

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

Salahi Deli and Grocery,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0213950

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 Salahi Deli and Grocery (hereinafter “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 Salahi Deli and Grocery.

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 April 2018 through September 2018. This involved the following transaction patterns which are common trafficking indicators:

- There were a large number of transactions ending in a same cents value.
- There were multiple transactions made from the accounts of individual SNAP households within a set time period.

- The firm conducted EBT transactions that were large based on observed store characteristics and recorded food stock.

CASE CHRONOLOGY

The agency's record shows that FNS initially authorized Salahi Deli and Grocery for SNAP participation on December 30, 2004. In a letter dated March 12, 2019, 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 April 2018 and September 2018. 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 a letter dated March 22, 2019, the Appellant, through counsel, replied to the charge letter, stating that the unusual transaction patterns were not due to trafficking, but rather were the result of extending credit to customers who were short on SNAP benefits. The customers would obtain food items on credit and then pay the firm back when the household's EBT card was replenished with a new allotment of SNAP benefits. The Appellant acknowledged that its credit policy was a violation of SNAP regulations, but explained that it was done with the best of intentions to help out some of its regular customers. The Appellant stated that there were no reasonable grounds to conclude that trafficking was occurring and stated that the appropriate penalty was a one-year disqualification rather than permanent disqualification. The Appellant further stated that the store has stopped accepting payments on credit. The Appellant further requested an extension of time to provide evidence to support its response. It appears that the Retailer Operations Division granted the firm's request, giving it until April 24, 2019, to submit its documentation.

On April 22, 2019, the Appellant submitted a large volume of documentation, including a two-page affidavit from store owner **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, and an affidavit from a store employee, both attesting to allowing credit accounts to some of the firm's regular customers. The Appellant also submitted 113 pages of inventory invoices from the review period, and 31 color photographs of the firm's inventory.

In response to the Appellant's claim that it allowed credit accounts at the store, the Retailer Operations Division sent the firm a letter dated May 6, 2019. In this letter, the Appellant was asked to provide additional 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 should be noted that the practice of allowing SNAP households to purchase food items on credit is prohibited by regulation. 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).

In response to the agency's credit account letter, the Appellant submitted eight pages of handwritten, undated credit logs from six different customers as well as photographs of four EBT cards showing the names of recipients and the last four digits of their ID numbers. Also submitted

were six signed affidavits from customers attesting to shopping at the firm on credit. The credit account logs list only a first name, but four of the names appear to correspond to the names on the EBT cards. The logs do not identify dates and do not list what was purchased. They are simply a listing of dollar amounts. It appears that some of the amounts are added together in occasional totals, but none of the total amounts are found in the March 12 charge letter.

After analyzing the explanations and documentation provided by the Appellant and further considering the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated June 19, 2019. This 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 a CMP was not appropriate 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 July 11, 2019, the Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

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....

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:

- The firm has presented clear and convincing evidence that any irregularity in EBT transactions during the review period were on account of its acceptance of EBT purchases on credit.
- Although credit transactions are unlawful, the proper penalty is a one-year suspension rather than permanent disqualification.
- The store is a grocery/deli store and offers extensive varieties of groceries. The dollar amounts of single transactions at this firm are well within a reasonable range for a firm that stocks such inventory.
- Affidavits provided by the firm confirm that the store maintained a wrongful policy of accepting payment for EBT transactions on credit. This credit activity was done with regular customers who were short on SNAP benefits. The customers paid the firm back later in the month once they had sufficient benefits to cover the balance.
- Although the firm had the best of intentions when establishing this policy, it now recognizes that the practice is a violation of SNAP regulations.
- The firm's credit account practices explain why multiple transactions were made from individual benefit accounts in relatively short timeframes and why some larger transactions were made from recipient accounts.
- The firm has been in business for almost 30 years and has never been warned of possible FNS violations in the past.
- There are no reasonable grounds to conclude that any trafficking violations were committed.
- The firm no longer accepts payments on credit.
- The owners are upstanding members of the community and their store offers convenient services to the neighborhood.
- Appellant requests that the agency's decision to permanently disqualify the firm be modified to reflect the proper penalty due.

In support of its contentions, the Appellant submitted the same documents that were submitted in its response to the charge letter, including affidavits from one of the owners and an employee; affidavits from six EBT customers and corresponding pictures of EBT cards for four of the customers; undated credit logs from six customers; a Google Map printout of the area in which

the store is located; photographs of the store and its inventory; and inventory purchase invoices from the review period.

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 in this document.

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 during an August 31, 2018, store inspection which was conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. The 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:

- Salahi Deli and Grocery is listed on agency records as a small grocery store, and is approximately 850 square feet in size, operating in the city of Brooklyn, New York. Considering the store's heavy emphasis on snack foods and non-foods, it is probably more appropriate to categorize this firm as a convenience store.
- At the time of the contractor's visit, the firm did not have any shopping carts or baskets for customer use, which is not unusual for stores of this size. Customers shopping in small stores like this generally purchase only as much food as they can carry in their arms.
- The store visit photographs show one cash register for food purchases and agency records reflect the use of one EBT point-of-sale device.
- It appears that the firm does not use optical scanners to process transactions.
- The checkout area consists of a small countertop where items can be placed for purchase. The constricted checkout area is not suitable for conducting large or rapid transactions as there is very little space on the counter to place more than a few items at a time and little room for customers to maneuver with large amounts of groceries.
- The store's staple food stock is sufficient for program eligibility, but the emphasis at the store appears to be on other items, such as snack foods, drinks, hot food, and non-food items. Much of the firm's staple food inventory is either behind the cash register where customers must ask for items, or is placed in shelves above the beverage coolers, which is out of reach for most customers.
- SNAP-eligible, non-staple accessory food items include carbonated and uncarbonated drinks, snacks, candy, and condiments. The store also sells a large amount of ineligible,

nonfood merchandise, including alcoholic beverages, tobacco products, lottery tickets, personal care items, and other miscellaneous household merchandise.

- The store sells food items for immediate consumption, including made-to-order hot and cold sandwiches. Deli items, such as sliced meat and cheese, are also available for purchase by the pound.
- The most expensive food items for sale at the store include containers of Enfamil infant formula ranging from \$18.99 to \$24.99 each, and a 7-ounce jar of coffee which sells for \$12.99. It should be noted that expensive infant formula is not commonly purchased with SNAP benefits because it is on the list of food items available for purchase through the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The vast majority of SNAP households with children under the age of five are also eligible for participation in WIC. Accordingly, many WIC-eligible items are purchased with a WIC card instead of SNAP benefits.
- The contractor noted that the store did not appear to have a special pricing structure, such as large amounts of merchandise ending in even-dollar amounts. Most items appeared to end with a cents value of 9, which is very common. The contractor also noted that the store does not round transaction totals up or down at checkout.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be typical of a small grocery store or corner market, where households normally purchase a limited number of items to complement their overall dietary needs. There was no indication that SNAP households would be inclined to regularly visit Salahi Deli and Grocery to purchase large quantities of groceries, especially considering the minimal amount of staple food, the absence of shopping carts and baskets, and the availability of substantially larger SNAP-authorized stores in the immediate area, including approximately 25 supermarkets and superstores within a one-mile radius of the firm. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from those of similar-sized competitors.

SNAP Transaction Analysis

Charge Letter Attachment 1: There were a large number of transactions ending in a same cents value. This attachment lists 141 transactions ending in .00 **5 U.S.C. § 552 (b)(6) & (b)(7)(C).** **5 U.S.C. § 552 (b)(7)(E).** At the time of the store visit, the store did not appear to have a consistent pricing structure, such as large numbers of items with prices ending in .00 or .50. By all indications, most items ended with a cents value of 9, which is the most common pricing structure among retail stores. As such, the likelihood that so many non-taxed transactions, which would typically consist of random items from the store's shelves, would so frequently and legitimately end in .00 is very low.

The Appellant has not specifically connected its credit account arguments to the transactions listed in Attachment 1, but as credit accounts are the key contention in this case, it is safe to assume that the Appellant believes that the transactions in Attachment 1 are the result of the firm allowing customers to shop on credit and then pay the firm back with its SNAP benefits at a later time.

The issue of credit accounts will be addressed in detail later in this document, but as the argument pertains to Attachment 1, this review finds the claim to be less than credible, particularly in relation

to the lack of even-dollar pricing at the store. As noted earlier, at the time of the store inspection, most items appeared to end with a cents value of 9. While there were a small number of even-dollar prices, such as Red Bull energy drink for \$3.00, \$4.00, or \$5.00, most items were not evenly-priced. If the firm were selling food items on credit at the prices posted in the store, it stands to reason that the total amount paid by the customer at the beginning of the following month would reflect that pricing structure. The store inspector, who completed the store visit in collaboration with store personnel who were onsite at the time of the inspection, also indicated that the firm did not round transaction totals up or down at checkout. It is notable that the Appellant did not provide any credit account evidence specifically from the review period, so it is impossible to determine whether or not such activity was the reason for the transactions found in Attachment 1.

Finally, the Appellant submitted a number of photographs in which pricing signs can be seen posted throughout the store. Several of these signs show even dollar prices, such as two cans of Progresso soup for \$5.00, or five pounds of flour for \$4.00. However, none of these signs were present in the store at the time of the contractor's visit, suggesting that the signs were hung only after the firm received the charge letter.

This review does not contest that some transactions at the store legitimately ended with a cents value of .00, but the Appellant's explanation and evidence is insufficient to eliminate trafficking as a primary reason for the unusually large numbers of such transactions.

Charge Letter Attachment 2: Multiple transactions were made from the accounts of individual SNAP households within a set time period. This attachment lists 20 sets of transactions (51 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

For example 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Considering the amount of food it would take to add up to these transaction totals and considering the characteristics of the store and the availability of much larger grocery stores in the area – 5 U.S.C. § 552 (b)(6) & (b)(7)(C) – it seems very unlikely that households would make large, legitimate SNAP purchases in such a repetitive manner.

Further, the Appellant's contention that the unusual transactions in Attachment 2 were the result of credit accounts makes little sense. If a household were paying a credit account, it stands to reason that they would pay the entire amount in one transaction rather than in multiple transactions over a short period of time.

Charge Letter Attachment 3: The store conducted EBT transactions that were large based on observed store characteristics and recorded food stock. This attachment lists 120 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 York. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a small grocery store in New York was \$10.73. In Kings County, the average was slightly higher, at \$10.77 per transaction. But the average transaction in Attachment 3 is more than six times larger than the average purchase amount for this store type.

Given that the Appellant firm does sell a moderate supply of staple foods as well as other SNAP-eligible food items, such as snacks and drinks, it is possible that there would be an occasional instance where the transaction amount is high, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As such, there may be some legitimate SNAP transactions sprinkled among the transactions listed in Attachment 3. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from nearby, similar-sized competitors. The substantial number of high-dollar transactions in a six-month period calls into question the legitimacy of these transactions.

Attachment 3 lists eight transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Considering how many food items it would typically take to add up 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and considering that the firm does not have any shopping carts or baskets, and given the fact that there are much larger grocery stores in the area with substantially greater inventory and variety, this review finds it unlikely that every transaction in Attachment 3 is a legitimate purchase of eligible food.

The Appellant did not offer any specific contentions related to the transactions in Attachment 3 except to say that the transaction patterns were the result of the firm allowing credit accounts. This contention will be addressed below.

This review does not doubt that Salahi Deli and Grocery sells eligible food items and conducts some legitimate SNAP business. But when SNAP transactions form patterns that are substantially different from similar-sized and similarly-stocked stores in the area, persuasive evidence from the Appellant is necessary to demonstrate that there is not something more, such as trafficking, taking place. In an appeal of adverse action, the onus is on the Appellant to prove by a preponderance of the evidence that the administrative action should be reversed. This means submitting sufficient and compelling evidence that would lead a reviewer to conclude that trafficking did not occur. Unfortunately, the Appellant has not met this standard.

It is the finding of this review that the attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place. The Appellant's contentions and evidence do not persuade this review otherwise.

Credit Accounts

The Appellant has claimed that the unusual transaction patterns in this case were not due to trafficking, but rather due to the firm engaging in credit accounts. According to the Appellant, it had a store policy in which it permitted some regular customers to shop at the store on credit and then pay the firm back with their SNAP benefits once the household's benefit allotment was replenished. To support this claim, the Appellant submitted six affidavits signed by SNAP households, an affidavit from store owner 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and an affidavit from one of the firm's employees. The Appellant also submitted photographs of EBT cards from four SNAP customers, and credit account logs for six customers.

The Appellant has acknowledged that allowing customers to shop on credit with SNAP benefits was a mistake and states that it has now discontinued the practice. The Appellant contends that

the permanent disqualification penalty in this case should be modified to a one-year sanction, which is the regulatory penalty for credit account violations.

Unfortunately, the documentation provided by the Appellant is insufficient for this review to eliminate trafficking as a key reason for the unusual transaction patterns identified in the charge letter. Based on the existence of credit ledgers, it is likely that credit account activity was taking place at the Appellant firm to some degree. But the Appellant's evidence is not nearly comprehensive enough to eliminate trafficking from the equation. For example, the Appellant submitted eight pages of credit account logs. As best as this review can tell, the logs correspond to credit activity for six different customers (identified by first names only). The affidavits are signed by six customers, and most of the names on the affidavits appear to correspond to the names on the credit ledgers. The four EBT cards also correspond to the same individuals on the credit ledgers. So in total, the Appellant's credit evidence involves no more than eight to 10 customers. And yet, Attachment 3 of the charge letter includes transactions from 37 different households. Were these households also involved in credit accounts? What's more, there is no evidence that the credit ledgers are even from the review period. On one page, there appears to be a date of "5 U.S.C. § 552 (b)(6) & (b)(7)(C)" among the list of dollar amounts, but this date is well after the end of the review period and none of the other credit logs have any dates at all. Additionally, none of the dollar amounts listed appear to correspond to the transactions listed in the charge letter, and none of the credit logs identify what was purchased at any time. As such, it is impossible to determine if the products purchased were SNAP-eligible food items.

As to the content of the customer affidavits, such declarations are largely unconvincing. Customers engaging in trafficking violations are unlikely to admit to such conduct, potentially opening themselves up to administrative and/or criminal charges. On the contrary, experience has shown that SNAP customer statements and affidavits routinely attest to irregular transactions being legitimate even when there is strong evidence otherwise.

When a retailer claims that credit accounts are a reason for the irregular SNAP transaction patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have frequently made false admissions of credit accounts in an attempt to obtain a lesser one-year disqualification penalty instead of permanent disqualification for trafficking. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items. Such proof should also correspond with the transactions identified in the letter of charges. The evidence provided by the Appellant falls far short of these expectations. In short, this review does not agree with the Appellant's characterization that it has presented "clear and convincing" evidence that the irregular transactions at this store were the result of credit accounts.

Other Evidence

As to the remaining key pieces of evidence provided by the Appellant, particularly the invoices and photographs, this review finds them to be of little value in this matter.

Regarding the inventory records, these largely consist of soda and other beverages. Also included are summary reports with no clear indication of what was inventory was actually purchased by the

firm. From all indications, the firm likely purchased sufficient inventory to cover the full amount of its SNAP redemptions during the review period. However, inventory records without accompanying documentation, such as itemized cash register receipts, rarely persuade a reviewer to reverse a disqualification determination as invoices and purchase summaries offer little insight into what transpired at the point of sale.

As to the Appellant's photographs, these were likely taken after the firm received the charge letter, and thus, are not an accurate representation of store conditions as they existed during the review period. For example, while the inventory in the Appellant's photos largely resembles the inventory as recorded by the store visit contractor, the Appellant's photos show large numbers of pricing posters and labels which were not present at the time of the inspection. As with the inventory invoices, photographs also give no indication of what occurred at the point of sale.

It is important to restate here that in an appeal of adverse action, the onus is on the Appellant to prove by a preponderance of the evidence that the administrative action should be reversed. Despite being presented with a specific list of questionable transactions, the Appellant's has offered no persuasive evidence, such as cash register receipts or other evidence from the point of sale, to prove that the transactions listed in the charge letter were legitimate purchases of eligible food.

No Prior Warning

The Appellant argues that Salahi Deli and Grocery has been in business for almost 30 years and has never been warned of possible FNS violations in the past.

With regard to this contention, USDA is under no obligation to warn retailers when SNAP violations are occurring. It should be noted, however, that on multiple occasions, the firm was given notice about violating program rules. The case record shows that in December 2004, the Appellant owner signed an application to participate as a retailer in SNAP. By signing this application, the Appellant owner agreed to accept responsibility on behalf of the firm for compliance with all statutory and regulatory requirements associated with participation in SNAP, including not exchanging SNAP benefits for cash (i.e. trafficking) and not accepting SNAP benefits as payment on credit accounts or loans. The Appellant submitted a reauthorization application as recently as March 31, 2015, in which it agreed to comply with these same regulations. From all indications, the Appellant either misunderstood or ignored the rules that were disclosed by FNS from the earliest stages of SNAP participation. Neither provides a valid basis for dismissing the charges or for mitigating the penalty imposed.

Civil Money Penalty

As noted earlier, the Retailer Operations Division determined that the 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 the firm 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 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 replied 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) and § 278.6(i), a civil money penalty in lieu of permanent disqualification for trafficking is not an option 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 Salahi Deli and Grocery from SNAP participation. This data provided sufficient 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. Likewise, the Appellant has not proven, by a preponderance of the evidence, that the administrative action should be modified or reversed.

Based on a review of all available information in this case, the decision to impose a permanent disqualification against the Appellant, Salahi Deli and Grocery, under the ownership **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

October 21, 2019