

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

North Shore Mini Mart LLC,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0220375

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 North Shore Mini Mart LLC 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 North Shore Mini Mart LLC (hereinafter referred to as “North Shore” or “Appellant”).

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 October 8, 2019, 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 March 2019 through August 2019. 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 charge letter was delivered to the Appellant by UPS on October 9, 2019.

The Appellant, through counsel, responded to the charges in a letter dated October 17, 2019. The Appellant denied that the store had committed any violations and stated that the transaction patterns were due to normal shopping habits of the store's customers and local conditions including but not limited to a nearby Section 8 housing unit. The Appellant also provided a series of Exhibits labeled A through F. The Appellant timely requested a trafficking CMP in lieu of a permanent disqualification.

After considering the evidence and the Appellant's response, the Retailer Operations Division issued a determination letter dated November 20, 2019. The letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and 7 CFR § 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 7 CFR § 278.6(i). 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. The determination letter was delivered to the Appellant's counsel on November 21, 2019.

In a letter postmarked November 27, 2019, the Appellant, through counsel, 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, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

The controlling law in this matter is 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 § 271.2 states that the definition of “coupon” includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

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 defines trafficking, in part, as:

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

7 CFR § 271.2 defines eligible food, in part, as:

Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods 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....

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).

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from March 2019 through August 2019. This involved the following transaction patterns which are trafficking indicators:

- **Charge Letter Attachment 1:** Multiple transactions were made from individual benefit accounts within a set time period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C)
- **Charge Letter Attachment 2:** The store conducted SNAP transactions that were large based on the observed store characteristics and recorded food stock. 5 U.S.C. § 552 (b)(6) & (b)(7)(C)

APPELLANT'S CONTENTIONS

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

- The Appellant has never been under investigation by the USDA for SNAP trafficking. Since the onset of opening this business, there were never any violations of USDA and SNAP law. The Appellant has never violated any laws related to Section 278.6 (e)(1) and 272.2.
- The owner and his employee were the only ones at the store during the review period.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) [sic] had a training policy in place for its employees. Using the SNAP Retailer Training Guide on the USDA website, the owner provided verbal training, in-store training, and a copy of the manual to all of the employees and store operators. The contents of the manual are discussed and reviewed with employees upon their hire date as well as the partners of the business on a semi-annual basis, when there are updates to the manual and when the need for additional training is required.
- The Appellant provided evidence showing that the original allegations did not warrant a permanent disqualification. The determination made by the USDA was only based on the Appellant's CMP request as evidence that the store's compliance was not considered.
- Therefore, this administrative review should focus solely on the compliance policy as the determining factor of whether the USDA should impose any other alternative rather than a permanent disqualification. In this particular case, the USDA stated that if the Appellant qualified for the CMP, the amount would be \$19,560.00. Because the USDA did not cite the original allegations as a reason for a permanent disqualification, the monetary amount of the CMP, if qualified, would be a moot point (because there was no monetary loss to the government).
- Unless the USDA can specifically cite a rule that governs a CMP being issued as a result of an alleged ineffective compliance policy being in place, the USDA should give serious thought as to giving the Appellant a warning letter (as the violation is too limited to

warrant a disqualification), impose merely a 6-month disqualification in lieu of a permanent disqualification or in the alternative, allow the Appellant to simply continue as SNAP authorized store.

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

FNS authorized North Shore for the SNAP on February 26, 2019. At authorization, the Retailer Operations Division classified North Shore as a convenience store based on estimated sales, inventory and observed store characteristics. The owner signed the SNAP application for the store on December 21, 2018 and acknowledged he 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, and other violations such as accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible items.

Trafficking Case Based on Irregular Transaction Patterns

The Appellant states that the store and its owner have never been investigated before. This contention is not relevant and has no probative value. The charge letter in this case was based on an investigation of the store's irregular transaction patterns which appeared shortly after the store was authorized for the SNAP. 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 Appellant is also given the opportunity to explain these transaction patterns and provide evidence regarding the underlying transactions.

The legality of this method is supported by 7 CFR §278.6(a) which 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.]

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an August 22, 2019 store visit conducted by an FNS contractor to observe the nature and scope of the store's operation, stock and facilities. This report 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:

- North Shore is approximately 1,504 square feet in size. A large sign outside the store identified the business as 5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, store personnel identified the store name as North Shore Mini Mart LLC
- The store had no shopping carts and no handheld shopping baskets for customer use.
- The store had one (1) cash register and one (1) point-of-sale device for food purchases.
- There were no large bulk foods, expensive international or specialty foods that might sell for a high price. There were no fresh meat/poultry/seafood bundles or large boxes of fresh fruit and vegetables for sale.
- The store did not have a special pricing policy such as most items ending in an even dollar amount. Prices generally ended in nine (9) cent amounts typical of a retail store.
- The store did not keep any food stored offsite and there was only a small storage area of 100 square feet but it appeared to not have any food items.
- The checkout area consisted of a small clear space on a glass display counter which largely contained jewelry and beauty and hair products. The small clear space for stacking purchases was approximately two (2) feet by two (2) feet. The very limited space for stacking food at the checkout area made it not conducive to conducting large transactions.

The SNAP eligible staple food stocked by the store consisted mainly of inexpensive canned and packaged goods. There was no fresh meat, fish, poultry or produce. The store also sold a large amount of inexpensive accessory food items such as snack foods, ice cream, candy, potato chips, coffee, tea, carbonated and non-carbonated drinks, condiments, and spices. The stocked ineligible items included tobacco products, health and beauty aids and paper goods. The store had a large stock of wigs, clothing, hair accessories, makeup and jewelry that took up approximately 40 percent of store's footprint.

At the time of the store visit, the most expensive food item sold by the store as identified by store personnel was 12 or 12.4 ounce cans of Similac at \$14.99. The store had approximately six (6) stocking units of this product. The store also had two (2) stocking units of milk at \$5.00 per gallon. There were no other food items more expensive than \$5.00.

Given the available inventory and store layout 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 offering similar food items.

Multiple Transactions by the Same Household within a Set Time Period

In its original response to the charge letter, the Appellant stated that it cannot control how SNAP households choose to use their benefits and that there is no regulation to limit SNAP purchases. It is true that 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 this 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. This is sometimes accomplished by a retailer purchasing a card and PIN from a household and then running transactions spread out over time.

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

As noted in the store visit report photographs, the store checkout area was limited and there were few, if any, shopping carts or baskets for transporting such a large amount of food within the store within such a short time.

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

The Appellant's initial response to the charge letter stated that when a SNAP recipient visits the store, they will often make a second purchase after their first purchase when they see the amount of benefits left on their EBT card. Additionally, customers may forget items and come back shortly thereafter or send a family member back to the store to make additional purchases as needed. Regarding these contentions, it is true that sometimes a customer will make a second small impulse purchase or forget an item or two and come back later to make an additional small dollar purchase. However, the transactions cited in the charge largely consisted of second or subsequent transactions which greatly exceeded the average SNAP transaction of an Allegheny County convenience store during the review period.

The Appellant also stated that if four household members are shopping during one visit, they often make four separate purchases. SNAP households are defined as persons who purchase and prepare meals together and it is unlikely that such a household would split up its purchases in such a manner. Even if repeated "co-shopping" trips were made by different household members this does not explain the multiple high dollar transactions conducted in a short period of time as cited in Charge Letter Attachment 2. Even the smallest transactions in each set had an amount which were generally two (2) to three (3) times higher than the average purchase amount for a SNAP convenience store in Allegheny County. Also, if co-shopping is causing these type of patterns one would expect those patterns to be repeated at nearby competitor stores that offer a similar amount and quantity of staple and accessory food. However, none of these stores exhibited the same irregular transaction patterns that occurred at North Shore.

Contrary to the claim of Appellant’s counsel, the case record documents that the Retailer Operations Division fully considered the Appellant’s responses to Charge Letter Attachment 1 and determined that the store did not successfully rebut the charge of trafficking. The evidence in the case file documents that it is unlikely that SNAP customers would shop at the store and purchase such a large volume of items multiple times during a set time frame. In addition, the store’s small checkout area and limited counter space makes it unsuitable for conducting large transactions. The store 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

As noted above, 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 regulatory limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of this convenience store’s stock and facilities and are thus indicative of trafficking.

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

The store’s food stock is mainly inexpensive canned and packaged goods, snack foods, single serving food items and accessory food items. The store visit report and pictures do not show that the firm offered any items in bulk, specialty or international items, fresh meat/seafood bundles, or large boxes of fresh produce that would justify high dollar transactions atypical of a convenience store. In addition, the store visit pictures show that the store layout is not conducive to these excessively large transactions. There were no shopping carts or baskets for transporting food around the store which would have been required especially for the larger dollar transactions. The checkout counter space is very limited and not conducive to stacking multiple items for purchase. The Retailer Operations Division properly considered these factors in making its determination that the transaction patterns cited in the charge letter are, more likely than not, due to trafficking.

Sometimes a store may have higher transactions than normal due to the lack of other authorized stores in the area. However, the Retailer Operations Division determined through agency mapping systems that there are 134 SNAP authorized within a three-mile radius of North Shore. These authorized stores included a supermarket within 0.75 miles and a superstore within 0.17 miles from North Shore. A government report¹ on SNAP benefit redemption patterns 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 like North Shore with a limited selection of staple foods.

¹ “Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program,” report prepared by Mathematica Policy Research for the Food and Nutrition Service, February 2011.

The case record also documents that the Retailer Operations Division conducted a detailed analysis of four (4) households with irregular transactions identified in the charge letter to analyze their shopping patterns at North Shore compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at supermarkets and/or superstores. However, despite this access to larger and better stocked stores, these sampled households conducted excessively large transactions at North Shore on the same day or within a few days of shopping at these larger stores. It is highly unlikely that a convenience store with more limited staple foods would have legitimate SNAP transactions comparable or larger than these SNAP authorized supermarkets and superstores.

Contrary to the claim of Appellant's counsel, the case record documents that the Retailer Operations Division fully considered the Appellant's responses to Charge Letter Attachment 2 and determined that the store did not successfully rebut the charge of trafficking. 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. 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.

Customer Statements

Appellant's Exhibit A provided statements from eight (8) households who alleged they were regular customers of North Shore with most saying they made frequent or high dollar transactions at the store. All of the statements provided the customer name and card number; however, the Retailer Operations Division determined that only four (4) of the eight (8) households had transactions at the store during the review period. One (1) household conducted transactions at the store, but did not have any transactions over **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Therefore only three (3) households actually had frequent or high dollar transactions at the store. In any case, the signed statements are of limited probative value as recipients engaged in trafficking are unlikely to admit that any violations occurred.

Invoices

The Appellant submitted its purchase invoices from the review period in an attempt to show it had sufficient food inventory to support its SNAP redemptions. The owner provided a total of 29 pages of invoices and receipts. The case record documents that the Retailer Operations Division thoroughly reviewed and analyzed these documents and determined that 18 receipts/invoices contained no date or name of the business. A total of three (3) were outside of the review period and were not counted. Two (2) invoices contained a different address than that of the subject store. The remaining four (4) invoices were used for invoice analysis. The food items in these invoices were totaled by the Retailer Operations Division and a 40 percent markup was applied to arrive at an estimated retail food sales figure for the review period. **5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(7)(E)**

Assuming that the store also had cash, debit and credit card sales of food, the actual shortfall of food inventory to SNAP redemptions should be even greater. However, it should be noted that even if the store had sufficient inventory to support its SNAP redemptions, this would still not explain the irregular transaction patterns cited in the charge letter. It is not unusual for violating stores to conduct largely legitimate SNAP transactions while conducting a smaller number of trafficking transactions with a few trusted households.

Lack of Prior Violations/Violations are Limited

The Appellant states that the Appellant store owner has not had any prior violations and that any violations that did occur were too limited to warrant a disqualification. Therefore, the Appellant argues that a lesser disqualification, a warning letter or reinstatement as a SNAP authorized store is the proper decision in this case. Regarding this contention, SNAP regulations at 7 CFR §278.6(e)(7) states that FNS will “send the firm a warning letter if violations are too limited to warrant a disqualification.” However, trafficking transactions are not considered to be “violations that are too limited to warrant a disqualification.” Trafficking in SNAP benefits is an extremely serious violation and both 7 U.S.C. § 2021(b)(3)(B) and 7 CFR § 278.6(e)(1)(i) state that a first time violation warrants a permanent disqualification. Therefore, the Appellant’s contention does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

TRAFFICKING CIVIL MONEY PENALTY

The Appellant timely requested consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR § 278.6(i). The SNAP regulation at 7 CFR § 278.6(b)(2)(ii) mandates that a request for a trafficking CMP along with supporting documentation shall be submitted within ten (10) days of receipt of the charge letter.

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

Regarding compliance policy standards, 7 CFR 278.6(i)(1) further states, with emphasis added, in part:

As specified in Criterion 1 above, in determining whether a firm has established an effective policy to prevent violations, **FNS shall consider written and dated statements** of firm policy which reflect a commitment to ensure that the firm is operated in a manner consistent with this part 278 of current [SNAP] regulations As required by Criterion 2, **such policy statements shall be considered only if documentation is supplied** which establishes that the policy statements were **provided to the violating employee(s) prior to the commission of the violation**. In addition, in evaluating the effectiveness of the firm's policy and program to ensure FSP compliance and to prevent FSP violations, FNS may consider the following:

- (i) Documentation reflecting the development and/or operation of **a policy to terminate** the employment of any firm employee found violating FSP regulations;
- (ii) Documentation of the development and/or continued operation of firm policy and procedures resulting in appropriate **corrective action** following complaints of FSP violations or irregularities committed by firm personnel;
- (iii) Documentation of the development and/or continued operation of procedures for **internal review of firm employees' compliance** with FSP regulations

Regarding training program standards, 7 CFR 278.6(i)(2) further states, with emphasis in part:

A firm which seeks a civil money penalty in lieu of a permanent disqualification **shall document its training activity** by submitting to FNS its **dated training curricula** and **records of dates** training sessions were conducted; a **record of dates** of employment of firm personnel; and **contemporaneous documentation** of the participation of the violating employee(s) in initial and any follow-up training held prior to the violation(s).

In its response to the charge letter, the Appellant provided Exhibit B (Affidavits from owner and employees regarding EBT card compliance and training; and a signed Employee Agreement) and Exhibit C (Training log for the store). The single Employee Agreement was signed and dated prior to the violations. The training log covered dates when the violations were occurring. The case record documents that the Retailer Operations Division analyzed and reviewed these documents and determined that they did not establish by **substantial** evidence that the firm had an **effective** compliance policy and training program.

Although the Appellant provided a training log dated and initialed by the owner and/or employee, the training log does not provide any evidence of the **curricula** that was covered during these alleged training sessions under 7 CFR 278.6(i)(2). The materials supplied by the Appellant also do not document that the firm had an **internal review process** to ensure employee compliance under 7 CFR 278.6(i)(1)(iii). If the store had such an internal review process, it is difficult to see how the store owner could not have noticed and questioned the irregular transactions in this case as they make up approximately **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of the store's total redemptions during the review period.

In summary, this review agrees that the Appellant has not documented by **substantial** evidence that it has an **effective** compliancy policy and training program. Therefore, 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. Stores caught in trafficking violations consistently display particular, characteristic patterns of transactions, including 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 support that trafficking in SNAP benefits is 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 North Shore Mini Mart LLC, 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

March 25, 2020