

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

**Last Drop Liquor,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0207950**

**FINAL AGENCY DECISION**

It is the decision of the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS) that the record supports that Last Drop Liquor (Appellant) likely committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support the permanent disqualification of Appellant from participation as an authorized retail food store in the Program, as imposed by the Retailer Operations Division, (Retailer Operations).

**ISSUE**

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

**AUTHORITY**

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

**CASE CHRONOLOGY**

By Charge letter dated August 21, 2018, Retailer Operations informed the owners that USDA had compiled evidence that Appellant had violated the SNAP. The analysis of Appellant's electronic benefit transaction (EBT) records established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity. Based on this information, Appellant was charged

with trafficking as defined in Section 271.2 of the regulations. The sanction for trafficking is permanent disqualification.

One owner replied to the Charge letter August 27, 2018. Retailer Operations issued a credit violation letter on August 28, 2018, to which a reply was requested within ten calendar days of receipt. The record states that on September 4, 2018, one owner faxed 43 credit statements which were illegible/blurred and difficult to read.

Retailer Operations issued a Determination letter dated September 6, 2018. This letter informed the owners that Appellant was permanently disqualified as a SNAP retail food store in accordance with Sections 278.6(c) and 278.6(e)(1) of the regulations. Retailer Operations considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to Section 278.6(i) of the regulations, and deemed it was not eligible because insufficient evidence was submitted to demonstrate that the owners had established and implemented an effective SNAP compliance policy and program to prevent violations.

The owners, via counsel, requested review of the determination by letter dated September 14, 2018. The request for appeal was granted by letter dated September 27, 2018.

### **STANDARD OF REVIEW**

In an appeal of an adverse action the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative 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 argument asserted is more likely to be true than not true.

### **CONTROLLING LAW AND REGULATIONS**

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

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

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

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

7 CFR § 278.6(b)(2)(ii) states: “Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence that establishes the firm’s eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).”

7 CFR § 278.6(i) states: “FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.”

### **SUMMARY OF THE CHARGES**

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges on review were based on an analysis of SNAP transaction data during the period of December 2017 through May 2018. This involved two patterns of transaction characteristics that are indicative of trafficking:

1. Multiple transactions made within a set time period.
2. Excessively large transactions made from recipient accounts.

### **APPELLANT’S CONTENTIONS**

In reaching a decision, consideration has been given to all contentions presented, including any not specifically referenced here.

- The owner explained they had been offering credit to EBT customers, not trafficking. This practice started around December 2017.
- The clerk wrote the items bought and the price in a notebook. Each customer had their own page. When they returned they would pay the tab with EBT. Once the tab was paid the clerk would destroy the page to simplify bookkeeping.
- Attachment A is the original EBT credit pages that have not been destroyed. They are primarily for August 2018. Each page shows the account number, the name of the clerk, the items bought, the price for each item, and the date the tab was paid.
- You can see both multiple large charges in the same day and large charges in general which is the sole evidence presented regarding the trafficking charge.

- Only eligible foods were bought and sold via EBT. Many large purchases and multiple visits can be explained by this system. Neither the owner nor the store was receiving any economic benefit from credit, no interest was charged.
- No payment was taken to start the credit.
- Attachment 2 has 453 transactions and shows the majority occurring in the first week of the month when the tabs would be paid. The records presented show a pattern of large food purchases by certain customers. The store serves as a primary food source for many of its customers.
- Attachment 1 is similar, most transactions happened early in the month and usually the first transactions was larger than the second. They would often return multiple times since the firm is location convenient to a substantial number of households.
- The firm is in a food desert and offers lower prices than their neighbors.
- The evidence of trafficking is circumstantial at best and does not take into account the evidence presented here.
- Attachment B is two declarations under penalty of perjury by the two employees that started and maintained the credit scheme around the time the suspicious activity started.
- Attachment C are customer declarations.
- Attachment D is merchant account totals from March 2017 to August 2018. The firm has not gained financially with increased sales by offering a food tab.
- Consider a CMP in place of a one year suspension. Removing the food source would create a hardship to participating households.

## ANALYSIS AND FINDINGS

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

**Attachment 1:** Listed are 107 transactions in 44 sets of two or more transaction completed by 27 different households. Multiple transactions made from individual benefit accounts in set time frames are indicative of trafficking. The record supports that there are at least 15 authorized stores within a one mile radius of Appellant. The data shows that there are supermarkets at .53 and .80 miles, and one super store located .97 miles from Appellant.

The responding owner claimed the store often sold food items on credit to a large portion of their customers and allowed customers to buy food items throughout the month on the promise that they would pay the credit when they got their EBT disbursements. He added that the store has two cashiers during the day, and that both handle and deal with their customers' credit independently. Reportedly at the beginning of each month their customers came back to pay for the items they bought on credit during the month.

Credit is often claimed by retailers in an effort to garner a lesser sanction than permanent disqualification. A firm that commits documented credit violations is sanctioned with a one year

disqualification period and may incur fiscal claims for violative credit. If the retailer does not provide adequate proof of credit, the retailer shall be permanently disqualified for trafficking. A one year disqualification for credit cannot be entertained when by a preponderance of evidence it is determined that trafficking has more likely than not occurred.

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

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

Enclosures provided by FNS to retailers when authorized include:

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

Thus, the owners were provided multiple and redundant resources through which a thorough knowledge of Program rules and requirements could be readily obtained. By signing the certification to become a SNAP retailer, the signatory-owner confirmed understanding of and agreement to abide by the rules and regulatory provisions. The certification requires owners to agree to accept responsibility on behalf of the firm for violations of the SNAP including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. These include violations such as accepting SNAP benefits as payment on credit accounts or loans and trafficking. The certification is clear that violations of Program rules can result in administrative actions such as fines, sanctions, withdrawal or disqualification from the SNAP.

Retailer Operations was unable to substantiate the responding owners' claim of credit given to SNAP customers since no evidence or documents of credit accounts were provided for the review period of December 2017 to May 2018. The credit ledger pages submitted in Attachment A were for credit transactions conducted in the month of August 2018, as confirmed by counsel.

As such, Retailer Operations determined that Appellant failed to provide sufficient evidence that the transactions listed on the Attachment were legitimate rather than the result of trafficking.

The two identical statements under Attachment B, signed by two store employees are dated September 12, 2018. The employees claimed that they were trained in the rules and regulations of EBT transactions and were unaware that credit transactions were prohibited. Retailer Operations found the contentions to be questionable, since the owners were made fully aware of their responsibility regarding SNAP regulations when the SNAP Certification Statement of the SNAP application was signed to comply with all statutory and regulatory requirements associated with participation in SNAP. It is the agency's position that credit account transactions can only be authorized by the owner or manager of a firm, as such, credit account violations constitute ownership or management involvement.

Counsel submitted 13 pre-printed statements, Attachment C, signed by customers claiming that Appellant allowed them to buy food items on credit, to be repaid when their EBT cards were refilled at the beginning of the month. Retailer Operations determined that none of these signed statements included the customers' EBT account numbers, their addresses, or the alleged food items purchased on credit on given dates during the review period. Therefore, Retailer Operations was unable to determine the accuracy of such claims of violative credit granted by Appellant during the review period.

The summary merchant processing statements (Attachment D) for March 2017 to August 2018, show credit card sales and SNAP redemptions through Quest. Retailer Operations found that this information did not explain the transactions listed in the Attachments. Retailer Operations determined that the lack of evidence regarding purported credit during the review period was not adequate to convince it that the suspicious transactions represented credit account transactions for eligible SNAP foods more likely than trafficking transactions.

**Attachment 2:** Listed are 346 transactions that are for amounts that exceed the average transaction amount for the same store type in the same state by at least three times. The record supports that Appellant's SNAP dollar volume was **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** higher than the average SNAP dollar volume for the same store type in the same county. This is irregular.

The March 24, 2018 onsite store report indicates the firm is approximately 770 square feet with a storage room. The storage room contained mainly alcoholic beverages and no resupply of staple food items was visible. The photos show that Appellant's primary inventory consists mainly of non-eligible alcoholic beverages. Many shelves used to display staple and accessory food items were not stocked to capacity. The most expensive food item observed on the shelves was 24.2 oz. coffee with fewer than five units in stock. Appellant did not appear to stock ethnic or specialty food items that were not available at other authorized retailers in the area. The approximately 3ft. x 3ft. checkout counter was observed to be cluttered. No shopping baskets or carts were seen to assist with the accumulation of large amounts of eligible food items.

Retailer Operations determined that SNAP clients redeeming benefits at Appellant were also redeeming benefits at other surrounding stores. For example 52% of the households identified on Attachment 1 redeemed benefits at larger store types within one day of a transaction(s) at

Appellant, and 68% of the households identified on this Attachment redeemed benefits at larger store types within one day of a transaction(s) at Appellant.

No vendor invoices for the acquisition of eligible food were advanced for review. No business banking records were provided, only the merchant POS statements were advanced. No federal business tax filings or state business tax filings were provided. No credit logs were provided for the relevant review time frame. The statements that credit was advanced in violation of the regulations did not include EBT numbers or SNAP ID information such as addresses to confirm the participation of the signatories in SNAP during the relevant review period.

Government analyses of stores caught trafficking during on-site investigations has found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include in part those cited in the letter of charges. Computer transaction data in addition to an onsite store visit and an analysis of household shopping behavior were used in rendering a finding that violations indicative of trafficking were occurring at Appellant. The regulations allow for disqualification of a retail food store based on a finding of a violation on the basis of evidence that may include facts established through inconsistent redemption data and/or evidence obtained through a transaction report under an electronic benefit transfer system.

This review encompasses and documents the examination of the evidence in this case to determine whether Appellant demonstrates by a preponderance of the evidence that the permanent disqualification should be reversed. While some of the hundreds of transactions listed on the Attachments may have been the result of violative credit, credit documentation for the review period was not presented. Thus, the preponderance of the evidence supports that the transactions flagged were more likely the result of trafficking. In appeal of this matter, Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true. Appellant has not met this burden.

### **CIVIL MONEY PENALTY**

The owners neither requested, nor submitted any documentation for review of the firm's eligibility for a trafficking CMP. Consideration of hardship CMP per Section 278.6(f)(1) of the regulations is not applicable in this matter. Rather, 7 CFR § 278.6(i) specifies the criteria for a store's eligibility for a civil money penalty in lieu of permanent disqualification for trafficking. The criteria listed therein are, as a whole, specifically identified as a minimum standard that firms must meet in order to be eligible for such a penalty. Accordingly, Retailer Operations correctly determined that Appellant did not qualify for a trafficking civil money penalty in lieu of a permanent disqualification.

### **CONCLUSION**

Retailer Operations' analysis of Appellant's SNAP transaction record was the primary basis for its determination to permanently disqualify Appellant. Appellant's data provided substantial

evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits.

The contentions offered for the transaction patterns were not persuasive by a preponderance of the evidence. The recipient affidavits could not be tracked back to transactions in the Attachments since inadequate identification information was provided to support the claims of violative credit. No federal business tax forms or state sale tax submissions were advanced to rebut the trafficking charge. No business banking records were provided. No itemized cash register tapes or date-stamped sale receipts were advanced to support the sale of eligible foods. No vendor invoices of acquired eligible food stock to support the high volume of SNAP redemptions were provided.

Appellant admitted to allowing violative credit, a sanctionable offense, but its evidence of credit did not include a credit log with dates, names, SNAP ID information, and items sold on credit for the charged review months. As such, the claim of credit rather than trafficking to explain the Attachments was not exculpatory as to trafficking. Based on the analysis of the transaction data in the Attachments, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transaction patterns in the letter of charges evidence trafficking at Appellant as the most likely explanation.

Retailer Operations also properly determined that Appellant was not eligible for a trafficking CMP according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations. Therefore, based on the discussion herein, the decision to impose a permanent disqualification against Appellant is sustained.

## **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to applicable rights to judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which the Appellant's owners 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, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

M. Viens  
ADMINISTRATIVE REVIEW OFFICER

November 8, 2018