

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

**Speedy Spot Liquor,**

**Appellant,**

**v.**

**Office of Retailer Operations  
and Compliance,**

**Respondent.**

**Case Number: C0223645**

**FINAL AGENCY DECISION**

The record supports that Speedy Spot Liquor (Appellant), committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the USDA that there is sufficient evidence to support that the permanent disqualification of Appellant from participation as an authorized retail food store in the Program, as imposed by the Office of Retailer Operations and Compliance, (Retailer Operations) was appropriate.

**ISSUE**

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

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1, provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6, or § 278.7, may file a written request for review of the administrative action with the Food and Nutrition Service (FNS).

**CASE CHRONOLOGY**

By Charge letter dated December 23, 2019, Retailer Operations informed the owner that it had compiled evidence that Appellant had violated the SNAP regulations based on electronic benefit transfer (EBT) transactions that established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the firm type. The sanction for trafficking is permanent disqualification. Counsel responded to the Charge letter by letter dated January 3, 2020.

Retailer Operations issued a Determination letter dated March 18, 2020. This letter informed Appellant that it was permanently disqualified as a retail food store in accordance with Sections 278.6(c), and 278.6(e)(1) of the regulations. Retailer Operations considered Appellant's eligibility for a civil money penalty (CMP) according to Section 278.6(i) of the regulations, and found it was not eligible because insufficient evidence was submitted timely to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program to prevent violations.

By letter postmarked March 26, 2020, the owner appealed Retailer Operations' determination, and requested administrative review. The appeal was granted by letter dated April 3, 2020.

### **STANDARD OF REVIEW**

In an appeal of an adverse action, the Appellant bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. That means the Appellant has the burden of providing credible, relevant evidence, which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true.

### **CONTROLLING LAW AND REGULATIONS**

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

7 CFR § 278.6(e)(1) states: "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." Trafficking is defined, in part, in 7 CFR § 271.2, as "the buying or selling of SNAP benefits for cash or consideration other than eligible food."

7 CFR § 271.2 states: "Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food products prepared for immediate consumption."

7 CFR § 278.6(a) states: "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, evidence obtained through a transaction report under an electronic benefit transfer system."

7 CFR § 278.6(b)(2)(ii) states: "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(i) states: "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."

### SUMMARY OF THE CHARGES

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges were based on an analysis of SNAP transaction data during the period of May 2019 through October 2019. The patterns of transaction characteristics indicative of trafficking are:

- Multiple transactions were made from individual benefit accounts within a set time period.
- Large EBT transactions based on observed store characteristics and recorded food stock.

### APPELLANT'S CONTENTIONS

In reaching a decision, consideration has been given to all contentions as presented, including any not referenced.

- It appears in Attachment 1 that during the 6 month period, there were only one day transactions for each Household (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) during the entire 6 month period, except for one customer, Household No. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) which made the multiple transactions in a set of time period.
- Our Client has no recollection of the Households who made subsequent transactions only one time in one day during the 6 month period. It is not unusual in this type of business that a certain customer makes second subsequent transactions within a set of time period in a particular circumstance. In some occasions when a customer comes in the store with his/her kids, the second card swiping could be made after the first transaction was already made because the kids may bring their items after the completion of the first transaction.
- In the Attachment 1, there was not a substantially large number of customers who made such repetitive transactions during the 6 month period. Apart from the Household No. 5 U.S.C. § 552 (b)(6) & (b)(7)(C), it appears that there were only four customers who made the subsequent transactions only once in the 6 month period. This would clearly evidence that it shows no patterns or repetitive activities in committing the Trafficking under the SNAP regulations; and that our Client has not intentionally and knowingly engaged in such alleged Trafficking. Our Client has no personal relationship with the 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This customer is one of the patrons of the store for a long time. However, our

Client has no recollection of any unusual, irregular and inexplicable activity associated with this customer. This customer has not been seen at the store since December 2019.

- As for the Attachment 2, our Client normally preserves and maintains the sufficient food stocks in the store for such large EBT sales. The financial documents, including invoices, inventory lists and the most recent tax returns, enclosed herewith for your review, shall be sufficient evidence to determine our Client's characteristics/capability of carrying out such large volume of EBT sales.
- Based on the foregoing, our Client disagrees with the USDA's charges for the Trafficking violation under the SNAP regulations. Our Client has never been sanctioned before for the Trafficking under the SNAP regulations.
- In the event that the USDA should determine that our Client is in violation of the Trafficking after this response, this office, on behalf of our Client, hereby requests, in lieu of permanent disqualification, disqualify for 6 months under the Section 278.1 paragraph (5); or a CMP for a reasonable amount under Section 278.6.
- Our Client is only a mom and pop type of local convenient store which would not be able to come up with such monetary sanctions within 30 day period. As such, our Client prefers a 6 month suspension to the monetary sanctions, if any.
- It is very difficult to understand how the transactions of the EBT charges and purchases on the list on the charge letter alone can justify that the trafficking did actually occurred at the store, therefore we would like to request USDA to provide some type of actual proofs or evidences. We are very unclear as to what is the actual CMP liable fine amount in the event that we sell or transfer ownership of the store.
- This is the first time ever our store has received the notice of violation from USDA.
- We disagree with the allegations and charges on the violation letter, and request to reconsider the charges for the Trafficking and permanently disqualifying from SNAP.

Counsel submitted:

- A one page spreadsheet of vendors and estimated monthly inventory from April 2019 through November 2019, totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- Copies of invoices for the food stock from May 2019 - October 2019.
- Copies of 49 photographs of inventory and the stock room.
- A copy of 2018 federal tax return including Schedule C, Profit or Loss from Business, with 5 U.S.C. § 552 (b)(6) & (b)(7)(C) stated as cost of items, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as inventory end year, and cost of goods sold as 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- Multiple pages of California State and Use tax returns for April 1, 2019 through June 30, 2019, and July 1, 2019 through September 30, 2019.
- A one page copy of a State tax payment on November 25, 2019.
- Copies of five sworn and deposed recipient affidavits with SNAP ID information.
- A copy of a Seller's Permit showing the owner of the business.

## ANALYSIS AND FINDINGS

Retailer Operations presented a case that Appellant trafficked SNAP benefits. Each Attachment furnished with the Charge letter represents the questionable and unusual patterns of SNAP

transactions indicative of trafficking which were conducted at Appellant during the review period. As patterns of unusual transactions appear across multiple Attachments the case of trafficking becomes more convincing.

**Attachment 1:** Listed are 32 transactions in 14 sets conducted by 11 unique households (HHs). The last four digits of the household numbers listed in the Charge letter are redacted from longer numbers, and the contention that there are fewer households is not the case. Appellant, a convenience store, had more data sets flagged on this Attachment's parameters, than a comparator same-type store that had only one data set flagged for the same timeframe. Retailer Operations noted that much of the stock seen in the FNS photos taken during the onsite visit of October 9, 2019, appears to be accessory foods such as snacks and beverages. There were no fresh or frozen meats, chicken, or seafood, or specialty/ethnic items reported on the FNS contractor's onsite inventory report. The store visit food checklist indicates that the only dairy items were milk, four units of butter and two units of cheese. The October 2019 onsite store inventory lists a total of 31 staple food items, many in small numbers, in the four staple food categories. The review did not indicate the presence of fresh produce, and the fruit and vegetable staple category appeared to be limited to bottled juice products. There were no food items reported as being priced at \$5 or higher.

Appellant has no deli or prepared foods section. The microwave located in the storage room was noted to be for employee use only. The store photos did not reveal any indication of a kitchen or hot food service. Appellant sells a variety of non-food items including: alcoholic beverages, tobacco products, lottery tickets, phone chargers, health and beauty aids, paper products, pet food, automobile products, and cleaning supplies. The photos depict that a good portion of the store display areas including coolers and shelf space were for beer, wine, and other alcoholic beverages. The onsite review indicates that the store has two registers, one POS device, an optical scanner, and operates behind a plastic barrier with window openings so as to conduct transactions. Appellant did not have handbaskets or grocery carts for customers to transport items throughout the store and to the register. The store contract reviewer indicated that Appellant did not have an unusual price structure, did not round transaction totals up or down at the register, and did not take telephone orders or offer delivery service.

The record indicates there are more than 100 authorized firms located within two miles or less of Appellant, including: seven supermarkets, one large grocery store, ten medium grocery stores, ten super stores, eight small grocery stores, 15 combination stores, and more than 50 additional convenience stores. This data supports that there are other authorized retailers at which SNAP recipients can purchase eligible foods. Retailer Operations conducted a SNAP recipient shopping analysis of several households, and determined that the HHs apparently had access to transportation as they transacted benefits at other authorized stores that were at a distance from Appellant, as well as those that were nearby. The record supports that 64% of the households listed on this Attachment made a transaction(s) at a super store, or supermarket within one day of making a SNAP transaction(s) at Appellant. The analyzed household data shows that many recipients were one person households, and many HHs participated in the restaurant meals program reserved for the disabled, homeless and elderly. It would likely be difficult for elderly and disabled recipients to carry the many items that would comprise high dollar totals at this store with documented lower priced inventory. Retailer Operations determined that all 11

households identified only had flags on this scan at Appellant and no other stores during the review period. Thus, this shopping pattern was irregular and specific to Appellant.

The transactions listed show that 64% of the subsequent purchases in the data sets were made more than 5 U.S.C. § 552 (b)(6) & (b)(7)(C) from the time of the initial purchase. These transactions more support that the SNAP recipient left the store and subsequently returned to make one or more additional transactions. Therefore, the majority of the transactions do not appear to be the result of children adding items to a previous transaction as contended. The dollar totals of the majority of the subsequent transactions in the sets are not indicative of forgotten or after-thought purchases. The owner did not provide detailed cash register tapes to show the what eligible items were acquired to result in the transaction amounts. Counsel did not offer explanations as to what items were purchased at Appellant, the nature of the business, and its SNAP recipients.

**Attachment 2:** Listed are 124 transactions conducted by 42 different households for amounts that exceed the average transaction amount for the same store type in the same state by three times or more. In comparison to other convenience stores in Los Angeles County, Appellant's average transaction dollar amount is more than 68% higher, and the total transaction dollar volume is more than 37% higher than the County average amount. The record supports that 59% of the households listed on this Attachment conducted transactions at a super store or supermarket within one day of making a transaction(s) at Appellant. Retailer Operations compared Appellant to a nearby same type store, which had just six flags that met the parameters of this scan, and found this to be unusual and suspicious.

Appellant had no shopping carts or handbaskets to convey eligible foods to the counter, and only a limited clear area at the checkouts to set down items. Furthermore, limited quantities of staple foods were photographed and recorded at the store. While Appellant did present sufficient invoices, with an applied markup, to likely support the SNAP redemption total amount for the review months, Retailer Operations found that the types of food purchased as seen in the invoices did not more likely support the legitimacy of the high dollar transactions listed in this Attachment. As noted, the store report in the record did not show high-priced items in stock. The store-submitted photos showed only two high priced packages of meat, and considered there to be an aberration. The store owner did not provide a price list of eligible foods or explain how transaction totals might exceed one hundred dollars or other high amounts, that were three times more than state average SNAP transaction amounts at state convenience stores for the same timeframe.

Retailer Operations conducted a review of several HHs' shopping patterns at Appellant. These patterns show that HHs made lower dollar SNAP transactions at larger store types on dates proximate to or on the same date as transactions at Appellant. While some households may have conducted legitimate SNAP transactions at Appellant, insufficient evidence was presented to support this argument. No itemized cash register receipts were provided. No explanations for the high dollar transaction amounts were proffered. The record shows that Appellant did not have high priced items, and the owner did not claim to sell items in bulk or eligible foods that would total to transactions of large dollar amounts.

The federal and state tax report submissions appear to be credible, however they are not persuasive by a preponderance, that Appellant was not trafficking. No business banking records were provided. The vendor receipts of stock of eligible foods were adequate to cover Appellant's SNAP redemptions. The invoices support that Appellant stocked mostly accessory foods. Accessory foods are eligible for SNAP purchase, however Retailer Operations determined it was unlikely that HHs would expend large benefit amounts at Appellant on these items, when other authorized stores including supermarkets and super stores, were proximate to Appellant. Retailer Operations decided that the large dollar transactions were more likely the result of trafficking.

Retailer Operations reviewed the five recipient statements provided, and confirmed that all five SNAP recipients shopped at supermarkets, super stores, large grocery stores, or medium grocery stores. Three households that made statements are listed on both Attachments, and they shopped at larger typed stores either before or after conducting transactions at Appellant. One household had a transaction listed on Attachment 2. Based on the shopping histories, Retailer Operations determined that the statements that the HHs would have a hardship to find other EBT authorized retail food stores in their areas selling the staple food items at comparable prices, was not credible. Two of the affiant households did not have any transactions listed on either Attachment during the review period.

The regulations at 7 CFR § 278.6(a) state that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, and that such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system. The owner has the burden of providing credible, relevant evidence, which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true. While some SNAP transactions at Appellant may have been for eligible foods, the owner has not provided a preponderance of evidence to support that the transactions flagged were likely more for eligible foods than the result of violative trafficking.

### **CIVIL MONEY PENALTY**

The regulations at 7 CFR Section 278.6(i) specify the criteria for a firm's eligibility for a CMP in lieu of permanent disqualification for trafficking. The four criteria listed at the cited regulation are identified as a minimum standard that firms must meet in order to be eligible for CMP consideration. The owner did not submit any substantive documentation to support a trafficking civil money penalty in lieu of permanent disqualification as required by the regulations.

Given the lack of a substantial evidence submission which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP, the owner did not meet the criteria for a CMP, and Retailer Operations properly denied it.

## **CONCLUSION**

Retailer Operations' analysis of Appellant's SNAP transaction data was the primary basis for its determination to permanently disqualify Appellant. The record also included onsite store photographs, an onsite store inventory report, and HH shopping analyses that provided evidence that the questionable transaction patterns during the review period had characteristics that are consistent with trafficking violations in SNAP benefits.

Based on empirical data, and in the absence of a preponderance of evidence of the legitimacy of the transaction patterns presented by Appellant, the evidence more supports that violations did occur as charged by Retailer Operations. Retailer Operations' denial of a trafficking CMP was also proper per the applicable regulations. Therefore, the decision to impose a permanent disqualification against Appellant is sustained. This decision is effective 30 days from delivery.

Please direct operations questions to Roxane Wise at (850) 228-7118.

## **RIGHTS AND REMEDIES**

Attention is called to Section 14 of the Food and Nutrition Act of 2008, and to 7 CFR § 279.7 of the regulations, with respect to applicable rights to judicial review of this decision. If 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 Appellant's owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of delivery 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.

M. Viens  
ADMINISTRATIVE REVIEW OFFICER

June 5, 2020