

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

RZ Discount Store LLC,

Appellant,

v.

Case Number: C0200935

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 a permanent disqualification of RZ Discount Store LLC (hereinafter “RZ Discount Store” or “Appellant”) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against RZ Discount Store.

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.”

SUMMARY OF CHARGES

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from December 2016 through May 2017. This involved the following transaction patterns which are common trafficking indicators:

- There were an unusual number of transactions ending in a same cents value.

- There were multiple transactions made from individual household benefit accounts within unusually short timeframes.
- An excessive number of manual key-entered EBT transactions were made.
- Excessively large purchase transactions were made from recipient accounts.

CASE CHRONOLOGY

The agency's record shows that FNS initially authorized RZ Discount Store for SNAP participation as a small grocery store on August 29, 2013. In a letter dated July 27, 2017, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of December 2016 and May 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In correspondence between August 1, 2017, and August 3, 2017, the Appellant, through counsel, responded to the charge letter, generally stating that trafficking was not occurring but rather the firm was engaged in the practice of permitting customers to shop at the store on credit and then pay their debt with SNAP benefits once the household's benefit allotment had been replenished.

In support of its response, the Appellant submitted 185 pages of inventory purchase receipts and invoices, as well as 80 pages of credit account ledger documentation.

In response to the Appellant's claim that it had allowed credit accounts at the store, the Retailer Operations Division sent the firm a letter dated August 10, 2017. In this letter, the Appellant was asked to provide documentation to support its claim of credit accounts. The letter stated that the documentation must identify specific accounts along with corresponding dates and amounts. It does not appear that the Appellant provided any additional credit account documentation beyond the 80 pages that had already been submitted.

It should be noted that if a firm is found to have committed credit account violations instead of trafficking, the firm would be subject to a one-year disqualification from SNAP in accordance with regulations at 7 CFR § 278.2(f).

After considering the Appellant's reply and documentation and further reviewing the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated August 29, 2017. This determination letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but that a CMP was not appropriate in this case because the Appellant failed to submit sufficient evidence to demonstrate that the firm had

established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked September 7, 2017, the Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted. It should be noted that in a letter dated October 2, 2017, the Appellant submitted an additional letter and document for the administrative review officer to consider. This information was added to the case file and all contentions were considered during the administrative review process.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, in part:

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

7 CFR § 278.6(a) states, in part:

FNS may disqualify any authorized retail food store...if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, **inconsistent redemption data, [or] evidence obtained through a transaction report under an electronic benefit transfer system...** [Emphasis added.]

7 CFR § 278.6(e)(1)(i) states:

FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, in part:

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 § 271.2 states, in part:

Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption...

7 CFR § 278.6(b)(1) states, in part:

Any firm considered for disqualification...under paragraph (a) of this section...shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...

7 CFR § 278.6(c) states, in part:

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) of this section, 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, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(b)(2)(ii) states, in part:

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... 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).

7 CFR § 278.6(b)(2)(iii) states:

If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty.

7 CFR § 278.6(i) states, in part:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking...if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program...

APPELLANT'S CONTENTIONS

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

- Appellant requests a review of the finding of SNAP violations and the rejection of the explanation of credit accounts.
- Appellant incorporates all prior communication and materials provided to the Retailer Operations Division.
- Adverse action was taken after a finding that the documentation previously provided did not substantiate the Appellant's position that it had been extending credit to its patrons.
- Upon a more searching review by the retailer, there are additional expenses that should have been factored into the agency's decision.

In support of these contentions, Appellant's counsel provided a letter written by the firm's owner, in which additional expenses were explained, such as costs of local, fresh vegetables, water, and ethnic foods. The letter also identified markup percentages of approximately 20 percent on top of the 40 percent already estimated by the Retailer Operations Division.

In the letter, the Appellant owner also apologized for making the mistake of allowing credit accounts and states that the firm will no longer give credit to its customers. The owner's letter further requests that the firm be given another chance to serve the community by accepting SNAP benefits at the store.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically summarized or explicitly referenced herein.

ANALYSIS AND FINDINGS

The primary issue for consideration in a case based on suspicious SNAP redemption data is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other words, did the Retailer Operations Division, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and unusual transactions cited in the charge letter were the result of trafficking?

Contractor Store Visit

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm's EBT transactions, but also information obtained from a May 22, 2017, store visit which was conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- RZ Discount Store is a small grocery store operating in Prospect Park, New Jersey.
- At the time of the contractor's visit, the firm had no shopping carts, but did have approximately seven handheld shopping baskets for customer use.
- The store visit photographs show two cash registers and agency records reflect the use of one EBT point-of-sale device.
- The store does not appear to use optical scanners to process transactions.
- The store's staple food stock is moderate in each of the four staple food categories and is typical of a small grocery store.
- The store visit report also indicates that the store sells SNAP-eligible, non-staple accessory food items, such as carbonated and uncarbonated drinks, snacks, candy, and condiments. Additionally, the store sells a large amount of ineligible nonfood items, such as tobacco products, lottery tickets, phone cards and a wide variety of miscellaneous household merchandise.
- The store appears to sell a very small amount of hot foods, such as hot coffee and hot meat patties. This does not appear to be a significant portion of the firm's revenue.
- The firm sells some frozen meats by the pound, such as chicken legs for \$0.99 per pound, and there appears to be a small assortment of fresh produce.
- Among the most expensive items are 20-pound bags of rice, priced between \$13.99 and \$21.99 per bag.
- The checkout area consists of one very small, cluttered countertop, perhaps 18 inches by 18 inches, where items can be placed to be rung up. The constricted checkout area is not suitable for conducting large or rapid transactions as there is very little space to place more than one or two small items and there is no conveyor belt to expedite the purchase.
- There is no indication from the store visit report that the firm has a special pricing structure, although judging by the report, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The report also indicates that the firm does not round transaction totals up or down at checkout.

The available inventory of SNAP-eligible food items at the time of the store visit showed stock that would be typical of a small grocery store. There was no indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of grocery items, especially considering the absence of shopping carts and the extremely constricted checkout area. The store markets itself as a discount store; as such, the available food was primarily of a low-dollar value and there was no evidence that the firm sold any high-priced meat or seafood bundles or other bulk or specialty items.

Given the available inventory and the store's characteristics, there was no sign that the firm would be likely to have SNAP redemption patterns that differed significantly from those of similar-sized competitors.

SNAP Transaction Analysis

Charge Letter Attachment 1: There were an unusual number of transactions ending in a same cents value. This attachment lists 337 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**
5 U.S.C. § 552 (b)(6) & (b)(7)(C).

As noted earlier, there was no evidence from the contractor's report that the firm had any sort of unique pricing structure for its merchandise, such as pricing its inventory in quarter- or half-dollar increments. The report, which was completed in collaboration with store personnel, further indicated that the store does not round transaction totals up or down.

Without a specific pricing structure, it is highly unusual for transactions to routinely end in even-dollar amounts. Unfortunately, the Appellant has not offered any contentions to suggest that the specific transactions listed in Attachment 1 were legitimate purchases of eligible food, except for a claim that the firm was engaged in credit accounts. This topic will be discussed later.

Accordingly, this review has little option but to side with the Retailer Operations Division, as the transactions listed in Attachment 1 are sufficiently unusual to reasonably conclude that trafficking is the likely cause.

Charge Letter Attachment 2: Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 77 sets of transactions (163 transactions in all) **5 U.S.C. § 552 (b)(6) & (b)(7)(C).** **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

These sorts of repetitive transactions are remarkably unusual for a small grocery store that sells typical, low-priced merchandise.

The Appellant has not offered any contentions that directly relate to the specific transactions listed in Attachment 2, except to claim that the firm was engaged in the practice of allowing customers to shop on credit. The topic of credit accounts will be addressed in greater detail below. But for purposes of Attachment 2, an argument of credit accounts makes very little sense.

It is possible that one large transaction would be a credit transaction to pay off a debt, but a second or third large transaction shortly after the first is illogical.

Agency records also show that the vast majority of households who shop at RZ Discount Store also shop at supermarkets and superstores in the area and do so on a regular basis, so there seems to be very little need for a household to spend hundreds of dollars in such a repetitive fashion at a small grocery store rather than shopping at a much larger store, where shopping carts and greater variety of inventory would help facilitate the purchase of large numbers of food items.

Because the Appellant has not offered any specific explanations to counter the transactions identified in Attachment 2, it is reasonable for this review to conclude that trafficking was likely occurring at the Appellant store.

Charge Letter Attachment 3: An excessive number of manual key entered EBT transactions were made. These transactions significantly exceed the normal practice for stores in the state. This attachment lists 44 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Unfortunately, the Appellant has not offered any contentions or evidence to explain why there are more manually-entered transactions at its store than at any other stores in the area. Such evidence could have included cash register receipts, which might have shown that the transactions listed were legitimate purchases of eligible food.

The evidence uncovered by the Retailer Operations Division suggests that there is much more going on at the Appellant store than simply faulty point-of-sale equipment or worn-out EBT cards. The number of key-entered transactions in this case may seem small compared with the total number of transactions that occurred at the store. But the number of manually-entered transactions remains significantly higher than other nearby stores and suggests that the transactions occurred without the EBT card being present. Accordingly, it is the conclusion of this review that that trafficking is a logical explanation for such transactions.

Charge Letter Attachment 4: Excessively large purchase transactions were made from recipient accounts. This attachment lists 593 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with a small grocery store in the state of New Jersey. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a small grocery store in New Jersey was \$11.40. In Passaic County, the average transaction size was even lower, at \$10.60. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Given that the Appellant firm does have a moderate inventory of staple foods as well as some eligible accessory foods, such as soft drinks and snacks, it is probable that there would be an occasional purchase where the transaction amount is high, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As such, there may well be some legitimate SNAP transactions sprinkled among the transactions listed in Attachment 4. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar-sized competitors, especially considering the minimal number of high-priced food items available at the store and

the absence of specially-priced meat bundles, large or expensive packages, or ethnic foods. The substantial number of high-dollar transactions in a six-month period calls into question the legitimacy of these transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Agency records show that there are nearly 40 comparable or larger SNAP-authorized stores located within a one-mile radius of RZ Discount Store, including a superstore and a supermarket, so it makes little sense that SNAP households would regularly expend large amounts of SNAP benefits at a small store such as RZ Discount Store.

The Appellant, through counsel, has argued that the firm was allowing households to shop on credit. This topic will be addressed below. For the purposes of Attachment 4, the claim of credit accounts is insufficient for this review to conclude that the unusually large transactions were legitimate purchases of eligible food.

Stores caught in trafficking violations, both during onsite investigations and in EBT analysis cases, consistently display particular characteristics or patterns. These patterns often include frequent, large transactions that cannot be supported by the retailer's inventory, store type, and structure. It is the conclusion of this review that RZ Discount Store, with its primarily low-dollar inventory, its lack of shopping carts, and its severely constricted checkout area cannot support the large numbers of high-dollar transactions identified in Attachment 4. Therefore, the most logical explanation for such transactions is trafficking.

Based on the above analysis, it is the determination of this review that RZ Discount Store likely trafficked in SNAP benefits during the review period. The attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place. Conversely, the Appellant has failed to provide a rational explanation or any evidence as to why such patterns might exist. As there are multiple unexplained patterns of irregular transactions, the case of trafficking is convincing.

Credit Accounts

The Appellant's chief argument to counter the charges of trafficking is a claim that the firm was engaged in the practice of allowing customers to obtain food items on credit and then pay for the items with their SNAP benefits at a later time. To support this claim, the Appellant submitted 80 pages of what appears to be a credit account ledger. The ledger includes the customer's name (often a first name only) and in some cases an address and phone number. Two customers even included their date of birth. The ledger also listed the dates of the credit transactions, a brief description of the items purchased on credit and the dollar amounts owed. Also included was the date the customer made a payment and the amount that was paid. A running debt total was also listed.

By all indications, the ledgers appear to be legitimate records of credit activity taking place at the store. Quite a few of the pages were outside of the six-month review period, but many of the ledgers appear to be within the six months in question.

Unfortunately, the credit ledgers are insufficient to prove that trafficking did not occur at the Appellant store. In fact, the opposite appears to be true. While the descriptions of what was purchased on credit are often very vague, with explanations such as “shopping,” or “food,” some descriptions are quite clear, including “water,” “cookie,” “phone bill,” “Lyca” (phone cards) “cig,” (cigarettes) “medicine,” “diapers,” and “cash.” All of these items, whether food or not, were added to the running tab. When the customer made a payment with SNAP, the remaining balance decreased, no matter what had been purchased on credit.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

By the Appellant’s own records, exchanging cash for SNAP benefits (i.e. trafficking) was a regular activity at the store.

Even though the Appellant submitted 80 pages of ledgers, only a total of 33 transactions corresponded to transactions listed in the charge letter. This constitutes just 5 percent of all the transactions listed in Attachment 4. Many of the very largest transactions in the charge letter do not appear anywhere on the credit ledgers and no other explanation was given as to what these might be for. As implied earlier, this review has grave doubts that such large transactions were legitimate, and the Appellant has not provided sufficient evidence to prove otherwise.

When a retailer claims that credit accounts are a reason for the irregular SNAP transactions and data patterns, FNS requires a substantial level of proof regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser one-year disqualification penalty after committing more egregious violations such as trafficking. Unfortunately, the documentation provided by the Appellant falls far short of these expectations. Therefore, it is the determination of this review that the firm’s minimal credit account documentation does not, in any respect, constitute a preponderance of the evidence sufficient to eliminate trafficking as a reason for the unusual transaction patterns identified in the charge letter.

Additional Documentation

As for the remaining documentation provided by the Appellant, including dozens of inventory purchase receipts and the owner’s explanation regarding additional expenses incurred by the firm, such evidence does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed. The documentation does not, in any way, offer an explanation for the specific transactions listed in the charge letter attachments.

The inventory records show that the firm purchases and receives inventory, but offer little insight as to what was actually purchased during each questionable transaction listed in the charge letter.

Accordingly, these additional documents and explanation are unpersuasive and have no bearing on the outcome of this case.

Civil Money Penalty

As noted earlier, the Retailer Operations Division determined that the Appellant firm was not eligible for a civil money penalty in lieu of permanent disqualification for trafficking because it did not submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and training program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider a trafficking CMP in lieu of permanent disqualification, but it must also submit appropriate documentation within designated timeframes. The case record shows that the Appellant did not request a trafficking CMP when it responded to the charge letter and there is no evidence that the Appellant submitted any documentation that would indicate that the firm had a compliance policy or training program of any kind.

Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii), a civil money penalty in lieu of permanent disqualification for trafficking cannot be granted in this case.

CONCLUSION

An analysis of the Appellant's EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify RZ Discount Store from SNAP participation. This data provided ample evidence for this review to conclude that the questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by the Appellant.

Based on a review of all available information in this case, it is the determination of this review that the Appellant has not proven, by a preponderance of the evidence, that the administrative action should be reversed. As such, the decision to impose a permanent disqualification against the Appellant, RZ Discount Store, under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt of this decision.

Under the Freedom of Information Act, 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.

JON YORGASON
Administrative Review Officer

March 13, 2018