

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

Stadler's Grocery,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0211360

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is sufficient evidence to support a finding that the permanent disqualification of Stadler's Grocery (Stadler's Grocery or Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), as initially imposed by the Retailer Operations Division, was appropriate.

ISSUE

The issue accepted for review is whether the Retailer Operations Division 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 USC § 2021 and the 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 October 15, 2018, the Retailer Operations Division charged 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 March 2018 through August 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant, through counsel, replied to the charges by letter on November 8, 2018. Appellant denied trafficking and explained the transactions were normal based on the unique circumstances of the store. After considering the retailer's reply and the evidence, the Retailer Operations Division issued a determination letter dated February 11, 2019. The determination letter informed Appellant that it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that Appellant was not eligible for a trafficking CMP because 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.

By letter postmarked February 15, 2019, ownership appealed the Retailer Operations Division's determination and requested an administrative review.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a clear preponderance of the evidence, that the administrative actions should be reversed. That means the 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 and Nutrition Act of 2008, as amended, 7 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a), (c) 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 USC § 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 § 271.2 states, in part, that, 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 § 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 § 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**, . . .” (emphasis added)

7 CFR § 278.6(e)(1) reads, in part:

FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

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.

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 THE CHARGES

Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from March 2018 through August 2018. This involved the following SNAP transaction patterns which are indicative of trafficking:

- There were multiple transactions made from individual benefit accounts in unusually short time frames.
- There were excessively large purchase transactions made from recipient accounts.

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.

APPELLANT'S CONTENTIONS

By e-mail dated March 26, 2019, counsel referred to its original reply that it submitted to the Retailer Operations Division to support its review request. In this letter dated November 8, 2019, counsel provided the following summarized explanations for the transactions:

- Other than redemption date, no other information is provided by FNS to support the alleged suspicious activity.
- Appellant can be described as a neighborhood gas station and convenience store, selling a wide variety of SNAP-eligible food products such as bread, milk, eggs, and an assortment of frozen foods.
- As seen in the price list, the store sells a far greater variety of high-dollar SNAP eligible food items than would be expected for a store this size.
- Appellant's primary inventory item that leads to higher EBT bills is the Krispy Krunch Chicken.
- Appellant has markedly increased its EBT sales over the last year by increasing its efforts to market and sell the Krispy Krunch Chicken (KKC) products.
- Appellant was purchasing and stocking a large inventory of chicken products from Sysco on a weekly basis from January 2018 through August 2018.
- These invoices show that Appellant was spending 5 U.S.C. § 552 (b)(6) & (b)(7)(C) to stock a variety of KKC products such as chicken tenders, wings, and frozen potatoes/biscuits.
- Appellant sells already cooked chicken in a microwaveable "grab and go" bag (for consumers to reheat and consume at home) that sell for \$19.29 each.
- The store also sells raw/uncooked KKC chicken products in bulk quantities, such as \$26.38 for a bag of chicken tenders or \$28.08 for a bag of chicken wings.
- Appellant sells other expensive frozen food items such as bulk hamburger patties (box of 20 for \$22.90), bacon (30 slices for \$15.85), boxes of chicken patties (16 for \$27.63), a hot dog box (\$22.90), and a "chili tub" (half pound container of frozen chili for \$17.45).
- Many customers in the local area prefer to shop Appellant based on the availability, variety, and competitive pricing of these items, as well as the easy proximity of the store to their homes.

- It is not unusual for these customers to make multiple legitimate food purchases at the store in small time frames, often reflecting the fact that they don't have a car to transport a large grocery purchase back to their homes - instead opting to make frequent trips to the store for their food needs.
- The customer declarations establish four things:
 1. This store is the closest available option for EBT customers to purchase a wide variety of food items, and many of them go multiple times per week or even multiple times in the same day.
 2. Legitimate EBT bills 5 U.S.C. § 552 (b)(6) & (b)(7)(C) per visit are extremely common for these repeat customers, with a few spending 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
 3. Many customers specifically mention spending large amounts on KKC items.
 4. They uniformly describe the store as having excellent customer service and they have never been offered cash in exchange for food stamps.
- The vast majority of the highest dollar transactions on FNS Attachment 2 are from only four EBT accounts.
- Counsel was able to get statements from three of these card numbers.
 1. 5 U.S.C. § 552 (b)(6) & (b)(7)(C), states that she has high dollar transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) explained that she has purchased up to 10-15 grab-n-go chicken bags.
 2. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) states that she goes to the store every day and also purchases up to ten chicken bags at a time in order to feed her five kids.
 3. 5 U.S.C. § 552 (b)(6) & (b)(7)(C), states that she spends 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on chicken bags and other items.
- The average flagged transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- An EBT customer could purchase one "Grab-N-Go" chicken bag and easily exceed the \$24.77 price point determined by FNS to be suspicious.
- An EBT customer making a legitimate food purchase could exceed \$24.77 with the purchase of only one or two eligible food items.
- Other customers indicated that they shared their EBT card with other family members who would return to the store to shop on the same day after purchases had already been made.
- The frequent transactions were predominantly associated with three EBT customers that accounted for eleven out of the 18 flagged transaction sets.
- There is no chance that these individuals would have been willing to voluntarily execute declarations describing their purchasing habits if they were receiving cash in a trafficking transaction.
- Counsel references to previous court decisions.

In support of its contentions, Appellant provided the following information in support of its review request:

- Sysco Invoices;
- Two page Price list;
- Rockingham County Property Report;
- Letter from Krispy Krunch Chicken;

- Twenty color photographs; and
- Three customer statements.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced.

ANALYSIS AND FINDINGS

Store Visit

FNS authorized Stadler's Grocery as a convenience store on March 20, 2013. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a February 21, 2018, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Stadler's Grocery is approximately 2100 square feet.
- There were no shopping baskets or shopping carts for customer use.
- There was one cash register and one point-of-sale device.
- There was no fresh unprocessed meat, poultry, or fish
- There was bacon and some packages of hot dogs.
- There were no bulk packages.
- There only fresh produce was green peppers and a couple of bananas.
- Dairy included milk, butter, and one unit of cheese.
- Other staple foods available for purchase were eggs, juice, pasta, and a limited selection of canned goods.
- Much of the remaining stock consisted of accessory foods such as candy, spices, and carbonated and uncarbonated drinks.
- There was a menu with hot and prepared food items and another items advertising hot chicken.
- Ineligible items included gas, alcohol, tobacco, lottery, health and beauty products, cleaning products, and paper products.

The SNAP eligible food stocked by the store was generally of a low dollar value consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. In fact here were only two items noted to be priced more than \$5.00 on the day of the store visit. These highest priced items noted were Red Bull \$7.99 and a bag of jerky \$7.49. Given the available inventory as noted above, 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. It is important to note that Appellant did not meet SNAP authorization criteria on the day of the store visit as it carried too few items in the dairy staple food category. Each retailer is required to stock at least three stocking units of three

different varieties of food in each of the four staple food categories. Appellant only carried sufficient quantities of food in two varieties of the dairy staple food category.

Charge Letter Attachments

Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

Charge Letter Attachment 1. Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment documents 18 sets of transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits that meet the parameters of this scan. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

The SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of Appellant's stock and facilities and are therefore indicative of trafficking. Although it is not uncommon for customers to have more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. The photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Appellant multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale. Appellant is not set up to provide for all of one's food needs and lacks an abundant depth and breadth of staple foods. The second and third transactions in each set are too large to consist of forgotten items.

Counsel explains that that three customers conducted the majority of the frequent transactions and accounted for 11 of the 18 transaction sets. These three customers submitted statements describing their shopping behavior and activity. Counsel states that there is absolutely no chance that these individuals would have been willing to voluntarily execute declarations describing their purchasing habits if they were receiving cash in a trafficking transaction. The Retailer Operations Division attempted to research their transaction history and determined that their names did not match the name of the households that conducted the questionable transactions. Furthermore, it is also not unusual for a household that maybe trafficking to provide a statement that it is not trafficking.

Counsel also explains that it is not uncommon for customers without transportation to return to the store multiple times in the same day in order to break up the amount of items they must carry home in a single trip. Counsel explains that some other customers indicated that they shared their EBT card with other family members who would return to the store to shop on the same day after purchases had already been made. The Retailer Operations Division compared Appellant to three other nearby convenience stores and determined that none of the other three store conducted any transactions sets that met the parameters of this scan. The question is why

customers are making repeated trips to break up their orders or sharing their EBT cards at Appellant and not at these other nearby stores.

Appellant has not offered any evidence to show that the transactions listed in Charge Letter Attachment #1 were legitimate purchases of eligible food.

Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts. This attachment lists 184 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transaction amounts are questionable because they are not consistent with the store's inventory, with limited staple food stock with no fresh meat and barely any fresh produce. The store did not have any shopping baskets or shopping carts. The frequency of high-dollar purchases in a six-month period calls into question the legitimacy of these transactions.

5 U.S.C. § 552 (b)(7)(E). Appellant's average SNAP transaction amount was also 80% greater than the average SNAP transaction amount for convenience stores in the County during the review period.

The Retailer Operations Division also compared Appellant to three nearby convenience stores. Appellant's average SNAP transaction amount was greater than each the other three stores. Appellant's total SNAP redemptions dollar value was also greater than the other three stores during the review period. The Retailer Operations Division also determined that the transaction pattern of Appellant exceed the nearby convenience stores, as seen on the table herein. The Retailer Operations Division considered this an indicator of trafficking given Appellant's inventory of food items. .

5 U.S.C. § 552 (b)(7)(E)

Counsel reports that Appellant can be described as a neighborhood gas station and convenience store, selling a wide variety of SNAP-eligible food products ranging such as bread, milk, eggs, and an assortment of frozen foods. It is true that Appellant is a gas station that sells convenience foods. It is also true that Appellant sells a large amount of hot and prepared food items that are not eligible for purchase with SNAP benefits. There was no fresh unprocessed meat, poultry, of fish for sale on the day of the store visit and there was limited fresh produce including a few green peppers and two bananas. As indicated previously, Appellant did not meet SNAP authorization criteria on the day of the store as it has too few items in the dairy staple food category. In general, Appellant carried a limited stock of staple food items. Thus, the evidence does not support that Appellant carried a wide variety of food items.

Appellant, through counsel, argues that the large dollar transactions are due to the sale of uncooked meat items. In support of this contention, Appellant submitted photographs of the frozen food and its invoices from Sysco. The evidence from the store visit show that these frozen food items are advertised to be sold as hot prepared food. There are no signs advertising a "you buy, we fry" program, nor was there any advertisements indicating that these items can be purchased frozen. Furthermore, on the day of the store, the store manager indicated that there were only two food items prices more than \$5.00 and that was Red Bull and beef jerky. Thus, the evidence does not support that these large transactions were due to the sale of cold chicken or

uncooked chicken. The items in the photographs are likely sold hot and prepared and not eligible for purchase with SNAP benefits.

With its reply to the charge letter, Appellant submitted invoices to the Retailer Operations Division to support its eligible food stock. All of the invoices were from Sysco and were for the store's prepared food menu of hot chicken, hot dogs, burgers, sandwiches, and other fried foods. The Retailer Operations Division analyzed the receipts/invoices and determined that the invoices were for all of the items that the retailer sells hot and prepared. Although counsel argues that these items are sold uncooked, cold, and or frozen, there was no evidence to support this and is unlikely.

Appellant explained that most of the transactions were conducted by the same four households. Counsel explained that it was able to get statements from three of the four households. As indicated previously, the Retailer Operations Division reviewed the State's System and the names of these households provide on the statements did not match the names of the households that conducted these SNAP transactions as recorded in the State database. Thus, these customer statements are not credible evidence.

The Retailer Operations Division determined that within a three mile radius of Appellant there are eight other convenience stores, one supermarket, and one super store (located within one mile).. The Retailer Operations Division examined three households identified in the charge letter to analyze their shopping patterns at Appellant compared to their shopping patterns at other SNAP authorized stores. However, despite this access to better stocked stores, each of the other households conducted excessively large transactions at Appellant within a short time of shopping at a supermarket or super store. It is questionable as to why households would conduct large transactions at Appellant, when these households had just visited or planned to visit larger stores with a better selection of fresh meat and produce and likely better prices. The inventory and layout at Appellant does not support these transactions. The firm has limited staple foods, does not sell fresh meat, with no shopping baskets or carts. There is no compelling reason for customers to consider Appellant as a first choice destination to fulfill large purchases of food.

Evidence

Counsel contends that other than redemption date, no other information is provided by FNS to support the alleged suspicious activity. The transactions reports are derived from the ALERT system, a computerized fraud detection tool to identify SNAP 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 conduct an extensive analysis of the transaction data and patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior and a comparison of stores in the area, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is supported by 7 CFR §278.6(a) which 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, **evidence obtained through a transaction report under an electronic benefit transfer system**” [Emphasis added.]

The documentation and evidence provided by the Retailer Operations Division was thoroughly examined. From all indications, the Retailer Operations Division obtained the EBT data (provided by ALERT), 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.

Appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed and that the transactions detailed in the charge letter were more likely than not due to the legitimate sale of eligible food in exchange for SNAP benefits. Appellant offered no relevant evidence to prove that the transactions listed in the charge letter were legitimate purchases of eligible food. In the absence of compelling information or documentation weighed in comparison to the evidence provided by the Retailer Operations Division, the evidence weighs in favor of the Retailer Operations Division’s determination that SNAP-benefit trafficking substantially produced the transaction activity at issue in the present case.

Case Law

Appellant cites some case law which it claims supports its position. It should be noted that considerations of legal precedent through case law is beyond the scope of this review. Instead this administrative review is limited to whether the Retailer Operations Division appropriately followed the Food and Nutrition Act of 2008, as amended, and the regulations promulgated under the Act, and whether the action taken is sustainable by a preponderance of the evidence. Therefore, any application of a judicial precedent would best be addressed in a judicial review in a court of law.

Summary

In summary, Appellant’s layout, business structure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. 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. Therefore, based on this empirical data, and in the absence of evidence to legitimize 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.

CIVIL MONEY PENALTY

In the charge letter, the Retailer Operations Division informed Appellant of its right to request a trafficking CMP under 7 CFR § 278.6(i). Appellant was informed that it would need to provide

both the request and supporting evidence within ten calendar days of receiving the charge letter and that no extension of time could be granted for making the request or for providing the required evidence. Appellant did not 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.

Even if a timely request had been submitted, 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 compliance policy to prevent SNAP 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 Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. 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 occur as charged by the Retailer Operations Division. The determination to impose a permanent disqualification against Appellant is sustained.

The Retailer Operations Division also determined that Appellant was not eligible for a trafficking civil money penalty according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations. Under review, the denial of a trafficking CMP was deemed correct and proper.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. 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'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 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.

MARY KATE KARAGIORGOS
Administrative Review Officer

June 18, 2019