

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

Quick Super Stop,)	
)	
Appellant,)	
)	
v.)	Case Number: C0175328
)	
Retailer Operations Division,)	
)	
Respondent.)	
<hr style="border: 0.5px solid black;"/>		

FINAL AGENCY DECISION

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

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 of Code of Federal Regulations (CFR) § 278.6(e)(1)(i) in its administration of SNAP when it imposed a Permanent Disqualification against Appellant on September 23, 2016.

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

The USDA conducted an investigation of the compliance of Appellant with federal SNAP law and regulations during the period December 3, 2014 through December 8, 2014. The investigation reported that personnel at Appellant accepted a total of \$40 in SNAP benefits in exchange for cash (trafficking) in the amount of \$20, as well as permitting the purchase of other non-food items with SNAP benefits. Identification information ascertained from the investigation indicates that these violative transactions were handled by two unidentified

clerks.

As a result of evidence compiled from this investigation, the Retailer Operations Division informed Appellant, in a letter dated August 11, 2016, that its firm was charged with violating the terms and conditions of the SNAP regulations, 7 CFR § 278.6(e). This letter of charges states, in relevant part, “As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for trafficking . . . is permanent disqualification.” The letter also states that “under certain conditions, FNS may impose a civil money penalty (CMP) . . . in lieu of a permanent disqualification of a firm for trafficking.”

Appellant replied to the charges in a subsequent letter to the Retailer Operations Division. The record reflects that the Retailer Operations Division received and considered this information prior to making a determination.

The Retailer Operations Division notified Appellant in a letter dated September 23, 2016 that the firm was being permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6 (c) and 278.6(e)(1) for trafficking violations. This determination letter also states that Appellant’s eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations was considered. However, the letter stated to Appellant that “. . . you are not eligible for the CMP because you failed to submit sufficient evidence to demonstrate that your firm had established and implemented an effective compliance policy and program to prevent violations of the Supplemental Nutrition Assistance Program.”

On October 10, 2016, Appellant appealed the Retailer Operations Division’s assessment and requested an administrative review of this action. The appeal was granted.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. That means 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 argument asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(e)(1)(i) establishes the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking of SNAP benefits.

7 CFR § 278.6(e)(1)(i) reads, in part:

FNS shall . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked

as defined in § 271.2.” Trafficking is defined, in part, in 7 CFR § 271.2, as “the buying or selling of [SNAP benefits] or other benefit instruments for cash or consideration other than eligible food.

APPELLANT’S CONTENTIONS

Appellant’s contentions regarding this matter are essentially as follows:

- There is a reference to selling ineligible items, but Appellant was not charged with this;
- FNS must prove trafficking occurred by the preponderance of the evidence, which did not occur;
- There is no evidence as to when the transaction occurred. There are no pictures of the cash or other items purchased in the transaction;
- The investigator’s report is hearsay. Hearsay can only be relied upon in administrative matters if certain criteria are met including showing the confidential informant was not biased and allowing the confidential informant to be subpoenaed by Appellant prior to the hearing;
- Courts treat investigations relying on a confidential informant with skepticism. The confidential informant in this case manufactured a transaction that did not occur because of a personal interest in obtaining proof of trafficking;
- Affidavits that are old become impermissibly stale. There was a 20-month delay between the investigation and the issuance of the charge letter;
- Appellant denies the allegation;
- Appellant’s staff have been trained in the proper handling of SNAP transactions; and,
- The report clearly indicates that cash provided in trafficking did not come from the register.

Appellant provided the following documents in support of its position:

- A one-page profile of Florida SNAP households;
- A three-page monthly benefit issuance schedule for Florida SNAP; and,
- ~31 store photographs.

The preceding may represent only a brief summary of Appellant’s contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any not specifically recapitulated.

ANALYSIS AND FINDINGS

As to Appellant’s denial of violations, this review examines the relevant information regarding the determination. Appellant argues that FNS must prove trafficking occurred by the preponderance of the evidence, which did not occur. Once the ROD establishes a violation occurred - as has happened in this case - Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole, that that the permanent disqualification should be reversed. If this is not demonstrated, the case will be sustained.

Assertions that the firm has not violated program rules, without supporting evidence and rationale, do not constitute valid grounds for overturning the determination.

Appellant contends Appellant's staff has been trained in proper handling of SNAP transactions. When ownership signed the FNS application to become an authorized SNAP retailer, this included a certification and confirmation that the owner(s) 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 document include trafficking. Regardless of whom the ownership of a store may utilize to operate the cash register and handle store business, ownership is accountable for the proper handling of SNAP benefit transactions. To allow store ownership to disclaim accountability for the acts of persons chosen to handle store business, would render virtually meaningless the enforcement provisions of the Food and Nutrition Act and the enforcement efforts of the USDA.

Appellant alleges that there is a reference to selling ineligible items, but Appellant was not charged with this. The charge letter specifically states that Appellant was charged with selling ineligible items. Appellant did not provide any contentions regarding this charge.

Lengthy Delay

Appellant notes the transactions occurred twenty months prior to the issuance of the charge which disadvantages Appellant which causes the affidavit to become stale. Appellant's contention is not supported. Appellant contends sales records are discarded after their necessity for fiscal and tax purposes. It is surprising that Appellant does not maintain supporting documents related to tax filings for longer than twenty months. There are a number of reasons an administrative action could be delayed. For example, an investigation may be escalated from the administrative level to the criminal level, and after some time a decision may be made not to pursue the criminal investigation after all; this could take a couple of years. In addition, investigations often involve a number of different stores, and no arrests or charges are made until after all store investigations have been completed. In the interim, no administrative actions are taken until after any civil and criminal actions against firms have been pursued. Prosecutors may also accept a case referral, and then months later decide to decline the case for prosecution. The time elapsed between the violations and the charge letter in this case does not have any effect on the potency or validity of the charges.

Evidence of Violation

Appellant contends some of the information on which the charges were based may be hearsay which, according to case law, requires certain criteria be met including showing the confidential informant was not biased and allowing the confidential informant to be subpoenaed by Appellant prior to the hearing. The administrative review of FNS determinations against SNAP retailers is authorized under Section 14(a)(5) of the Food and Nutrition Act of 2008. The SNAP rules at 7 CFR Part 279 have been promulgated pursuant to the Food and Nutrition Act of 2008, and the administrative review adheres to the process provided for in these regulations.

Appellant asserts that the report clearly indicates that cash provided in trafficking did not come from the register, courts treat investigations relying on a confidential informant with skepticism, and that the confidential informant in this case manufactured a transaction that did not occur because of a personal interest in obtaining proof of trafficking. The investigative report states, "Clerk scanned the card and aide entered the pin number. Clerk gave aide \$20 and Aide took cash and items and left. Aide couldn't see where clerk got the \$20 from." The evidence does not support Appellant's assumption that the cash clearly did not come from the register. Courts take seriously cases such as these where a confidential informant was involved in a trafficking transaction, despite Appellant's single example from 16 years ago. There is no evidence, provided by Appellant or otherwise, which supports Appellant's claim that the Confidential Informant in this case manufactured this transaction.

Appellant claims the violations lack supporting evidence; there is no evidence as to when the transaction occurred and no pictures of the cash or other items purchased in the transaction. As Appellant was provided with the day the trafficking transaction occurred, and the amount of this transaction, it is surprising that it could not determine the time of the transaction. As previously stated, 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* . . ." (Emphasis added.) Appellant was provided a copy of the investigation report, redacted to protect the identity of the investigative operative, which details each occasion during which violations occurred, their dates and times of day, the amount of cash provided in exchange for SNAP benefits, and the descriptions and any comments of the clerk involved. Appellant has also received all file information requested under the Freedom of Information Act except information that is specifically exempt from disclosure by law.

The Retailer Operations Division provided receipts for each of the exhibits, and third-party non-profit organizations provided receipts for the items identified in each of the exhibits. The store receipts each identify "Quick Super Stop Inc" at Appellant's address and confirm the day, time, transaction amounts and all other pertinent details mentioned in the investigative report. The third-party receipts confirm the accuracy of the information stated in the investigator's report as the items donated immediately after the purchases at Appellant's store correspond with the items identified as being purchased in the report. There is substantial documentation that the violations occurred at Appellant.

CIVIL MONEY PENALTY

For a firm to have the opportunity to be considered for a civil money penalty (CMP), it must notify FNS that it desires the agency to consider the sanction of a CMP in lieu of permanent disqualification and submit supporting documentation within ten days of receipt of the charge letter. Appellant was advised of these provisions in the charge letter of August 11, 2016. The regulations specify that such supporting evidence must be substantial to demonstrate the firm had established and implemented an effective SNAP compliance policy and training program prior to the occurrence of violations. A review of the administrative record indicates Appellant did not, at any time, request a CMP. Appellant also did not submit any documentation to

support its eligibility for this alternative sanction, before or after the deadline.

In the absence of a request for a CMP and any supporting documentation, a CMP was not assessed by the ROD. According to the requirements stated in 7 CFR § 278.6(b)(1), § 278.6(b)(2)(ii and iii), and § 278.6(i), Appellant is not eligible for a CMP in lieu of a permanent disqualification from participation as an authorized retailer in SNAP. The determination by the Retailer Operations Division to deny Appellant a civil money penalty is sustained.

CONCLUSION

Based on a review of the evidence in this case, it appears that the program violations at issue did, in fact, occur as charged. As noted previously, the charges of violations are based on the findings of a formal USDA investigation. All transactions cited in the letter of charges were conducted under the supervision of a USDA investigator and all are thoroughly documented. A review of this documentation has yielded no indication of error or discrepancy in any of the reported findings. Rather, the investigative record is specific and accurate with regard to the dates of the violations, the specific exchanges of SNAP benefits for cash and nonfood items, and in all other critically pertinent detail.

Based on the discussion above, the determination by the Retailer Operations Division to impose a permanent disqualification against Quick Super Stop from participating as an authorized retailer in SNAP is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If such a request is received, FNS will seek to protect, to the extent provided by law, personal information that if released could constitute an unwarranted invasion of privacy.

RICH PROULX
ADMINISTRATIVE REVIEW OFFICER

January 10, 2017

DATE