

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

**NY Chipolino DBA Shaha & Dhar Food Corp,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0201528**

**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 NY Chipolino DBA Shaha & Dhar Food Corp (hereinafter referred to as “NY Chipolino”) 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 NY Chipolino.

**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 31, 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 January 2017 through June 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).

During a telephone conversation with the Retailer Operations Division on September 5, 2017, Sukumar Dhar stated that he no longer owned NY Chipolino. As a result of the conversation, the Retailer Operations Division requested, in a letter dated September 7, 2017, additional information concerning the alleged transfer of ownership and noted that SNAP authorized store owners are required to inform FNS of any transfer of ownership.

In a written response, the Appellant store owner Sukumar Dhar stated that he and store owner Basudeb Shaha had sold the store to a new owner on August 10, 2017 and provided a copy of the notarized sale and purchase deed. The Appellant denied trafficking in SNAP benefits and provided a photocopies of non-itemized cash register receipts and EBT register receipts from June 2017 and miscellaneous other documents. The Appellant did not request a trafficking CMP under the conditions specified in 7 CFR § 278.6(i).

In a faxed letter dated September 21, 2017, the Appellant store owner Basudeb Shaha stated that he was a silent owner (50% shareholder in the business) who was not involved in the store operations. The letter further stated that any violations were the responsibility of Sukumar Dhar who was responsible for store operations under a June 2012 agreement.

After considering the responses from both store owners and the evidence in the case, the Retailer Operations Division issued a determination letter dated September 29, 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 6, 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, *inter alia*:

*... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...*

7 CFR § 278.6(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, *inter alia*:

***Trafficking** means the buying or selling of ... [SNAP] benefits for cash or consideration other than eligible food ....*

7 CFR § 271.2 states, *inter alia*:

*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, *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.]*

7 CFR § 278.6(i) states, *inter alia*:

*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, *inter alia*:

*(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 January 2017 through June 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 15 sets of 30 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits. **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 353 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).  
5 U.S.C. § 552 (b)(6) & (b)(7)(C).

## APPELLANT'S CONTENTIONS

The Appellant store owners made the following summarized contentions in their response to the charge letter and the request for administrative review, in relevant part:

- The store was sold to a new owner on August 10, 2017.
- The store was not trafficking as shown by cash register receipts and EBT register receipts for the month of June 2017 as well as other documentation.
- One owner claims to be a silent partner who did not run day-to-day operations. As he had no involvement in the store, he does not want his name associated with food stamp fraud. He was also told by “other people” that the other owner was “doing deals under the table for food stamps.”

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 NY Chipolino for the SNAP on April 11, 2012. During the review period of January 2017 through June 2017, the Retailer Operations Division classified NY Chipolino as a small grocery store.

### Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a December 21, 2016 store visit conducted by an FNS contractor 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:

- NY Chipolino is approximately 550 square feet in size and operates out of a building in an urban commercial area.
- 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 handheld shopping baskets for customer use.
- There were no large bulk foods, international or specialty foods that might sell for a high price. Although the store sold some chicken, seafood, fruits and vegetables, there were no fresh meat/seafood bundles or boxes of fresh fruit and vegetables for sale.
- The checkout area consisted of a small counter with a scale and a cash register. There were also products on the counter for sale which further limited space for stacking purchases. The limited space at the checkout area made it not conducive to conducting large transactions.

The inventory of food items at the time of the store visit was typical of a small grocery store with limited staple food stock. 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 health and beauty products, paper goods, cleaning products, cleaning supplies, general houseware, cell phone accessories, party supplies and gift /souvenirs,

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.

### **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 small grocery 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 15 sets of 30 transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). 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 Appellant provided copies of EBT register receipts and non-itemized cash register receipts, but these documents have no probative value as they do not provide an explanation for the irregular transactions cited in Charge Letter Attachment 1. In addition, one of the owners stated that he had heard stories that the other store owner was “doing deals under the table for food stamps.” This further supports the determination by the Retailer Operations Division.

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 limited checkout counter space makes it unsuitable for conducting large transactions. The store also had no shopping carts or 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 small grocery store’s stock and facilities and are thus indicative of trafficking.

Charge Letter Attachment 2 cites 353 SNAP transactions  
5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

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 half-mile radius of NY Chipolino there are 55 other SNAP authorized firms including a supermarket and two (2) superstores. 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

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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.

is highly unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a small grocery store with limited staple foods like NY Chipolino.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of five (5) households identified in the charge letter to analyze their shopping patterns at NY Chipolino 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 better stocked stores, these sampled households conducted excessively large transactions at NY Chipolino often within a few days of shopping at supermarkets and superstores. It is highly unlikely that a small grocery store with limited staple foods would have legitimate SNAP transactions comparable to these larger and better stocked supermarkets and superstores.

The Appellant provided copies of EBT register receipts, non-itemized cash register receipts and miscellaneous other documents, but these documents have no probative value as they do not provide an explanation for the irregular transactions cited in Charge Letter Attachment 2. In addition, one of the owners stated that he had heard stories that the other store owner was “doing deals under the table for food stamps.” This further supports the determination reached by the Retailer Operations Division.

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.

### **Ownership and Sale of Store**

One of the Appellant store owners claims that he is a “silent partner” and was not involved in day-to-day operations at the store. Regarding this contention, both owners are responsible for any violations occurring at the store. It does not matter if only one owner is responsible for day-to-day operations. Store owner Sukumar Dhar signed the SNAP application on behalf of all store owners on February 21, 2012 and acknowledged that all owners were aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owners 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.

The Appellant states that NY Chipolino was sold to a new owner on August 10, 2017. Regarding this contention, the determination of the Retailer Operations Division is that the store was trafficking during the review period of January 2017 through June 2017. The evidence in the case clearly shows that the sale of this store occurred after the review period, and as such the Appellant store owners are both accountable for the violations that occurred prior to the date of sale of the business.

### **CIVIL MONEY PENALTY**

The Appellant did not timely request consideration 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. Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program prior to the violations. 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. 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 NY Chipolino DBA Shaha & Dhar Food Corp, 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

December 6, 2017