

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

**Kicks 66 - Krishna,**

**Appellant,**

**V.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0214802**

**FINAL AGENCY DECISION**

It is the decision of the USDA that the record indicates that Kicks 66 - Krishna, (hereinafter Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retailer in the program, as initially imposed by the Retailer Operations Division was appropriate.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant by letter dated June 11, 2019.

**AUTHORITY**

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

**CASE CHRONOLOGY**

In a letter dated April 4, 2019, Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of June 2018 through November 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i).

In an April 11, 2019, telephone conversation, Appellant requested a two week extension in which to respond to the charge letter. In correspondence dated April 11, 2019, Retailer Operations Division granted Appellant a 10-day extension to April 25, 2019, and advised Appellant that the time to request a civil money penalty in lieu of permanent disqualification and to provide the documentation to support such a request could not be extended.

In correspondence dated April 22, 2019, Appellant, through counsel, responded to the charge letter and generally stated that what standards, definitions, or criteria FNS uses to determine transaction timing or size is not shared with the Firm, and is an unfortunate deprivation of Due Process. The firm is submitting an accounting report that shows total food sales and receipts both of which confirm sales and food stock turnover that justify to volume of sales to support the size and timing of transactions found in the audit. Counsel, quoted an April 6, 2019, CNBC.com retail report stating, multiple reports find a high rate of immediate consumption, as high as 65 percent of the items sold, and 83 percent of items sold are consumed within an hour. Counsel gave background on the Appellant's store citing that it is open 24-hours a day, located in a low-income high crime area serving homeless and impoverished customers who cannot drive and offers a restroom and free water to customers.

It was also stated that for the period in question, the store also offered video game machines at all hours. Counsel stated that it is unreasonable that a transaction a few minutes apart is judged in the same way as a transaction the next day and absent more clarity on what constitutes a "set period of time" it is impossible to develop a coherent defense. The representative receipts, which number 300 pages and sent separately by the firm, show how a beneficiary can spend what FNS may deem as excessively large amounts. It also can explain why these transactions can occur close in time. The receipts establish a factual basis as to why transactions both appear excessively large. There is no evidence in any form, direct or indirect, to show that the benefits are trafficked for ineligible items. Appellant, through counsel, provided Department Sales Reports for May 2018, June 2018, July 2017(as printed on the report) and August 2018 however most of the information on the reports was illegible.

After giving consideration to the Appellant's reply and evidence of the case, Retailer Operations Division issued a determination letter dated June 11, 2019. This letter informed ownership that they were permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also states that Retailer Operations considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. However, Retailer Operations Division determined that Appellant was not eligible for the CMP because it failed to submit sufficient evidence to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated June 14, 2019, Appellant, through counsel, appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted.

## STANDARD OF REVIEW

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

## CONTROLLING LAW

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

7 CFR § 278.6(a) states, *inter alia*, that “FNS may disqualify any authorized retail food store...from further participation in the program if the firm fails to comply with the Food and Nutrition Act of 1977, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an *electronic benefit transfer system ...*” (*Emphasis added*)

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

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

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

## SUMMARY OF THE CHARGES

The charges on review were based on an analysis of SNAP electronic benefit transfer (EBT) transactions dated during the four month period of June 2018 through November 2018. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from the accounts of individual SNAP households within a set time period.

2. Your store conducted EBT transactions 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 the questionable transactions were the result of trafficking.

### **APPELLANT'S CONTENTIONS**

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

1. What standards, definitions or criteria FNS uses to determine transaction timing or size is not in the C.F.R or any other public source and is shared with the Firm, an unfortunate deprivation of Due process.
2. It is impossible for the firm to defend allegations when key terms are not defined and appear at the sole discretion of the FNS reviewer.
3. The transactions do not qualify as evidence of trafficking.
4. The receipts establish a factual basis as to why transactions both appear excessively large.

The preceding may represent a brief summary of Appellant's contentions in this matter however, in reaching a decision, full attention has been given to all contentions presented, including any not specifically recapitulated or referenced herein.

### **ANALYSIS AND FINDINGS**

The FNS initially authorized the business as a convenience store on January 27, 2005. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during the December 9, 2018, store visit to the business conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the EBT transactions at Appellant that formed patterns indicative of trafficking. The firm review summary documented the following store size, description, and characteristics:

1. One cash register and one POS device with a small counter area partially obstructed by other smaller items available for sale.
2. Estimated to be approximately 1300 square feet.
3. No shopping baskets or carts available for customers.
4. Optical scanner available at checkout. No specialty registers present.
5. Store does not operate through a night window or plastic barrier with food stock behind the barrier.
6. No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
7. No unusual pricing structure such as ending most products with 00 cents and does not round transaction totals.

8. Food is stored in an area outside of public view that is approximately 300 square feet in size containing only non-food and non-staple foods.
9. Store does not have any storage freezers or coolers and no food stored off site.
10. Store is not primarily selling one food type such as meat, poultry, dairy, seafood, fruits, baked goods or vegetables.
11. Store does not take telephone or online orders and does not offer delivery
12. Highest priced eligible food items were Frozen Fried Chicken (\$9.79), Red Bull (\$7.99) and Beef Jerky (\$11.99 and \$13.00).
13. Store stocks a significant amount of non-food items such as but not limited to paper products, household products, tobacco products, automotive products, gasoline, health and beauty aids, gift items, alcohol and cleaning products.
14. Store stocks limited amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products. Fresh fruit consist of a few bananas. No fresh meat, seafood or poultry. Most meats are canned, packaged or precooked frozen.
15. No kitchen/prepared food area and no deli area.
16. No hot foods sold for onsite consumption.
17. Food sold for onsite consumption with the use of a microwave.
18. No meat or seafood specials or bundles or fruit/vegetable boxes sold.
19. Appellant was deficient in the dairy product category missing one variety and three stocking units and may not have been eligible to hold its SNAP authorization on the day of the store visit.
20. Food items contained faded and missing labels.

The issue for consideration is whether Retailer Operations Division has presented a convincing case that Appellant likely trafficked in SNAP benefits. Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

**Attachment 1 of the Charge Letter – Multiple transactions were made from the accounts of individual SNAP households within a set time period.**

There were 24 sets of 52 SNAP transactions that met the parameters of this attachment. Multiple transactions conducted by the same household account within a set time period is a method which violating stores use to avoid the detection of single high dollar transactions that cannot be supported by the retailer's inventory and structure.

With regard to Appellant's contentions, through counsel, the record reflects that a shopping analysis was conducted on 15 SNAP households in the charge letter and shows that these households regularly shopped at other stores located in various distances from Appellant's store which also shows that lack of transportation was not an issue for SNAP households. Additionally, access to restrooms in the area cannot be verified however, it is noted that restroom access and giving out free water does not justify the transactions activity or the number of transactions conducted during the late night hours into the early morning hours. Though these presence of gaming machines may generate some sales, it is illogical to suggest that the presence

of video machines would generate a high volume of SNAP purchases. In fact it would be more likely that SNAP households visiting Appellant to play the alleged video machines, and making SNAP purchases, would be purchasing items (hot or heated) for immediate consumption and drink and/or snack items and not large amounts of staple food items that would require storage and home preparation.

It is important to note that it is not a question of any reasonable judgement on transactions that occurred in a span of few minutes or few hours, it is either the individual sales that occurred in few minutes or a few hours apart or the aggregate total of the transactions that are suspicious of trafficking when these transactions are occurring in a few minutes and/or a few hours apart in a store that does not offer any particular promotional sale, ethnic, and/or exotic food sold at high prices, no fresh meat, seafood or poultry, or offers a great variety of staple food stock, that are suspicious of trafficking. The number of minutes or hours are to show how often these SNAP households are involved in multiple transactions that total to a large dollar amount in an effort to avoid single high dollar transactions that cannot be supported by the Appellant's inventory and business structure.

Furthermore, it is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a set time period. For example, mothers may shop and later send a child to the store to pick-up a forgotten item nonetheless; it is unusual that the second or subsequent transaction amount would be for more than a nominal amount. Additionally, it is questionable why households would visit Appellant up to four times in a set time period expending benefits **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** when its stock is very limited, it carries no fresh meat, seafood or poultry and a few pieces of fresh produce, it does not offer any specialty or ethnic foods, no foods sold in bulk at high prices and does not carry food items that cannot be purchased at larger, better stocked stores. Additionally, the store visit documentation indicates that Appellant was deficient in the dairy product category missing one variety and three stocking units and may not have been eligible to hold its SNAP authorization on the day of the store visit.

In conclusion, it is therefore more likely true than not true that the irregular transactions cited in the charge letter Attachment 1 are due to trafficking in SNAP benefits.

**Attachment 2 of the Charge Letter – Your store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock.**

There were 483 SNAP transactions that met the parameters of this attachment. Based on the results of the contracted store visit, the large transaction amounts are not consistent with the store's inventory of low priced foods. The firm does not offer food in bulk or any ethnic or specialty foods that sell for a high price. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions.

Appellant, through counsel contends that the receipts establish a factual basis as to why transactions both appear excessively large. With regard to Appellant's contention, through counsel, although the retailer did not provide any invoices for the month of October and November, the entire review period was considered with the invoices that Appellant provided. Non-food items are not considered in the analysis however, it is noted that Appellant's non-food

item purchases were significantly higher than the store's staple and non-staple food purchases.

With regard to the CNBC report quoted by counsel, it is important to note that the Appellant's store is not comparable to any of the stores addressed in this report. The report indicated that 83 percent of the food sold in convenience stores are consumed within an hour and 65 percent are consumed immediately. The report is based on a general consumer's behavior and more likely in the consumption of immediate foods such as fruits and vegetables, microwavable precooked foods, and hot foods such as pizza and/or sandwiches. Hot foods are not allowed on EBT and food items purchased with SNAP are not meant to be consumed immediately but for home preparation and consumption. It is noted that the report did not specify if the food items purchased were staple or non-staple foods, no total dollar amounts for each transaction was reported nor the time of day in which the transaction occurred but did mention that the shoppers visit to such convenience store 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is noteworthy that the records reflects that of the 483 high dollar transactions cited 422 or 87.37 percent of those transactions occurred between the hours of 10 pm and 6 am. The total dollar volume of those transactions was 5 U.S.C. § 552 (b)(6) & (b)(7)(C) which means that over 88 percent or 5 U.S.C. § 552 (b)(6) & (b)(7)(C) came from transactions that took place during the hours of 10 pm and 6 am. Usually, most convenience stores conduct their business during the day however in the present case, the majority of Appellant's high volume transactions occurred in the late evening through the early morning hours and raises the question of legitimacy of the transaction. Appellant is a typical convenience store with a gas station, and does not offer any specialty foods, no fresh meat, seafood or poultry, a few pieces of fresh fruit and no great variety or stock of staple foods that would draw SNAP households to shop late night into the early hours of the morning or to spend large amounts of SNAP benefits. As previously stated, Appellant was deficient in the dairy staple food product on the day of the store visit and may not have been eligible to maintain its SNAP authorization.

## Invoice Analysis

The review period invoice totals, as submitted, for food inventory purchases, during the review period, was 5 U.S.C. § 552 (b)(6) & (b)(7)(C). A standard 40 percent mark-up was added to the store food inventory of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) giving a total redeemable food inventory of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The standard 20 percent for cash, credit, and debit card sales totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was subtracted from the redeemable inventory leaving 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant's total SNAP redemptions during the same period was 5 U.S.C. § 552 (b)(6) & (b)(7)(C) leave a difference of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in unexplainable SNAP redemptions. It was noted that Appellant's monthly food purchases were inconsistent and decreased significantly from June 2018 to September 2018, with no receipts from October and November 2018. Additionally, it is important to note that even if the invoices were sufficient to demonstrate that Appellant purchased enough inventory to support the amounts of its SNAP transactions. Still, there would not be enough information to determine whether they account for the sum of Appellant's SNAP and non-SNAP transaction activity. While the overall dollar amount of SNAP activity is relevant, the charge letter did not cite as evidence Appellant's SNAP sales total. Rather, the Retailer Operations Division identified a series of different suspicious transaction patterns.

Appellant's total transaction dollar amount for the review period was 5 U.S.C. § 552 (b)(6) & (b)(7)(C) higher than that of similar convenience stores in Weber County Utah. There appears to be no basis for customer attraction to Kicks 66 - Krishna with there being no great price advantage or specialty food offerings. The food stock offered at Appellant's store is readily available to SNAP customers at larger retail food stores, which carry a wider variety of food stock to include fresh meat, dairy, and produce.

### **Transaction Receipts**

The record reflects that Appellant submitted 472 itemized transaction receipts along with corresponding EBT receipts covering the review period. Though some of the transactions may have been legitimate SNAP transactions, a review of the register/EBT receipts provided by Appellant, showed that some of the receipts appeared original while others were reprinted. Some of the EBT transaction receipts were copied over the itemized transaction receipt concealing the information on the itemized receipt and others were copied separately. It was also noted that some itemized receipts had transaction times 5 U.S.C. § 552 (b)(6) & (b)(7)(C) from the EBT receipt time stamp and some EBT receipt time stamps occurred 5 U.S.C. § 552 (b)(6) & (b)(7)(C) before the itemized transaction actually occurred. It is the determination of this review that the numerous inconsistencies in the itemized register receipts and the EBT receipts as well as the concealing of information on some of the itemized register receipt by the EBT receipt being placed on top, renders their validity questionable. It cannot be adequately determined if the receipts provided are a true record of each SNAP transaction as presented.

### **Affidavits**

Appellant, through counsel, provided 16 signed customer affidavits. A review of those affidavits reflects the following: six were signed and dated in 2017, six did not have any transactions at Appellant's store during the review period and are considered invalid, four had transactions during the review period that were either not attached to the charge letter as suspicious or did not suggest that the transactions may have been as a result of trafficking, three could not be verified due to incorrect/invalid EBT card numbers or the name could not be verified with the given card number, two reflect that the recipient visited the store only one day or a few days of any given month during the review period and the transactions were considered suspicious given they were conducted in succession on a single day or on the same day or within a day before or after making purchases at supermarkets or superstores, one reflects that the recipient visited the store multiple time during the review period and expended a considerable amount of monthly SNAP benefits in Appellant's store even while shopping at other larger stores that were closer to the recipient's home than Appellant's store. With the exception of two recipient affidavits, the remaining 14 households that provided affidavit shed little to no light in support of the Appellant's contentions, through counsel.

Retailer Operations also conducted an analysis of the shopping habits of six of the households

identified in the charge letter. This analysis concluded that these households also shopped at other area grocery stores including full-line supermarkets and superstores that offer a much larger quantity and variety of eligible food items for likely better prices either on the same day or within days of visiting Appellant's firm. This again indicates that lack of access to other stores is not at issue. However, despite this access to large supermarkets and superstores, these households consistently conducted much higher transactions at the Appellant firm than at better stocked supermarkets/superstores in and around the Weber County area of Utah. This is another strong trafficking indicator.

Appellant, through counsel, contends that the standards, definitions or criteria FNS uses to determine transaction timing or size is not in the C.F.R or any other public source and is shared with the Firm, an unfortunate deprivation of Due process. It is impossible for the firm to defend allegations when key terms are not defined and appear at the sole discretion of the FNS reviewer. With regard to these contentions, the record reflects that in an April 26, 2019, email conversation, counsel was informed that a Freedom of Information Act (FOIA) request for Agency information being sought was required. The record also reflects that counsel did not submit any FOIA requests either to Retailer Operations Divisions, the FOIA office or during this review. Additionally, with regard to Appellant's contention regarding a previous SNAP violation charge, the specific information and evidence presented in a prior case has no bearing on the current case and charge of trafficking. Appellant must present new evidence for the current case as the review period and specific charges are distinct from the previous case.

## **Due Process**

With regard to the contention that the agency violated the Appellant's right to due process, it is important to note that the letter of charges provided Appellant the opportunity to reply to the charges and provide explanations for the questionable transactions. Appellant, through counsel, did reply to the charges in writing, denying the charge of trafficking and offering various explanations for the questionable transactions. After considering the evidence of the case and Appellant's reply, Retailer Operations Division determined that a permanent disqualification was warranted. But while administrative action is held in abeyance for most adverse actions against firms pending appeal, there can be no stay of action pending an appeal of a permanent disqualification. 7 U.S.C. at 2023(a)(18) of the Food Stamp Act of 2008, as amended, states, in part: "SUSPENSION OF STORES PENDING REVIEW. Notwithstanding any other provision of this subsection, any permanent disqualification ... shall be effective from the date of receipt of the notice of disqualification."

Furthermore, the regulations at 7 CFR § 278.6(c) state, "in the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section..." which describes disqualification for trafficking, "...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."

## Summary

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

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

As noted, 7 CFR § 278.6(a) states that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 1977, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

Retailer Operations Division has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns in two attachments of EBT transaction data, the inadequacy of the firm’s eligible food stock as observed and recording during the onsite visit to support such large transactions, the lack of evidence of invoices of foods in inventory to cover SNAP redemption totals for the review months, the lack of explanation for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant, and the irregular SNAP transaction data of Appellant as compared to other convenience stores in the State.

In the absence of evidence for the legitimacy for such transaction patterns based on information submitted by Appellant and a comparison of the store’s characteristics and available stock to the transaction patterns cited in the charge letter, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns evidence trafficking as the most likely explanation. While ownership was afforded the opportunity to provide valid explanations and evidence that support that the questionable transactions were the result of legitimate purchases of eligible food items, Retailer Operations Division determined that Appellant’s contentions did not outweigh the evidence in the record.

The purpose of the administrative review process is to ensure that firms aggrieved by Retailer Operations Division's adverse actions have the opportunity to have their position fairly considered by an impartial review authority prior to that adverse action becoming final. Appellant has been duly given, and has taken the opportunity to present to USDA through the administrative review process whatever evidence and information it deems pertinent in support of its position that Retailer Operations Division' adverse action should be reversed. Therefore, any evidence and information that Appellant presented to Retailer Operations Division, as well as any such information submitted subsequently, have now been considered in this administrative review in rendering the final agency administrative decision in this case. The record does not indicate any departure from established policy or procedures with regard to Appellant's right to a fair and thorough review.

### **CIVIL MONEY PENALTY**

Appellant was notified in the charge letter dated April 4, 2019, that it had 10 calendar days upon receipt of the charge letter to provide required documentation in order to be considered for the trafficking CMP. Appellant failed to provide Retailer Operations Division with the required documentation to be considered for a trafficking CMP in lieu of disqualification. Therefore, Retailer Operations Division correctly determined that Appellant was not eligible for a trafficking CMP as set forth in the SNAP regulations.

### **CONCLUSION**

Ownership has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. As such, the SNAP regulations are specific with regard to the action that must be taken if personnel of the firm have trafficked, which is that FNS shall disqualify the firm permanently.

Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Kicks 66 - Krishna from participation in the SNAP. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Therefore, based on a review of all the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged by Retailer Operations Division. Based on the discussion herein, the determination to impose a permanent disqualification against Kicks 66 - Krishna is sustained.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 1977, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the

U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

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

Monique Brooks  
ADMINISTRATIVE REVIEW OFFICER

December 11, 2019