

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

**LF Food Market Corp,**

**Appellant,**

**V.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0200507**

**FINAL AGENCY DECISION**

It is the decision of the USDA that the record indicates that LF Food Market Corp., (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 July 28, 2017.

**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 July 11, 2017, 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 December 2016 through May 2017. 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).

The Appellant did not reply to the Charge letter. Retailer Operations Division issued a Determination letter dated July 28, 2017. The letter informed Appellant that it was permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also stated that Retailer Operations Division 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 August 10, 2017, 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 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(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 six month period of December 2016 through May 2017. This involved three patterns of EBT transaction characteristics indicative of trafficking:

1. Unusual number of transactions ending in the same cents value.
2. Multiple transactions were made from individual benefit accounts in usually short time frames.
3. Excessively large purchase transactions were made from recipient accounts.

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:

- The business has established and implemented an effective compliant policy pursuant to Section 278.6(i)(1) of the rules of the SNAP program.
- The permanent disqualification of the business will cause an economic hardship on the community that we serve.
- The business has taken these allegations very seriously and has taken action to prevent further occurrence by appointing a manager to more closely oversee management of the business.
- Attachment 1: When customers in the area are given the sales price of the purchased items including the sales tax, they refuse to pay the tax and rather not purchase the goods. This behavior has compelled the store owner to include the tax in the sales price which creates transactions ending in the same cents value. Further some customers request that the balance due be rounded by the purchase of smaller items.

- Attachment 2: The store has a number of clients who have large families that use the same card to make multiple additional personal purchases. Also, my client extended credit to a group of reliable customers who settle their accounts prior to making new purchases. One transaction was to settle a credit account and the other was an actual purchase.
- Attachment 3: The store is very well stocked and carries an abundant quantity of food, vegetables and other items covered by the SNAP program so it is easy to spend over 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the store. It sells merchandise by the case, box and bag. The most comprehensive government study regarding average EBT purchase amount documents that approximately 16 percent of all EBT purchase transactions are in dollar amounts 5 U.S.C. § 552 (b)(6) & (b)(7)(C). My client's store has fewer large purchases than would be predicted by the government's own statistical and empirical research. This is also caused by credit payments.

The Appellant, through counsel, provided copies of letters of support submitted by customers of the store (Exhibit A); a demographic/population survey for the area served by the store (Exhibit B); copies of the stores Merchant Statement (Exhibit C); copies of customer credit ledgers (Exhibit D); and a courtesy copy of counsel's Notice of Appearance on behalf of Appellant (Exhibit E).

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 authorized the business as a convenience store on March 16, 2016. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during a May 22, 2017, 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:

- One cash register, one specialty register (lottery, western union, etc.) and one POS device. A small counter area, approximately 2ft x 2ft in size, partially obstructed by other smaller items available for sale.
- No shopping baskets or carts available for customers.
- No adding machines or optical scanners are available at checkout.
- No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
- No food stored offsite. Does not offer delivery or take telephone and/or online orders.
- Kitchen area and hot foods sold but not for onsite consumption. There is a prominent menu board.

- A deli or prepared food section available with prices posted for meats/cheeses and prepared/made to order sandwiches. Stock used for deli/prepared food section.
- No meat or seafood specials or bundles or fruit/vegetable boxes sold.
- Estimated to be 1000 square feet with no food stored in storage area out of public view.
- Does not operate through a night window or plastic barrier with food stock behind the barrier.
- Store is not a delivery route, farmers' market or specialty food store primarily selling one food type such as meat, poultry, seafood, bread, fruit or vegetables.
- Store stocks a significant amount of non-food items such as but not limited to household products, personal hygiene products, tobacco products, alcohol, lottery tickets, mobile phone/phone cards, cleaning supplies, pet products, and paper goods.
- Store stocks limited amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products.
- Empty and sparsely stocked shelves were noticed during the store visit.

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 – There were an unusual number of transactions ending in a same cents value.**

This attachment lists 1006 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** that end in 00, and 50 cents. When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits.

Appellant, through counsel, contends that when customers are given the sales price of the purchased items, including the sales tax, they refuse to pay the tax and decide not purchase the goods. This behavior has compelled the store owner to include the tax in the sales price which creates transactions ending in the same cents value. Further some customers request that the balance due be rounded by the purchase of smaller items. With regards to these contentions, it is important to note that SNAP licensed retailers may not charge state or local sales tax on SNAP purchases. Additionally, adding a random tax amount to the price of an item would most likely result in a price that does not end in 00 or 50 cent value. Appellant's assertions regarding rounding off transaction amounts are not supported by the evidence. It is unclear why individuals would want to round prices of smaller purchased items as there does not appear to be any benefit or compelling reason for this type of request and this action would more likely benefit the Appellant and not the SNAP recipient. There is little reason to round totals in an electronic debit system, as no cash-change is provided to customers and any amount can be entered as easily as any other. The practice of maintaining typical retail pricing (\$.x9), as did Appellant, yet then rounding off totals as if payments were being received in whole dollar amounts, or an amount consistently ending in 50 cents, is highly suspect. Legitimate transactions result from totaling an assortment of variously-priced items and thus cents- values are largely random; SNAP-benefit trafficking transactions are based on a general amount agreed upon by two parties, and thus there

is little reason to burden the transaction with cents-values other than to attempt to mask the exchange. SNAP benefit- trafficking is a more plausible explanation than any other appearing in the record. Although these transactions do not, in and of themselves, violate SNAP regulations, multiple repetitive digits strongly indicate that many of the SNAP transaction amounts reflected in Attachment 1 are contrived.

When there are a disproportionate amount of transactions ending in same cent value it appears the transactions are contrived and absent any compelling rationale to the contrary it is a strong indicator of trafficking. Based on the contractor visit, the store's inventory contains almost exclusively inexpensive single-serving, prepared food items and accessory foods. As such, it is implausible that several of these relatively inexpensive items purchased together would routinely total to a purchase amount ending in 00 cents or 50 cents; especially when item prices end with a standard .x9. In addition a store that is rounding prices up or down or an even value would not have any transactions ending in odd values.

Based on the analysis above, it appears that the transactions cited in the charge letter are contrived and therefore, in the absence of plausible evidence to the contrary, are likely the result of trafficking in SNAP benefits.

**Attachment 2 of the Charge Letter - Multiple transactions were made from individual accounts in unusually short timeframes.**

This attachment lists 14 sets of 39 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits. The store visit report does not indicate any compelling reason for customers to consider Appellant a first choice destination to fulfill large purchases of food, or that they would have made relatively large, multiple purchases at the store **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Multiple transactions conducted by the same household account **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** 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.

Appellant, through counsel, contends that the store has a number of clients who have large families that use the same card to make multiple additional personal purchases and ownership extended credit to a group of reliable customers who settle their accounts prior to making new purchases. One transaction was to settle a credit account and the other was an actual purchase. With regard to this contention, SNAP regulations at § 278.2(f) provides, inter alia, that: "*Food stamp benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in the Food Stamp Program for a period of one year*".

Since attributing suspicious EBT transactions to credit may be an attempt to avoid a more serious sanction which is appropriate for a trafficking violation indicated by the available evidence, to refute charges of trafficking, as part of the Appellant's reply to the charge letter, the retailer must provide adequate proof that credit accounts existed at the time the suspicious EBT transactions occurred. It is imperative that the retailer provide evidence to refute charges of trafficking so that the Retailer Operations Division can compare such proof with the transactions outlined in the

Charge letter. If the retailer does not provide adequate proof, the determining office shall permanently disqualify the retailer for trafficking.

The determining office shall compare the credit information provided by the retailer against the transactions outlined in the letter of charges and the recipient personal identifying information available from the State EBT administrative terminals. The retailer shall be assessed a fiscal claim for each transaction determined to be a credit account violation. If the retailer is not able to account for all of the suspicious EBT transactions for which it has been charged, the determining office must evaluate the remaining transactions and determine whether trafficking has occurred. If the retailer does not provide adequate proof, the determining office shall permanently disqualify the retailer for trafficking.

The record reflects that the Appellant did not reply to the charge letter dated July 11, 2017. In subsequent correspondence dated September 18, 2017, Appellant, through counsel, provided 17 pages of an alleged credit ledger as Exhibit D of the documentation. Upon review, the documentation provided only contained dates, amounts, illegible signatures, some contained items with prices but no names, and only one showed an EBT receipt but the ledger did not provide the items purchased. It is the determination of the review that the documentation provided is insufficient evidence that Appellant maintained credit accounts for SNAP households therefore, Appellant's contention that the Attachment 2 transactions were due to customers paying off credit accounts, does not constitute valid grounds for dismissal of the current charges or for mitigating the impact of those charges.

Additionally, while there are legitimate reasons why a SNAP recipient might return to a convenience store during a short period of time to make SNAP purchases, it is implausible that households that rely on SNAP benefits to make ends meet would make multiple large purchases at a minimally stocked convenience store with no fresh or frozen meat, minimal amounts of produce and where the stock consisted mainly of inexpensive snack and individually prepared items.

In conclusion, it is therefore more likely true than not true that the irregular transactions cited in the charge letter Attachment 2 are due to trafficking in SNAP benefits.

**Attachment 3 of the Charge Letter - Excessively large purchase transactions were made from recipient accounts.**

This attachment lists 123 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. 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.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The average convenience store transaction in New York, during the review period, was \$8.95. Appellant's largest transaction amount was **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** approximately 20 times higher than the average convenience store transaction amount in New York.

It is also important to note that Appellant's total SNAP redemptions during the review period were nearly three times that of other convenience stores in New York. Appellant's layout and inventory do not support a high percentage of transactions markedly exceeding the average transaction amount or total SNAP redemption amounts for this store type. The Appellant, through counsel, contends that the store is very well stocked and carries an abundant quantity of food, vegetables and other items covered by the SNAP program, so it is easy to spend **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. It sells merchandise by the case, box and bag. Also, the most comprehensive government study, regarding average EBT purchase amount, documents that approximately 16 percent of all EBT purchase transactions are in dollar amounts **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The store has fewer large purchases than would be predicted by the government's own statistical and empirical research. This is also caused by credit payments.

With regard to these contentions, the contracted store visit, conducted on May 22, 2017, did not evidence that Appellant carried an abundant quantity of SNAP eligible food items. There was no evidence that Appellant sold items in bulk or for high prices. Appellant's stock was limited and shelves were empty or sparsely stocked. Additionally, the government report on SNAP shopping patterns, referenced herein, does not explain or legitimize the unusual and irregular transaction patterns cited in Attachment 3 of the charge letter. Based on the stores characteristics and available stock, the transactions identified in this Attachment appear unusual.

The record reflects that there are 62 SNAP authorized retailers within a ½ mile radius of Appellant which include one superstore, eight supermarkets, two large grocery stores, 12 medium grocery stores, 21 small grocery stores and 18 other convenience stores where household also shopped. There were 393 households identified as having shopped at Appellant during the review period. Of the 393 households identified 208 or 50 percent of those shopped at large grocery stores, supermarkets or 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. 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 Bronx County area of New York. This is another strong trafficking indicator.

The evidence in this case reveals EBT transactions that establish clear and repetitive patterns of unusual, irregular, and inexplicable activity at Appellant's store which warrant permanent disqualification.

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.

Appellant, through counsel, contends that the permanent disqualification of the business will cause an economic hardship on the community and the store has taken action to prevent further occurrences by appointing a manager to more closely oversee management of the business. With regards to these contentions, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm resulting from imposition of such penalty. To allow ownership to be excused from an assessed administrative penalty based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008, as amended, and the enforcement efforts of the USDA. Furthermore, giving special consideration to economic hardship of the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations.

Additionally, it is important to clarify, for the record that the purpose of this review is to determine if the earlier decision of the Retailer Operations Division, to permanently disqualify Appellant from participation in the SNAP, was in fact a correct one. It is not within the scope of this review to consider what subsequent actions Appellant may have taken so that its store may begin to comply with program requirements therefore; ownerships contentions does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

## **Summary**

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 the 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 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 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 three 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. 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' 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 July 11, 2017, 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.

Appellant, through counsel, contends that the business has established and implemented an effective compliant policy pursuant to Section 278.6(i)(1) of the rules of the SNAP program. Appellant did not provide the required documentation, pursuant to SNAP regulations, to adequately prove that it, in fact, had an effective compliance policy in place to prevent trafficking violations. 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 convincing 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 LF Food Market Corp. 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 LF Food Market Corp. 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

November 1, 2017