

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

Sky Deli and Grocery 1 Corp,

Appellant,

v.

Case Number: C0199623

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 Sky Deli and Grocery 1 Corp. (hereinafter “Sky Deli and Grocery” 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 Sky 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 October 2016 through April 2017. This involved the following transaction patterns which are common trafficking indicators:

- There were multiple transactions made from individual household benefit accounts within

- unusually short timeframes.
- Excessively large purchase transactions were made from recipient accounts.

CASE CHRONOLOGY

The agency's record shows that FNS initially authorized Sky Deli and Grocery for SNAP participation as a convenience store on May 23, 2016. In a letter dated June 9, 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 October 2016 and April 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 a letter dated June 16, 2017, the Appellant, through counsel, responded to the charge letter, stating that the allegations of trafficking were unfounded. It argued that the transactions listed in the charge letter were not indicative of any kind of violation, but were typical, legitimate transactions that occurred during the normal course of business. The Appellant contended that FNS's case against the firm was circumstantial and that no direct evidence of employees exchanging SNAP benefits for cash or ineligible has been presented.

To support its contentions, the Appellant provided affidavits from the Appellant owner and three employees asserting that they have never committed SNAP violations and that they have been thoroughly trained in SNAP rules and procedures. The employees also signed separate statements indicating that they are aware of and have been trained on the firm's policies regarding SNAP and that they agree to participate in all future training sessions. The statements further acknowledge an understanding that their employment will be terminated if they are found to have engaged in any violations of rules or regulations. The signed statements are dated prior to the review period.

The Appellant also submitted a copy of the firm's three-page policy manual, and five photographs of the store.

After reviewing the Appellant's response and documentation 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 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 July 5, 2017, the Appellant 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, *inter alia*:

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

7 CFR § 278.6(a) states, *inter alia*:

*FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, **inconsistent redemption data, [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, *inter alia*:

Trafficking means: The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and

signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone...

7 CFR § 271.2 states, *inter alia*:

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, *inter alia*:

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, *inter alia*:

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, *inter alia*:

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, *inter alia*:

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... In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of permanent disqualification for trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following criteria:

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

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of the violations cited in the charge letter sent to the firm; and

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in § 278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations...

APPELLANT'S CONTENTIONS

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

- USDA's permanent disqualification of Sky Deli and Grocery is based upon an erroneous finding that violations occurred in the store and that the firm failed to have an effective compliance policy and program to prevent SNAP violations. Appellant requests that this finding be reversed.
- Appellant further requests that the decision to permanently disqualify the firm also be reversed.
- The original charge letter made no allegation that the firm lacked an effective compliance policy and program to prevent SNAP violations. The charge letter solely accused the firm of trafficking as defined in Section 271.2 of the SNAP regulations. The charge letter made no mention of the firm's compliance policy and program and did not question, criticize, or in any way discuss the firm's compliance policy and program.
- Further, the owner and his employees completely denied committing any violations.
- It almost seems that since USDA lacked sufficient evidence to show that trafficking occurred, it is now suggesting additional allegations in an attempt to disqualify Sky Deli and Grocery from SNAP.
- While the determination letter claims that the firm did not have an effective compliance policy and program to prevent SNAP violations, there is absolutely nothing to support such an assertion. USDA makes this accusation without having any evidence, documentation, or information to corroborate its claim. In fact, all of the available evidence disproves USDA's claim. This evidence, including a store policy manual, was presented to USDA in response to the original charge letter.

- It seems somewhat disingenuous for USDA to characterize the firm’s compliance policy and program as ineffective when the policy and program are very similar to the compliance policies and programs recommended by USDA on its website.
- The firm’s owner and his employees submitted affidavits to show that there was a policy in place and that the policy was implemented to ensure that every employee was compliant with all SNAP regulations. USDA has nothing to suggest anything to the contrary.
- Without any evidence to support its assertion that the firm did not have an effective compliance policy and program to prevent SNAP violations, it is inappropriate, unfair, and an abuse of discretion for USDA to disqualify the firm from SNAP.
- If the disqualification is not reversed following a review of this case, the firm will be forced to seek a further appeal in U.S. District Court. “Thankfully courts do not render rulings and decisions based upon mere speculation and evidence which supports a contrary outcome.”
- As to the allegations of trafficking, the store owner confronted his employees about the allegations, and all denied providing either ineligible items or cash as part of an EBT transaction. Previously submitted affidavits attest to this.
- “5 U.S.C. § 552 (b)(6) & (b)(7)(C)” attempted to obtain the store’s video surveillance from the dates when the alleged improper transactions occurred, but given the age of the relevant dates, the video from those dates had already been erased and recorded over by new video.
- The owner’s training and the firm’s training manual make it clear that any deviation from SNAP regulations will be grounds for termination. If the owner is provided with clear evidence that any of his employees have violated the rules or regulations of SNAP, he will terminate that employee immediately.

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 an April 23, 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:

- Sky Deli and Grocery is a small convenience store, approximately 450 square feet in size, operating in an urban commercial area of Brooklyn, New York.
- At the time of the contractor's visit, the firm had no shopping carts or shopping baskets for customer use.
- The store visit photographs show one cash register and agency records indicate the use of one 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. The store also sells SNAP-eligible, non-staple accessory food items, such as carbonated and uncarbonated drinks, snacks, candy, and condiments. Additionally, the store sells ineligible nonfood items, such as tobacco products and other miscellaneous household merchandise.
- The store has a commercial-grade kitchen where it prepares hot meals that are not eligible for purchase with SNAP benefits. Offerings include breakfast foods, such as omelettes, pancakes, and French toast; hot, made-to-order sandwiches; gyros; and appetizers, such as French fries, onion rings, mozzarella sticks, and hot wings. Prices for most hot food items range between \$2.99 and \$5.99.
- The store also sells meat and cheese by the pound.
- The checkout area consists of a small countertop (roughly 18 inches by 24 inches) where items can be placed to be rung up. The checkout area is not suitable for conducting large or rapid transactions as there is no conveyor belt to expedite the purchase and not enough space to place more than a few small items at one time.
- There is no indication from the store visit reports that the firm has a special pricing structure, although judging by the contractor's photographs, most items appear to end in 9, such \$0.99, \$1.99, etc.

The available inventory of SNAP-eligible food items at the time of the store visit showed stock that would be typical of a small convenience 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 limited staple food inventory, the constricted checkout area, the absence of shopping carts and baskets, and the availability of larger authorized stores in the immediate vicinity. The available food was primarily of a low-dollar value and there was no hint that the firm sold any high-priced meat or seafood bundles or other bulk or specialty items.

Given the available inventory, there was very little 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: Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 41 sets of transactions (100 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C)

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Such repetitive transactions are very unusual for a small convenience store that does not offer any large or bulk staple food items and has no shopping carts or baskets to help transport large amounts of food. It is also strange that households would make repeat visits to this store for large purchases when stores with significantly greater inventory are in the immediate vicinity, including a supermarket next door.

Unfortunately, the Appellant has offered no evidence whatsoever to prove that the transactions listed in Attachment 1 were legitimate purchases of eligible food. Such evidence could have included documentation like itemized cash register receipts.

Given the common practice of violating retailers breaking up large, suspicious transactions into multiple, somewhat smaller transactions to avoid detection, and considering the Appellant's lack of evidence regarding the questionable transactions, this review is left with little option but to conclude that the transactions listed in this attachment were more likely than not the result of trafficking.

Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts. This attachment lists 469 SNAP transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with a convenience 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 convenience store in New York was \$8.92. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Given that the Appellant firm does have a small 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). 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 absence of shopping carts and shopping baskets and the fact that there are other shopping options in the area. According to agency records there are two large grocery stores, one supermarket, and one superstore within a half-mile radius of Sky Deli and Grocery. As mentioned earlier, the supermarket is located next door to the Appellant firm. Such stores offer a much larger variety of staple food inventory as well as shopping carts and shopping baskets to help facilitate the purchase of large amounts of food.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Considering the fact that the store sells primarily low-priced snack foods and other low-cost merchandise, and considering how many items it would take to add up to 5 U.S.C. § 552 (b)(6) & (b)(7)(C), it seems very unlikely that these were legitimate purchases of eligible food. It is not plausible that the firm's customers would carry large amounts of merchandise around the store without the benefit of shopping carts or baskets or that customers

would routinely make the bulk of their grocery purchases at a moderately-stocked convenience store rather than at a nearby supermarket with significantly more inventory and variety. Unfortunately, the Appellant has not offered any explanations or evidence to justify the specific transactions listed in Attachment 2.

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 Sky Deli and Grocery, with its limited and primarily low-dollar inventory, lack of shopping carts and baskets, and its constricted checkout area cannot support the large numbers of high-dollar transactions identified in Attachment 2. Therefore, the most logical explanation for such repetitive transactions is trafficking.

Based on the above analysis, it is the determination of this review that Sky Deli and Grocery 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 as to why such patterns might exist. As there are multiple unexplained patterns of irregular transactions, the case of trafficking is convincing.

Affidavits

As noted earlier, the Appellant has provided affidavits from both the store owner and three employees. In these documents, the affiants assert that they have never exchanged SNAP benefits for cash or ineligible items, and claim that they have been trained in SNAP on a regular basis. The owner states that he provides weekly SNAP training to all employees, while the employees state that they receive monthly training.

With regard to these affidavits, is not often that a retailer or an employee admits to trafficking, as making such an admission potentially exposes an individual to administrative and/or criminal charges. On the contrary, experience has shown that owner and employee affidavits routinely attest to irregular transactions being legitimate even when there is strong evidence suggesting otherwise.

The fact that the Appellant has not offered any evidence at all to demonstrate that the specific transactions in question were legitimate purchases of eligible food causes this review to doubt the veracity of the affiants' claims. Assertions of innocence, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal or reversal of the current charges.

Compliance Policy and Program / Civil Money Penalty

A significant portion of the Appellant's request for administrative review deals with its belief that the decision to permanently disqualify the firm from SNAP participation was based in part on the Retailer Operations Division's determination that the firm did not have an effective compliance policy and program to prevent SNAP violations. The Appellant contends that the

original charge letter made no allegation that the firm lacked an effective compliance policy and program. The Appellant states that such an accusation did not appear until the June 29, 2017 determination letter. According to the Appellant, it almost seems that since FNS lacked sufficient evidence to show that trafficking occurred, it is now suggesting additional allegations in an attempt to disqualify Sky Deli and Grocery from SNAP.

The Appellant argues that there is nothing to support the agency's assertion that the firm did not have an effective compliance policy and program; rather, all of the available evidence disproves this assertion. The Appellant further claims that it is disingenuous for FNS to characterize the firm's compliance policy and program as ineffective when the policy and program are very similar to the policies and programs recommended by FNS on its website.

Finally, the Appellant argues that without any evidence to support FNS's assertion that the firm did not have an effective compliance policy and program to prevent SNAP violations, it is inappropriate, unfair, and an abuse of discretion for FNS to permanently disqualify the firm from SNAP.

With regard to this list of contentions about the firm's compliance policy and program, it must be stated that at no time did the Retailer Operations Division claim that Sky Deli and Grocery had an ineffective compliance policy and program. The agency's reference to the firm's compliance policy and program was made only in relation to the firm's eligibility for a trafficking civil money penalty. The effectiveness of the firm's policy and program had no bearing on the agency's finding that trafficking occurred or on its decision to impose a permanent disqualification.

It is entirely possible that the Appellant firm does have an effective compliance policy and program. But the Retailer Operations Division determined that the Appellant did not submit sufficient evidence of its policy and program to be eligible for a CMP in lieu of disqualification.

In order to be eligible for a trafficking CMP, a firm must submit "substantial evidence" that it fulfills each of the four criteria found in 7 CFR § 278.6(i). The standards of evidence are further detailed in 7 CFR § 278.6(i)(1) and (2).

It should be noted that the Appellant did not, at any time, request consideration of a CMP in lieu of disqualification. In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must first notify FNS that it desires the agency to consider a CMP in lieu of permanent disqualification. If a firm fails to request consideration for a CMP, it is not eligible for such a penalty. As best as can be determined, the Appellant provided a copy of the firm's compliance policy and program and copies of employee statements not for purposes of requesting a CMP, but in an attempt to demonstrate that the employees did not and would not engage in violative behavior.

Despite the fact that the Appellant made no such request, the Retailer Operations Division decided to consider the firm's eligibility for a CMP anyway. Based on the documentation provided by the Appellant, the agency determined that the evidence was not sufficient to prove that the Appellant met the criteria outlined in 7 CFR § 278.6(i)(1) and (2).

This review concedes that the mention of a trafficking CMP in the determination letter, when a CMP was not requested, may have caused confusion and may have given an inaccurate impression that the disqualification was based on the firm's failure to provide sufficient evidence of a compliance policy and program. However, this review finds no evidence that the disqualification of Sky Deli and Grocery was based on anything but trafficking violations.

As a matter of formality, this review finds that Sky Deli and Grocery is not eligible for a trafficking CMP because there is no evidence that the Appellant requested consideration for this alternative penalty.

Trafficking Case based on EBT Data

The Appellant, through counsel, has argued that permanent disqualification of Sky Deli and Grocery is based upon an erroneous finding that violations occurred in the store. It contends that the charges are wholly circumstantial and lack direct evidence to prove that trafficking occurred, as defined in Section 271.2 of the SNAP regulations. The Appellant argues that a determination of trafficking requires evidence of exchanging SNAP benefits for cash or ineligible items. In this case, the only evidence provided by FNS is "several EBT transactions that it deems to be 'unusual.'" The Appellant claims that if the owner is provided with clear evidence that any employees have violated the rules or regulations, he will terminate that employee immediately.

With regard to these contentions, this review acknowledges that a conclusion of trafficking cannot be drawn from EBT data alone, nor would it be possible to do so in a case based primarily on inconsistent redemption data or transaction data under an EBT system. It is noted that FNS employs a computerized fraud detection tool to identify EBT transactions that form patterns having characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. The Retailer Operations Division must still analyze the transaction data and patterns with other factors, such as observations from a store visit, an analysis of customer shopping behavior, and a comparison with similar stores in the area, and then render a determination as to whether or not the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is identified in 7 CFR § 278.6(a) which 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.]

Prior to a disqualification determination, the accused firm is given an opportunity to reply to the charges and provide any information it deems appropriate in justifying as legitimate the transaction activity detailed in the charge letter.

It should be noted that this reviewer has thoroughly examined the documentation and information provided by the Retailer Operations Division and found no evidence to suggest that

the agency simply churned out numerical data and declared it to be trafficking. From all indications, the Retailer Operations Division obtained the EBT data, found it to be suspicious in comparison to other area stores of similar size, and then undertook a thorough investigation before concluding that trafficking was likely occurring.

It is important to restate that the Appellant has offered no evidence, such as itemized cash register receipts or other accounting records, to prove that the specific transactions identified in the charge letter attachments were legitimate purchases of eligible food. Therefore, the Appellant's contention that the allegations of trafficking are lacking direct evidence does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

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 Sky 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.

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, Sky Deli and Grocery, under the ownership of Gamal Qatabi, 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

December 20, 2017