

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

**Ninth Avenue Grocery Inc,**

**Appellant,**

**v.**

**Case Number: C0201225**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the USDA that there is sufficient evidence to support that the Retailer Operations Division properly imposed a permanent disqualification of Ninth Avenue Grocery Inc. 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 in its administration of the SNAP, when it imposed a permanent disqualification against Ninth Avenue Grocery Inc.

**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.”

**CASE CHRONOLOGY**

In a letter dated August 30, 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 February 2017 through July 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated the Appellant had the right to respond to the charges within 10 days of receipt to provide explanations for the

irregular SNAP transaction patterns. The letter also stated that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i). The Appellant received the charge letter on August 31, 2017 as documented by a UPS delivery notice in the casefile.

The Appellant, through counsel, responded to the charges in an undated letter received on September 13, 2017. In general, the Appellant denied trafficking in SNAP benefits and stated that the store was a medium sized grocery selling staple food and catering to Dominican, Ecuadorean, and Central American expatriates. The Appellant stated that the transaction patterns were legitimate and could be explained by the shopping characteristics of the store's SNAP clientele. Although, the Appellant requested a trafficking CMP in lieu of permanent disqualification, it did not provide the required supporting documentation within 10 days of receiving the charge letter.

After considering the evidence in the case, the Retailer Operations Division issued a determination letter dated October 4, 2017. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination 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. The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP 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 violations of the SNAP.

In a letter postmarked October 16, 2017, the Appellant requested an administrative review of the Retailer Operation Division's determination. The request for administrative review was granted.

## **STANDARD OF REVIEW**

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, might 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 covered in the Food & 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(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 ...

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(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, **evidence obtained through a transaction report under an electronic benefit transfer system....***  
[Emphasis added.]

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.*

7 CFR § 278.6(b)(2) states, in part:

*(ii) 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 as specified in § 278.6(i), 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).* [Emphasis added.]

*(iii) 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.* [Emphasis added.]

## SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from February 2017 through July 2017. This involved the following transaction patterns which are trafficking indicators:

- **Charge Letter Attachment 1: Multiple transactions were made from individual benefit accounts in unusually short time frames.** This attachment lists 35 sets of 88 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- **Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 195 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). T5 U.S.C. § 552 (b)(6) & (b)(7)(C).

## APPELLANT'S CONTENTIONS

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

- The Appellant denies trafficking in SNAP benefits and contends that the use of computer patterns is “shaky and circumstantial.”
- Ninth Avenue Grocery Inc. is a medium sized grocery store that sells frozen fish, deli meats, canned goods, fruit, vegetables, rice, bread, cooking oils, frozen precooked foods, ice cream, milk, eggs, cheese, dairy products, flour, rice, beans, chick peas, pasta, pasta sauce, and many more food stuffs and eligible items. The store also caters to a customer base that includes Dominican, Ecuadorean, and Central American expatriates.
- Customers almost always arrive at the store by foot with other family members and carry their groceries home. A significant number of customers have large families and reside in apartments they share with other extended family members. Customers will first buy groceries for themselves and then buy the groceries the extended family picked out. The customers will also break up their purchases so they can more easily take their groceries back to their apartment. They will make a purchase and take it home then when they are available again come back and finish their purchase.
- The “excessively large purchases” consist of 195 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The definition of a large purchase is arbitrary and unreasonable especially as this is a New York

store, the most expensive locale in the United States.

- Most of the store's customers shop there because it is the closest available and they do not have transportation to go to big stores.
- The store has implemented a policy that all transactions must be barcoded transactions and kept as a business record. The store has also instituted a policy of fully recording invoices and products purchased as business records.
- The Appellant should qualify for a hardship CMP because it is selling a substantial variety of staple food items and the firm's disqualification would cause a hardship as there are no other authorized retailers in the area selling as large a variety of staple food items at comparable prices.
- The Appellant should qualify for a trafficking CMP as it has implemented an effective compliance policy to insure compliance with SNAP rules and regulations.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

## **ANALYSIS AND FINDINGS**

### **Authorization History**

The Food & Nutrition Service (FNS) authorized Ninth Avenue Grocery Inc. for the SNAP on November 1, 2016. The owner signed the SNAP application for the store on September 13, 2016 and acknowledged that the owner was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would "accept 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 include accepting SNAP benefits in exchange for cash, otherwise known as trafficking.

During the review period of February 2017 through July 2017, the Retailer Operations Division classified Ninth Avenue Grocery Inc. as a convenience store. The Appellant states that Ninth Avenue Grocery Inc. is a medium sized grocery store. However, a review of the store visit report indicates that FNS properly classified Ninth Avenue Grocery Inc. as a convenience store during the review period.

### **Store Visit Report**

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during store visits conducted by an FNS contractor on July 3 and July 5, 2017 to observe the nature and scope of the firm's operation, stock and facilities. This information was then used to ascertain if there were justifiable

explanations for the store's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Ninth Avenue Grocery Inc. is approximately 900 square feet in size.
- The store had one (1) cash register and one (1) point-of-sale device.
- The store had no optical scanners or conveyor belts at the checkout.
- The store had no shopping carts and no shopping baskets for customer use.
- Store personnel confirmed that there was no food stored outside of public view in a storage area and that no food was stored offsite.
- There were no large bulk foods, international or specialty foods that might sell for a high price. There were no fresh meat/seafood bundles or boxes of fresh fruit and vegetables for sale. There were only four (4) food items that were priced 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- The store visit documented that the store had dusty food packages/cans indicating that stock turnover was not frequent.
- The checkout area consisted of a small countertop no more than two (2) feet by three (3) feet in size. There was plastic shelving with products surrounding the counter. The limited space at the checkout area and the narrow aisle made it not conducive to conducting large transactions.

The inventory of food items at the time of the store visit was typical of a convenience store with limited staple food stock. At the time of the store visit, Ninth Avenue Grocery Inc. was only marginally eligible in the dairy products staple food category. The SNAP eligible food stocked by the store was generally of a low dollar value consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. Accessory food items included, but were not limited to: coffee, tea, carbonated and non-carbonated drinks, condiments, and spices. The stocked ineligible items included tobacco products, alcohol, lottery tickets, health and beauty products, paper goods, cleaning products and general houseware.

Given the available inventory as noted above, there is no indication from the store visit report that the store would be likely to have SNAP transaction patterns significantly different from similar-sized competitors.

### **Trafficking Case Based on Irregular Transaction Patterns**

The Appellant denies trafficking in SNAP benefits and contends that the use of computer patterns of purchases is “shaky and circumstantial.” With regard to this contention, FNS employs a computerized fraud detection tool to identify SNAP transactions that form patterns having characteristics indicative of trafficking. However, this tool does not by itself determine or conclude that trafficking has occurred. The Retailer Operations Division must still analyze the transaction data and patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior and a comparison of stores in the area, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking.

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

### **Multiple Transactions within a Short Time Period**

SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. However, 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 a convenience store’s stock and facilities and are thus indicative of trafficking.

Violating stores often conduct multiple split transactions from the same household account as a method to avoid the detection of single high dollar transactions that cannot be supported by the retailer’s food inventory and infrastructure. Charge Letter Attachment 1 lists 35 sets of 88 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).**

The Appellant states that SNAP benefits are not enough to feed an entire family. However, it should be noted that this is true of any SNAP household as SNAP benefits are intended to supplement only a part of a household’s entire food needs. The Appellant contends that a substantial number of its customers come from immigrant communities and consist of households that contain both SNAP eligible and SNAP ineligible members. Allegedly, a SNAP recipient will come with these other family members and split their purchases in order to carry them back home. They will also come back later to finish their purchases. Regarding these contentions, while it is possible that a family containing both SNAP eligible and ineligible members might shop in this fashion, this does not adequately explain the transactions cited in the charge letter. **5 U.S.C. § 552 (b)(6) & (b)(7)(C).** It is not credible that a convenience store with limited staple foods would have suspicious SNAP transactions greatly exceeding the average SNAP transaction of a supermarket or superstore in New York County. It is even less likely that these excessively large transactions would be conducted multiple times by the same household during a short time period.

The store visit pictures show that is unlikely that SNAP customers would want to shop at this store multiple times during a short time frame, or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale. In addition, the store’s small checkout area and limited counter space makes it unsuitable for conducting large transactions. The store also had no shopping carts or shopping baskets for transporting food within the store. Based on the analysis above, and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

## Excessively Large Transactions

SNAP households have no limit on the amount of eligible food they may purchase (subject to the remaining balance on the card). However, 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 a convenience store's stock and facilities and are thus indicative of trafficking.

The Appellant states that the Retailer Operation Division's determination of an excessively large purchase is arbitrary and unreasonable especially as this is a New York store, the most expensive locale in the United States. However, the case record documents that the Retailer Operations Division did appropriately consider the area in which the Appellant store is located. Charge Letter Attachment 2 cites 195 SNAP transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

The Appellant states that most of the store's customers shop there because it is the closest available and they do not have transportation to go to big stores. It is true that sometimes a store may have higher than normal SNAP transactions due to the lack of other SNAP authorized stores in the area. However, the Retailer Operations Division determined that within a one-mile radius of Ninth Avenue Grocery Inc. there are 73 SNAP authorized stores including nine (9) superstores, ten (10) supermarkets, three (3) medium grocery stores, 16 small grocery stores and 36 convenience stores. A government report on SNAP benefit redemption patterns<sup>1</sup> revealed that households most often redeemed their benefits at supermarkets and superstores with only four (4) percent of all households never shopping in a supermarket or superstore. Thus, when a supermarket or superstore is available, it is highly unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a convenience store with very limited staple foods like Ninth Avenue Grocery Inc.

The Appellant speculates that the transaction patterns described in the charge letter are due to the unique circumstances of a neighborhood with many immigrant families that include members not eligible for the SNAP. If this contention is true, one would expect that the same transactions patterns would be present at other SNAP authorized convenience stores in the neighborhood. The Retailer Operations Division compared the Appellant's stores transactions with those at six (6) SNAP authorized convenience stores located less than 0.42 miles from Ninth Avenue Grocery Inc. and determined that none of these stores exhibited these irregular SNAP transaction patterns. This further indicates that the explanations offered by the Appellant are not sufficient to explain its irregular transaction patterns.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of four (4) households identified in the charge letter to analyze their shopping patterns at Ninth Avenue Grocery Inc. compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at supermarkets and/or

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<sup>1</sup> "Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program," report prepared by Mathematica Policy Research for the Food and Nutrition Service, February 2011.



superstores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Ninth Avenue Grocery Inc. often on the same day or within a day or two of shopping at these supermarkets and superstores. It is highly unlikely that a convenience store with limited staple foods would have legitimate SNAP transactions comparable or larger than better stocked supermarkets and superstores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and baskets support the Retailer Operations Division determination. It is not plausible that the store's customers are carrying large amounts of food around the store with no shopping carts. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

### **Frequency of Irregular Transactions**

The Appellant states that the irregular transactions cited in the charge letter occurred over a period of 180 days and are only a subset of all the SNAP transactions conducted at the store. Regarding this contention, violating firms often conduct largely legitimate transactions while also conducting trafficking transactions with a smaller number of trusted households. To state that only a limited number of households may have conducted irregular and abnormal SNAP transactions does not offer an explanation for the transactions cited in the charge letter. In the absence of a credible explanation for the irregular transaction patterns, the most likely explanation is that they are a result of the Appellant firm trafficking in SNAP benefits.

### **Invoices and Receipts**

The Appellant provided receipts and invoices as evidence that Ninth Avenue Grocery Inc. had purchased sufficient food inventory to support its SNAP redemptions during the review period. Although the Appellant indicated it could not locate all of its invoices, it estimated that the available invoices documented the purchase of approximately 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP eligible food over a six-month period. The case record shows that the Retailer Operations Division thoroughly examined these invoices and determined that SNAP eligible food purchases for the store could be verified to the amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C) during the review period. Not all of the purchase invoices could be accepted as they contained insufficient information, were duplicates, or had anomalies that made them questionable. Nevertheless, the Retailer Operations Division determined that the store likely had sufficient food purchases to support its SNAP redemptions during the review period. However, the Retailer Operations Division also noted that the large majority of purchases were for sodas and snacks which would not explain the excessively large transactions cited in the charge letter.

Violating firms often conduct largely legitimate transactions while also conducting trafficking transactions with a smaller number of trusted households. In such cases, a store would normally have a sufficient amount of food inventory to support its SNAP redemptions, but would still be in violation of SNAP rules against trafficking. In the absence of a credible explanation for the irregular transaction patterns, the most likely explanation is that they are a result of the store trafficking in SNAP benefits.

The Appellant also provided 45 pages of photocopied sales cash register receipts and matching EBT receipts. However, as the cash register receipts were not itemized it could not be determined whether these purchases were for eligible food items. Therefore, these documents were of no probative value.

### **Corrective Action**

The Appellant states that the store has implemented a policy that all transactions must be barcoded transactions and kept as a business record. The store has also instituted a policy of fully recording invoices and products purchased as business records to identify trafficking and take immediate action if it is confirmed.

With regard to this contention, it is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier determination of the Retailer Operations Division. This review is limited to what circumstances existed at the time that was the basis of the Retailer Operations Division's action. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that a store may begin to comply with program requirements.

In addition, there are no provisions in the SNAP regulations for a waiver or reduction of an administrative penalty assessment on the basis of alleged or planned after-the-fact corrective actions implemented subsequent to program violations. Therefore, Appellant's contention that corrective action has taken place or that further remedial actions are planned does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Hardship to SNAP Community**

The Appellant states that a permanent disqualification will cause a hardship to SNAP customers as Ninth Avenue Grocery Inc. is the only store selling a substantial variety of staple food items and the firm's disqualification would cause a hardship as there are no other authorized retailers in the area selling as large a variety of staple food items at comparable prices.

Where there is a hardship to SNAP households due to a lack of authorized stores in the area, FNS may impose a hardship CMP on a firm in lieu of a less than permanent disqualification. However, the regulations at 7 CFR § 278.6(f)(1) clearly state that "a civil money penalty for

hardship to [SNAP] households may not be imposed in lieu of a **permanent** disqualification.” [Emphasis added.] Because the Retailer Operations Division has taken action to permanently disqualify the Appellant firm, a hardship CMP in lieu of disqualification cannot be granted.

It should also be noted again that the Retailer Operations Division determined that there are 73 SNAP authorized stores, including nine (9) superstores and ten (10) supermarkets located within a one-mile radius of the Appellant store. Therefore, it is unlikely that the local SNAP community will suffer a hardship as opposed to a mere inconvenience due to the permanent disqualification of Ninth Avenue Grocery Inc.

### CIVIL MONEY PENALTY

The Appellant did not timely provide supporting documentation to establish its eligibility for a trafficking CMP in lieu of a permanent disqualification under 7 CFR 278.6(i) even though it was informed of the right to do so in the charge letter. SNAP regulations at 7 CFR § 278.6(b)(2)(ii) and (iii) mandate that both the trafficking CMP request and supporting documentation and evidence must be submitted within ten (10) days of the receipt of the charge letter. Therefore, the Appellant is not eligible for a trafficking CMP.

The criteria for a trafficking CMP in lieu of disqualification is defined under 7 CFR § 278.6(i) which reads, in part:

*In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of a permanent disqualification for trafficking, the firm shall, at a minimum, establish by **substantial** evidence its fulfillment of each of the following criteria:*

*Criterion 1. The firm shall have developed an **effective** compliance policy as specified in §278.6(i)(1); and*

*Criterion 2. The firm **shall establish** that both its **compliance policy and program were in operation** at the location where the violation(s) occurred **prior to the occurrence of violations** cited in the charge letter sent to the firm; and*

*Criterion 3. The firm had developed and instituted an **effective** personnel training program as specified in §278.6(i)(2); and*

*Criterion 4. **Firm ownership** was not aware of, did not approve, **did not benefit from**, or was not in any way involved in the conduct or approval of trafficking violations; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm .... [Emphasis added.]*

Even at the date of this decision, there are no compliance policy documents or training documents dated prior to the review period which establish that the Appellant store had established and implemented an effective SNAP compliance policy and program. Regarding Criterion 4, in an EBT system, settlements are made directly to the owners’ bank

account, and therefore, the owners have benefited from the violations even if they did not have knowledge or approve of the violations. The Appellant has provided no evidence that this fund settlement did not go to the owners' bank account or that the owners did not benefit from the violative transactions. In conclusion, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

## **CONCLUSION**

The Retailer Operations Division's analysis of the Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify the retailer. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges.

In the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did in fact occur as determined by the Retailer Operations Division. Based on the discussion above, the decision to impose a permanent disqualification against Ninth Avenue Grocery Inc., Appellant, is sustained.

## **RIGHTS AND REMEDIES**

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, 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.

RONALD C. GWINN  
Administrative Review Officer

January 8, 2018