

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

Li's Market,

Appellant,

v.

Case Number: C0208441

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a permanent disqualification of Li's Market (hereinafter "Appellant") from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against Li's Market.

AUTHORITY

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

SUMMARY OF CHARGES

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from November 2017 through April 2018. This involved the following transaction patterns which are common trafficking indicators:

- There were multiple transactions made from the accounts of individual SNAP households within a set time period.
- The majority or all of an individual recipient's SNAP benefits were exhausted in unusually short periods of time.
- Excessively large purchase transactions were made from recipient accounts.

CASE CHRONOLOGY

The agency's record shows that FNS initially authorized Li's Market for SNAP participation as a convenience store on December 18, 2012. In a letter dated June 21, 2018, 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 between the months of November 2017 and April 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In a letter dated July 3, 2018, the Appellant, through counsel, responded to the trafficking charges, claiming that the suspicious transaction patterns were likely due to its mistaken belief that SNAP purchases 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were not permitted. The Appellant contended that the firm's owners were taught SNAP rules by the individual from whom the store was purchased. The owners understood what could and could not be purchased with SNAP benefits, but were incorrectly taught that purchases 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were prohibited, thus resulting in multiple transactions in some instances. Further, the Appellant argued that the transactions themselves do not appear to be fraudulent; rather, they are likely community members shopping for a week or two at a time in their nearby corner store. Finally, the Appellant requested consideration of a CMP in lieu of disqualification for trafficking. It stated that while the firm does not maintain a formal, written policy related to SNAP, the store owners do have a policy of complying with all local and federal laws, including rules and regulations promulgated by USDA.

After reviewing the Appellant's response and further considering the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated July 10, 2018. This letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but determined that a CMP was not appropriate in this case because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked July 11, 2018, the Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that 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 AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, in part:

...[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, in part:

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, [or] evidence obtained through a transaction report under an electronic benefit transfer system....

7 CFR § 278.6(e)(1)(i) states:

FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, in part:

Trafficking means: The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone...

7 CFR § 271.2 states, in part:

Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption...

7 CFR § 278.6(b)(1) states, in part:

Any firm considered for disqualification...under paragraph (a) of this section...shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter shall inform the firm that it may respond

either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...

7 CFR § 278.6(c) states, in part:

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) of this section, 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.

7 CFR § 278.6(b)(2)(ii) states, in part:

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(b)(2)(iii) states:

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.

7 CFR § 278.6(i) states, in part:

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...

APPELLANT'S CONTENTIONS

The Appellant, through counsel, made the following summarized contentions in its request for administrative review, in relevant part:

- The firm's owners are hard-working Chinese immigrants who speak little English. When they purchased the store, the prior owner explained to them how SNAP works, but did not give them proper advice regarding how to remain compliant. They know what is and what is not eligible for purchase with SNAP, but they were operating under a misconception that the system was not able to process SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Accordingly, they divided larger purchases into multiple parts. This is why transactions are seen as two smaller transactions in many cases.
- The firm has never been found to have violated SNAP regulations in the past.

- Appellant now understands that there has to be a policy in place and training protocols to follow. To this extent, the owners have developed a training policy for the store as well as SNAP store policies going forward. *[A copy of the policy was included with the Appellant's request for review.]* The policy will also be translated into Chinese for the benefit of the owners as well as potential new employees or family members who want to work in the store but do not speak English.
- Appellant recognizes that the development of the store policy and training program came after the current issues arose, but it was because of the current situation that the Appellant recognized what steps needed to be taken. In response to the charges, the firm has taken prompt and appropriate action to remedy the issue. Appellant believes that the policy that has been developed and adopted by the firm sufficiently covers the requirements set forth by USDA.
- Appellant acknowledges that there may be consequences for noncompliance with the training requirements, but requests an opportunity to remain authorized to accept SNAP.
- SNAP customers constitute approximately 25 percent of the firm's total revenues. A loss of that magnitude would be devastating to the business and may force it to close.
- The owners have never willfully violated SNAP regulations, and the current issues appear to be a result of their ignorance.
- The Appellant did not take SNAP proceeds for ineligible items. Instead, the firm has been cited due to its odd transaction history, which arose from the owners' ignorance regarding how large a SNAP transaction can be.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions and evidence presented, including any not specifically summarized or explicitly referenced herein.

ANALYSIS AND FINDINGS

The primary issue for consideration in a case based on suspicious SNAP redemption data is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other words, did the Retailer Operations Division, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and unusual transactions cited in the charge letter were the result of trafficking?

Contractor Store Visit

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm's EBT transactions, but also information obtained from an April 25, 2018, store visit which was conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- Li's Market is a convenience store, approximately 600 square feet in size, operating in Philadelphia, Pennsylvania.

- At the time of the contractor’s visit, the firm had no shopping carts and just one handheld shopping basket, which is not unusual for stores of this size. Customers shopping in such stores routinely purchase only as much food as they can carry in their arms.
- The store visit photographs show one cash register for food purchases and agency records reflect the use of one EBT point-of-sale device.
- It does not appear that the firm uses optical scanners to process transactions.
- The store’s staple food stock is moderate in each of the four staple food categories. The food selection is typical of a convenience store or corner market.
- SNAP-eligible, non-staple accessory food items available at the store include carbonated and non-carbonated drinks, snacks, candy, and condiments. The store also sells ineligible, nonfood items, including tobacco products, lottery tickets, and miscellaneous household merchandise.
- At the time of the contractor’s visit, the firm was an authorized retail store in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). This is reflected in the food items available for purchase with WIC benefits, including fresh produce, canned tuna, fruit juice, eggs, bread, milk, breakfast cereal, peanut butter, and infant foods such as infant formula and jars of baby food. It should be noted that the vast majority of SNAP households that contain infants are also eligible for WIC participation. Therefore, it is uncommon for such households to purchase expensive infant formula with their SNAP benefits; rather, they use WIC vouchers to make such purchases.
- The checkout area consists of a small, cluttered countertop where items can be placed for purchase. The constricted checkout area is not suitable for conducting large or rapid transactions as there is very little space on the counter to place more than a few items at a time and little room for customers to maneuver with large amounts of groceries.
- There is no indication from the store visit report that the firm has a special pricing structure. The report also states that the firm does not round transaction totals up or down at checkout.
- According to the report, the most expensive food items available for purchase at the store are various types of infant formula, such as a 12.4-ounce can of Similac for \$17.99.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be typical of a convenience store or small neighborhood market, where households normally purchase a limited number of items. There was no indication that SNAP households would be inclined to regularly visit Li’s Market to purchase large quantities of groceries, especially considering the lack of shopping carts and baskets, the constricted checkout area, and the availability of much larger grocery stores in the immediate area, including a supermarket less than a quarter-mile away.

Given the available inventory and the store’s characteristics, this review could find no reason why the Appellant firm’s SNAP redemption patterns differed so significantly from those of nearby, similar-sized competitors.

SNAP Transaction Analysis

Charge Letter Attachment 1: Multiple transactions were made from the accounts of individual SNAP households within a set time period. This attachment lists 23 sets of transactions (65 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), an extraordinary amount for a convenience store like Li's Market, which has no shopping carts and just one handheld shopping basket and a very small checkout area. It is very interesting to note that earlier in the day, this same household spent significantly less than that amount at a nearby superstore, which has a much greater variety of foods at undoubtedly lower prices along with shopping carts and baskets that would help transport large numbers of food items. It is difficult for this review to imagine what was available at Li's Market, a typical convenience store, that would not have been available at the superstore earlier in the day.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Considering the amount of food it would take to add up to these transaction totals, and given the limited overall food inventory at the Appellant firm, it seems very unlikely that these are legitimate transactions. Repeat visits to the store with large transaction totals are highly unusual and are strongly suggestive of trafficking. Attachment 1 is filled with similar examples.

The Appellant, through counsel, contends that the firm was operating under a misconception that the system was not able to process individual SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As a result it divided larger purchases into multiple parts. According to the Appellant, this is why transactions are seen as two smaller transactions in many cases.

Unfortunately this argument makes little sense when considering the actual transactions listed in the charge letter. Except for a few instances, the majority of transactions in Attachment 1 occurred several minutes to several hours apart.

For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C):

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

If purchases 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were being split into multiple transactions due to a misconception by the store's owners, one would expect that the transactions would occur within moments of each other rather than several minutes or even hours apart. And in those rare instances where transactions were very close together, as in lines 53 and 54, above, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), making a division wholly unnecessary.

What is concerning to this review is not that the firm would occasionally divide a large purchase into separate transactions as a result of a misunderstanding, but rather that households would choose to spend large portions of their SNAP allotments in such repetitive fashion at a store that has limited overall inventory, no shopping carts, and a very constricted checkout area. This type of behavior is considerably abnormal in comparison to similar-sized stores in the area.

Unfortunately, the Appellant has not submitted any evidence, such as itemized cash register receipts, inventory records, or other accounting documentation to show that the specific transactions in question were legitimate purchases of eligible food. Without compelling evidence to prove that the transactions listed in Attachment 1 were legitimate SNAP purchases, it is reasonable for this review to conclude that that they were likely the result of trafficking violations.

Charge Letter Attachment 2: In a series of transactions, the majority or all of an individual recipient's benefits were exhausted in unusually short periods of time. This attachment lists five sets of SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

It is not unusual for violating retailers to conduct trafficking transactions in which a household spends the vast majority of its allotment in a series of transactions over a short period of time. A suspicion of trafficking is reinforced when these balance-depleting purchases occur in small stores such as Li's Market, where there is minimal overall inventory and a lack of shopping carts or baskets to help facilitate large purchases. It makes little sense that a household would spend almost the entirety of its SNAP allotment in a single transaction or in a series of rapid transactions at this store.

For example, **5 U.S.C. § 552 (b)(6) & (b)(7)(C).** Such behavior is far beyond what is normal shopping behavior for SNAP households and is inconsistent in comparison with transactions at nearby similar-sized stores.

A government report on SNAP shopping patterns indicates that on average, after the first day of benefit issuance, approximately 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It typically takes about two weeks to deplete 80 percent of one's benefits, and three weeks to deplete 90 percent.¹ Depleting a large portion of one's SNAP balance in a very short period of time, leaving little or no benefits for the rest of the month, is inconsistent with normal shopping behavior of SNAP households.

Unfortunately, the Appellant has not offered any specific explanation or evidence related to the transactions listed in Attachment 2. Such evidence might have included itemized cash register receipts or inventory records to help prove that the transactions were legitimate purchases of eligible food. Without any evidence to the contrary, it is reasonable for this review to conclude that the transactions in this attachment were likely the result of trafficking violations.

¹ See U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, *Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program*, by Laura Castner and Juliette Henke. Project officer: Anita Singh, Alexandria, VA: February 2011.

Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts. This attachment lists 144 SNAP transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with a convenience store in the state of Pennsylvania. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a convenience store in Pennsylvania was \$8.41. In Philadelphia, the average was only slightly higher, at \$8.46 per transaction. 5 U.S.C. § 552 (b)(7)(E).

Given that the Appellant firm does have a moderate inventory of staple foods and other SNAP-eligible foods, it is possible that there would be an occasional purchase where the transaction amount is high, perhaps exceeding 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As such, there may well be some legitimate SNAP transactions sprinkled among the transactions listed in Attachment 3. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from nearby, similar-sized competitors, especially considering the absence of shopping carts, the limited number of shopping baskets, and the very constricted checkout area. The substantial number of high-dollar transactions in a six-month period calls into question the legitimacy of these transactions.

Attachment 3 lists 17 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) during the review period, including a high of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Considering how many food items it would typically take to add up 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and considering that the store does not have any shopping carts and has only one handheld shopping basket, and given the fact that there are much larger grocery stores in the area with substantially greater inventory and variety, including both supermarkets and superstores, this review finds it unlikely that SNAP households would legitimately choose to spend such large portions of their benefit allotments at a small store such as Li's Market.

The transactions in Attachment 3 are very unusual and warrant further explanation. Unfortunately, the Appellant has not offered any evidence to demonstrate that the transactions in question were legitimate purchases of eligible food. Without any evidence from the Appellant, this review has little option but to conclude that trafficking was a likely cause of the unusual transaction patterns listed in this attachment.

It is the finding of this review that the attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place. Agency records show that the transactions listed in the charge letter are highly unusual and substantially different from comparable stores in the area. Based on these and other factors, such as the store's physical characteristics and inventory, the case of trafficking is convincing.

In an appeal of adverse action, the onus is on the Appellant to prove, by a preponderance of the evidence, that the administrative action should be reversed. This means submitting sufficient and compelling evidence that would lead a reviewer to conclude that trafficking did not occur. Unfortunately, the Appellant did not submit any evidence and its contentions do not sufficiently address the specific transactions listed in the charge letter. Therefore, it is the conclusion of this

review that the transactions listed in the charge letter were, more likely than not, the result of trafficking violations committed by the Appellant.

No Prior Violations

The Appellant contends that it has never before been found to have committed SNAP violations and claims that the firm's owners have never willfully violated program regulations. This contention implies that because the firm does not have a history of program violations, the permanent disqualification determination should be overturned or reduced.

Unfortunately, this contention does not provide a valid basis for dismissing the charges or for modifying the disqualification penalty. The law states that when serious violations, such as trafficking, occur, permanent disqualification is the required penalty, even on the first occasion, as noted in 7 U.S.C. § 2021(b)(3)(B).

Civil Money Penalty

As noted earlier, the Retailer Operations Division determined that the firm was not eligible for a civil money penalty in lieu of permanent disqualification for trafficking because it did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and training program to prevent SNAP violations. In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider a trafficking CMP, but it must also submit appropriate documentation within 10 days of receipt of the charge letter.

The case record shows that the Appellant made a request for a CMP in its reply to the charge letter. However, there is no evidence that the Appellant submitted documentation within required timeframes which would establish that the firm had a compliance policy or training program of any kind. The Appellant acknowledged that at the time of the alleged violations its store policies were not formalized in a written document, but contended that this was because the firm has no employees beyond the two store owners.

Unfortunately, SNAP regulations do not exempt small stores with limited personnel from the evidence requirements. In order to meet the CMP criteria outlined in § 278.6(i), a firm must demonstrate by "substantial evidence" that it meets each of the four criteria listed. Paragraph (1) of this section reads: "...[I]n determining whether a firm has established an effective policy to prevent violations, FNS shall consider written and dated statements of firm policy which reflect a commitment to ensure that the firm is operated in a manner consistent with this part 278 of current [SNAP] regulations and current [SNAP] policy on the proper acceptance and handling of [SNAP benefits]...."

The Appellant contends that as a result of the trafficking charges, it now understands that there must be a compliance policy and training protocols in place. With this new understanding, the firm's owners took prompt action to develop a training policy for the store as well as SNAP store policies going forward. The Appellant believes that the policy that has been developed and adopted by the firm sufficiently covers the requirements set forth by USDA.

While this review commends the Appellant for taking immediate action to rectify the firm's policy and training deficiencies, such steps, taken subsequent to the finding of program violations, cannot be a consideration in determining whether the firm meets the requirements for a trafficking CMP. Paragraph (1) of § 278.6(i) states that a firm's "policy statements shall be considered only if documentation is supplied which establishes that the policy statements were provided to the violating employee(s) prior to the commission of the violation...."

Because the Appellant did not provide written evidence of a compliance policy and training program within required timeframes in accordance with 7 CFR § 278.6(b)(2)(ii), and because the Appellant has not offered proof that its compliance policy and program were in operation prior to the occurrence of the violations cited in the charge letter as required by § 278.6(i), a civil money penalty in lieu of permanent disqualification for trafficking cannot be granted in this case.

Hardship to Appellant

The Appellant contends that SNAP customers constitute approximately 25 percent of the firm's total revenues. According to the Appellant, a loss of that magnitude would be devastating to the business and may force it to close.

With regard to this claim, 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 on the basis of possible economic hardship to either the ownership personally or to the firm resulting from the imposition of such a penalty.

To allow store ownership to be excused from being assessed administrative penalties based on a purported economic hardship to the store's ownership or to the firm itself would render virtually meaningless the provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA. Moreover, giving special consideration to economic hardship to 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.

Therefore, the Appellant's claim that the firm may incur economic hardship based on the assessment of an administrative sanction does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

CONCLUSION

An analysis of the Appellant's EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify Li's Market from SNAP participation. This data provided sufficient evidence for this review to conclude that the questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by the Appellant. Likewise, the Appellant has not proven, by a preponderance of the evidence, that the administrative action should be reversed.

Based on a review of all available information and evidence in this case, the decision to impose a permanent disqualification against the Appellant, Li's Market, under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 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.

JON YORGASON
Administrative Review Officer

January 30, 2019