

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review Branch
Alexandria, VA 22302**

Krazy Dollar Deals,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0197060

FINAL AGENCY DECISION

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

ISSUE

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

AUTHORITY

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

CASE CHRONOLOGY

In a letter dated February 2, 2017, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of October through December 2016. The letter noted that the sanction for trafficking is permanent disqualification, as provided by 7

CFR §278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR §278.6(i). The record reflects that the SNAP Office received and duly considered Appellant's replies to the Charge Letter. By a letter dated March 31, 2017, Appellant was informed that it was permanently disqualified from participation as a retail store in the SNAP and was ordered upon receipt of the letter to cease accepting SNAP benefits; consequently, Appellant ceased to accept said benefits. On April 10, 2017, Appellant requested an administrative review of the SNAP Office's decision; the request was granted.

STANDARD OF REVIEW

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

CONTROLLING LAW

The controlling statute in this matter is contained in the Food & Nutrition Act of 2008, as amended, at 7 U.S.C. § 2021 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6 (e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. **5 U.S.C. § 552 (b)(7)(E).**

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 & 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, (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)(iii) states, *inter alia*:

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

SUMMARY OF THE CHARGES

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

APPELLANT'S CONTENTIONS

In Appellant's reply to the Charge Letter and in its written request for review dated April 10, 2017 it was argued that:

1. With regard to Attachment 1 to the Charge Letter, the firm has three cash registers; during busy times the card terminal is in constant use, which is why multiple transactions

are often made in a very short period of time. Two of the registers are used for products sold on the floor and the other one is used for selling meat and dairy products only. Sometimes customers make multiple purchases during a single visit. Customers sometimes want separate receipts for separate items. Some customer do not know their SNAP account balance and when they find out the balance they make another purchase.

2. Regarding Attachment 2, some customers exhaust their SNAP benefits all at once because they live far away; the Appellant store is very rare in many counties such as Westchester near to the Bronx; people in neighboring counties come to the store once or twice a month and buy everything at a time for the family. Customers use not only benefit cards but also credit cards, debit cards and personal checks. Some make large holiday purchases. Appellant provides a petition signed by customers stating that the firm has been very helpful to the community and a letter signed by the Corporate Secretary of the Bangladesh-American Community Council stating that the Appellant firm has been in business almost 10 years and that many members of the Council shop at the store, that the firm has a good reputation of providing commodities at low cost to the local consumer and that there are no complaints against the store. Appellant also provides copies of product purchase invoices/receipts for September through December 2016.
3. A disqualification will work a hardship upon the business and may force it to close.
4. Over nine years ago Appellant viewed a instructional DVD provided by FNS and also read SNAP regulations and training materials. The firm organized a number of training sessions for employees proficient in English to read; Appellant explained and reviewed the regulations with all other employees. Strict store policies were then put in place and employees were given training as to how to process SNAP benefits and other government benefit cards. There is also a store sign close to the cash register which gives the best possible view of the regulations that are followed. The Owner has done everything within his/her power to ensure compliance with SNAP rules.

ANALYSIS AND FINDINGS

At the outset it should be noted that the ROD Office ordered a contracted store visit to the Appellant firm as part of its investigation into Appellant's questionable transaction activity; the visit was conducted on January 20, 2017, as a result of which documentation was obtained including photographs of the interior and exterior of the store, a store layout diagram and a store inventory survey. This documentation reflected the following:

- No optical scanners.
- Shopping carts and baskets available.
- Three cash registers.
- One card reader.
- No hot food sold.
- No dining area.
- No deli section.
- No meat/seafood bundles/specials or fruit/vegetable boxes.
- Approximately 6800 square feet of store space.
- Not a farmers market, specialty food store or delivery route.

- The firm sold health and beauty products, paper goods, cleaning products, housewares, gift items, party goods, souvenirs and other non-food items. The firm operated as a variety/general store and most of the firm's inventory appeared to be in non-food items. Photos: 21, 22, 34 and 36.
- The firm would have failed to qualify to participate in the SNAP under Criterion A on the day of the store visit.
- Sparsely-stocked shelves and coolers. Photos: 1, 5, 9, 10, 11, 14, 17, 19 and 23.
- Check-out counters approximately 1 X 2 feet and surrounded by a variety of non-food products. Photos: 13 and 34.

The documentation presents no indication of advertised specials, promotions or bulk or expensive food items. The checkout areas were set up in convenience store fashion, utilizing three small check-out areas (each approximately 1 by 2 feet of useable space) but were otherwise cluttered/surrounded by snack items, health and beauty products and other non-food items. Store visit documentation reflected several sparsely-stocked shelves and coolers, typically an indication of low turnover. The documentation reflects that the firm was a typically to marginally-stocked convenience store in all relevant respects. It is worth noting that the average SNAP purchase in a convenience store in the state of New York during the analysis period was \$8.78, reflecting that large purchases are not routinely made in such stores.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, as noted by the ROD Office, the firm maintains a typical convenience store inventory, which is not conducive to frequent and large transactions; transaction set totals in Attachment 1 5 U.S.C. § 552 (b)(6) & (b)(7)(C). SNAP Households conduct most of their food shopping at super stores and supermarkets and rarely spend large amounts at convenience stores. The firm stocked no uncooked fresh, frozen or refrigerated meat, seafood or poultry and no fresh fruit or vegetables. As noted in the foregoing, the firm would have failed to qualify to participate in the SNAP under Criterion A on the day of the store visit, having only two varieties of staple food items in the dairy category. The majority of the firm's retail space is devoted to the sale of non-food items.

While there are legitimate reasons why a SNAP recipient or household member might return to a convenience store during a short period of time, such purchases are more typically in small amounts and for obtaining just a few items. The examples in Attachment 1 indicate a series of repetitive purchases that total large amounts (5 U.S.C. § 552 (b)(6) & (b)(7)(C)). Customers spending such substantial amounts of SNAP allotments in a marginally-stocked convenience store, when there are other larger food stores nearby which carry substantially larger varieties of food at lower costs, is implausible. Lastly, large transactions for the purchase of legitimate food items (which at this store would have been a substantial number of lower-priced items), using very little checkout-counter space, is additionally implausible. Multiple transactions over a short period of time, especially of high dollar value, are very suspicious because they are typical of stores and SNAP customers which are attempting to diminish attention to signs of SNAP-benefit trafficking. Frequent and large transactions conducted in order to purchase eligible foods at Appellant's store are highly unlikely given Appellant's logistical wherewithal and store stock. There is no compelling rationale to explain why Appellant's customers made repetitive visits spending large amounts in short timeframes. The record reflects, as noted above, that the Appellant firm was a marginally-stocked convenience store in all relevant

respects and provides no plausible bases for customers' unusual attraction to the firm and unorthodox transaction patterns, there being no superior selection of staple foods, no evidence of a price advantage, no evidence of package, bulk or promotional items, no extensive variety of otherwise unavailable ethnic food items and no evidence of custom or special services rendered.

Regarding contention 2 above, as noted in the foregoing, the store visit documentation reflected that the Appellant firm carried a typically to marginally-stocked convenience store inventory, focusing primarily on snack and convenience foods with very few food items that a typically-stocked convenience store would not also carry. The firm maintained some frozen and canned/package staple foods as well as cereal, juice, milk and small packages of rice and pasta, with the remainder consisting primarily of single-serving snack food items, similar to other convenience stores. There is very little evidence in the record that the firm's eligible food inventory is unique in any substantial way, other than the wide variety of non-food items offered for sale; this is borne out by the product purchase invoices and receipts provided by Appellant. As such, the contention that the firm's inventory is rare in many New York counties is not viewed as compelling. Moreover, as noted, there is no evidence of bulk or expensive items offered for sale; Appellant provides no compelling rationale to explain excessively large transactions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The ROD Office conducted an analysis of a sample of Appellant's customer's shopping habits and found that customers routinely shopped at much better-stocked and very likely more competitively-priced super stores and supermarkets on or about the same day as conducting implausible transactions at Appellant's marginally-stocked convenience store, calling into question what customers could obtain at Appellant's firm that they could not obtain at the more fully-stocked stores. Some of these households were traveling up to 10 miles from the Appellant firm to shop at super stores and supermarkets, demonstrating that they had access to transportation. The Appellant store was clearly not the only store in the area offering food items to SNAP customers; as noted above, it was clearly not the best-stocked firm in the area and it was clearly not the only store being visited by Appellant's customers.

Additionally, the ROD Office conducted an in-depth analysis of the product purchase receipts and invoices (for the analysis period of October through December 2016) provided by Appellant; the results are summarized below:

5 U.S.C. § 552 (b)(7)(E)

As can be readily ascertained from the above table, Appellant's documentation fell substantially short of justifying SNAP redemptions during the analysis period of October through December 2016. It is noted for the record that the documentation provided appeared to include invoices/receipts from two other stores in the area; additionally, many receipts did not specifically identify the buyer or the business address of same, so it is possible that these receipts likewise reflect product purchases for stores other than the Appellant firm, which calls into question the validity of the documentation.

The petition and letter of recommendation do not provide any information that specifically address the transactions contained in the ROD Office's Charge Letter; accordingly, no further findings are rendered in this regard.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The ROD Office further notes that Appellant's average SNAP transaction during the analysis period was larger than the average SNAP transaction at small grocery stores, combination grocery/other stores, medium grocery stores and large grocery stores in the state of New York, a further indication that violative activity was occurring at the store.

With regard to contention 3 above, hardship worked upon retailers is not a consideration in decisions to disqualify firms due to SNAP benefit violations or in decisions to impose civil money penalties in the event disqualified firms are subsequently sold or the ownership thereof otherwise transferred; **5 U.S.C. § 552 (b)(7)(E).**

In regard to contention 4 above, 7 CFR §278.6(i) provides for the imposition of a civil money penalty in lieu of permanent disqualification for trafficking; Appellant was advised of the requirement regarding civil money penalties in lieu of permanent disqualification in the ROD Office's February 2, 2017 Charge Letter, which further advised that documentation of eligibility for this sanction was to be provided within a given time limit. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) that "if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified, the firm shall not be eligible for such a penalty." The regulations provide no discretion to extend the time within which documentation and evidence in support of a civil money penalty may be submitted. In its reply to the Charge Letter, Appellant did not request consideration of said sanction. Thus the SNAP Office decision not to impose a civil money penalty is found to have been in accordance with 7 CFR §278.6(b)(1), §278.6(b)(2)(ii), §278.6(b)(2)(iii) and §278.6(i). Appellant may imply that a request for consideration of a trafficking civil money penalty (TCMP) was contained in its April 10, 2017 request for review, 62 days following the firm's receipt of the Charge Letter and far beyond the 10-day timeframe. Though the request cannot therefore be considered, the documentation and evidence provided by Appellant clearly fall short of the standard detailed at § 278.6(i), as noted in the following:

Criterion 1:

- Appellant provided insufficient written and dated documentation to reflect a commitment to ensure that the firm was operated in a manner consistent **5 U.S.C. § 552 (b)(7)(E)**:
 - Documentation of the development and/or operation of a policy to terminate violating employees (not provided). Appellant notes that the violating employee was terminated but provides no documentation confirming same, such as disciplinary letters, notes or a letter of termination commonly used in such circumstances.
 - Documentation of the development and/or operation of procedures/policy to implement corrective action in response to complaints of violations (not provided).

- Documentation of the development and/or operation of procedures providing for internal review of employees' compliance (not provided).
- Documentation must establish that the policy statements were provided to violating employees prior to the commission of the violation(s) (not provided).

Criterion 2:

- Appellant did not provide documentary evidence which establishes that the firm's compliance policy and program were in operation prior to the occurrence of the violations at issue.

Criterion 3:

- Appellant did not provide the following:
 - Documentation of dated training curricula and dates of training sessions prior to the violations.
 - Records of dates of employment of all firm personnel.
 - Contemporaneous documentation of participation of violating personnel in initial and follow-up training prior to violations.
- Appellant provided insufficient documentation to demonstrate that its training program meets or is otherwise equivalent to the following standards:
 - Training shall be designed to establish a level of competence that assures compliance with program requirements as included in part 278.
 - Written materials, which may include FNS publications and program regulations available to all authorized firms, are used in the training program.
 - Training materials shall clearly state that the following acts are prohibited and are in violation of the statute and regulations:
 - The exchange of SNAP benefits for cash.
 - The exchange of SNAP benefits for firearms, ammunition, explosives or controlled substances.
 - Training for all who work in the store within one month of implementing the compliance policy documented in Criterion 1.
 - Any subsequently hired employees are trained within one month of hiring and trained periodically thereafter.

Criterion 4:

- Appellant provided insufficient evidence in support of the following:
 - Ownership/Management was not aware of, did not approve, did not benefit from or was not involved in trafficking. Appellant has provided no records or documentation demonstrating that SNAP benefits used in the transactions noted in the Charge Letter were in fact not deposited into its bank account. Conversely, as noted above, transaction data and other evidence confirms that the violative transactions did in fact result in monetary deposits into the firm's bank account in the exact amounts noted in the Charge Letter. It is noted for the record that the regulations allow an exception to the Criterion 4 language if it is ownership/management's first involvement in SNAP-benefit trafficking.

5 U.S.C. § 552 (b)(7)(E). The standard of substantial evidence employed above is difficult to meet, indeed impossible if such policy and program are not implemented and documented prior to the violations, but such is the standard required by the regulations, as noted above, and to which Appellant is held during the course of this review. Additionally, neither the size of an organization nor the number of its personnel is a consideration in determining the eligibility of a firm for a civil money penalty in lieu of permanent disqualification for trafficking. Moreover, while significant effort may be required to develop and maintain a compliance policy and program, if such fails to meet the requirements, that level of effort, even if substantial, does not mitigate the insufficiency. Lastly, the criteria for eligibility for a civil money penalty in lieu of permanent disqualification are clearly stated as *minimum* standards below which eligibility is precluded. The regulations at 7 C.F.R § 278.6(i) are purposely prescriptive and require an unequivocal and well-documented commitment to compliance and training. Accordingly, as noted, the SNAP Office correctly determined that Appellant did not qualify for a civil money penalty in lieu of a permanent disqualification.

CONCLUSION

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

RIGHTS AND REMEDIES

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

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

DANIEL S. LAY
Administrative Review Officer

November 22, 2017