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

Stop Quick Market,

Appellant,

v.

Case Number: C0185910

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 there is sufficient evidence to support a finding that a Permanent Disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Stop Quick Market by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a Permanent Disqualification against Stop Quick Market on April 25, 2018.

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

The USDA conducted an investigation of the compliance of Stop Quick Market with Federal SNAP law and regulations during the period April 18, 2017 through February 21, 2018. The investigation report documents that personnel at Stop Quick Market, in addition to accepting SNAP benefits in exchange for ineligible items on four occasions, also exchanged SNAP benefits for cash during one undercover compliance visit. The buying or selling of SNAP

benefits for cash or consideration other than eligible food is trafficking as defined under 7 CFR § 271.2.

As a result of evidence compiled from this investigation, the Retailer Operations Division informed the Appellant, in a letter dated March 21, 2018, that it was charged with violating the terms and conditions of the SNAP regulations. The Charge Letter along with a copy of the investigation report was delivered by UPS on March 23, 2018 and signed for by "Ptell". The letter stated, in relevant part, that:

> "Your firm is charged with trafficking, as defined in Section 271.2 of the SNAP regulations. As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for the trafficking violation(s) … is permanent disqualification".

The Charge Letter also stated that:

> "…under certain conditions, FNS may impose a civil money penalty (CMP) of up to $59,000.00 in lieu of permanent disqualification of a firm for trafficking. The SNAP regulations, Section 278.6(i), list the criteria that you must meet in order to be considered for a CMP. If you request a CMP, you must meet each of the four criteria listed and provide the documentation as specified within 10 calendar days of your receipt of this letter".

In a telephone conversation with Retailer Operations Division staff on April 5, 2018 and in a written correspondence to the Retailer Operations Division postmarked April 4, 2018, the Appellant, through counsel, replied to the charges therein indicating that a part-time store employee, a college student who was being trained on the SNAP regulations by the store manager, exchanged SNAP benefits for cash without the Appellant's knowledge, consent, or approval. The Appellant also requested that FNS impose a civil money penalty in lieu of a permanent SNAP disqualification.

After giving consideration to the Appellant's replies and the evidence in this case, the Retailer Operations Division informed the Appellant, by letter dated April 25, 2018, that Stop Quick Market was permanently disqualified from participation as a retail store in the SNAP. The letter also stated that the Appellant was not eligible for a trafficking CMP as the Appellant did not 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 April 30, 2018, the Appellant, through counsel, requested an administrative review of the permanent disqualification determination. FNS granted the Appellant's request for administrative review by letter dated May 8, 2018.

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, might 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 covered 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, 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 …[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, in part:

> Trafficking means the buying or selling of coupons, ATP cards or other benefit instruments for cash or consideration other than eligible food …

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 …

7 CFR §278.6(i) states, in part:

> FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program ….
>
> In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of a 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 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; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm ….

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

During an investigation from April 18, 2017 through February 21, 2018, the USDA conducted five compliance visits at Stop Quick Market. A report of the investigation was provided to the Appellant as an attachment to the Charge Letter dated March 21, 2018. The investigation report included Exhibits A through E which provide full details on the results of each compliance visit. The investigation report documents that SNAP violations occurred during four of the five compliance visits. During one of the compliance visits, a clerk exchanged cash for SNAP benefits as documented by Exhibit C. The buying or selling of SNAP benefits for cash or consideration other than eligible food is trafficking as defined under 7 CFR § 271.2.

APPELLANT'S CONTENTIONS

The following represents a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the replies to the Charge Letter, in the review request postmarked April 30, 2018, and in a subsequent correspondence postmarked May 29, 2018, the Appellant, through counsel, made the following summarized contentions, in relevant part:

- A part-time store employee, a college student who was being trained on the SNAP regulations by the store manager, exchanged SNAP benefits for cash without the Appellant's knowledge, consent, or approval. The Appellant was not directly involved in the SNAP violations that occurred at Stop Quick Market.
- The Appellant has been participating in the SNAP for over 10 years and has never received a warning or been cited for any SNAP violations prior to receiving the Charge Letter from FNS.
- FNS did not warn the Appellant of the possibility that violations were occurring at Stop Quick Market prior to issuing the Charge Letter.
- The SNAP violations that occurred during the store investigation are too limited/minor in nature to warrant a permanent SNAP disqualification.
- Section 278.6 of the SNAP regulations clearly provides reconciliation or forbearance with errors and clearly spells out the mitigation in the language, i.e., "first violation", "first sanctions", "not previously sanctioned, "FNS had not previously advised the firm of the possibility that violations were occurring and the possible consequences", "double the appropriate period of disqualification if the same firm has never been assigned a sanction", etc. Therefore, the Appellant requests that FNS issue a Warning Letter in lieu of permanently disqualifying Stop Quick Market from the SNAP.
- The Appellant requests that if a Warning Letter is not an appropriate sanction in this case that FNS impose a trafficking civil money penalty in lieu of a permanent SNAP disqualification as the firm had an effective compliance policy and training program in place prior to the reported violations. This statement is supported by the fact that the employee responsible for trafficking SNAP benefits in Exhibit C refused to do so again when asked by the Investigator in Exhibit E.

In support of the Appellant's contentions, the following documents were submitted to FNS:

- A notarized affidavit signed by the Appellant certifying that it has received much training materials from USDA regarding the proper utilization of the SNAP.
- Photos showing the FNS posters "We Welcome SNAP EBT Customers" and "Don't Do It" displayed in various places in the subject firm.
- A photo showing a "No Cash" warning sign written in Indian that is displayed in the subject firm.

- Hand-written logs of events/meeting notes dated January 1, 2017, April 1, 2017, May 2017, August 2017, September 2017, November 2017, January 2018, February 2018, and March 2018.

ANALYSIS AND FINDINGS

Appellant Not Involved in SNAP Violations

The Appellant contends that a part-time store employee, a college student who was being trained on the SNAP regulations by the store manager, exchanged SNAP benefits for cash without the Appellant's knowledge, consent, or approval. The Appellant was not directly involved in the SNAP violations that occurred at Stop Quick Market. This contention cannot be accepted as a valid basis for dismissing any of the charges, or for mitigating the impact of those charges. As owner of the store, the Appellant is liable for all violative transactions that occur at Stop Quick Market. Regardless of whom the ownership of a store may utilize to handle store business (i.e., regardless of whether a store owner, store manager, store clerk, family member, etc. was involved in the violative transactions), ownership is accountable for the proper handling of SNAP benefit transactions. Prior to becoming authorized to participate in the SNAP on February 23, 2005, the Appellant completed and submitted a SNAP Application for Retail Stores. The SNAP Application contained a section indicating that the person(s) signing the Application understood and agreed to ensure that store employees follow the SNAP rules and regulations and that the person(s) accepts responsibility for any SNAP violations that may occur at the store that were committed by any of the store's employees---paid, unpaid, new, temporary, full-time, part-time, etc. The SNAP Application also included a section that contained a statement which acknowledged that the person(s) signing the Application was aware that violations of program rules could result in fines, legal sanctions, withdrawal, or disqualification of the store. In addition, the Appellant was provided with program training and reference materials which reinforced the statements included in the SNAP Application.

The regulations establish that an authorized food store may be disqualified from participating in the program when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf. The Appellant admitted to FNS that a part-time store employee, who was being trained on the SNAP regulations by the store manager, exchanged SNAP benefits for cash without the Appellant's knowledge, consent, or approval. Trafficking is defined in 7 CFR § 271.2 of the SNAP regulations which states that 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… The Food and Nutrition Act of 2008, at § 2021, does not allow for discretion in determining sanctions for trafficking and is specific in its requirement that "Disqualification … shall be permanent upon … the first occasion of a disqualification based on … trafficking … by a retail food store". In keeping with this legislative mandate, 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. The Appellant's implied contention that the SNAP violations were committed by a part-time store employee without its knowledge, consent, or

approval cannot be accepted as a valid basis for diminishing the penalty. To allow store ownership to disclaim accountability for the acts of persons whom the ownership chooses to utilize to handle store business would render virtually meaningless the enforcement provisions of the Food and Nutrition Act and the enforcement efforts of USDA.

First Time Violator

The Appellant contends that it has been participating in the SNAP for over 10 years and has never received a warning or been cited for any SNAP violations prior to receiving the Charge Letter from FNS. However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges. 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.

No Warning Provided

The Appellant contends that FNS did not warn it of the possibility that violations were occurring at Stop Quick Market prior to issuing the Charge Letter. 7 CFR § 278.6(d)(2) and (3) of the SNAP regulations provides that "The FNS office making a disqualification or penalty determination … shall consider … any prior action … to warn the firm about the possibility that violations are occurring…." The citation simply requires the Retailer Operations Division to consider any prior warnings when determining a sanction. It does not require the Retailer Operations Division to give such warnings. Even upon charging the firm with trafficking, the Retailer Operations Division had not yet made a final determination of violation and even afforded the Appellant the opportunity to reply to the charges in order to provide explanations that would justify the questionable transactions as being other than the result of trafficking. Only after consideration of a number of factors, including the Appellant's replies to the charges, did the Retailer Operations Division make a final determination, through a preponderance of the evidence, that questionable transactions were in fact the result of trafficking.

SNAP Violations Minor

The Appellant contends that the SNAP violations that occurred during the store investigation are too limited/minor in nature to warrant a permanent SNAP disqualification. However, the Food and Nutrition Act of 2008, at § 2021, does not allow for discretion in determining sanctions for trafficking and is specific in its requirement that "disqualification . . . shall be permanent upon . . . the first occasion of a disqualification based on . . . trafficking . . . by a retail food store." In keeping with this legislative mandate, 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. Additionally, the Act noted herein and the regulations pursuant thereto do not stipulate a minimum dollar amount of SNAP benefits trafficked in order to meet the definition of "trafficking" at 7 CFR § 271.2.

Alternate Sanction

The Appellant contends that Section 278.6 of the SNAP regulations clearly provides reconciliation or forbearance with errors and clearly spells out the mitigation in the language, i.e., "first violation", "first sanctions", "not previously sanctioned, "FNS had not previously advised the firm of the possibility that violations were occurring and the possible consequences", "double the appropriate period of disqualification if the same firm has never been assigned a sanction", etc. Therefore, the Appellant requests that FNS issue a Warning Letter in lieu of permanently disqualifying Stop Quick Market from the SNAP. However, as mentioned previously, the Food and Nutrition Act of 2008, at § 2021, does not allow for discretion in determining sanctions for trafficking and is specific in its requirement that "… a disqualification . . . 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 …". In keeping with this legislative mandate, 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked.

CIVIL MONEY PENALTY

The Appellant requests that if a Warning Letter is not an appropriate sanction in this case that FNS impose a trafficking civil money penalty in lieu of a permanent SNAP disqualification as the firm had an effective compliance policy and training program in place prior to the reported violations. This statement is supported by the fact that the employee responsible for trafficking SNAP benefits in Exhibit C refused to do so again when asked by the Investigator in Exhibit E.

In the March 21, 2018 Charge Letter the Appellant was informed by the Retailer Operations Division that, under certain conditions, FNS may impose a civil money penalty (CMP) of up to $59,000 in lieu of permanent disqualification of a firm for trafficking. Per Section 278.6(i) of the SNAP regulations, four criteria must be met in order to be considered for a trafficking civil money penalty. If requesting a trafficking CMP, an Appellant must meet each of the four criteria listed and provide the documentation as specified **within ten days** of the Appellant's receipt of its Charge Letter. As specified in 7 CFR § 278.6(i), in determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following four criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in 7 CFR § 278.6(i)(1);

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

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in 7 CFR § 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.

If the Appellant's request for a trafficking CMP and the required documentation are not submitted on time, it will lose its rights for any further consideration for a trafficking CMP. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) that "if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility **within the 10 days specified**, the firm shall not be eligible for such a penalty". The regulations do not provide the agency discretion to extend the time within which documentation and evidence in support of a trafficking civil money penalty may be submitted. The March 21, 2018 Charge Letter to the Appellant stated that "If you request a CMP [in lieu of a permanent SNAP disqualification], you must meet each of the four criteria listed and provide the documentation as specified within 10 calendar days of your receipt of this letter. Your request and all documentation must be postmarked by midnight on the 10th calendar day after you receive this letter in order to be considered timely".

In a letter to the Retailer Operations Division postmarked April 4, 2018 in which the Appellant was responding to the Charge Letter allegations, the Appellant, through counsel, contended that Stop Quick Market had an effective compliance policy and training program in place prior to the reported violations. However, the Appellant's request for the imposition of a civil money penalty in lieu of a permanent SNAP disqualification was postmarked April 4, 2018 which is after the 10 day timeframe for submitting a request for civil money penalty in lieu of a permanent SNAP disqualification. The Appellant's request for an imposition of a CMP must have been postmarked by April 2, 2018 in order for it to be considered timely.

However, even if the Appellant's response to the Charge Letter allegations was submitted within the 10 days specified, the response only partially addressed the requirements described herein and did not provide substantial evidence, in accordance with the criteria detailed in the referenced regulations, that the firm established and implemented an effective compliance policy and program to prevent violations. Therefore, in the April 25, 2018 Determination Letter, the Appellant was informed by the Retailer Operations Division that consideration was given to the Appellant for a trafficking CMP according to the terms of the SNAP regulations but the Retailer Operations Division determined that the Appellant was not eligible for the trafficking CMP because its request was not timely and because it failed to submit sufficient evidence to demonstrate that Stop Quick Market had established and implemented an effective compliance policy and program prior to the SNAP violations occurring in order to prevent violations of the SNAP.

In support of its contention that Stop Quick Market had an adequate compliance policy and training program in place prior to the cited SNAP violations, the Appellant submitted the following documentation/information in its written correspondences to FNS:

- A notarized affidavit signed by the Appellant certifying that it has received much training materials from USDA regarding the proper utilization of the SNAP.
- Photos showing the FNS posters "We Welcome SNAP EBT Customers" and "Don't Do It" displayed in various places in the subject firm.

- A photo showing a "No Cash" warning sign written in Indian that is displayed in the subject firm.
- Hand-written logs of events/meeting notes dated January 1, 2017, April 1, 2017, May 2017, August 2017, September 2017, November 2017, January 2018, February 2018, and March 2018.

However, the documentation provided by the Appellant is not sufficient to demonstrate that Stop Quick Market had established and implemented an effective compliance policy and program prior to the occurrence of the SNAP violations. The Appellant submitted no evidence to validate that Stop Quick Market had an effective compliance policy and program in place prior to the occurrence of the SNAP violations other than its statement of such. The Appellant did not provide an employee roster showing dates of hire for each employee (both current and past employees who received training—including any store managers and the store owners), no signatures were provided from each past and current employee acknowledging that they had received training or that a compliance policy was in effect and on which dates they received training, etc. The Appellant did not provide FNS with any documentation to validate all of the employees who had worked at Stop Quick Market, verification on the dates of their employment at the store, verification that the employees listed have been the only employees who have worked at the store since the compliance program was implemented, etc.

The Appellant did not provide FNS with any documentation to verify that it had developed and implemented an employee training manual prior to the cited SNAP violations. The Appellant admitted in its letter to FNS postmarked April 4, 2018 that it did not have a corporate handbook or training program in place. In addition, the Appellant did not provide FNS with any documentation to validate that the training materials used to train store employees on the SNAP rules and regulations clearly state that the following acts are prohibited and are in violation of the Food and Nutrition Act and regulations: 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.

The Appellant did not provide any evidence to verify that all new employees are trained on the compliance policy and program prior to being able to conduct SNAP transactions as there were no signatures provided from store employees verifying this claim. The Appellant did not provide any evidence to validate that all new employees and managers whose work brings them into contact with SNAP benefits were trained within one month of their employment at Stop Quick Market, as is required by Appellants who are seeking an assessment of a CMP in lieu of permanent disqualification.

In support of its contention that Stop Quick Market had a training program in place, the Appellant provided FNS with copies of hand-written logs of events/meeting notes dated January 1, 2017, April 1, 2017, May 2017, August 2017, September 2017, November 2017, January 2018, February 2018, and March 2018. However, the hand-written logs of events/meeting notes did not include the names of each employee, manager, and/or store owner in attendance at each meeting nor did they include the signatures of each employee in attendance. In addition, only the

hand-written logs with the dates of January 1, 2017, August 2017, and March 2018 indicate that any information regarding the SNAP was discussed. These meeting notes were vague and state only that: "Discussed SNAP training for new hires and also reviewed training materials with new hire and the new hire understands the SNAP requirements. . . . Reviewed EBT/SNAP. . . Reviewed SNAP violations [provided in the Charge Letter] . . . and reviewed eligible items and approved products by the SNAP. . . .".

It is also important to note that some of the information included in the meeting notes contradicts the information/contentions provided by the Appellant in its correspondences to FNS. For example, the March 2018 meeting notes state that with regard to discussing the Charge Letter allegations . . . "The citations [violations] of February 21, 2018 were conducted by 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Mouse and hair spray are not qualified products on EBT/SNAP. Shopper did request cash back which he refused to give following the SNAP guidelines. As far as the sale of non-qualified items is concerned, he has been retrained". However, the Appellant stated in its letter to FNS postmarked April 4, 2018 that "The perpetrator (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) is no longer employed and does not know of the Charge Letter implications of April 19, 2017 . . .". However, it is not possible for the perpetrator/employee responsible for trafficking SNAP benefits to have been retrained on the SNAP rules during the March 2018 store meeting if he was not employed at Stop Quick Market in March 2018 when the Charge Letter was delivered to the Appellant. Based on these inconsistencies, it appears that the meeting notes of March 2018 may have been fabricated in an effort to support the Appellant's request for an imposition of a CMP in lieu of permanent disqualification from the SNAP.

The Appellant did not provide FNS with the dates of each employee training (both past and present employees and managers) nor did it provide any evidence that employees received on-going, periodic training on the SNAP regulations and the proper acceptance and handling of SNAP coupons other than with generic statements provided in a few of the periodic meeting notes. In addition, the Appellant did not provide FNS with an evaluation of the effectiveness of the firm's compliance policy and program to ensure SNAP compliance and to prevent SNAP violations, as is required by Appellants who are seeking an assessment of a CMP in lieu of permanent SNAP disqualification. There was no indication that the firm's policy was to terminate the employment of violating store employees or that the firm had implemented a policy intended to initiate corrective action following complaints of SNAP violations. The SNAP regulations state that an effective compliance policy includes documentation reflecting the development and/or operation of a policy to terminate the employment of any firm employee found violating the SNAP regulations prior to the occurrence of the SNAP violations.

The Appellant did not provide FNS with documentation that validates that it was unaware, nor approved or benefited from, the unauthorized trafficking by management, employees, or SNAP recipients and/or retail purchases of items of unauthorized items under the SNAP other than its statement of such. In determining whether store ownership benefited from trafficking of SNAP benefits in which it was not directly involved, it is generally assumed that if EBT settlements are made to the store owner's account, the store owner had benefited from such transactions. The store employee, manager, or store owner involved in the trafficking transactions took cash out of the store's cash register and the benefits most likely went into the Appellant's bank account. The Appellant did not submit any documentation to contradict this issue.

With regard to the affidavit provided by the Appellant which purports to establish that the subject firm had an effective compliance policy and training program in place prior to the cited SNAP violations, the truth of such declarations can neither be confirmed nor denied. Although such affidavits may be sworn to and notarized, that does not mean that they are necessarily truthful. One would not expect a SNAP retailer to admit that it did not have an effective compliance policy in place when requesting the imposition of a civil money penalty in lieu of permanent disqualification, were it really so. On the contrary, one would expect that any SNAP retailer affidavit provided would attest to having an effective compliance policy in place.

Therefore, based on the lack of substantial evidence and information submitted and the fact that the Appellant did not submit its request for the imposition of a civil money penalty in lieu of a permanent SNAP disqualification within the 10 day specified timeframe, the Appellant failed to demonstrate that Stop Quick Market had established and implemented an effective compliance policy and program prior to the SNAP violations that occurred. As such, the Appellant's request for consideration of a trafficking civil money penalty in lieu of a permanent SNAP disqualification was appropriately denied by the Retailer Operations Division.

CONCLUSION

As previously stated, 7 CFR § 278.6(e)(1)(i) reads, in part, "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." The law and regulations do not provide for a lesser period of disqualification for this violation.

Based on a review of the evidence in this case, there is no question that program violations did occur during a USDA investigation. All transactions cited in the letter of charges were conducted or supervised by a USDA investigator and all are thoroughly documented. A review of this documentation has yielded no indication of error or discrepancy in any of the reported findings. Rather, the investigative record is specific and accurate with regard to the dates of the violations, including the exchange of SNAP benefits for cash, and in all other critically pertinent details. Therefore, the decision to impose a permanent disqualification against the Appellant, Stop Quick Market, is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to 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.

LORIE L. CONNEEN July 24, 2018
Administrative Review Officer