its firm type or to user-selected comparison stores. In addition, the system utilizes mapping software which translates the location address information into geo codes and enables the user to map the locations of selected authorized stores and track recipient transaction locations. The software system provides an analysis of SNAP transaction data and is used by Retailer Operations staff to evaluate the type and extent of potential program violations. Users are also able to supplement and/or confirm their analytic documentation by accessing the applicable state's EBT processors' administrative systems through web access to the applicable state system. Therefore, that Retailer Operations used computer printouts of transaction data and other reports, in addition to store visit observations and an analysis of household shopping behavior, in rendering a finding that violations indicative of trafficking were occurring at Appellant, is as valid a means of establishing facts as direct evidence obtained through an onsite investigation and the eye witnessing of trafficking.

CIVIL MONEY PENALTY

To be considered eligible for a CMP a firm must establish, by substantial evidence, its fulfillment of each of the criteria under 7 CFR § 278.6(i) of the regulations. The criteria are, as a whole, specifically identified as a minimum standard that firms must meet in order to be eligible

for such a penalty. Given these considerations, it is clear that the statute and the regulation allow no flexibility below the level of this stated standard.

The owner submitted a signed SNAP training schedule for training sessions held on April 3, 2017 and October 9, 2017 for three employees. The training is stated to include watching the SNAP training video. A copy of the USDA SNAP Training Guide was provided. The owner also denied being involved or aware of SNAP trafficking violations being committed in his business claiming that he has always been a rule abiding business and always observed the rules and regulations of the SNAP program.

The statute and regulations do not limit the scope of the required compliance policy and program to violations other than those caused by error, inadvertence, oversight or lack of management supervision, but rather direct that store policy and program are structured to prevent all violations, regardless of cause. The size of an organization, or number of personnel, is not a consideration in determining the eligibility of a firm for a CMP in lieu of permanent disqualification for trafficking. Moreover, while significant effort may be required to develop and maintain a compliance policy and program, if such fails to meet the requirements, that level of effort, even if substantial, does not mitigate the insufficiency. The standard of substantial evidence required for CMP consideration is difficult to meet; indeed impossible if such policy and program are not implemented and documented prior to violations. Nevertheless, such is the regulatory standard to which Appellant is held under review. Based on review of the CMP submission, Retailer Operations correctly determined that Appellant did not qualify for a CMP in lieu of a permanent disqualification based on the insufficiency of its submission.

CONCLUSION

Upon review of all of the evidence in this matter it is determined that the evidence by a preponderance supports a conclusion that Appellant's SNAP transaction activity was due primarily to SNAP benefit trafficking. Retailer Operations' analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. Thus, based on the discussion herein, the decision to impose a permanent disqualification against Appellant is sustained. It is also determined that Retailer Operations properly denied a CMP.

RIGHTS AND REMEDIES

Attention is called to Section 14 of the Food and Nutrition Act of 2008 and to Section 279.7 of the regulations (7 CFR § 279.7) with respect to applicable rights 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 the Appellant's owner resides or is engaged in business, or in any court of record of the State having

competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

M. Viens
Administrative Review Officer

April 13, 2018