

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

Shukrani Market Inc,

Appellant,

v.

Case Number: C0199999

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS) that the permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP) imposed upon Shukrani Market Inc. (hereinafter “Appellant”) by the Retailer Operations Division, Investigations and Analysis Branch, hereinafter “ROD Office” is hereby sustained.

ISSUE

The issue accepted for review is whether the ROD Office took appropriate action, consistent with 7 U.S.C. § 2021, 7 CFR § 278.6(a) and 7 CFR § 278.6 (e)(1) and (i) in its administration of the SNAP when it imposed a permanent disqualification upon Appellant.

AUTHORITY

7 U.S.C. § 2023 and the implementing regulations at 7 C.F.R. § 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 July 7, 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 during the months of December 2016 through April 2017. The letter noted that the sanction for trafficking is permanent disqualification, as provided by 7 CFR §278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the

conditions specified in 7 CFR §278.6(i). The record reflects that the SNAP Office received and duly considered Appellant's replies to the Charge Letter. By a letter dated August 24, 2017, Appellant was informed that it was permanently disqualified from participation as a retail store in the SNAP and was ordered upon receipt of the letter to cease accepting SNAP benefits; consequently, Appellant ceased to accept said benefits. On September 1, 2017, Appellant requested an administrative review of the SNAP Office's decision; the request was granted.

STANDARD OF REVIEW

In appeals of adverse actions an appellant bears the burden of demonstrating 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, as amended, at 7 U.S.C. § 2021 and in Part 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.

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 & 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, 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, (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, in part:

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, in part:

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)(iii) states, in part:

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.

SUMMARY OF THE CHARGES

- A series of 187 SNAP transactions totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) ended in same-cents values (Attachment 1).
 - A series of 163 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
 - A series of 24 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- A series of multiple SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from individual benefit accounts in unusually short time frames (Attachment 2).
- A series of excessively large SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from recipient accounts (Attachment 3).

APPELLANT'S CONTENTIONS

In Appellant's replies to the Charge Letter, in its written request for review dated September 1, 2017, and in subsequent correspondence, it was argued that:

1. Appellant's customers do not have transportation.
2. Regarding Attachment 1 to the Charge Letter, there is no sales tax charged on the transactions, so they will often end in same-cents values. Most same-cents transactions were relatively small and for the purchase of a single but expensive imported item. There were not enough same-cents transactions to be significant – only approximately one per day.

3. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Many of the transactions were due to customers realizing they had forgotten something and adding a second purchase. Due to the unique inventory, customers visit the store less often than other stores and may not return to the store for a longer period of time; thus they make both larger and also secondary purchases during a single visit.
4. Regarding Attachment 3, inventory is imported and thus expensive; customers spend more at the store compared to other stores. Also, customers stock up on such items causing purchases to be large. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Although customers do not rely on the Appellant firm for all their food purchases, many spend relatively larger amounts compared to other stores because of the price of imported food products.
5. Appellant provides copies of individual itemized sales receipts in support of the above.

ANALYSIS AND FINDINGS

At the outset it should be noted that the ROD Office ordered a contracted store visit to the Appellant firm as part of its investigation into Appellant's questionable transaction activity; the visit was conducted on March 14, 2017, as a result of which documentation was obtained including photographs of the interior and exterior of the store, a store layout diagram and a store inventory survey. This documentation reflected the following:

- No optical scanners.
- The firm had one shopping cart and two shopping baskets present for customer use.
- One cash register and one card reader.
- No hot food sold.
- No dining area.
- No meat/seafood bundles/specials or fruit/vegetable boxes.
- Estimated 2500 square feet of store space.
- The firm sold jewelry, clothing, paper products, cleaning supplies, kitchen utensils, laundry detergent, health and beauty products and other non-food items.
- Check-out counter space approximately 1 X 1 feet and surrounded by health and beauty products, jewelry, clothing and other non-food items. Photos: 5 and 20.
- Sparsely-stocked shelves. Photos: 2, 9, 10, 20, 22, 23, 30 and 31.
- Prices in standard retail variations of \$.x9. Photos: 2, 10, 12 and 13.
- Combination grocery store selling ethnic African food items as well as non-food items. Photos: 5, 8, 20, 22 and 32.

The documentation presents no indication of advertised specials or promotions. The checkout area was set up in convenience store fashion, utilizing a small check-out area, approximately 1 X 1 feet and surrounded by health and beauty products, jewelry, clothing and other non-food items. This documentation reflects that the firm was a marginally-stocked combination grocery/other store in all relevant respects, with a substantial amount of empty/sparsely-stocked retail space. It is worth noting that the average SNAP purchase in a combination grocery/other store in the state of Texas during the analysis period was \$17.32; 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

In regard to contention 1 above, the ROD Office cites agency household data that indicates most households conducting Charge Letter transactions also shopped at super stores, supermarkets and grocery stores (many of which were several miles away) and some on or about the same day, reflecting that most customers have routine access to transportation as well as to other better-stocked and very likely more competitively-priced food stores.

Regarding contention 2 above, as noted in the foregoing, the store visit photos reflect several items priced in standard retail variations of \$.x9; Appellant's sales receipts further indicate such pricing. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). While plausible to an extent, the firm has not provided invoices to demonstrate that it maintained the inventory to support numerous large transactions; this is relevant, as the store visit documentation reflected a substantial amount of empty and/or sparsely-stocked shelves and coolers. There are some issues surrounding the receipts as well, which will be discussed in further detail below.

The ROD Office has provided analysis demonstrating that the number of same-cents transactions was abnormally high. Also as noted, the average SNAP transaction in a combination grocery/other store in the state of Texas during the analysis period was \$17.32; most of the transactions in Attachment 1 exceeded this amount and several were multiple times this amount; accordingly the contention that there were not enough same-cents transactions and/or that they were too small is not found to be compelling.

Lastly, the ROD Office has compared the number of same-cents transactions conducted at the Appellant firm with two nearby stores that are very similar stocked and which also cater to the same ethnic clientele; Appellant's numbers of same-cents transactions were multiple times that of the two other SNAP-authorized firms during the same time period. Agency data reflects that some of Appellant's customers also shopped at these other stores. There is no rationale offered to explain why only or primarily Appellant's customers would conduct such transactions.

Given the small number of the sales receipts, the lack of receipts for large transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and the firm's marginal inventory, the receipts are viewed as falling short of rebutting Attachment 1 and the ROD Office's case work in support thereof.

With regard to contention 3 above, while there are legitimate reasons why a SNAP recipient or household member might return to a small store during a short period of time, such purchases are more typically in small amounts and for obtaining just a few items. The examples in Attachment 2 indicate a series of repetitive purchases that total large amounts. Customers spending such substantial amounts of SNAP allotments in a marginally-stocked combination grocery store, when there are other larger food stores nearby which carry substantially larger varieties of food at lower costs, is implausible. Multiple transactions over a short period of time, especially of high dollar value, are very suspicious because they are typical of stores and SNAP customers which are attempting to diminish attention to signs of SNAP-benefit trafficking. Moreover, the record further reflects that Appellant's number of repetitive transactions during the analysis period was multiple times that of two nearby SNAP-authorized stores (both within a one-mile radius and similarly or better-stocked firms also focusing on ethnic African food products). Frequent and large transactions conducted in order to purchase eligible foods at Appellant's store are highly unlikely given Appellant's logistical wherewithal and store stock. There is no

compelling rationale to explain why only, or primarily, Appellant's customers made repetitive visits spending large amounts in short timeframes. The record reflects, as noted above, that the Appellant firm was a marginally-stocked combination grocery store in all relevant respects and provides no plausible bases for customers' unusual attraction to the firm and unorthodox transaction patterns.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Frequent and large transactions conducted rapidly in order to purchase eligible foods at Appellant's store are highly unlikely given Appellant'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: 1) unloading items from a cart or basket, 2) separating eligible from ineligible items, 3) the cashier's handling of individual items to determine the price, which in this case involved manual keying of amounts, 4) weighing individual items if sold by weight, 5) entering prices into a register or adding machine, once for eligible foods and once for ineligible items, which is typical for larger purchases, 6) handling manufacturers cents-off coupons, if applicable, 7) bagging the items for carry out, 8) informing the customer of the totals (one for eligible foods and one for non-eligible items, if applicable, which for large purchases includes most transactions), 9) pressing the "SNAP transaction key" on the point-of-sale device, 10) swiping the card, 11) customer entry of the required PIN, 12) cashier entry of the purchase amount, 13) confirming customer has a sufficient benefit balance, 14) the transaction being processed by the system and receiving approval, 15) printing out receipts, 16) accepting an alternate form of payment for nonfoods and possibly handling cash change and 17) the customer removing products from the checkout area so the next customer in line can begin the next 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.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Limited counter space as well as manually key-entering 19-digit card numbers adds additional time to transactions. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

In regard to contention 4 above, while it acknowledged that some of the inventory appears to be relatively expensive, the depth of stock and variety present in the store on the day of the store visit was marginal, calling into question whether repeated excessively large purchases by customers could be sustained by the firm. It is noted for the record that the firm does not provide inventory records or product purchase receipts/invoices to support its contentions. Attachment 3 alone contains **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP activity; such constitutes 80% of the firm's SNAP redemptions during the analysis period. The ROD Office further notes that Appellant's number of excessively large transactions was multiple times that of two nearby comparable firms, both of which also carried substantial inventories of ethnic African food products.

Regarding contention 5 above, the receipts contain numerous discrepancies. Most have dates, times and amounts that match the Charge Letter exactly; but some reflect a drastically incorrect time, AM versus PM and vice versa, which, if the receipts are date/time stamped, is highly implausible. The error is occasional and not a systematic time stamp issue, which suggests that at least some of the receipts were contrived.

Additionally, some of the receipts are time stamped after the store's stated hours of operation. The store visit notes that the firm did not have optical scanners, thus it is surprising that the firm provided itemized receipts, although the firm provided only a small number of receipts compared to the number of transactions detailed in the Charge Letter. No explanation is given for why only some of the receipts were provided. However, since the firm did not have an optical scanner, reproducing large numbers of itemized receipts would be extremely time-consuming. Many of the purchased items appearing on the receipts were consistent from one receipt to the next; however, several reflected different product/item spellings and different prices. One item, identified only as "Tomson box 40 lb," was listed with a price of \$115.98. It is not clear what this item was; Appellant offers no explanation. The store visit revealed no single item/package or advertised bulk item that would reasonably be priced at over \$100.

Moreover, many items appear in a similar order on the receipts, which likewise appears implausible: often flour, grains, beans and other expensive items were listed first, while cat fish, goat meat or other items, which appear to be priced by the pound, appear last. Perhaps the firm had established this check-out order out of habit or routine; however, since this is also a method by which one could reproduce specific amounts by adding individual items (adding expensive items first to quickly approximate the total and then using a variable-priced item to arrive at an exact total), at least some of the receipts, in addition to representing only a small number of the total transactions at issue, appear to be of dubious authenticity; only 28 receipts were provided for the 187 transactions in Attachment 1, 24 for the 218 transactions in Attachment 2 and 16 for the 493 transactions in Attachment 3.

The SNAP Office notes that, at the time of the sanction decision, there were 14 SNAP-authorized firms within a one-mile radius, including one supermarket, one large grocery store, one medium grocery store, two small grocery stores, six convenience stores and three other combination grocery stores. The record reflects that many customers clearly had access to and routinely shopped at better-stocked super stores and supermarkets in the area. This information further indicates that these customers were conducting implausible transactions only at or primarily at the Appellant firm. The Appellant store was clearly not the only store in the immediate area offering ethnic African food items to SNAP customers; it was clearly not the best-stocked firm in the area and it was clearly not the only store being visited by Appellant's customers.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Lastly, once trafficking is established, there is no latitude to impose a lesser sanction, with the exception of a trafficking civil money penalty. There is provision at 7 CFR §278.6(i) for the imposition of a civil money penalty in lieu of permanent disqualification for trafficking. Appellant was advised of this provision in the SNAP Office's Charge Letter dated July 7, 2017, which also advised that documentation of eligibility for that alternative sanction was to have been provided within a specific time limit. In the absence of any such documentation, a civil money penalty was not imposed in lieu of permanent disqualification by the SNAP Office. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) in 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 (within 10 days

of receiving the letter of charges), the firm shall not be eligible for such a penalty.” As Appellant did not request such consideration and provided no evidence or information in support thereof, the SNAP Office’s decision not to impose a civil money penalty is sustained as appropriate pursuant to 7 CFR §278.6(b)(1); §278.6(b)(2)(ii), §278.6(b)(2)(iii) and §278.6(i).

CONCLUSION

In view of the above, the decision of the ROD Office to permanently disqualify Appellant from participation in the SNAP is hereby sustained. The decision will become final upon the 30th day following Appellant’s receipt of this document.

RIGHTS AND REMEDIES

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

Under the provisions of the Freedom of Information Act (FOIA), 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.

DANIEL S. LAY
Administrative Review Officer

April 6, 2018