

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

**New Image Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0224765**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) finds there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification of New Image Market (“Appellant”) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against New Image Market.

**AUTHORITY**

7 U.S.C. § 2023 and 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**

FNS initially authorized New Image Market to participate in SNAP on July 16, 2003. In a letter dated February 6, 2020, the Retailer Operations Division charged Appellant with trafficking, as defined in Section 271.2 of SNAP regulations, based on an analysis of Electronic Benefit Transfer (EBT) transactions that established clear and repetitive patterns of unusual, irregular, and inexplicable activity for the firm’s type that occurred between the months of July 2019 and December 2019. Attachments enclosed with the charge letter specified the transactions that were the basis of the charges. The charge letter noted that the penalty for trafficking is permanent disqualification, as provided by 7 CFR § 278.6(e)(1). The letter informed Appellant of the right to reply to the charges and that Appellant may request a civil money penalty (CMP) in lieu of

permanent disqualification for trafficking within 10 days of receipt of the charge letter, under the conditions specified in 7 CFR § 278.6(i).

Agency records show that Appellant responded to the charge letter, through counsel, but did not request a CMP timely. Below is a summary of Appellant's responses and submitted documentation:

February 21, 2020: Appellant requested an extension of time to respond to the charge letter, which was granted by letter from the Retailer Operations Division on February 24, 2020. In the letter, the Retailer Operations Division reminded Appellant that the time to request a CMP would not be extended.

March 13, 2020: Appellant submitted a letter denying any illegal act stemming from large transactions and high volume of transactions from the same cardholder within a set period of time. Appellant contended that the business is in a low-income neighborhood in New Orleans, Louisiana flanked by Section 8 housing, and customers purchase all their groceries with SNAP benefits, often for families that consist of a single parent with three to five children. Appellant said households consisting of large families would shop numerous times throughout the day, and many unemployed customers frequented the store. Appellant also noted that the business had been SNAP-authorized since 2003 without any violations or investigations for SNAP trafficking, and that the owner and employees reviewed the SNAP user's manual on a regular basis. Finally, Appellant said the store had a full inventory of SNAP-eligible foods and sold a high volume of meat, which accounts for the excessively large transactions the firm had been charged with. Appellant also submitted five customer affidavits labelled "Exhibit A" which, in summary, described the convenience of the store because of its location, customers' lack of transportation to go to other stores, and the good food selection at the store. Additionally, Appellant returned a questionnaire that contained answers to questions about store operations.

March 16, 2020: Email with 17 additional customer affidavits, which attested to customers' need for the store to be SNAP authorized. In summary, these affidavits described the convenience of the store and customer transportation issues, and said the store had good meat deals, that store staff were nice, and that customers had shopped at the store for years.

April 1, 2020: A typed list of "Specialty Items Sold" was submitted, containing meat, poultry, and seafood items, and labeled "Exhibit B".

April 14, 2020: City of New Orleans Sales Tax Reports for January 2019 through December 2019 were submitted. The transmittal email said the reports show the totality of sales taxes paid that also include EBT amounts charged for each month, and that about 15 percent of hot food items are sold each month at the store, though the report does not categorize those sales.

May 1, 2020: Inventory purchase invoices, labeled "Exhibit C," were submitted. This included 22 invoices from vendor 5 U.S.C. § 552 (b)(6) & (b)(7)(C), for a total 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in purchases of primarily meat products, including chicken, beef, sausage, and cold cuts from January 2019 through February 2020. Also submitted was "Exhibit D," which included nine handwritten pages of inventory items with prices.

*June 19, 2020:* Emails were sent clarifying sales shown on the City of New Orleans Sales Tax Reports and explaining a store visit photo which showed a piece of paper listing food items and prices.

After considering Appellant's replies and further analyzing the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter, dated July 9, 2020. This letter informed Appellant that the firm 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 Appellant was not eligible for a trafficking CMP in accordance with paragraph § 278.6(i) because Appellant failed to submit sufficient evidence to demonstrate the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked July 23, 2020, Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

### **STANDARD OF REVIEW**

In an appeal of an adverse action, the appellant bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. This 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.

### **CONTROLLING LAW & 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 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 [SNAP benefits] or trafficking in [SNAP benefits] 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 § 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....

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 § 278.2(a) states, in part:

[SNAP benefits] may be accepted by an authorized retail food store only from eligible households...only in exchange for eligible food. [SNAP benefits] may not be accepted in exchange for cash...[and] may not be accepted in payment of interest on loans or for any other nonfood use.

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.... Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for [a] period of 12 months to 10 years for a firm's second sanction; and disqualification shall be permanent for a disqualification based on paragraph (e)(1) of this section. [Emphasis added.]

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(e)(1)(i) states, in part:

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

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.

### SUMMARY OF CHARGES

New Image Market was charged with trafficking and subsequently permanently disqualified from participating in SNAP based on an analysis of FNS records, which included observed store characteristics, recorded food stock, and store pricing gathered during a store visit, as well as Electronic Benefit Transfer (EBT) transaction data for July 2019 through December 2019. Government analyses has found that transactions involving trafficking consistently display particular characteristics or patterns. In this case, the attachments enclosed with the charge letter reflected the following transaction patterns, which commonly indicate trafficking:

- **Charge Letter Attachment 1:** Multiple transactions were made from the accounts of individual SNAP households within a set time period; and
- **Charge Letter Attachment 2:** EBT transactions conducted that are large based on observed store characteristics and recorded food stock.

### APPELLANT'S CONTENTIONS

Appellant, through counsel, made the following summarized contentions as part of its request for administrative review, and in supplemental correspondence emailed on August 21, 2020, in relevant part:

- Appellant has had no violations of SNAP and USDA law since going into business and being authorized in SNAP in 2003.
- It is not uncommon for customers to purchase items, and after purchase, go back to collect EBT items they may have forgotten to purchase during the first transaction. There is absolutely no law or rule by the USDA that disallows customers to do this.
- The USDA would need to contemplate using simple common sense in determining a rationale for the set periods of back to back transactions. The shortest (for example) is a timeframe **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** (Attachment 1, item 1 of charge letter). The amounts spent in each transaction are not an astronomical amount
- Appellant owns a grocery store and a very big meat market area and cannot fathom the idea that USDA would actually think that the recorded food stock she maintains would be so little that large transactions should not take place.
- Based on the prices of the meat market items, spending **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in one visit to the store should be a no brainer. These alleged large transactions include grocery store items as well as meat market items, and would be common in a store with this many items to choose from.
- Customers purchasing items typically have families that range from three to six members on average.
- Prices are marked up on average 30 to 40 percent.

- The Retailer Operations Division did an intricate review of Appellant’s Sales Tax Reports that included EBT Transactions and concluded that Appellant did not prove to have implemented an effective compliance policy. Appellant feels that she proved the original allegations were justified by providing documents and giving the Retailer Operations Division ample time (over 3 months) and responding to each request over a long period of time.
- Based on the determination made by the Retailer Operations Division, the charges in Attachments 1 and 2 of the charge letter are moot and have no bearing on the outcome or the basis of the determination made on July 9, 2020, and so the focus of the determination is the compliance program.
- USDA determined the reason the Appellant was to be permanently disqualified from SNAP was due to an ineffective implemented compliance program.
- The firm had a training policy in place for its employees using the SNAP Retailer training guide, including verbal training, in-store training, and providing a copy of the manual to all employees and store operators. Training was conducted annually, when there are updates to the manual, and when there was need for additional training.
- New Image Market and/or its employees have not violated SNAP law under 7 CFR § 278.6(d) as their transactions are based on the sale of qualified merchandise, they were never reprimanded for violations in the past, and there was no intent to violate regulations.
- The firm has implemented an effective compliance policy, as described above and a Training log shows that a compliance policy was in place prior to the alleged violations. The USDA now has the burden of proof to justify that a compliance policy was not in place prior to the alleged trafficking charges.
- The firm has had its written compliance policy in place since 2010, and Appellant will submit this.
- The firm’s training program is a combination of verbal, practical training, and a review of the SNAP manual as a group. Employees have their own manual, which they use to review their store processes annually. Appellant has never been in trouble with the USDA for SNAP trafficking violations and has successfully run the business in accordance with SNAP law from 2003 to present.

To note, in the administrative review request, Appellant, through counsel, refers to the firm as “5 U.S.C. § 552 (b)(6) & (b)(7)(C),” in one instance, and cites SNAP regulations at “278.6 2 (d)” in one instance. Presumably these are typographical errors and intended to refer to New Image Market and 7 CFR § 278.6(d), respectively.

In support of their contentions, Appellant submitted the following documents:

- Eleven customer affidavits that echo the sentiments in the customer affidavits previously submitted to the Retailer Operations Division in response to issuance of the charge letter, indicating that New Image Market is convenient, and often in walking distance for customers who generally do not have transportation to get to other stores, and that this access is particularly important to customers who are elderly, disabled, or who have babies and small children.

- Store owner and employee affidavits attesting to the SNAP training program at the store. The first, dated August 10, 2020, was signed by the store owner, while the remaining three were signed by employees (the first dated August 10, 2020, the second dated August 15, 2020, and the third undated). Each of the affidavits described the training program at the store.
- Employment agreements for five employees.
- A “Convenience Store Training Log,” for each of the five employees that employment agreements were submitted for. These appear to have been signed annually by each employee.

The preceding may represent only a brief summary of the Appellant’s contentions and evidence submitted. 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**

This review examines the relevant information regarding the Retailer Operations Division’s trafficking determination. When applying for SNAP authorization, the firm’s owner signed the SNAP application, acknowledging that the owner was aware of SNAP regulations and understood those regulations. The application included a certification and confirmation that the owner “accept[s] responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm’s employees, paid or unpaid, new, full-time or part-time.” The violations listed on this certification included accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible items.

Once authorized, the Retailer Operations Division classified New Image Market as the store type, “small grocery store” based on estimated sales, inventory, and observed store characteristics. In determining if trafficking was occurring, the Retailer Operations Division reviewed the firm’s EBT transactions for any unusual patterns and compared the store’s transactions with firms of the same store type located nearby, as it would be expected that similar patterns would present themselves at stores that have similar estimated sales, inventory, and characteristics, particularly if they are nearby.

Because New Image Market’s EBT transaction patterns were significantly irregular, the record shows the Retailer Operations Division analyzed the patterns **5 U.S.C. § 552 (b)(7)(E)**. Appellant now bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole, that it is more likely true than not true that it did not engage in trafficking. If Appellant fails to show this, the case will be sustained. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

### **Store Visit Report**

In reaching a disqualification determination, the Retailer Operations Division considered information obtained from a store visit conducted by an FNS contractor on December 3, 2019, 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:

- The firm is a small grocery store, approximately 2,500 square feet in size, with 400 square foot of storage outside of public view and storage coolers or freezers onsite.
- The store visit photographs show one cash register for food purchases and agency records reflect the use of one EBT point-of-sale device.
- The firm does not use optical scanners to process transactions.
- The checkout area consists of a small and cluttered counter space where items can be placed for purchase.
- The store's staple food stock meets SNAP program eligibility requirements; the food selection is typical of a small grocery store. The store does not sell specialty items such as bundles of meat or seafood or large boxes of fruit and vegetables.
- SNAP-eligible, non-staple, accessory food items available at the store include carbonated and uncarbonated drinks, snacks, candy, and condiments. The store also sells ineligible, nonfood items, including tobacco products, alcohol, health and beauty aids, paper goods, cleaning products, and has ATM or money transfer services.
- The store has a kitchen or food preparation area, and sells deli and prepared food items, including burgers, seafood platters, wings, pork chops, prepared salads, and fries.
- There is no indication from the store visit report that the firm has a special pricing structure, except that most prices appear to end in 9, such as \$0.99, \$1.99, etc.
- Store personnel confirmed that the store does not round prices up or down at checkout.
- The store has a small storage area of approximately 400 square feet that stored non-staple foods, and storage coolers or freezers that stored staple foods. Store personnel confirmed that no food was stored offsite.
- The store does not take telephone or online orders, nor does it offer delivery.
- The most expensive food items for sale at the store include a case of Mama brand instant noodles for \$59.99; a 21.1-ounce container of Enfamil baby formula for \$24.99; a 12.5-ounce container of Enfamil baby formula for \$19.99; and a case of soda 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 small grocery store. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns would differ significantly from those of nearby, similarly-sized stores offering similar food items.

### **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 116 sets of transactions (270 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).



In response to the Retailer Operations Division's charge letter, Appellant contended that the business is in a low-income neighborhood, flanked by Section 9 housing, where customers purchase all their groceries with SNAP benefits, often for families that consist of a single parent with three to five children. Appellant said households would shop numerous times throughout the day, and many unemployed customers frequent the store. On administrative review, Appellant further contended that it is not uncommon for customers to purchase items, and after purchase, go back to collect items they may have forgotten to purchase during the first transaction. Appellant noted that there was no rule or law that disallows this and pointed out that the shortest timeframe between transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, referring to the first transaction listed in Attachment 1 of the charge letter.

While SNAP regulations do not limit the number of transactions a SNAP household makes, or how large individual transactions can be, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of Appellant's stock and facilities and are therefore indicative of trafficking. Many SNAP households shopping at authorized stores consist of multiple children and have multiple family members who shop. It is not uncommon for SNAP households to have more than one transaction per day, but it is uncommon that such multiple transactions are for large dollar amounts, as reflected in the transactions listed in Attachment 1. The second and third transactions in each set are too large to consist of a few forgotten items, and most take place hours, not minutes apart. These are unlikely forgotten items that the customers retrieve and pay for within a few minutes of the first transaction. The transactions identified in the charge letter are not marginally abnormal, but decidedly so, given that the extent to which they recur over a six-month review period.

Records show that during the review period, Appellant conducted **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)(7)(E)**. Appellant has provided little evidence to support its contentions as to why so many households conducted multiple transactions at the store within a short time period.

A firm's explanation and evidence for the occurrence of multiple large transactions by households in a short time period should be both rational and compelling. Because Appellant has not provided adequate evidence to support its contentions, this review concludes that trafficking was a likely cause of the transaction patterns listed in charge letter Attachment 1.

**Charge Letter Attachment 2: EBT transactions that are large based on the observed store characteristics and recorded food stock.** This attachment lists 504 large purchase SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. For perspective, the average purchase transaction amount in Orleans County during the review period was \$13.97.

Appellant contends customers have large families of three to six members on average, resulting in large purchase transactions. Appellant submitted over 30 customer affidavits to the Retailer Operations Division and on administrative review, attesting to customer need for the store, and particularly focusing on lack of transportation to get to other stores. Appellant also says these high-dollar transactions occur because the store has a large meat market area and submitted a

nine-page handwritten list of inventory items with prices, including meat products, and 22 inventory purchase invoices showing a total 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in purchases of primarily meat products from January 2019 through January 2020. Appellant said prices were marked up 30 to 40 percent. Appellant also submitted copies of their City of New Orleans Sales Tax Reports for January 2019 through December 2019 to the Retailer Operations Division.

In reviewing the inventory purchase invoices dated within the review period, this review finds the total amounts of the purchases was insufficient to support a high level of SNAP redemptions at the store. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). No other purchase invoices were provided for other staple foods at the store.

Appellant did submit a handwritten list of inventory items, which contained two columns of prices. Appellant did not describe what the two columns of prices represented, though Appellant indicated the list would support that the store sells higher priced specialty items. One column on this list appears to generally show individual pricing, for example per item or per pound, while the other column generally shows higher prices per pound, or box, or pack. Presumably the second column shows pricing for higher quantities of the inventory item, though this is not clear and the amounts in the second column are generally not multiples of the pricing in the first column. For example, a 6 lb. box of pork patties is listed at \$2.90 per pound, or \$23.99 per six-pound box. Typically, bulk pricing is less expensive than per pound or per item pricing, but the Appellant's price list does not show this. Also, the store visit report and photographs do not show bulk pricing for most of the items provided on Appellant's handwritten list and Appellant did not provide inventory purchase receipts for most of the items on the list. For these reasons, the inventory list provides little support for Appellant's contention that there is sufficient store inventory to support large SNAP transactions.

The City of New Orleans Sales Tax Reports submitted by Appellant for the review period show an extremely high amount of SNAP sales in proportion to all grocery food sales. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). With customers that have access to a significant amount of non-SNAP tender to use at the store, it seems highly suspect that Appellant is reporting so little in taxable grocery food sales for non-SNAP tender. Also, while the tax reports may confirm a high level of SNAP redemptions, without additional documentation, such customer receipts to validate those redemptions, they provide little evidence as to the legitimacy of the transactions that underly the sales figures reported.

Although customer affidavits attested to customers enjoying the proximity of Appellant to their homes due to transportation challenges, analyzed shopping patterns show that households shopping at Appellant, in fact, also shopped at larger, better stocked, and more competitively priced grocery stores, often on the same day. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Given that SNAP benefits are intended to supplement the food budget for households whose net income is near or below the Federal Poverty Level, it is unlikely that customers who must rely on SNAP benefits to make ends meet would pay higher prices and spend considerable amounts of their benefits at a small grocery store, when they have access to larger stores carrying a greater variety of foods at a lower cost. In fact, the Retailer Operations Division determined there were 3 medium grocery stores and 2 super stores within one mile of Appellant that would likely also be accessible to its customers.

Finally, a transaction spread analysis conducted by the Retailer Operations Division shows that New Image Market had many more transactions **5 U.S.C. § 552 (b)(7)(E)**. Given the store's food inventory, there is no legitimate reason why the store would have such abnormal spikes in SNAP transactions at those high dollar levels.

Based on the store layout, infrastructure, and available inventory, it is not credible that the Appellant would so frequently conduct large transactions closely resembling those typically found at much larger stores. Further, it is not plausible that the firm's customers would regularly carry very large amounts of merchandise around the store without the benefit of shopping carts or that they would choose to purchase a large number of items frequently, especially since larger, better stocked stores are readily accessible and in the vicinity of the Appellant firm. Appellant has failed to provide convincing evidence to establish the legitimacy of these excessively large transactions.

### **No Prior Violations**

The Appellant contends that New Image Market has been in business for almost 17 years, has accepted EBT and complied with regulations during that time, and has never been accused of any of the allegations set forth in the charge letter. Unfortunately, this contention has no relevance in this matter. SNAP regulations at 7 CFR § 278.6(e) require that when serious violations, such as trafficking, occur, permanent disqualification is the necessary penalty, even on the first occasion, regardless of a firm's prior compliance with program rules. In this case, the sanction imposed by the Retailer Operations Division is wholly in line with SNAP regulations and is consistent with sanctions imposed upon other retailers that have committed similar violations.

### **Summary**

It is the finding of this review that the attachments furnished with the charge letter adequately identify irregular patterns of SNAP transactions, thereby indicating that trafficking was likely taking place. 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 for trafficking is convincing.

Upon review, the Appellant failed to prove, by a preponderance of the evidence, that the administrative action should be reversed. The Appellant has not offered sufficient and compelling evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter were not caused by trafficking. In fact, the Appellant offered little reliable evidence to support its contentions regarding specific transactions listed in the charge letter. This is wholly insufficient to warrant reversal of the agency's permanent disqualification determination. In the absence of reasonable evidence from the Appellant, it is the conclusion of this review that the transactions listed in the charge letter attachments were, more likely than not, the result of trafficking violations committed by the Appellant.

## **CIVIL MONEY PENALTY**

In the charge letter, the Retailer Operations informed Appellant of its right to request a trafficking CMP under 7 CFR §278.6(i). Appellant was informed that it would need to provide both the request and supporting evidence within 10 calendar days of receiving the charge letter and that no extension of time could be granted for making the request or for providing the required evidence. Appellant was reminded that that this deadline for the CMP would not be extended in the Retailer Operation Division's February 24, 2020, letter.

Regardless, Appellant failed to request a trafficking CMP timely, within 10 calendar days of receiving the charge letter. At the same time, Appellant's counsel, on administrative review, appears to misunderstand the determination letter sent by the Retailer Operations Division, the fact that Appellant has been permanently disqualified based on the charges in the charge letter, and SNAP law regarding trafficking and CMPs. Appellant claims that the charges in the charge letter are moot and have no bearing on the outcome of the July 9, 2020, determination and submitted evidence of its compliance program, saying "USDA determined that the reason Petitioner was to be permanently disqualified from EBT SNAP program was due to an ineffective implemented compliance program." Appellant submitted a number of contentions this effect, as well as owner and employee affidavits describing training at the store, and a "Convenience Store Training Log," signed annually by each store employee. As provided above, Appellant did not request a CMP timely. Accordingly, the information submitted by Appellant regarding its compliance program has been submitted too late for consideration.

To be clear, the basis of the Appellant's disqualification are the trafficking charges outlined in the charge letter, and its attachments, not due to failed implementation of a compliance program. To quote from the July 9, 2020, determination letter, it specifically says, "We find the violations cited in our charge letter occurred at your firm . . . Therefore, your firm will be permanently disqualified from the Supplemental Nutrition Program, effective upon receipt of this letter."

Given that Appellant failed to timely request a CMP or submit documentation of an effective compliance program and policy, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate under 7 CFR § 278.6(i).

## **CONCLUSION**

The Retailer Operations Division's analysis of the EBT transaction record for New Image Market was the primary basis for its determination to permanently disqualify the retailer. This review finds this data provides substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Store visit photographs and documentation further supported the trafficking determination. Appellant has not proven, by a preponderance of evidence, that the administrative action should be modified or reversed.

Based on a review of all the information available in this case, the determination by the Retailer Operations Division to impose a permanent disqualification against New Image Market is sustained.

## **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this determination are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in SNAP regulations, at 7 CFR § 279.7. 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 Appellant owners reside or are 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.

MICHELLE WATERS  
ADMINISTRATIVE REVIEW OFFICER

October 22, 2020