

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

**Kenv Investments Inc,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0220470**

**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 a finding that a permanent disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Kenv Investments Inc. (Appellant) by the Retailer Operations Division of FNS.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a permanent disqualification against Kenv Investments Inc. on December 9, 2019.

**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.

**CASE CHRONOLOGY**

In a letter dated October 29, 2019, the Retailer Operations Division informed the Appellant that Kenv Investments Inc. was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 –282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm." 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 responses to the Retailer Operations Division of November 7, 2019, November 15, 2019, and December 5, 2019, the Appellant, through counsel, replied to the charges therein denying the trafficking allegations citing credit extension to SNAP customers and other various explanations for the questionable SNAP transactions documented in the Charge Letter.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated December 9, 2019, informing the Appellant that Kenv Investments Inc. was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations. The letter also stated that the Appellant was not eligible for a trafficking civil money penalty (CMP) as the Appellant did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked December 19, 2019, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated January 14, 2020.

### **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 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.

### **CONTROLLING LAW**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 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. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

7 U.S.C. § 2021(b)(3)(B) states, inter alia:

... 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, inter alia:

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 ... [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, inter alia:

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 § 278.6(f)(1) states, inter alia:

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, inter alia:

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) states, inter alia:

(ii) 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 as specified in § 278.6(i), 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). [Emphasis added].

(iii) 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 penalty. [Emphasis added].

## **SUMMARY OF CHARGES**

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from March 2019 through August 2019. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were a large number of transactions in repeated dollar values;
- There were multiple transactions made from one or more SNAP households within a short timeframe;
- There were multiple transactions made from the accounts of individual SNAP households within a set time period;
- The bulk of SNAP households' remaining benefits were depleted within short timeframes; and
- There were EBT transactions conducted that are large based on the observed store characteristics and recorded food stock.

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

## **APPELLANT'S CONTENTIONS**

The following represents a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the replies to the Charge Letter and in the administrative review request, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant denies the trafficking of SNAP benefits took place at the firm. There is simply no evidence that trafficking occurred at the Appellant firm.
- The Appellant stocks a large variety of groceries. Owing to their service to a number of different cultural groups in the area, the Appellant stocks typical American groceries, as well as foodstuffs which are part of the Asian, Caribbean, and Latino cultures. Many of the items in the store are atypical of a normal convenience store. Many items are found in specialty grocery stores as opposed to a firm like Kenv Investments Inc.
- The Appellant did not keep records of its transactions in accordance with the best business practices and it made accommodations to many customers it should not have. Not knowing it was a violation of the SNAP regulations, the Appellant would, at times, extend food to customers on credit and would settle up later. Credit account records were kept in a notebook, but, when the account was satisfied, the pages were discarded. Accordingly, the Appellant cannot produce any records for the review period. Upon receipt of the Charge Letter, the Appellant learned that credit extension to SNAP customers was not permitted and immediately stopped.
- With regard to the transactions documented in Charge Letter Attachment 1, in December, 2018, the store was closed for three weeks due to a death in the family. After reopening

in early January, 2019, the Appellant had a significant drop in business and, to attract customers back to the store, decided to offer food purchases on credit. When customers ran out of funds to get food items towards the end of the month, the Appellant would offer food items on store credit and ask to pay when they receive SNAP funds. This helped the customers and improved customer trust and relationships. In addition, some customers use split payment methods when using SNAP benefits.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C).** Unfortunately, the Appellant did not maintain records of its sales and cannot verify each transaction in the Attachment.

- With regard to the transactions documented in Charge Letter Attachment 2, some of these transactions were the result of credit extension to SNAP customers. Some of the transactions appear to be instances where a purchase was made and then a round number was charted to curtail a credit balance. In addition, the Appellant has experience with customers that come in and make multiple transactions at a time for any number of reasons. One is that the store is located in a densely populated area and many people walk or ride a bicycle to the store. Store hours (open until 10:00 p.m. Monday through Saturday, and 8:00 p.m. on Sunday) combined with a relative short distance to carry heavy groceries have made the Appellant a popular store among customers. There are many times where customers purchase items, leave, and then return a short time later to purchase again.
- With regard to the transactions documented in Charge Letter Attachment 3, based on the trends that the Appellant had noticed in the time it operated the store, most SNAP customers spend most, if not all funds the first half of the month. Many people stock up for the month especially because of the frozen food selection (the Appellant carries a unique selection of meat, seafood, breads, frozen meals, etc.) See photos provided of some of the Appellant's food stock. These transactions may have to do with the fact that many of the firm's customers make multiple purchases a day. It most certainly is not a product of anything nefarious by the Appellant.
- With regard to the transactions documented in Charge Letter Attachment 4, some of these transactions were the result of credit extension to SNAP customers. Most of the people who were extended credit for food items would pay back what is owed and purchase new items in separate transactions. As a first time business owner, the Appellant did not save the receipts for all transactions. The Appellant can provide receipts for all transactions from November 1, 2019 and going forward.
- With regard to the transactions documented in Charge Letter Attachment 5, when the owners acquired the store in May of 2018, it was ill kept and did not provide many of the products that are now offered. Because of its condition, the owners were able to purchase the store without any goodwill and by only paying for the inventory the previous owner had and the very old fixtures. Since then, the Appellant financed freezers and added many unique products to change the image of the store to a true neighborhood market and an international food store—not just a convenience store. When the store visit was conducted, the Appellant believes that the inspection was not complete and thorough. Although the reviewer initially stated that she would be in the store for about an hour, she was still not finished after three hours of effort. She became frustrated because there was so much to catalogue and left the store. The reviewer did not catalogue the Appellant's frozen food section or the back stock.

- The Appellant requests that USDA allow this to serve as an education experience for the firm and that it will be able to retain its SNAP authorization.
- No other action has been taken by FNS to warn the Appellant of any potential violations of the SNAP regulations.
- Neither of the store owners have any history of violations or a history of any other unlawful activity.
- The owners are willing to undergo any recommended training to aid them in abiding by the SNAP regulations.
- Due to the location of the store, a vast number of customers receive SNAP benefits.

In support of the Appellant's contentions, the following documents were submitted to FNS for review:

- Twelve (12) notebook pages/credit ledger dated October;
- August 8, 2019 cash register receipt;
- Hand-written customer statement regarding previous credit extension by Appellant;
- Numerous photos of food stock;
- Vendor invoices for food purchases dated January 2019 to October 2019;
- A letter to the Appellant from Jetro showing the total purchase amount from January 1, 2019 through October 31, 2019;
- Email dated April 26, 2019 to the Appellant's insurance company requesting confirmation that frozen food inventory is insured in case of power loss; Email also confirms that new inventory was added since store opened;
- Facebook activity and proof of paid Facebook ads promoting food items; and
- Itemized cash register receipts dated November 2019.

## **ANALYSIS AND FINDINGS**

### **Store Characteristics**

FNS authorized Kenv Investments Inc. as a convenience store on July 3, 2018. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an April 25, 2019 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 3,200 square feet in size with additional storage outside of public view of approximately 200 square feet that stocked predominantly drinks, alcohol, and non-food items;
- Three (3) shopping carts and ten (10) hand-held baskets available for customer use;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- One checkout counter area with limited check-out counter space;

- Had optical scanners;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- No indication from the store visit report that the firm has a special pricing structure, such as prices ending in \$.x9 and/or \$.00;
- Transaction totals are not rounded up or down at the checkout counter;
- Telephone and on-line orders were not taken and delivery was not offered;
- Had dusty cans/packages;
- Had bare and dusty shelves;
- Had spoiled food (produce);
- The four most expensive food items in stock were Nido dry whole milk at \$39.99 per 5.5 pounds; Royal basmati rice at \$23.99 per 20 pounds (1 unit in stock); Maggi real coconut milk at \$14.99 per 1 kilogram; and JIF peanut butter at \$5.99 per 3 pounds (3 units in stock);
- No fresh meats, poultry, or seafood;
- Had a variety of frozen meats, poultry, and seafood;
- Some specialty/ethnic foods were sold;
- Deli meats and cheeses were not sold by the pound;
- Had a kitchen but hot foods were not sold;
- Meat items included units of eggs, canned fish, bacon, meat jerky, sausage, and hot dogs;
- Dairy included milk (milk and coconut varieties) and cheese;
- Fresh produce stock consisted of a few onions and plantains;
- Other staple foods available for purchase included such items as juice, pasta, rice, cereal, baking mix, loaf bread, buns/rolls, flour, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, snack foods/chips, seasonings/spices, and condiments; and
- Ineligible nonfood items included tobacco products, health and beauty aids, paper products, household cleaning supplies, automotive supplies, lottery tickets, housewares, gift items/souvenirs, mobile phones/phone cards, clothing, jewelry, pet food, and gaming machines.

The available inventory of SNAP eligible food at the time of the store visit showed food stock that would be typical of a convenience store, where households normally purchase a limited number of items. The SNAP eligible food stocked by the store was generally of a low dollar value, consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. There was little indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of groceries. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from those of similar sized competitors.

## **Charge Letter Attachments**

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

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. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate.

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

## **Credit Transactions**

The Appellant contends that some of the questionable SNAP transactions documented in the Charge Letter are the result of the store extending credit to SNAP customers. The Appellant did not keep records of its transactions in accordance with the best business practices and it made accommodations to many customers it should not have. Not knowing it was a violation of the SNAP regulations, the Appellant would, at times, extend food to customers on credit and would settle up later. Credit account records were kept in a notebook, but, when the account was satisfied, the pages were discarded. Accordingly, the Appellant cannot produce any records for the review period. Upon receipt of the Charge Letter, the Appellant learned that credit extension to SNAP customers was not permitted and immediately stopped.

When a retailer claims it maintains credit accounts to explain 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 penalty after committing more egregious violations such as trafficking. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items.

In response to the Appellant's claim of credit extension, the Retailer Operations Division requested documentation to support that food items were purchased on credit and stated that this documentation must identify specific accounts along with corresponding dates and amounts. The Appellant's counsel responded via correspondence that credit account records were kept in a notebook, but, when the account was satisfied, the pages were discarded. Accordingly, the Appellant cannot produce any records for the review period. In support of its credit extension



contentions, the Appellant submitted 12 notebook pages/credit ledger dated in October and a hand-written customer statement regarding previous credit extension provided by the Appellant.

FNS reviewed the information provided from the Appellant and properly determined that the information was insufficient to support the Appellant's credit extension contention for the following reasons:

5 U.S.C. § 552 (b)(7)(E).

With regard to the Appellant's contention that it did know that credit extension to SNAP customers is a violation of the SNAP regulations, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) signed a certification page on May 11, 2018 upon authorization to participate in the SNAP. The certification page clearly states that retailers are responsible for ensuring that training materials are reviewed by all firm's owners and employees. Furthermore, this certification page clearly spells out that credit accounts are a violation of the SNAP regulations. Thus, it is doubtful that the Appellant was unaware of its violative behavior.

In conclusion, although Kenv Investments Inc. may have, on a rare occasion, accepted SNAP benefits as repayment on credit accounts, the evidence submitted by the Appellant does not support its contention that the irregular SNAP transactions listed in the Charge Letter are due to repayment on credit accounts.

### **Transactions in Repeated Dollar Values (Charge Letter Attachment 1)**

This Charge Letter Attachment documents 40 transactions with repeated dollar values of \$40.xx 5 U.S.C. § 552 (b)(6) & (b)(7)(C); 18 transactions with repeated dollar values of \$50.xx 5 U.S.C. § 552 (b)(6) & (b)(7)(C); and 12 transactions with repeated dollar values of \$100.xx 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Attachment 1 identifies large transactions made for repeated dollar values. Typically, the frequency of transactions peak at the average for that store type. Thereafter, the frequency of store transactions gradually decreases as the amounts in the transactions increases. The frequency of transactions do not typically spike at specific amounts. Such unusual clustering around specific transaction amounts is indicative of trafficking.

5 U.S.C. § 552 (b)(7)(E).

With regard to the Appellant's credit extension contention in support of the transactions in this Attachment, as noted previously, the information provided by the Appellant is not sufficient to support that these questionable SNAP transactions are due to repayment of credit accounts by SNAP customers.

The Appellant contends that some customers use split payment methods when using SNAP benefits. For example, on August 8, 2019 (a transaction receipt with this date was provided by the Appellant), 5 U.S.C. § 552 (b)(6) & (b)(7)(C) SNAP benefit was used on this purchase but the total transaction was in excess. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Unfortunately, the Appellant did not maintain records of its sales and cannot verify each transaction in the Attachment.

While the Appellant admitted poor record keeping, it was able to find just one itemized receipt. While the provided receipt may explain one of the questionable SNAP transactions in this Attachment, it does not explain the other 69 transactions cited. There is no compelling reason for a SNAP customer to regularly request split payments and the Appellant provided no reason or evidence as to why this is beneficial to the SNAP recipient. Thus, it is likely a very infrequent event and does not sufficiently explain these transactions.

Patterns of transactions spiking at particular dollar amounts indicate that SNAP transaction amounts are contrived. Random data, which legitimate transaction activity approximates, is extremely difficult to produce intentionally; it is very difficult to avoid repetitive patterns when attempting to create the appearance of normal, near-random transactions. That various customers each repeatedly had totals around certain dollar amounts during the review period strains the credibility of Appellant's declaration that this activity reflected the acceptance of SNAP benefits in exchange for eligible food items. As the Appellant has offered no rational explanation for why such patterns might exist, it is reasonable to conclude that these same dollar value transactions are the result of trafficking.

### **Multiple Transactions from One or More Households (Charge Letter Attachment 2)**

There are 32 SNAP transactions (16 transaction sets) 5 U.S.C. § 552 (b)(6) & (b)(7)(C) that met the parameters of this Charge Letter Attachment. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These types of rapid transactions at a firm with only one register and limited counter space are indicative of trafficking in EBT benefits.

The Retailer Operations Division considered these transactions to be a strong indicator of trafficking taking into consideration the time required to process a legitimate purchase and the numerous steps involved, to include the cashier's handling of individual items to determine the price which can involve manual keying of amounts, bagging the items for carry out, and processing the transaction, these multiple purchase transactions appear to have been made too rapidly to be credible and are indicative of trafficking. The Appellant has one cash register and a limited checkout counter area in which to process SNAP transactions.

With regard to the Appellant's credit extension contention in support of the transactions in this Attachment, as noted previously, the information provided by the Appellant is not sufficient to support that these questionable SNAP transactions are due to repayment of credit accounts by SNAP customers.

The Appellant contends that it has experience with customers that come in and make multiple transactions at a time for any number of reasons. One is that the store is located in a densely populated area and many people walk or ride a bicycle to the store. Store hours (open until 10:00 p.m. Monday through Saturday, and 8:00 p.m. on Sunday) combined with a relative short distance to carry heavy groceries have made the Appellant a popular store among customers. There are many times where customers purchase items, leave, and then return a short time later to purchase again.

It is reasonable to expect the subsequent purchase to be for a nominal amount because it is quite rare to find very expensive items positioned at the checkout area, especially in smaller stores. However, in the majority of the Exhibits, the subsequent transaction was for amounts that exceed any nominal, afterthought purchase. In 15 of the 16 transaction sets, the amounts of subsequent transactions exceeded (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) the preceding transaction amount. Additionally, while it is possible that customers shop together, it is improbable that they would use just one card if they were both SNAP recipients. If forgotten items are not added into the total, it is implausible that they would merely swipe the EBT card a second time to include those items without totaling them, which would take more than a few seconds to complete the entire transaction. However, many of the violations listed in this Attachment followed a transaction by a different household. The second transaction in 15 of the 16 sets of violations were conducted by a household different from that which made the first transaction in each set. These transactions cannot be explained by customers visiting the store multiple times a day for a number of reasons, as the same household would have completed both transactions in each set.

Moreover, it may be possible to conduct rapid transactions for SNAP recipients who may have one or two small inexpensive items; however, given that there were no promotional, special, bulk or package deals offered or advertised, it is unlikely that the transaction in this Attachment are legitimate SNAP transactions. The firm's checkout counter area offered minimal surface space on which to place items for large purchases and it did not offer equipment required for rapid processing of large amounts of eligible food items. It also precluded the processing of more than one customer at a time, as there is only one register. 5 U.S.C. § 552 (b)(7)(E).

While such transactions may well be done in succession, performing these processes on large transactions generally are not done rapidly. The amount of time required is, largely, proportional to the dollar amount of the transaction; typically, the larger the dollar amount transacted the longer the time period between transactions. The Appellant firm processed orders considerable faster than supermarkets typically process them, yet the firm has only one small checkout counter and none of the logistical tools such as conveyor belts, rotating bagging platforms or order separators that are routinely used in rapid throughput operations. As the Appellant has offered no rational explanation or supporting documentation for why such patterns might exist, it is reasonable to conclude that the SNAP transactions included in this Charge Letter Attachment are the result of trafficking.

### **Repeat Transactions by the Same Household (Charge Letter Attachment 3)**

This Charge Letter Attachment documents 58 sets of transactions (138 total transactions) 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits to meet the parameters of this scan. These transactions were completed by 30 different SNAP households. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

Although it is not uncommon for customers to have more than one transaction per day and there are no limits on the number of times EBT cards may be used or the amount of eligible foods

that may be purchased, it is not common that such multiple transactions are for large dollar amounts. The SNAP transactions noted in the Charge Letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of the Appellant's stock and facilities and are therefore, indicative of trafficking.

The Appellant contends that based on the trends that the firm has noticed in the time it has operated the store, most SNAP customers spend most, if not all funds the first half of the month. Many people stock up for the month especially because of the frozen food selection (the Appellant carries a unique selection of meat, seafood, breads, frozen meals, etc.) See photos provided of some of the Appellant's food stock. These transactions may have to do with the fact that many of the firm's customers make multiple purchases a day. It most certainly is not a product of anything nefarious by the Appellant.

With regard to the Appellant's contentions that most SNAP customers spend most, if not all funds the first half of the month, a June 2006 study entitled "An Analysis of Food Stamp Benefit Redemption Patterns" prepared by USDA FNS, notes that typical EBT purchases are small (about 71 percent were \$25.00 or less) and SNAP benefits are spent throughout a given month-- 63 percent of SNAP households use more than half of their benefits in the first week after issuance and over half (56 percent) use more than 90 percent of the household benefits within two weeks after issuance. However, the study also found that "Supermarkets accounted for over 64 percent of all EBT transactions and 83 percent of the total value of EBT purchases" while "less than 6 percent never shopped at supermarkets." The study indicates that most SNAP benefits are redeemed at supermarkets. Supermarkets generally provide the widest range of high-quality foods at reasonable prices. Although access to supermarkets may be limited in some areas, most low income shoppers redeem most of their SNAP benefits in supermarkets as opposed to convenience stores like the Appellant firm.

The report and photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Kenv Investments Inc. multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items or food cases for sale. The second, third, and subsequent transactions in each set are too large to consist of forgotten items. In addition, the store's limited checkout space is unsuitable for large transactions.

The photos of food stock provided by the Appellant show frozen and specialty food items offered for sale. While the store visit observations indicate that the firm carries some specialty meats and seafood, as well as some international items, the majority of the store stock appears to be typical convenience store items such as drinks, snacks, and canned/packaged items. In addition, the store visit indicates that the store had dusty cans/packages, bare and dusty shelves, and spoiled food. This calls into question the veracity of the statement that customers stock up on items at this firm and consider it a first choice destination. There are supermarkets and super stores nearby that would likely carry items such as rice, NIDO milk powder, and many of the other ethnic items found at Kenv Investments Inc., likely at lower prices.

Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are 30 SNAP authorized retailers, including a supermarket located 0.3 miles and a super store located 0.31 miles away, located within a 2.0 mile radius of Kenv Investments Inc. that can meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than Kenv Investments Inc. and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. These larger stores would offer a much greater quantity and variety of foods at lower prices than the Appellant firm and their proximity would make it unlikely that any SNAP recipient would consider the Appellant firm as their primary source for groceries.

The record indicates that SNAP customers who shopped at Kenv Investments Inc. during the review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores or the availability of other food stores does not appear to be an explanation for the Appellant's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

**5 U.S.C. § 552 (b)(7)(E).**

Unfortunately, the Appellant has not provided any evidence to show that the transactions listed in this Attachment were legitimate purchases of eligible foods. The arguments presented by the Appellant hold little weight without some kind of evidence to substantiate its claims.

**Majority of SNAP Benefits Exhausted (Charge Letter Attachment 4)**

This Charge Letter Attachment documents 20 suspicious transaction sets (35 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These transactions were conducted by 16 different SNAP households. Depleting the household's entire allotment in one or a few transactions, or within one or two days, leaving little or no benefits for the rest of the month is inconsistent with the normal shopping behaviors of SNAP benefit households. Therefore, transactions in which SNAP benefits are exhausted in unusually short periods of time are indicative of trafficking.

The Appellant contends that some of these transactions were the result of credit extension to SNAP customers. Most of the people who were extended credit for food items would pay back what is owed and purchase new items in separate transactions. As a first time business owner, the Appellant did not save the receipts for all transactions. The Appellant can provide receipts for all transactions from November 1, 2019 and going forward.

With regard to the Appellant's credit extension contention in support of the transactions in this Attachment, as noted previously, the information provided by the Appellant is not sufficient to support that these questionable SNAP transactions are due to repayment of credit accounts by SNAP customers. The fact that the retailer is now saving receipts for all transactions is moot, since these receipts shed no light on the transactions cited in the Charge Letter.

A review of the store visit photos indicates that Kenv Investments Inc. offers a moderate amount and variety of staple food items and that the firm does not offer any specialty or ethnic food items that are not available at other area authorized retail food stores. There were no signs

posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals, no evidence of meat/seafood specials or bundles/plans or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers.

As mentioned previously, there are 30 SNAP authorized retailers of a comparable size or larger located within a 2.0 mile radius of Kenv Investments Inc. that can meet the nutritional needs of SNAP customers. These authorized stores include a supermarket located 0.3 miles and a super store located 0.31 miles from the subject firm. Several of these area authorized SNAP stores are larger than Kenv Investments Inc. and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. As mentioned previously, SNAP customers who shopped at Kenv Investments Inc. during the review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores does not appear to be an explanation for Kenv Investments Inc.'s abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

As noted previously, a government report on SNAP household patterns indicates that that typical EBT purchases are small (about 71 percent were \$25.00 or less) and SNAP benefits are spent throughout a given month--63 percent of SNAP households use more than half of their benefits in the first week after issuance and over half (56 percent) use more than 90 percent of the household benefits within two weeks after issuance. However, the study also found that "Supermarkets accounted for over 64 percent of all EBT transactions and 83 percent of the total value of EBT purchases" while "less than 6 percent never shopped at supermarkets."

Although many households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefit allotment in only a few transactions or in a single day. Depleting one's entire allotment in one or two days or in a single day, especially in a moderately stocked convenience store, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households. Rather, large single transactions, or multiple and high cumulative transactions which diminish balances over a short period of time soon after benefit issuance, are indicative of SNAP benefit trafficking and attempts to diminish attention to signs of the same.

The Appellant did not provide any compelling justification or evidence as to why SNAP households are spending the majority or all of their SNAP benefits in short periods of time at Kenv Investments Inc. or evidence that all of the irregular transactions cited in this Charge Letter Attachment were for eligible food items only. Based on the analysis above and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

### **Excessively Large Purchase Transactions (Charge Letter Attachment 5)**

This Charge Letter Attachment lists 207 SNAP transactions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transaction amounts are not consistent with the store's observed characteristics and

recorded food stock. The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

The Appellant contends that it stocks a large variety of groceries. Owing to their service to a number of different cultural groups in the area, the Appellant stocks typical American groceries, as well as foodstuffs which are part of the Asian, Caribbean, and Latino cultures. Many of the items in the store are atypical of a normal convenience store. Many items are found in specialty grocery stores as opposed to a firm like Kenv Investments Inc. Since acquiring the store in May, 2018, the owners financed freezers and added many unique products to change the image of the store to a true neighborhood market and an international food store—not just a convenience store. When the store visit was conducted, the Appellant believes that the inspection was not complete and thorough. Although the reviewer initially stated that she would be in the store for about an hour, she was still not finished after three hours of effort. She became frustrated because there was so much to catalogue and left the store. The reviewer did not catalogue the Appellant’s frozen food section or the back stock.

The food stock and facilities of the Appellant as reported in the store visit documentation do not appear sufficient to provide for all of one’s food needs. People generally do not spend large sums at such stores. They usually stop at convenience stores to pick up a few staple food items, such as bread, milk, or a can or two of food that they may consider are not worth a trip to the supermarket to purchase. The Appellant contends that these large transactions are not the result of trafficking of SNAP benefits. However, it is rare for a convenience store such as Kenv Investments Inc. to have purchases like those included in this Attachment to the Charge Letter. This Attachment cites 207 EBT transactions during the six month period of investigation **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

The FNS store visit report and photos of April 25, 2019 show that Kenv Investments Inc. offers a moderate stock of SNAP eligible foods with no fresh meats, poultry, or seafood, a variety of frozen meats, poultry, and seafood, a minimal stock of canned goods, a very minimal variety and amount of fresh produce, and lacks an abundant depth and breadth of staple foods. The store visit inventory report and photos also show only a few expensive eligible foods in stock that would account for these large amounts as well as showing the store has limited checkout counter space in which to process transactions. It is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The photos of food stock provided by the Appellant show higher priced items than what was documented in the store visit documentation. However, FNS has no way to verify when the Appellant’s photos were taken. It is likely that these photos were taken in response to the Charge Letter and that the Appellant “beefed up” the food stock in its photos in an effort to respond to the Charge Letter allegations. Contrary to the Appellant’s claims, the reviewer photographed the frozen foods and the contents of the store room during the store visit. It is also important to note that the photos submitted by the Appellant were often too close up to determine where in the store the items were located, so it is not possible to do a comparison of the store visit observations to the photos provided by the Appellant. The Appellant’s photos were overlapping and cut off in such a way as to make this comparison difficult. The reviewer noted that some shelves were bare and dusty; however, no bare shelves were seen in the photos submitted by the

Appellant. Thus, it is impossible to validate whether the photos submitted by the Appellant are a true reflection of the store stock during the review period.

The store visit report and photos also indicate that there were no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals, no evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers. There is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area. As noted earlier, the four most expensive food items in stock were Nido dry whole milk at \$39.99 per 5.5 pounds; Royal basmati rice at \$23.99 per 20 pounds (only 1 unit in stock); Maggi real coconut milk at \$14.99 per 1 kilogram; and JIF peanut butter at \$5.99 per 3 pounds (only 3 units in stock)

The Appellant submitted photos of items that were likely not in stock at the time of the April 25, 2019 store visit because these items are not noted in the store visit documentation. The items in the photos submitted by the Appellant show items that are priced higher than JIF peanut butter at \$5.99. In addition, all store visit questions documented in the store visit report were answered in collaboration with store personnel (in this case, the store owner signed the form). It is questionable as to if these higher priced items were in stock at the time of the store visit, why the store owner did not emphasize or point them out to the reviewer. This also calls into question the validity of the Appellant's photos.

The email to the Appellant's insurance company does not provide information regarding what types of frozen foods were present during the review period, only that the Appellant wanted to make sure it was insured. It is acknowledged that the firm carries frozen food items. Thus, this information has no bearing on the case at hand. The Facebook activity and proof of Facebook advertising also has no bearing on the case. The Facebook ads show that the firm advertises international foods. Again, it is recognized that the firm carries a moderate amount of international foods that may draw some customers. However, the presence of international and ethnic foods cannot explain the very high SNAP transactions documented in the Charge Letter.

**5 U.S.C. § 552 (b)(7)(E).**

While the Appellant firm may be located in a neighborhood with households that qualify for SNAP benefits, these factors are not an indication that questionable transactions would be occurring at any given store. The subject store shows unusual transaction patterns that are not displayed in other similarly stocked stores. If specific household needs are causing these questionable transactions at the subject store, it would be expected that similar patterns would also present themselves at nearby firms as well. But this is simply not the case.

As noted previously, there are 30 SNAP authorized retailers of a comparable size or larger located within a 2.0 mile radius of Kenv Investments Inc. that can meet the nutritional needs of SNAP customers. These authorized stores include a supermarket located 0.3 miles and a super store located 0.31 miles from the subject firm. Some of these area authorized SNAP stores are larger than Kenv Investments Inc. and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. These larger stores would offer a



much greater quantity and variety of foods at lower prices than the Appellant firm and their proximity would make it unlikely that any SNAP recipient would consider the Appellant firm as their primary source for groceries.

An analysis of the shopping patterns for all of the SNAP households listed in this Attachment shows that the majority of the households shopping at Kenv Investments Inc. have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and/or supermarkets, located nearby and at several miles distance from the Appellant's location. While Kenv Investments Inc. does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located in proximity to the Appellant's business offering a greater quantity and variety of products, including fresh meats/seafood and produce, at lower prices.

#### 5 U.S.C. § 552 (b)(7)(E).

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 Charge letter. Therefore, based on this empirical data, and in the absence of credible evidence 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. Nevertheless, transactions having such characteristics do sometimes have valid explanations that support that they were the result of legitimate purchases of eligible food items, and this is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, however, the Retailer Operations determined that the Appellant's contentions did not outweigh the evidence. Assertions that the firm has not violated program regulations, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding those of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out supports the Retailer Operations Division's determination. Based on the preponderance of the evidence, the irregular transaction patterns cited in this Attachment are more likely than not the result of trafficking in SNAP benefits.

#### **Invoice Analysis**

In support of its contentions that the questionable SNAP transactions included in the Charge Letter Attachments are legitimate food purchases and not the result of trafficking of SNAP benefits, the Appellant provided FNS with numerous vendor purchase invoices dated January 2019 through October 2019. The Appellant also provided a letter to the Appellant from Jetro showing the total purchase amount from January 1, 2019 through October 31, 2019.

The Retailer Operations Division conducted an analysis of the invoices provided by the Appellant, giving the Appellant the benefit of the doubt at every opportunity. Invoices which

were dated outside of the review period were excluded from the analysis. The purchase information provided from Jetro was not used in the analysis as it was not itemized (i.e., what was purchased) nor were the purchases broken down by month. The Retailer Operations Division analyzed the invoices for March 2019 and April 2019 due to the high volume of invoices submitted. All effort was made to separate out the foods from the non-food items. In the event of an unknown item, the benefit of the doubt was given to the Appellant. In addition, some undated invoices were included in the analysis because they were present along with other invoices from March and April. This, too, was done to give the benefit of the doubt to the Appellant.

The invoice analysis indicates that for the month of March, 2019, the Appellant failed to cover its SNAP redemptions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, even with a generous mark-up of 50%. Furthermore, the retailer provided no information regarding the cash and credit card sales that inevitably took place, so the Retailer Operations Division cannot account for these sales either.

The invoice analysis indicates that for the month of April, 2019, the firm appeared to cover its SNAP redemptions when using a generous 50% mark-up. However, the retailer provided no information regarding the cash and credit card sales that inevitably took place, so the Retailer Operations Division cannot account for these sales either. It should be pointed out that the vast majority of the items represented in these invoices were for snacks, candy, and drinks. A minimal amount of chicken wings, chicken breast, and oxtail was purchased but did not appear to be purchased in large enough quantities to justify the questionable SNAP transactions that occurred during the review period.

While the invoices provided for review for April, 2019 appear to indicate that the Appellant had purchased sufficient food inventory to account for the firm's SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions outlined in the Charge Letter. Even the large dollar transactions would remain questionable if there were sufficient food inventory to support such transactions when consideration is made of there being only a moderate variety of stock in the store, no fresh meats, poultry, or seafood, a greater variety of foods at comparable or lower prices at other stores, and little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at Kenv Investments Inc. to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to shop there, a convenience store, in some cases traveling a few miles to do so, and spend substantial amounts of their SNAP benefits.

### **No Warning**

The Appellant contends that no other action has been taken by FNS to warn it of any potential violations of the SNAP regulations. 7 CFR § 278.6(d)(2) and (3) of the SNAP regulations provides that "The FNS office making a disqualification or penalty determination ... shall consider ... any prior action ... to warn the firm about the possibility that violations are occurring..." The citation simply requires FNS to consider any prior warnings when determining a sanction. It does not require FNS to give such warnings. FNS did not consider prior actions to warn Kenv Investments Inc. about the possibility that violations were occurring

because there were no prior warnings during the review period. The evidence considered by the Retailer Operations Division included the raw data of questionable transactions and information obtained during the aforementioned store visit conducted on April 25, 2019.

### **No Prior Violations**

The Appellant contends that neither of the store owners have any history of violations or a history of any other unlawful activity. However, a record of participation in the 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 those charges. Trafficking in SNAP benefits is an extremely serious violation and both 7 U.S.C. § 2021(b)(3)(B) and 7 CFR § 278.6(e)(1)(i) state that a first time violation warrants a permanent disqualification.

### **Corrective Action**

The Appellant contends that the owners are willing to undergo any recommended training to aid them in abiding by the SNAP regulations. It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements. There is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective action implemented subsequent to investigative findings of program violations. Therefore, the Appellant's contention that it has taken or will take corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Customer Hardship**

The Appellant contends that due to the location of the store, a vast number of customers receive SNAP benefits. 7 CFR § 278.6(f) of the SNAP regulations provides for civil money penalty assessments in cases where disqualification would cause "hardship" to SNAP households because of the unavailability of a comparable participating food store in the area to meet their needs. However, this regulation also sets forth the following specific exception to such assessments there under: "A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification". Therefore, since this case involves a permanent disqualification action, the civil money penalty provision is not applicable to the present case.

## **CIVIL MONEY PENALTY**

As previously indicated, the December 9, 2019 Determination Letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated October 29, 2019 advised

the Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The regulations specify that such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. The letter indicates that no information was provided by the Appellant for consideration; therefore, on review the Retailer Operations Division's determination that the Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

## **CONCLUSION**

The Retailer Operations Division's analysis of the Appellant's EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellant's contentions do not outweigh this evidence.

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against Kenv Investments Inc. is sustained.

## **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (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, 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.

LORIE L. CONNEEN  
ADMINISTRATIVE REVIEW OFFICER

March 5, 2020