

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

Rochester Grill Inc,

Appellant,

v.

Case Number: C0204550

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a Permanent Disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Rochester Grill Inc. (hereinafter “Rochester Grill”) by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a Permanent Disqualification against Rochester Grill on March 23, 2018.

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 January 30, 2018, the Retailer Operations Division informed the Appellant that Rochester Grill was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 –282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm."

In written correspondences received by the Retailer Operations Division on February 14, 2018 and March 12, 2018, the Appellant, through counsel, denied the trafficking allegations and

provided various explanations for the questionable SNAP transactions that were outlined in the January 30, 2018 Charge Letter.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated March 23, 2018, informing the Appellant that Rochester Grill was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations.

In a letter postmarked March 28, 2018, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated April 6, 2018.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

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(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(e)(1)(i) states:

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

7 CFR § 278.6(f)(1) states, inter alia:

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR § 278.6(i) states, inter alia:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 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 ...

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 penalty. [Emphasis added].

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from July 2017 through October 2017. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple purchase transactions made too rapidly to be credible;

- There were multiple purchase transactions made from individual benefit accounts in unusually short timeframes;
- There were an unusual number of manually key-entered EBT transactions made at the subject location; and
- There were excessively large purchase transactions made from recipient accounts.

APPELLANT’S CONTENTIONS

The following represents a brief summary of the Appellant’s contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the replies to the Charge Letter and in the review request postmarked March 28, 2018, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant denies that trafficking of SNAP benefits took place at Rochester Grill.
- The charges of SNAP benefit trafficking are solely based upon numbers generated by a computer program without any evidence of fraud or trafficking or any violation of the SNAP.
- The charges as stated in the Charge Letter do not meet the definition of trafficking as stipulated in the SNAP regulations.
- FNS’ determination that trafficking of SNAP benefits took place at Rochester Grill is arbitrary and is in direct violation of substantive and procedural due process.
- The multiple purchase transactions made too rapidly to be credible may be the result of one clerk using the one EBT POS device to swipe the SNAP customer’s EBT card while another clerk is calculating the total for another customer. When the first clerk completes the transaction, the second clerk proceeds to use the EBT POS device. While some of the transactions happened within short timeframes, most happened hours and sometimes days apart.
- With regard to the multiple transactions made from individual benefit accounts in unusually short timeframes, there is no timeframe of reference and there are no applicable rules or regulations that dictate how often a household may use their EBT card to make food purchases. Many of the transactions were made during time periods ranging between several hours to as long as over a day. Rochester Grill is located in an area where a large volume of the residents are SNAP recipients and it is one of a very few grocery stores in the area which are easily accessible to local residents.
- Regarding the unusual number of manually key-entered EBT transactions made at Rochester Grill, there is no rule or regulation that prohibits a clerk to manually key-enter EBT transactions which happens when the EBT card is chipped or does not scan otherwise.
- With regard to the excessively large purchase transactions, the store’s location, as well as the demographics of the location population and its food shopping patterns and preferences, explains these transactions. It is not unusual for a family with several children to spend a large amount of their SNAP benefits in one shopping session. The largest transaction listed in Attachment 4 is only 5 U.S.C. § 552 (b)(6) & (b)(7)(C), in no

way a “large” transaction for a family household and there are only three transactions listed in this Attachment in this range (5 U.S.C. § 552 (b)(6) & (b)(7)(C)). In addition, there are a high number of customers patronizing Rochester Grill who, due to health and other reasons, lack the ability to purchase food as often as they need. The store offers such customers the opportunity to buy food in bulk. Some customers request that food be ordered for them in advance.

- The Appellant requests that FNS immediately reverse its decision to permanently disqualify Rochester Grill from participation in the SNAP.
- Alternatively, the Appellant requests that FNS impose a trafficking civil money penalty in lieu of a permanent SNAP disqualification of Rochester Grill as the firm and its management have been in compliance with all applicable SNAP rules and regulations.

In support of the Appellant’s contentions, the following documents were submitted to FNS:

- 215 vendor invoices for items purchased for Rochester Grill during the four month review period;
- Hand-written weekly tallies of total sales, EBT sales, debit/credit card sales, and expenses for the four month review period; and
- Statements from Harbortouch which processes Rochester Grill’s debit, credit, and EBT sales data (for the review period).

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized Rochester Grill as a small grocery store on April 28, 2016. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a November 8, 2017 store visit conducted by a FNS contractor to observe the nature and scope of the firm’s operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm’s irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 790 square feet in size and it has a storage area/room outside of public view that is approximately 25 square feet in size. The storage area/room stocks drinks.
- No shopping carts or hand-held baskets available for customer use;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- An optical scanner;
- No meat/seafood specials or vegetable bundles that might sell for high prices;
- Not a WIC Program vendor; however, the store stocks a small amount and variety of infant formula, infant fruits/vegetables/juices and infant cereal;
- Does not stock any specialty or ethnic foods;
- Does not take telephone, online, or other types of orders for food;
- Does not offer delivery to customers;

- Per the store visit observations, the four most expensive staple food items in stock are: Enfamil® infant formula at \$20.00 per 12.5 oz. can; pastrami at \$9.99 per pound; vegetable oil at \$8.99 per 1 gallon jug; and cheddar cheese at \$7.99 per pound;
- It does not appear from the store visit observations that the store extends credit to customers;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include grocery package deals;
- Limited checkout counter area and it has many miscellaneous items stocked there. As such, the checkout counter does not provide adequate space for the large amounts of individual food items necessary to make up many of the large transactions cited in the Charge Letter Attachments;
- Frozen food items include ice cream;
- No fresh unprocessed meats, poultry, or seafood;
- No frozen unprocessed meats, poultry, or seafood;
- A deli case/section in which deli meats and cheeses are sold by the pound as well as prepared salads;
- Other meat items include canned/potted meat, canned fish, canned shellfish, bacon, sausage, meat jerky, and eggs;
- A kitchen in which hot and cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation are prepared and sold. A menu board is posted in the store advertising the following: Sandwiches (available on a roll or as a hero): Any meat, cheese, lettuce and tomato; pastrami, cheese, lettuce, and tomato; roast beef, cheese, lettuce, and tomato; Philly cheese steak; grilled chicken; chicken cutlet; cheeseburger; chopped cheese; and tuna; Platters: Grilled chicken salad; home fries, any meat, egg, and cheese; french toast, any meat, egg, and cheese; and pancakes, any meat, egg, and cheese; Other: Mozzarella sticks; onion rings; french fries; chicken wings; and buffalo chicken wings;
- A minimal amount and variety of fresh produce;
- No frozen fruits or vegetables;
- Other staple foods available for purchase include such items as milk, margarine, yogurt, soup, canned fruits, canned vegetables, pasta, rice, cereal, flour, baking mix, cakes/pastries, snack foods, etc.;
- Much of the remaining food stock consists of accessory foods such as carbonated and non-carbonated drinks, condiments, coffee, tea, and spices; and
- A large supply of ineligible nonfood items such as tobacco products, health and beauty items, paper products, household items, household cleaning supplies, clothing, laundry detergent, gift items, over-the-counter medications, cell phone accessories, alcohol, lottery tickets, pet food, candles, automotive supplies, charcoal, souvenirs, etc.

This documentation reflects that the firm is a moderately stocked small grocery store in all relevant respects. It is worth noting that the average SNAP purchase in a small grocery store in Kings County, New York (the county in which Rochester Grill is located) during the analysis period was \$10.76, reflecting that large purchases are not routinely made in such stores.

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

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. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges is trafficking. Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellant’s contentions did not outweigh the evidence. The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Denial of Trafficking Charges

Regarding the Appellant’s contention that he denies the trafficking allegations, this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is, as noted above, to determine whether the Appellant demonstrates by a preponderance of the evidence that the permanent disqualification should be reversed. In this case, therefore, if the Appellant demonstrates by a preponderance of the evidence that trafficking did not occur in the Appellant’s firm, then trafficking will be considered not to have occurred and the disqualification reversed. If this is not demonstrated the case is to be sustained. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact.

Charges Based on Computer Program

The Appellant contends that the charges of SNAP benefit trafficking are solely based upon numbers generated by a computer program without any evidence of fraud or trafficking or any violation of the SNAP. Firms are chosen for analytical investigation based upon numerous detailed and rigorous mathematical algorithms. This data presents the Retailer Operations Division with a statistically valid prima facie indication of highly unusual transaction activity; the activity therein identified is not marginally aberrant, but markedly so. Properly analyzed and interpreted, the Retailer Operations Division does not contend that EBT transactions are overtly suspicious when they occur on an occasional or intermittent basis, but when such transactions form repetitive patterns, on a comparative basis, over a period of time that ensures such activity is not simply intermittent, such activity is identified for further analysis.

Once such firms have been identified as potential compliance cases, from approximately 263,105 authorized firms nationwide, the Retailer Operations Division undertakes a detailed examination of the available transaction data and obtains further relevant information regarding the firm's business operations such as the level and condition of staple food stock maintained by the firm, the presence or absence of the firm's logistical retail wherewithal and numerous other factors pertinent to the firm's ability to legitimately process the transaction activity for which the firm has been flagged. Agency policy and procedures direct that only after a careful, comprehensive and complete analysis, from which appropriate conclusions are logically derived, will the firm be issued a Charge Letter. The firm is then given the opportunity to reply to those charges and provide any information it deems appropriate in justifying as legitimate the transaction activity detailed in the Charge Letter. In the present case, these policies and procedures are shown by the record to have been duly performed in all relevant and pertinent detail. Moreover, 7 CFR § 278.6(a), noted above, established the authority upon which FNS may disqualify any authorized retail food store on the basis of evidence obtained through a transaction report under an electronic benefit transfer system. The Retailer Operations Division's use of transaction data and other reports, in addition to store visit observations and an analysis of household shopping behavior and other relevant data and information, in rendering a finding that trafficking is the most likely explanation of the transaction activity, is as valid a means of establishing evidence as that obtained through an on-site investigation and the eye witnessing of trafficking. Accordingly, the Appellant's contention that charges are solely based upon numbers generated by a computer program without any evidence is not compelling.

Charges Do Not Stipulate Trafficking

The Appellant contends that the charges as stated in the Charge Letter do not meet the definition of trafficking as stipulated in the SNAP regulations. Trafficking is defined, in part, in 7 CFR § 271.2, by the words: "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...". The Appellant is reading the regulation literally to mean that trafficking requires the buying or selling of actual *physical* items, i.e., EBT cards, card numbers and PINs, manual vouchers and signature (i.e., the SNAP benefit cards themselves), and has nothing to do with buying or selling the credits, debits or benefits associated with such instruments.

It must be noted that when the definition of trafficking was originally formulated, the SNAP (originally known as the "Food Stamp Program") utilized paper coupons which were legal tender for the purchase of eligible food items under program rules. There was no separation or distinction between the physical coupon itself and its value. Therefore, there was no reason to distinguish one from the other in the definition. The instrument and its value were simply one and the same. A \$10.00 Food Stamp coupon had a value of \$10.00, and exchanging such a coupon for cash was the same as exchanging the \$10.00 value of that coupon for cash. The value of the coupon and the coupon itself were inseparable.

The benefit delivery system has since changed. The SNAP is now an electronic benefit system in which benefit holders are issued SNAP benefit cards which are used to debit benefits contained in their electronic accounts. Unlike the old Food Stamp coupons, SNAP benefit cards do not by themselves have any value. What is of value are the benefits contained in the household's electronic account for which the SNAP card is an access instrument. Such benefits may be plentiful or completely depleted. In fact, a SNAP card is not even necessary to transact SNAP benefits, only the card number and PIN. Value in the card can be sold for cash without the physical card being sold with it or the actual card being involved in the transaction.

Although the Appellant may be correct that the charge of trafficking in this case is not consistent with the *literal* meaning of the definition of "trafficking" in 7 CFR § 271.2, which uses words that depict exchanging physical items for cash, this literal translation would not be meaningful if it meant only the exchange of the physical instrument itself void of any value. It is reasonable to assume that Congress' intentions about what trafficking meant did not involve the mere exchange for cash of paper or plastic, but involved rather the exchange for cash of the value such items had associated with and/or inherently in them. People do not traffic for the paper or plastic; they traffic for the benefits, for the value that is inherent in such items or accessible by such items.

Due Process

The Appellant contends that FNS' determination that trafficking of SNAP benefits took place at Rochester Grill is arbitrary and is in direct violation of substantive and procedural due process. The Appellant (through counsel) replied to the charges in writings to Retailer Operations Division staff, denying the charge of trafficking and offering various explanations and evidences for the questionable transactions. After considering the evidence of the case and the Appellant's replies, the Retailer Operations Division determined that a permanent disqualification is warranted. The action was not arbitrary or capricious as it followed the agency's due process procedures which are two-fold in nature. First, the retailer is afforded an opportunity to reply to the charges as specified by the Retailer Operations Division; the Appellant has availed himself of this first aspect of the due process procedures in the form of written replies (through counsel) to Retailer Operations Division staff. The second level of due process involves an administrative review, of which the Appellant has likewise availed himself (through counsel) and in the process of which the Appellant was granted an additional three weeks within which additional information may be provided in support of the request for review.

The purpose of the administrative review process is to ensure that firms aggrieved by FNS' adverse actions have the opportunity to have their position fairly considered by an impartial reviewing authority prior to that adverse action becoming final. The Appellant has been duly given, and has taken, the opportunity to present to USDA through the administrative review process whatever evidence and information he deems as pertinent in support of his position that the Retailer Operations Division's adverse action should be reversed. Therefore, any evidence and information that the Appellant presented to the Retailer Operations Division, as well as any such information submitted subsequently, have now been considered in this administrative review in rendering the final agency administrative decision in this case. The record does not indicate any departure from established policy or procedures with regard to the Appellant's right

to a fair and thorough review. The Appellant has exercised his opportunity to reply to the Charge Letter and his administrative review rights, and by doing so has availed himself of the full complement of the agency's statutory obligations with regard to due process.

Multiple Transactions Made Too Rapidly

Charge Letter Attachment 1 lists 6 sets of transactions (12 total transactions) totaling **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits that met the parameter of this Scan. Rochester Grill processed 6 sets of transactions, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. In considering the time required to process a legitimate purchase and the numerous steps involved, including the cashier's handling of individual items to determine the price which can involve manual keying of amounts, bagging the items for carry out, and processing the transaction, these multiple purchase transactions were made too rapidly to be credible and is suggestive of trafficking.

The Appellant contends that the multiple purchase transactions made too rapidly to be credible may be the result of one clerk using the one EBT POS device to swipe the SNAP customer's EBT card while another clerk is calculating the total for another customer. When the first clerk completes the transaction, the second clerk proceeds to use the EBT POS device. While some of the transactions happened within short timeframes, most happened hours and sometimes days apart.

Frequent and large transactions conducted rapidly in order to purchase eligible foods at Rochester Grill are highly unlikely given the store's logistical wherewithal and store stock. The firm does not maintain the logistical wherewithal required to rapidly process these transactions. In light of the above, consider the time required to process a legitimate purchase and the steps involved:

- Unloading items onto the checkout counter (no shopping carts or hand-held baskets are available for customer use);
- Separating eligible items and ineligible items;
- Weighing individual items if sold by weight;
- Handling by the cashier of individual items to determine the price;
- Entering the prices into the cash register, once for eligible foods and once for ineligible items;
- Bagging the items for carry out;
- Handing the customer bagged items to make room for more food items the customer is bringing to the counter;
- Informing the customer of the totals (one for eligible foods and one for non-eligible items, if applicable);
- Pressing the "SNAP transaction key" on the point-of-sale device;
- Swiping the card;
- Entering by the customer of the required PIN;
- Cashier entry of the purchase amount;
- Confirming customer has a sufficient benefit balance;
- Processing and approval of the transaction by the system;
- Printing out register and EBT receipts;

- Accepting an alternate form of payment for nonfood items and possibly handling cash change; and
- Removing products from the checkout area so the next customer in line can begin another transaction.

While such transactions may well be done in succession, one will readily surmise that performing these processes on large transactions is not done rapidly. The amount of time required is generally proportional to the dollar amount of the transaction; typically, the larger the dollar amount transacted the longer the time period between the transactions. Limited counter space adds additional time to transactions. Rochester Grill processed orders **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, yet the firm had only a small checkout counter and none of the logistical tools such as conveyor belts, rotating bagging platforms or order separators that are routinely used in rapid throughput operations. Frequent and large transactions conducted rapidly in order to purchase eligible foods at Rochester Grill are highly unlikely given the store's logistical wherewithal and store stock. Lastly, large transactions for the purchase of legitimate food items (which at this store would have been a substantial number of lower priced items), using no shopping carts or hand-held baskets and little checkout counter space, processed rapidly is implausible. The Appellant's rationale regarding how Rochester Grill may have conducted such transactions rapidly is not compelling.

Repeat Transactions by the Same Household

Charge Letter Attachment 2 lists 29 transaction sets (62 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. This average transaction is more than five times larger than the average transaction made at small grocery stores in Kings County, New York during the review period. It is not credible that the subject store would have so many suspicious SNAP transactions greatly exceeding the average SNAP transaction for small grocery stores in Kings County during the review period. Violating stores often conduct multiple transactions from the same household account to avoid detection of single high dollar transactions that cannot be supported by the firm's food inventory and infrastructure.

The Appellant contends that with regard to the multiple transactions made from individual benefit accounts in unusually short timeframes, there is no timeframe of reference and there are no applicable rules or regulations that dictate how often a household may use their EBT card to make food purchases. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Rochester Grill is located in an area where a large volume of the residents are SNAP recipients and it is one of a very few grocery stores in the area which are easily accessible to local residents. However, the Appellant's contentions are not supported by available evidence.

While there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, the SNAP transactions noted in this Charge Letter Attachment are questionable because they display characteristics of use inconsistent with the nature and extent of the store's stock and facilities and are indicative of trafficking. Although it is not uncommon for customers to conduct more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. Rochester Grill is not set up to provide for all of one's food needs with no fresh unprocessed meats, poultry, or seafood, no

frozen unprocessed meats, poultry, or seafood, no frozen fruits or vegetables, a minimal variety and amount of fresh produce, and lacks an abundant depth and breadth of staple foods. Also, the store visit observations indicate that there is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area. It is irregular for small grocery stores to have purchases such as those cited, especially when Rochester Grill stocks only a few high priced food items so the majority of food items stocked at the store are low priced items.

A review of client shopping data for the review period shows that clients shopping at Rochester Grill are also shopping at other area grocery stores, as well as full-line supermarkets and super stores that most likely offer customers a much larger quantity and variety of eligible food items for better prices. Based on these shopping patterns, transportation to other stores is not an issue for these SNAP customers. Yet, these customers continue to shop and spend suspicious high dollar amounts in short timeframes at Rochester Grill, where the eligible food stock is limited, often on the same day, or within 24 hours of their purchases at better stocked stores. This is a strong indicator of trafficking.

Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are 62 SNAP authorized retailers located within a 0.5 mile radius of the subject firm that can meet the nutritional needs of SNAP customers. Several of these authorized SNAP stores are larger than Rochester Grill and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. As mentioned previously, SNAP customers who shopped at Rochester Grill during the four month review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores does not appear to be an explanation for Rochester Grill's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

The Appellant did not provide any compelling justification as to why SNAP households are conducting multiple transactions at Rochester Grill or evidence that all of the irregular transactions cited in the Charge Letter were for eligible food items only. 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.

Manually Key-entered SNAP Transactions

Attachment 3 of the Charge Letter lists 37 SNAP transactions totaling **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** that were manually key-entered into the cash register during the four month review period. Given that so many cards scanned correctly at this store, it's unlikely that there were legitimate card or equipment issues at the store that would cause manual transactions. This data indicates that key-entered transactions at this store were made without the cards being present and are indicative of trafficking.

The Appellant contends that with regard to the unusual number of manually key-entered EBT transactions made at Rochester Grill, there is no rule or regulation that prohibits a clerk to

manually key-enter EBT transactions which happens when the EBT card is chipped or does not scan otherwise. However, the Appellant's contention is not supported by available evidence.

Manually keyed transactions are those in which the magnetic strip on the back of the EBT card is not being read by the store's EBT POS device and the store clerk must manually key-enter the lengthy EBT card number. When the magnetic strip on an EBT card fails, it can no longer be swiped and replacement EBT cards contain different identification numbers. On-site investigations into trafficking at retailers have found it is not uncommon for retailers to have a SNAP recipient's PIN and EBT card number in order to facilitate trafficking SNAP benefits in exchange for cash without the need for the recipient to be physically present. The retailer enters the EBT card number manually as the SNAP recipient has the actual EBT card and then enters the PIN. A review of other EBT transactions on the dates of these manual transactions shows that Rochester Grill's POS device was functioning properly as there were swipe transactions before and after the manual transactions. The SNAP recipient forgetting his/her PIN would not result in a manually key-entered EBT transaction leaving a recipient's EBT card having a worn or malfunctioning strip as the only possible reason, outside of trafficking, for these excessive numbers. An analysis of the transaction data in this Attachment identified transactions by multiple households which do not fit the pattern of an EBT card having a worn or malfunctioning strip and therefore are indicative of trafficking. Specifically, the Retailer Operations Division identified SNAP households that conducted manually key-entered transactions at Rochester Grill even though the household's EBT card was able to be swiped at other stores. A pattern of manually keyed and swiped transactions using the same EBT card is indicative of trafficking.

Excessively Large Purchase Transactions

Charge Letter Attachment 4 lists 276 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. As noted previously, there is no indication from the store visit report that Rochester Grill would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellant contends that with regard to the excessively large purchase transactions, the store's location, as well as the demographics of the location population and its food shopping patterns and preferences, explains these transactions. It is not unusual for a family with several children to spend a large amount of their SNAP benefits in one shopping session. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. In addition, there are a high number of customers patronizing Rochester Grill who, due to health and other reasons, lack the ability to purchase food as often as they need. The store offers such customers the opportunity to buy food in bulk. Some customers request that food be ordered for them in advance. However, the Appellant's contentions are unsubstantiated.

The Appellant contends that it is not unusual for a family with several children to spend a large amount of their SNAP benefits in one shopping session. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. With regard to this contention, the SNAP transactions listed in Charge Letter Attachment 4 are suspicious because in comparison to other small grocery stores in Kings County during the review period, they are excessively large. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. As noted previously, there is no indication from the store visit report that Rochester Grill would be likely

to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items. These suspicious SNAP transactions are very unusual and highly unlikely and indicative of trafficking.

The Appellant also contends that there are a high number of customers patronizing Rochester Grill who, due to health and other reasons, lack the ability to purchase food as often as they need. The store offers such customers the opportunity to buy food in bulk. Some customers request that food be ordered for them in advance. However, the November 8, 2017 store visit observations and photos indicate that no signs or flyers are posted inside or outside of Rochester Grill advertising the availability of bulk food items such as meat bundles, seafood specials, and/or fruit and vegetable boxes nor did the store stock any food items in case or bulk amounts. In addition, the Appellant did not provide FNS with any evidence to validate the legitimacy of this claim. The store employee/cashier informed the contracted Reviewer during the store visit that Rochester Grill does not take telephone, online, or other types of food orders from store customers nor does the store offer delivery to customers.

The store employee noted during the November 8, 2017 store visit that the most expensive food item stocked at Rochester Grill is infant formula which costs \$20.00 per 12.5 ounce can. It is important to note, however, that the majority of households that qualify for WIC Program benefits also qualify and are SNAP recipients. In most cases, these households utilize their WIC Program benefits to purchase infant formula and infant foods in lieu of their SNAP benefits in order to save their SNAP benefits for other needed food items. Therefore, it is not likely that SNAP customers are purchasing large amounts of infant formula at the subject store. In addition, when one considers that SNAP benefit allotments are calculated to provide households with a bare minimum of food security, it is unreasonable to believe that households would spend a large majority of their monthly benefit allotments at a moderately stocked small grocery store like Rochester Grill.

The store visit report and photos show that Rochester Grill was stocked with a moderate quantity and variety of staple foods as it stocked no fresh unprocessed meats, poultry, or seafood, no frozen unprocessed meats, poultry, or seafood, no frozen fruits or vegetables, a minimal variety and amount of fresh produce, and lacks an abundant depth and breadth of staple foods. The inventory report and photos also show only a few expensive eligible foods in stock that would account for these large amounts as well as showing the store has a limited checkout counter space and no shopping carts or hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The record shows that there are 62 SNAP authorized retailers located within a 0.5 mile radius of Rochester Grill that can meet the nutritional needs of SNAP customers including 15 other small grocery stores, 2 medium grocery stores, 1 large grocery store, and 3 supermarkets. Several of these authorized SNAP stores are larger than Rochester Grill and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. An analysis of the shopping patterns for all of the SNAP households listed in this Attachment shows that the majority of the households shopping at Rochester Grill have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and/or

supermarkets, located a few miles distance from the Appellant's location. While Rochester Grill does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located within a few miles of the Appellant's business offering a greater quantity and variety of products, including fresh meats/seafood and produce, at lower prices. Therefore, the store has nothing to attract SNAP customers as there are no special or custom services offered that are not available at other authorized stores in the area.

The SNAP transaction activity of Rochester Grill during the review period was compared to the SNAP transaction activity of three nearby authorized small grocery stores which stock a similar or superior amount and variety of staple foods at comparable or better prices as compared to the subject store. As indicated in the below bar graphs, Rochester Grill had a SNAP dollar volume that is at least 5 U.S.C. § 552 (b)(6) & (b)(7)(C) higher than the three competing stores, an average SNAP transaction that is nearly twice higher than the average SNAP transactions of all three competing stores, and an ALERT Rank average that is significantly higher than the other competing stores. In addition, the subject store conducted more SNAP transactions during the review period than that of two of the three competing stores.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

As indicated in the below bar graphs, the three comparison stores had a negligible number of flags on the ALERT Scans when compared to Rochester Grill.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

There is also a significant difference in Rochester Grill's SNAP transactions and dollar volumes during the review period when compared to other small grocery stores located in the state of New York as is indicated below.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

The Transaction Spread Report below shows that Rochester Grill is conducting a significantly greater number of transactions between specific dollar ranges than the average small grocery store in the state of New York. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As Rochester Grill does not offer any higher priced foods such as bundles of meat and seafood or bulk packages, there is no reasonable explanation for these questionable transaction amounts. This data indicates that it is more likely than not that trafficking is occurring at Rochester Grill.

5 U.S.C. § 552 (b)(7)(E).

The Appellant provided FNS with a total of 215 vendor invoices in order to help substantiate that Rochester Grill had purchased enough food items to cover/explain the SNAP transactions that occurred at the store during the four month review period. FNS carefully analyzed the review period invoices. FNS excluded the vendor invoices that were dated outside of the review period, that had no vendor or store name, that did not list actual products purchased, that were unreadable, or were duplicates. In the invoice analysis, FNS gave the Appellant the benefit of the doubt wherever possible. For example, a few of the vendor invoices did not have the year of

the purchase date; however, FNS included them in the analysis. The Appellant did not provide FNS with Rochester Grill's retail mark-up, so a generous 40% mark-up was allowed. A generous allowance was provided for inventory that could be used in food preparation, 70% was calculated as retail and 30% as food preparation. Additionally, because the firm sells both hot and cold prepared foods, an additional allowance of 50% of prepared foods was included in retail sales, since pre-made cold sandwiches are a SNAP eligible food item.

5 U.S.C. § 552 (b)(7)(E).

5 U.S.C. § 552 (b)(7)(E).

It is also important to note that the vendor invoices of eligible foods included mostly milk, juice, deli meats and cheeses, beverages and snacks, and did not indicate any quantities of food products that could be sold in bulk. There were no invoices provided for purchases of infant formula or produce other than lettuce and tomatoes.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

It is important to note that even if the invoice analysis showed that sufficient food inventory had been purchased to account for the firm's SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions such as multiple purchases made too rapidly to be credible, rapid and consecutive transactions by individuals during the same store visit or in a single day, and an unusual number of manually key-entered transactions. Even the large dollar transactions would remain questionable if there were sufficient food inventory to support such transactions when consideration is made of there being only a moderate variety of stock in the store, no fresh unprocessed meats, poultry, or seafood, no frozen unprocessed meats, poultry, or seafood, no frozen fruits or vegetables, a minimal variety and amount of fresh produce, a greater variety of foods at comparable or lower prices at other stores, no shopping carts or hand-held baskets available for customer use, and little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at Rochester Grill to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to shop there, a small grocery store, in some cases traveling a few miles to do so, and spend substantial amounts of their SNAP benefits.

In support of his contentions, the Appellant also provided FNS with statements from Harbortouch, which processes Rochester Grill's debit, credit, and EBT sales data; and handwritten weekly tallies of total sales, EBT, debit/credit, and expenses for the review period.

Harbortouch Statements:

Each statement for the review period shows an Activity Summary for the month and a transaction listing. The Activity Summary reports the type of sale, number of transactions, and totals that are categorized by the type of credit card, debit card, and EBT.

Sample Activity Summary for July 2017:

5 U.S.C. § 552 (b)(6) & (b)(7)(C))

5 U.S.C. § 552 (b)(7)(E).

Because violative SNAP transaction activity would be included in any transaction report without distinction, these statements are not of any evidentiary value and do not validate that trafficking did not occur at Rochester Grill.

Daily Sales Tallies:

Ten pages of handwritten records of sales were submitted to FNS. The header is partially in Spanish, and translates to:

5 U.S.C. § 552 (b)(7)(E).

Below is a sample Statement for the week of July 3, 2017 through July 9, 2017:

5 U.S.C. § 552 (b)(7)(E).

ALERT reports indicate that for the week of July 3, 2017 through July 9, 2017, the firm generated 266 EBT transactions with redemptions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(7)(E).

5 U.S.C. § 552 (b)(6) & (b)(7)(C). This difference is insignificant.

Of interest is that ALERT also shows that 65 of the SNAP transactions that week were flagged as suspicious, generating 81 individual flags. Because violative SNAP transaction activity would be included in any sales reports without distinction, these sales tallies are not of any evidentiary value and do not validate that trafficking did not occur at Rochester Grill.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three SNAP households identified in the Charge Letter to analyze their shopping patterns at Rochester Grill compared to their shopping patterns at other SNAP authorized stores. Each of these households had access to, and shopped at larger stores including super stores and/or supermarkets. It is obvious that these SNAP households had transportation available to them to reach these other authorized stores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Rochester Grill 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of shopping at the larger stores where they conducted much smaller SNAP purchases. It is highly unlikely that a small grocery store with moderate staple foods would have legitimate SNAP transactions greater than these larger and better stocked stores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding those 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 hand-held baskets support the Retailer

Operations Division's determination. It is not plausible that the store's customers are carrying large amounts of food around the store without the benefit of shopping carts and hand-held baskets. 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 the preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 4 are more likely than not the result of trafficking in SNAP benefits.

Request to Reverse Penalty

The Appellant requests that FNS immediately reverse its decision to permanently disqualify Rochester Grill from participation in the SNAP. However, the Food and Nutrition Act of 2008, at § 2021, does not allow for discretion in determining sanctions for trafficking and is specific in its requirement that "... a disqualification . . . 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 ...". In keeping with this legislative mandate, 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked.

CIVIL MONEY PENALTY

The Appellant requests that FNS impose a trafficking civil money penalty in lieu of a permanent SNAP disqualification of Rochester Grill as the firm and its management have been in compliance with all applicable SNAP rules and regulations. In the January 30, 2018 Charge Letter the Appellant was informed by the Retailer Operations Division that, under certain conditions, FNS may impose a civil money penalty (CMP) of up to \$59,000 in lieu of permanent disqualification of a firm for trafficking. Per Section 278.6(i) of the SNAP regulations, four criteria must be met in order to be considered for a trafficking civil money penalty. If requesting a trafficking CMP, an Appellant must meet each of the four criteria listed and provide the documentation as specified within ten days of the Appellant's receipt of their Charge Letter. As specified in 7 CFR § 278.6(i), in determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following four criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in 7 CFR § 278.6(i)(1);

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;

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in 7 CFR § 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.

If the Appellant's request for a trafficking CMP and the required documentation are not submitted on time, he will lose his right for any further consideration for a trafficking CMP. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) that "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, the firm shall not be eligible for such a penalty". The regulations do not provide the agency discretion to extend the time within which documentation and evidence in support of a trafficking civil money penalty may be submitted.

In the letter received by the Retailer Operations Division on February 14, 2018 in which the Appellant was responding to the Charge Letter allegations, the Appellant, through counsel, contended that Rochester Grill and its management have been in compliance with all SNAP applicable rules and regulations. However, the Appellant only partially addressed the requirements described herein and did not provide substantial evidence, in accordance with the criteria detailed in the referenced regulations, that the firm established and implemented an effective compliance policy and program to prevent violations. Therefore, in the March 23, 2018 Determination Letter, the Appellant was informed by the Retailer Operations Division that consideration was given to the Appellant for a trafficking CMP according to the terms of the SNAP regulations but the Retailer Operations Division determined that the Appellant was not eligible for the trafficking CMP because he failed to submit sufficient evidence to demonstrate that Rochester Grill had established and implemented an effective compliance policy and program prior to the SNAP violations occurring in order to prevent violations of the SNAP.

In support of his contention that Rochester Grill had an adequate compliance policy in place prior to the cited SNAP violations, the Appellant submitted the following information in his written correspondence to FNS:

A statement indicating that "Rochester Grill and its management have been in compliance with all applicable SNAP rules and regulations. For example, all employees are obligated to watch the SNAP Training Guide. Also, USDA SNAP compliance posters are displayed behind the cash register. The store does not have a history of previous SNAP violations".

However, the information provided by the Appellant is not sufficient to demonstrate that Rochester Grill had established and implemented an effective compliance policy and program prior to the occurrence of the SNAP violations. The Appellant submitted no evidence to validate that Rochester Grill had an effective compliance policy and program in place prior to the occurrence of the SNAP violations other than his statement of such. The Appellant did not provide an employee roster showing dates of hire for each employee (both current and past employees who received training—including any store managers and the store owner), no signatures were provided from each past and current employee acknowledging that they had received training or that a compliance policy was in effect and on which dates they received training, etc. The Appellant did not provide FNS with any documentation to validate the employees who had worked at Rochester Grill, verification on the dates of their employment at the store, verification that the employees listed have been the only employees who have worked at the store since the compliance program was implemented, etc.

The Appellant did not provide FNS with any documentation to verify that he had developed and implemented an employee training manual prior to the cited SNAP violations. The Appellant did not provide FNS with any documentation to validate that the training materials used to train store employees on the SNAP rules and regulations clearly state that the following acts are prohibited and are in violation of the Food and Nutrition Act and regulations: 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.

The Appellant did not provide any evidence to verify that all new employees are trained on the compliance policy and program prior to being able to conduct SNAP transactions as there were no signatures provided from store employees verifying this claim. The Appellant did not provide any evidence to validate that all new employees and managers whose work brings them into contact with SNAP benefits were trained within one month of their employment at Rochester Grill, as is required by Appellants who are seeking an assessment for a CMP in lieu of permanent disqualification. The Appellant did not provide FNS with the dates of each employee training nor did he provide any evidence that employees received on-going, periodic training on the SNAP regulations and the proper acceptance and handling of SNAP coupons. In addition, the Appellant did not provide FNS with an evaluation of the effectiveness of the firm's compliance policy and program to ensure SNAP compliance and to prevent SNAP violations, as is required by Appellants who are seeking an assessment for a CMP in lieu of permanent SNAP disqualification. There was no indication that the firm's policy was to terminate the employment of violating store employees or that the firm had implemented a policy intended to initiate corrective action following complaints of SNAP violations. The SNAP regulations state that an effective compliance policy includes documentation reflecting the development and/or operation of a policy to terminate the employment of any firm employee found violating the SNAP regulations prior to the occurrence of the SNAP violations.

The Appellant also contends that Rochester Grill does not have a history of previous SNAP violations. However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges. 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.

The Appellant did not provide FNS with documentation that validates that he was unaware, nor approved or benefited from, the unauthorized trafficking by management, employees, or SNAP recipients and/or retail purchases of items of unauthorized items under the SNAP. In determining whether store ownership benefited from trafficking of SNAP benefits in which he was not directly involved, it is generally assumed that if EBT settlements are made to the store owner's account, the store owner had benefited from such transactions. The store employee, manager, or store owner involved in the trafficking transactions took cash out of the store's cash register and the benefits most likely went into the Appellant's bank account. The Appellant did not submit any documentation to contradict this issue.

Therefore, based on the lack of substantial evidence and information submitted, the Appellant failed to demonstrate that Rochester Grill had established and implemented an effective compliance policy and program prior to the SNAP violations that occurred. As such, the Appellant's request for consideration of a trafficking civil money penalty in lieu of a permanent SNAP disqualification was appropriately denied by the Retailer Operations Division.

CONCLUSION

The Retailer Operations Division's analysis of the Appellant's EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellant's contentions do not outweigh this evidence.

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against Rochester Grill Inc. is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to 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.

LORIE L. CONNEEN
Administrative Review Officer

July 3, 2018