

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review Branch  
Alexandria, VA 22302**

**Rock City Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0199091**

**FINAL AGENCY DECISION**

It is the decision of the USDA that the record indicates that Rock City Market, (hereinafter Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retailer in the program, as initially imposed by the Retailer Operations Division was appropriate.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant by letter dated July 10, 2017.

**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**

By Charge letter dated May 17, 2017, Retailer Operations Division informed ownership that Appellant was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 271 – § 278, based on EBT benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm."

The letter of charges stated, in relevant part, that “As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for trafficking is permanent disqualification.”

In correspondence dated May 20, 2017, Appellant replied to the charge letter and generally stated that the transactions in the charge letter were cherry picked and only represent less than five percent of the total number of sales. Appellant stated that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is not an excessive amount because it has 40 pound bags of rice that cost \$70 and cases of sodas and juice 5 U.S.C. § 552 (b)(7)(E). Appellant also stated that it cannot turn down customers just because they shop at the store multiple times in a day or spend too much money. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Retailer Operations Division gave consideration to the Appellant’s replies and evidence of the case, and issued a determination letter dated July 10, 2017. This letter informed Appellant that it was permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also stated that Retailer Operations Division considered Appellant’s eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. However, Retailer Operations Division determined that Appellant was not eligible for the CMP because it failed to submit sufficient evidence to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked July 18, 2017 and received July 24, 2017, Appellant appealed the Retailer Operations Division’s assessment and requested an administrative review of this action. The appeal was granted.

## 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 an Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

## CONTROLLING LAW

The controlling statute in this matter is contained in the Food & Nutrition Act of 2008<sup>1</sup>, as amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a) (c) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store in the event that personnel of the firm have engaged in trafficking SNAP benefits.

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<sup>1</sup> Effective October 1, 2008, the Food Stamp Act of 1977 was superseded by the Food and Nutrition Act of 2008, as amended through P.L. 110-246

7 CFR § 278.6(a) states, *inter alia*, that “FNS may disqualify any authorized retail food store...from further participation in the program 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(c) reads, in part, “*Review of Evidence*. The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1)...the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS...”

7 CFR § 278.6(e)(1) reads, in part, “FNS shall disqualify 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 for cash or consideration other than eligible food.”

7 CFR § 271.2 states in part that, “Eligible foods mean: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption.”

### **SUMMARY OF CHARGES**

The charges on review were based on an analysis of SNAP electronic benefit transfer (EBT) transactions dated during the three month period of January 2017 through March 2017. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from individual benefit accounts in usually short time frames.
2. Excessively large purchase transactions were made from recipient accounts.

The first issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking.

### **APPELLANT’S CONTENTIONS**

The Appellant made the following summarized contentions in its response to the permanent disqualification letter issued by Retailer Operations Division, and its request for administrative review, in relevant part:

- I’ve been at this store accepting EBT for seven years and I’ve never violated any laws.
- Please consider my argument and ask them for any physical evidence of any kind.

In its reply to the charge letter Appellant contends that:

- The transactions in the charge letter were cherry picked and only represent 5 percent of the total sales.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is not an excessive amount because it has 40 pound bags of rice that cost \$70 and cases of sodas and juices 5 U.S.C. § 552 (b)(7)(E).
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

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

## ANALYSIS AND FINDINGS

The FNS originally authorized the business as a convenience store on October 12, 2010. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during a March 1, 2017, store visit to the business conducted by a 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 EBT transactions at Appellant that formed patterns indicative of trafficking. The firm review summary documented the following store size, description, and characteristics:

- One cash register and one POS device. Counter area is approximately 1.5ft x 2ft in size, partially obstructed by other smaller items available for sale. One specialty register (lottery, Western Union, etc.).
- Approximately 10 shopping baskets but no carts available for customers.
- No adding machines or optical scanners are available at checkout.
- No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
- Does not operate through a night window or plastic barrier with food stock behind the barrier.
- No hot foods sold for take-out or for onsite consumption.
- A deli or prepared food section available with made-to-order sandwiches.
- No meat or seafood specials or bundles or fruit/vegetable boxes sold.
- Estimated 1200 square footage and no food stored in storage area out of public view
- Store is not a delivery route, farmers' market or specialty food store primarily selling one food type such as meat, poultry, seafood, bread, fruit or vegetables.
- Store stocks a significant amount of non-food items such as but not limited to household products, personal hygiene products, tobacco products, alcohol, lottery tickets, cleaning supplies, paper goods, and housewares.
- Store stocks minimal amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products.
- Store has no fresh meat or seafood and no frozen foods.
- Store had some empty shelves and expired/outdated/spoiled food.
- Highest priced item was rice at \$37.99 and \$18.99 a bag.

- Prices typically end in x9 and .00 but does not round total up or down at checkout.
- Store does not offer delivery services or take telephone and online orders.

The second issue for consideration is whether Retailer Operations Division has presented a convincing case that Appellant likely trafficked in SNAP benefits. Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at Appellant’s store during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

**Attachment 1 of the Charge letter - Multiple transactions were made from individual accounts in unusually short timeframes.**

This attachment lists 14 sets of 36 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The store visit report does not indicate any compelling reason for customers to consider Appellant’s store a first choice destination to fulfill large purchases of food, or that they would have made relatively large, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The most expensive items in the store were bags of rice that were priced at \$18.99 and \$37.99 respectively. Appellant’s available stock of rice did not appear sufficient to justify the multiple SNAP transactions in this Attachment.

Appellant’s quality, quantity and selection of eligible food items is limited compared to that of the supermarkets and or super stores in the area and Appellant does not offer any specialty or cultural foods, fresh or frozen meat or meat plans or any fresh or frozen produce. The record reflects that there are at least 24 other SNAP authorized stores within one mile radius of Appellant which include small grocery stores, medium grocery stores, large grocery stores, supermarkets, superstores and other convenience stores.

There appears to be no special reason for customers to continuously shop at Appellant’s store. 5 U.S.C. § 552 (b)(7)(E).

5 U.S.C. § 552 (b)(6) & (b)(7)(C). With regards to this contention Appellant is a convenience store that does not compare in size and stock to the large supermarkets, and/or super stores where the households also shopped. Households may transact their benefits at any authorized retailer, but considering the store type and stock there is no apparent legitimate reason that:

- 5 U.S.C. § 552 (b)(6) & (b)(7)(C)
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The record reflects that the store’s stock consists of a minimal variety and minimal units of eligible staple food items. There were no fresh fruits or vegetables available. The store did have deli luncheon meat and hot dogs, but no fresh meat or fish available and no frozen foods were found during the store visit. The store visit did indicate that Appellant’s stock consisted of some expired/outdated spoiled food and had a few empty shelves. The most heavily stocked item was assorted varieties of canned goods, snack foods, candy, chips, single serve ice cream and

beverages. The most expensive items (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) were cereal, large canned tomatoes, medium and large sized bags of rice. The store visit does not show bags of rice priced at \$70.00 as claimed by the owner. The store visit report does not indicate any compelling reason for customers to consider Rock City Market a first choice destination to fulfill large purchases of food.

Additionally, it is unlikely that SNAP customers, who have limited amounts of SNAP benefits in which to adequately feed their families, would consistently spend upwards 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on junk food. Based on discussion herein, Appellant's contention cannot be accepted as a valid basis for dismissing the charges or for mitigating the penalty imposed.

**Attachment 2 of the Charge letter - Excessively large purchase transactions were made from recipient accounts.**

This attachment lists 78 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Based on the results of the contracted store visit, the large transaction amounts are not consistent with the store's inventory of low priced foods. The firm does not offer food in bulk or any ethnic or specialty foods that sell for a high price. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions. The average convenience store transaction in California during the review period was \$7.37. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant contends that the transactions were cherry picked and only represent five percent of the total sales. With regard to this contention, the ALERT system is a database software solution that has passed rigorous government testing, meets quality assurance requirements, and has been certified to accurately reflect the transaction data received from State EBT data banks compiled from the actual EBT transactions of individual stores. Retailer Operations Divisions uses ALERT as a tool to identify EBT transactions that form patterns having characteristics indicative of trafficking and saves the Retailer Operations Division time and effort of having to make such compilations manually.

ALERT does not determine or conclude that trafficking has occurred. The Retailer Operations Division must still analyze the transaction data and patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior and a comparison of stores in the area, and render a determination whether questionable transactions were, more likely than not, the result of trafficking. Therefore, although the Retailer Operations Division does not manually prepare the transaction data upon which they may charge firms with trafficking violations, the raw transaction data is reliable, and the Retailer Operations Division has the authority to analyze and use that data in evidence to substantiate a determination that violations have occurred

Appellant contends that it has been at the store, accepting EBT, for seven years and has never violated any laws. With regards to this contention, it is important to note that a record of participation in 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 the present serious charge of trafficking. 5 U.S.C. § 552 (b)(7)(E). Furthermore, giving special consideration to firms claiming lack of knowledge of the requirements, rules and regulations of the SNAP would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations.

Based on this empirical data, and in the absence of sufficient evidence as to the legitimacy of such transactions, 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. In this case, ownership did not provide sufficient evidence to legitimize Appellant’s transaction data as outlined in the Attachments. Retailer Operations Division determined that Appellant’s contentions did not outweigh the evidence that the store was trafficking and concluded, through a preponderance of evidence, that trafficking is the most probable explanation for the questionable transactions listed in the charge letter attachments.

The transaction data and overall firm record convincingly demonstrate repetitive patterns of unusual, irregular, and inexplicable SNAP activity for this type of firm indicative of trafficking. Once Retailer Operations Division established the convincing case against Appellant, ownership bears the burden of proving, by a preponderance of the evidence, that the administrative action 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. If this is not demonstrated, the case is to be sustained.

As noted, 7 CFR § 278.6(a) states that 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 inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

Retailer Operations Division has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns in two attachments of EBT transaction data, the inadequacy of the firm’s eligible food stock as observed and recorded during the onsite visit to support such large transactions, the lack of evidence of invoices of food in inventory to cover Appellant’s reasoning for the SNAP transaction totals for the review months, the lack of explanation for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant, and the irregular SNAP transaction data of Appellant as compared to other convenience stores in the State.

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. Therefore, based on this empirical data, and in the absence of evidence for the legitimacy 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. While ownership was afforded the opportunity to provide valid explanations and evidence that support that the questionable transactions were the result of legitimate purchases of eligible food items, Retailer Operations determined that Appellant's contentions did not outweigh the evidence in the record.

The purpose of the administrative review process is to ensure that firms aggrieved by Retailer Operations Division's adverse actions have the opportunity to have their position fairly considered by an impartial review authority prior to that adverse action becoming final. Appellant has been duly given, and has taken the opportunity to present to USDA through the administrative review process whatever evidence and information it deemed pertinent in support of its position that Retailer Operations Division's adverse action should be reversed. Therefore, any evidence and information that Appellant presented to 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 Appellant's right to a fair and thorough review.

Ownership has not provided sufficient evidence to rebut the convincing case that Appellant most likely trafficked in SNAP benefits. As such, the SNAP regulations are specific with regard to the action that must be taken if personnel of the firm have trafficked, which is that FNS shall disqualify the firm permanently.

#### **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 dated May 17, 2017. 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**

Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Rock City Market from participation in the SNAP. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Therefore, based on a review of all the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged by Retailer Operations Division. Based on the discussion herein, the determination to impose a permanent disqualification against Rock City Market is sustained.

## **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 1977, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (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 (FOIA), we are 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.

Monique Brooks  
Administrative Review Officer

October 4, 2017