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

Nasser & Nasser Enterprise Inc.,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0194792

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 Nasser & Nasser Enterprise Inc. (hereinafter "Appellant") by the ROD (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 January 13, 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 April through September 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 February 14, 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 February 20, 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 412 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) ended in a same-cents value (Attachment 1).

- 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 2).
- A series of excessively large SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from recipient accounts (Attachment 3).

APPELLANT'S CONTENTIONS

In Appellant's written request for review dated February 20, 2017 it was argued that:

1. Appellant denies any wrongdoing or intentional violation of SNAP regulations.
2. There is a great lack of grocery stores and food supply chains in the Detroit area. Most of the food shopping for families is done at small businesses without traveling outside of the city limits. Public transportation is severely underfunded and often unavailable. The Appellant firm thrives on being one of the only stores in the area.
3. Appellant offers diverse food products and sells bulk food products such as smoked sockeye salmon, wild Alaskan smoked salmon, raw white shrimp, pork loin back ribs, Zealand boneless leg of lamb and Smithfield Honey Glazed, among other high demand products. Appellant provides a price list in support thereof. The sales of these items also increase the firm's gasoline sales. Nonetheless, only about 1% of the firm's sales are in suspicion of violation, the amount being approximately 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for the analysis period.
4. It is common for customers to pay part cash or credit for an item and part using SNAP benefits. This would explain the same-cents transactions.
5. Appellant did not receive the January 13, 2017 Charge Letter and asks that the review request be considered under § 278.6(b)(2)(ii). Appellant requests consideration of a trafficking civil money penalty in lieu of a permanent disqualification. Appellant provides a sample of internal "Cash Drop" forms and register reports in support thereof. The employees have been trained to be in compliance with SNAP regulations.
6. The firm has an expert opinion from an accountant that will support compliance with the rules and regulations put in place for EBT and SNAP regulations.
7. Alternatively, Appellant requests consideration for a hardship civil money penalty. Appellant supplies SNAP households with a large variety of staple food items and there is no other authorized store in the area that does in fact sell this variety of food products, especially the seafood, boneless lamb, shrimp and pork loin ribs. Other stores in the area do not offer as diverse, healthy and nutritious products as Appellant and a disqualification would work a hardship upon SNAP households.

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 October 13, 2016, 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.
- No shopping carts or baskets.
- Two cash registers.
- One card reader.
- No dining area.
- No meat/seafood bundles/specials or fruit/vegetable boxes.
- Approximately 100 square feet of retail space.
- No food stored outside public view.
- Not a farmer's market, delivery service or specialty food store.
- The firm sold tobacco and tobacco-related products, lottery tickets, automative supplies, health and beauty products, paper goods, cleaning products, CDs, incense, laundry detergent and other non-food items.
- Dusty cans/packages noted. Photos: 7, 23, 24, 26 and 31.
- The firm was insufficiently stocked in the dairy category on the day of the store visit and thus did not qualify to participate in the SNAP under Criterion A.
- Items priced in standard retail variations of $.x9. Photos: 2, 3, 7, 8, 9, 10, 11, 14, 15, 19, 22, 23, 24, 25, 27, 29 and 31.
- The firm also operated as a gas station. Photos: 4 and 8.
- Typical convenience store inventory and layout. Photos: 6 and 14.
- Check-out counter space approximately 1 X 1 foot and surrounded by candy, tobacco products, snack food, automotive supplies, lottery tickets, CDs, incense and other non- food items. Small counter area used a turnstile; register behind a Plexiglas barrier. One register appears to be used for lottery tickets. Photos: 15, 25 and 27.
- Sparsely-stocked cooler/shelves. Photo: 21.
- The firm stocked no fresh meat, poultry or fish. The only frozen food offered was ice cream.
- No hot foods sold.

The documentation presents no indication of advertised specials, promotions or bulk or expensive food items. As noted above, photographs reflect that most visible prices of food and other items were in standard retail variations of $.x9. The checkout area was set up in convenience store fashion, utilizing two small check-out windows (each approximately 1 by 1 feet of useable space) but was otherwise

cluttered/surrounded by candy, tobacco products, snack food, automotive supplies, lottery tickets, CDs, incense and other non-food items. There were no shopping carts or baskets with which customers could transport large orders to the small check-out area or to waiting transportation. This documentation reflects that the firm was a typically-stocked convenience store in all relevant respects. It is worth noting that the average SNAP purchase in a convenience store in Wayne County Michigan during the analysis period was $5.33, reflecting that large purchases are not routinely made in such stores.

In regard to contention 1 above, this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is, as noted above, to determine whether the Appellant demonstrates by a preponderance of the evidence that the permanent disqualification should be reversed. In this case, therefore, if the Appellant demonstrates by a preponderance of the evidence that trafficking did not occur in Appellant's firm, then trafficking will be considered not to have occurred and the disqualification reversed. If this is not demonstrated the case is to be sustained. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, cannot constitute valid grounds for dismissal of the current charges of violations. Appellant's further contentions are viewed as presented in support of the denial of violations.

Regarding contention 2 above, the ROD Office notes that there are 38 SNAP-authorized firms within a one-mile radius, including one super store (at just over one-half mile from the Appellant firm), two supermarkets (one at just over one-third mile), one medium grocery store (at just over one-half mile), one small grocery store (at just over one-tenth of a mile), eight combination grocery/other stores (six from just under one-quarter mile to just over one-half mile) and 25 other convenience stores (eight from just over 50 feet to one-half mile). Moreover, the ROD Office presents household shopping data and analysis reflecting that customers conducting transactions appearing in the Charge Letter were also shopping at many of these other stores, including the super stores, supermarkets and grocery stores, on or about the same day as conducting implausible transactions at Appellant's typically-stocked convenience store. The above data largely refutes Appellant's assertions in contention 2.

With regard to contention 3 above, as noted in the foregoing, the store visit ordered by the ROD Office found no bulk or expensive food items; in fact, only four of the 13 items appearing in Appellant's price list were seen in the store on the day of the store visit. The roasted/salted cashews were seen in small packages, approximately 6-ounces in size, which are sold at super stores and supermarkets for around $3.39 each. There was one, possibly two boxes of Belvita biscuits, which sell at super stores and supermarkets for approximately $2.98. Two boxes of corn flakes were seen; there was no signage indicating a price for purchasing two boxes; a similar sized box of cereal nearby was priced at $2.99. The only meat items in the store were six packages of hot dogs, four packages of bologna, three cartons of eggs (one

dozen each), canned meat (such as tuna and Vienna sausages) and beef jerky. There was no advertising or signage indicating that bulk fresh or frozen meat was available; no retail cooler was visibly stocked with such items. Moreover, Appellant has provided no product purchase receipts/invoices, inventory or sales records to support its assertions in this regard.

Appellant argues that the total dollar value of transactions detailed in the Charge Letter comprises only approximately 1% of the firm's total monthly gross sales; however, neither the Food & Nutrition Act of 2008 nor the regulations issued pursuant thereto cite any minimum dollar amount of cash or SNAP benefits, number of occurrences or number of personnel or customers involved for such exchanges to be defined as trafficking. The Act reads, in part, that disqualification shall be "permanent upon ... the first occasion of a disqualification based on ... trafficking ... by a retail food store." In keeping with this legislative mandate, section 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked SNAP benefits. Accordingly, if the evidence in the case preponderates toward a finding that trafficking occurred, the dollar amount of such violations is not relevant, though the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) figure referenced by Appellant is arguably a large amount if even a fraction of it was comprised of trafficking.

In regard to contention 4 above, as noted in the foregoing, a substantial amount of the firm's food items were priced in standard retail variations of $.x9; virtually all food items were, moreover, inexpensive items. Thus a combination of several such items, so that a large purchase would result, is increasingly unlikely to produce a total ending 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant states that customers frequently use two forms of payment to make large purchases. While somewhat understandable for large purchases, the lower the dollar amount of the purchases the less compelling this argument becomes. Additionally, only 26 of the 412 transactions in Attachment 1 were conducted with a balance near the purchase amount and in most cases balances were multiple times the amount of the purchase, which would tend to indicate that there was no need to use cash/checking/savings or incur debt in order to complete the purchase.

Additionally, the ROD Office notes some highly anomalous characteristics of many Attachment 1 transactions; notably, the transactions tended
5 U.S.C. § 552 (b)(6) & (b)(7)(C), though the store visit reflected the presence of no expensive or bulk/packaged items at these dollar levels.
5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant's contentions provide no rationale to explain this activity. Appellant does not directly address Attachment 2 to the Charge Letter, other than via the assertion that expensive meat items explain large transactions. This contention has been addressed in the foregoing. Additionally, while there are legitimate reasons why a SNAP recipient or household member might return to a small grocery 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 2 indicate a series of repetitive purchases that total large

amounts. Customers spending such substantial amounts of SNAP allotments in a typically-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 no shopping carts and 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. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 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 only, or primarily, Appellant's customers made repetitive visits spending large amounts in short timeframes. The record reflects, as noted above, that the Appellant firm was a typically- stocked convenience store in all relevant respects and provides no plausible bases for customers' unusual attraction to the firm and unorthodox transaction patterns.

The ROD Office moreover notes several implausible characteristics of Attachment 2 transactions. Most of the transactions sets also included same-cents transactions; in fact 10 of the sets involved only same-cents transactions. Most of the households conducting these transactions at Appellant's typically-stocked convenience store shopped at much better-stocked super stores, supermarkets and grocery stores on or about the same day, calling into question what these customers could obtain at the Appellant firm that they could not obtain at the better- stocked stores. Many of these households also shopped outside of a one-mile radius from the Appellant firm, indicating that transportation to fully-stocked stores was readily available. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The activity is highly unorthodox, and no rationale other than SNAP-benefit trafficking exists in the record.

Likewise, Appellant does not directly address Attachment 3 to the Charge Letter, other than with the assertion that expensive meat items explain large transactions, which has been addressed in the foregoing. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Furthermore, these transactions ended in same-cents values. This tends to strongly indicate that the transaction amounts were contrived, as legitimate transactions (in the absence of evidence that items were priced at these levels and in amounts which would produce repetitive cents- values) closely resemble random dollar and cents amounts. The purchase of a cart or basket (which Appellant did not provide to customers, calling into question how large orders were transported to the register or to waiting transportation) of eligible food items typically approximates a random total amount. The transaction clusters in Attachment 3 do not resemble random numbers but rather clearly appear contrived.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

In the absence of a compelling rationale to explain the ROD Office's observations of highly unorthodox activity, the evidence preponderates toward the conclusion that SNAP-benefit trafficking substantially contributed to the activity detailed in the Charge Letter.

Regarding contention 5 above, UPS tracking records indicate that the Charge Letter was addressed to Appellant at the mailing address provided on Appellant's retailer application and was delivered thereto and signed for by a representative of the firm, using the signature "5 U.S.C. § 552 (b)(6) & (b)(7)(C)," at 11:06 A.M. on January 16, 2016. This constitutes ample and proper notice to the firm of the charges against it. Moreover, Appellant has now been afforded and has availed itself of the opportunity to present to USDA, through the administrative review process, any/all evidence and information it could have previously submitted in support of its position that the SNAP Office's adverse action should be reversed or modified. Appellant has provided contentions in support of its case along with its review request and such information has been duly considered in rendering the final agency decision in this case.

Appellant requests consideration for a trafficking-civil-money-penalty be granted outside the 10- day deadline specified by 7 C.F.R. § 278.6(b)(2)(ii). 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 SNAP Office's January 13, 2016 Charge Letter, which further advised that documentation of eligibility for this sanction was to be provided within a specific time limit. In the absence of a request and documentation in support thereof, a civil money penalty was not imposed in lieu of permanent disqualification by the SNAP Office. 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 (within 10 days of receiving the Charge Letter), the firm shall not be eligible for such a penalty." The regulations do not provide discretion to extend the time within which documentation and evidence in support of a civil money penalty may be submitted. 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) and §278.6(b)(2)(iii), §278.6(i).

Appellant presented a request for consideration of a trafficking civil money penalty (TCMP) in its February 20, 2017 request for review, which was postmarked February 22, 2017, 37 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).
    - 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 with SNAP rules and regulations (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 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 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, the SNAP Office correctly determined that Appellant did not qualify for a civil money penalty in lieu of a permanent disqualification. Appellant's request for consideration of a civil money penalty was beyond the 10-day timeframe and, moreover, does not meet the requirements of 7 C.F.R § 278.6(i).

Regarding the "Cash Drop" reports and cash register reports provided by Appellant, the former reports are merely daily totals of cash, credit, SNAP and coin receipts. The latter pertain primarily to gasoline inventory and sales, which are not relevant to the case. The SNAP daily totals noted on the Cash Drop reports correspond approximately to agency records of SNAP redemption amounts for the few days the reports were dated within the analysis period. Most,

however, were either undated or were outside the analysis period. Those within are merely daily totals and do not reflect what was purchased and provide no evidence, one way or the other, regarding whether the benefits involved trafficking.

With regard to contention 6 above, it is important to clarify for the record that there is no provision in the statute or regulations for waiver or reduction of an administrative penalty on the basis of corrective action implemented subsequent to findings of program violations. The purpose of this review is to determine if the earlier decision of the SNAP Office was proper and in compliance with pertinent laws and regulations. Accordingly, this review is limited to considerations relevant at the time such decision was made. It is beyond the scope of this review to consider what subsequent remedial actions, such as changes in store management, procedures, internal controls, employee discipline/training or facility and/or inventory changes and improvements Appellant may propose to take or may have taken in order to comply with program requirements. Therefore, to the extent Appellant implies that it will, or has, implement(ed) corrective and/or remedial actions, though this would likely have been valuable in preventing program violations at an earlier time, such cannot now apply retroactively and does not provide a valid basis for dismissing the charges or for mitigating the serious impact of the violations upon which they are based. It is further added for the record that, although Appellant claims corrective action has been taken, it offers no documentary evidence of same. As such, the claim carries little weight, and as noted above, corrective action following findings of violations is not relevant in ROD Office sanction decisions.

In regard to contention 7 above, the issue of hardship worked upon retailers or SNAP clients is not a consideration under the statute or regulations in decisions to disqualify firms due to SNAP- benefit trafficking. The only alternative to permanent disqualification, once trafficking is established, is to impose a trafficking civil money penalty in lieu of permanent disqualification. As noted, in order for this alternate penalty to be considered, a retailer must provide sufficient evidence demonstrating that the firm had established and implemented an effective compliance policy and program to prevent violations prior to said violations, as stipulated in § 278.6(i).

Appellant did not timely request consideration for same and did not provide such evidence and, accordingly, this alternate penalty was correctly withheld. Moreover, the information and evidence provided by Appellant, had it been timely received, would not have resulted in the firm qualifying for a civil money penalty in lieu of a permanent disqualification for trafficking.

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 October 7 2017
Administrative Review Officer