

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

Sportsmans Super Stop,

Appellant,

v.

Case Number: C0207393

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the USDA that there is sufficient evidence to support that the Retailer Operations Division properly imposed a permanent disqualification of Sportsmans Super Stop as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against Sportsmans Super Stop.

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.”

CASE CHRONOLOGY

In a letter dated May 17, 2018, 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 October 2017 through March 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated the Appellant had the right to respond to the charges within 10 days of receipt to provide explanations for the irregular SNAP transaction patterns. The letter also stated 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 charge letter was delivered to the Appellant by UPS on May 21, 2018.

In a faxed letter dated May 29, 2018, the Appellant, through counsel, admitted that the violations appeared to have happened. The Appellant store owner indicated that he at times left the store in the control of a teenager. The Appellant stated that the violations were not intentional and that the store was taking corrective action to ensure these type of violations did not occur in the future.

After reviewing the Appellant's contentions and the evidence in the case, the Retailer Operations Division issued a determination letter dated June 21, 2018. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and 7 CFR § 278.6(e)(1). The determination letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of 7 CFR § 278.6(i). The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP 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 violations of the SNAP.

In a letter postmarked June 29, 2018, the Appellant, through counsel, requested an administrative review of the Retailer Operation Division's determination. The request for administrative review was granted.

STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence, that the administrative action 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 AND REGULATIONS

The controlling law in this matter is covered in the Food & 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 § 271.2 states that the definition of "coupon" includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

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 defines trafficking, in part, as:

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 defines eligible food, in part, as:

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

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, evidence obtained through a transaction report under an electronic benefit transfer system.... [Emphasis added.]

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.

7 CFR § 278.6(b)(2) states, in part:

(ii) 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 as specified in § 278.6(i), 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). [Emphasis added.]

(iii) 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. [Emphasis added.]

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from October 2017 through March 2018. This involved the following transaction patterns which are trafficking indicators:

- **Charge Letter Attachment 1:** There were an unusual number of transactions ending in a same cents value. This attachment lists 219 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The largest single transaction amount reached **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.
- **Charge Letter Attachment 2:** Multiple consecutive purchase transactions were made too rapidly to be credible. This attachment lists 36 pairs of transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.
- **Charge Letter Attachment 3:** Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 31 sets of 83 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits. The largest single transaction set reached a high of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.
- **Charge Letter Attachment 4:** Excessively large purchase transactions were made from recipient accounts. This attachment lists 309 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The transaction amounts ranged up to a high of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

APPELLANT'S CONTENTIONS

The Appellant, through counsel, made the following summarized contentions in its reply to the charge letter and its request for administrative review, in relevant part:

- The Appellant admits that SNAP violations appear to have happened.
- The Appellant store owner indicated that he at times left the store in the control of a teenager and that there was a lack of supervision.
- The Appellant stated that the violations were not intentional.
- The store has instituted new procedures to ensure these violations do not happen in the future.
- The Appellant requests that the agency impose a lesser penalty than a permanent disqualification.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all

contentions presented, including any not specifically recapitulated or specifically referenced herein.

ANALYSIS AND FINDINGS

Authorization History

FNS authorized Sportsmans Super Stop for the SNAP on December 1, 2008. During the review period of October 2017 through March 2018, the Retailer Operations Division classified the store as a convenience store.

Charge Letter Attachment 1: Same Cent Transactions

The charge letter identified an unusual number of transactions ending in a same cents value. This attachment lists 219 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The largest single transaction amount reached 5 U.S.C. § 552 (b)(6) & (b)(7)(C) which is also excessively large for a SNAP authorized convenience store in Louisiana during the review period. When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits. There is no evidence that the store had a special pricing policy that would cause a disproportionate number of higher dollar transactions to end in 00 or 99 cents. Store personnel also stated during a store visit conducted on January 18, 2018 that the firm did not round prices up or round prices down to the nearest dollar. The Appellant offered no explanation for these irregular transactions. In the absence of a credible explanation for the irregular transaction patterns, the most likely explanation is that they are a result of the Appellant firm trafficking in SNAP benefits.

Charge Letter Attachment 2: Rapid and Consecutive Transactions

The charge letter identified multiple consecutive purchase transactions that were made too rapidly to be credible. This attachment lists 36 pairs of transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits in which consecutive transactions were conducted in less than a couple of minutes or even seconds apart. The second transaction in each set was a large dollar transaction which greatly exceeded the average SNAP transaction at a convenience store in Louisiana during the review period. The Appellant offered no explanation for these irregular transactions. In the absence of a credible explanation for the irregular transaction patterns, the most likely explanation is that they are a result of the Appellant firm trafficking in SNAP benefits.

Charge Letter Attachment 3: Multiple Transactions within a Short Time Period

Violating stores often conduct multiple split transactions from the same household account as a method to avoid the detection of single high dollar transactions that cannot be supported by the retailer's food inventory and infrastructure. The charge letter identified 31 sets of 83 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits. The average transaction for each set greatly exceeded the average SNAP transaction for a convenience store in Louisiana

during the review period. Store visit pictures show that is unlikely that SNAP customers would shop at Sportsmans Super Stop purchasing such a large volume of items multiple times during a short time frame. In addition, the store's small checkout area and limited counter space makes it unsuitable for conducting large transactions. The Appellant offered no explanation for these irregular transactions. In the absence of a credible explanation for the irregular transaction patterns, the most likely explanation is that they are a result of the Appellant firm trafficking in SNAP benefits.

Charge Letter Attachment 4: Excessively Large Transactions

The charge letter identified 309 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The transaction amounts ranged up to a high of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The substantial number of high dollar purchases atypical of a SNAP authorized convenience store calls into question the legitimacy of these transactions. There is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items. The Appellant offered no explanation for these irregular transactions. In the absence of a credible explanation for the irregular transaction patterns, the most likely explanation is that they are a result of the Appellant firm trafficking in SNAP benefits.

Owner Responsibility

The Appellant store owner admits that he sometimes left the store in the control of a teenager. Although the owner was allegedly not aware of the violations, it cannot be accepted as a valid basis for dismissing any of the charges, or for mitigating the impact of those charges. Regardless of whom the owner may utilize to handle store business, the owner is accountable for the proper training of staff and the monitoring and handling of SNAP benefit transactions. To allow store ownership to disclaim accountability for the acts of persons whom the owner chooses to utilize to handle store business would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

In addition, the owner signed the most recent SNAP reauthorization application for the store on April 22, 2014 and acknowledged that he was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible items.

Violations Not Intentional

The Appellant contends that the firm or its employees did not intend to violate any SNAP regulations. In response to this contention, please note that the definition of trafficking contained in the SNAP regulations at 7 CFR §271.2 does not require an element of intent on the part of the

violator. Therefore, whether or not the Appellant firm or its employees intended to violate SNAP regulations is irrelevant.

Appellant Requests Lesser Penalty

The Appellant requests a lesser penalty than permanent disqualification. Regarding this request, trafficking in SNAP benefits is an extremely serious violation and both 7 U.S.C. §2021(b)(3)(B) and 7 CFR §278.6(e)(1)(i) state that a first time violation warrants a permanent disqualification.

Corrective Action

The Appellant submitted documentation of corrective action that it has taken or plans to take to prevent SNAP violations in the future. However, it is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier determination of the Retailer Operations Division. This review is limited to what circumstances existed at the time that was the basis of the Retailer Operations Division's action. It is not the authority of this review to consider what subsequent remedial actions may be planned so that a store may begin to comply with program requirements.

In addition, there are no provisions in the SNAP regulations for a waiver or reduction of an administrative penalty assessment on the basis of alleged or planned corrective actions implemented subsequent to findings of program violations. Therefore, the Appellant's contention that corrective action has taken place, or will take place, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

CIVIL MONEY PENALTY

The Appellant did not timely request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR § 278.6(i) even though it was informed of the right to do so in the charge letter. The SNAP regulation at 7 CFR § 278.6(b)(2)(ii) mandates that a request for a trafficking CMP along with supporting documentation shall be submitted within ten (10) days of receipt of the charge letter.

The SNAP regulation at 7 CFR § 278.6(b)(2)(iii) also states, in part, 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 ... the firm **shall not be eligible** for such a penalty." [Emphasis added.]

Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program **prior** to the violations. Therefore, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

The Retailer Operations Division's analysis of the Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify the retailer. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges.

In the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did in fact occur as determined by the Retailer Operations Division. Based on the discussion above, the decision to impose a permanent disqualification against Sportsmans Super Stop, Appellant, is sustained.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses your right to a judicial review of this determination. Please note that 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 you reside or are 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 receipt of this Decision.

Under the Freedom of Information Act, 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

RONALD C. GWINN
Administrative Review Officer

September 12, 2018