

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

Supermercado Amigo,

Appellant,

v.

Case Number: C0199030

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 Supermercado Amigo 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 in its administration of the SNAP, when it imposed a permanent disqualification against Supermercado Amigo.

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 9, 2017, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the

months of October 2016 through March 2017. 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).

In response to the charge letter, the Appellant, through counsel, requested and was granted two extensions to provide its contentions and evidence. However, the Retailer Operations Division informed the Appellant that it could not grant an extension to request a trafficking CMP under 7 CFR § 278.6(i). The Appellant did not request a trafficking CMP within 10 days of its receipt of the charge letter.

In a letter dated June 14, 2017, the Appellant submitted its contentions and evidence to the Retailer Operations Division. The Appellant generally stated that the Retailer Operations Division had based its decision on raw transaction data without consideration of other factors. The Appellant generally stated that the transactions cited in the charge letter were normal in comparison to similarly situated stores in the area. The Appellant provided copies of cash register tapes which it alleged showed that the SNAP transactions cited in the charge letter were legitimate. The Appellant also provided a price list including high dollar items such as infant formula and large bags of flour and rice. Lastly, the Appellant provided the available purchase invoices for the review period to show that the store had sufficient inventory to support its SNAP redemptions.

After considering the Appellant's response and the evidence in the case, the Retailer Operations Division issued a determination letter dated September 21, 2017. The determination letter informed the Appellant 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 the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations. 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 September 30, 2017, 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, might 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 § 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:

(1) 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; ...

(4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or

(5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

(6) Attempting to buy, sell, steal, or otherwise affect 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 signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

7 CFR § 271.2 states, in part:

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

7 CFR § 278.6(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, *inter alia*:

*(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 2016 through March 2017. This involved the following transaction patterns which are trafficking indicators:

- ☐ **Charge Letter Attachment 1: Multiple transactions were made from individual benefit accounts in unusually short time frames.** This attachment lists 34 sets of 69 transactions 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 2: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 251 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

APPELLANT'S CONTENTIONS

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

- ☐ The Retailer Operations Division based its decision on raw transaction data without consideration of other factors. The determination was also unsupported by normal investigative techniques including undercover transactions, surveillance, or witness interviews. The decision was therefore arbitrary and capricious and denied the Appellant store due process under the US Constitution.
- ☐ Regarding Charge Letter Attachment 1, only the first ten (10) sets of transactions occurred on the same day and only two (2) sets of transactions were conducted 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This miniscule number of transactions becomes statistically insignificant given the thousands of reported sales occurring within the review period.
- ☐ It is not at all unusual for low income recipient families to allocate proportional shares of benefits among themselves.
- ☐ The store has provided copies of its available register tapes which match the transactions noted in Charge Letter Attachments 1 and 2. These transaction tapes reflect item dollar amounts which total the dollar amounts, plus non-eligible items and associated local tax, and also match date and time of the alleged high dollar transactions. These tapes are

indicative of normal transactions which add up very quickly given today's price points.

- Regarding Charge Letter Attachment 2, the tendered sample of "higher dollar" transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) compared to the thousands of transactions conducted within the review period and they demonstrate normal activity for similarly situated stores.
- The store has provided a list of retail prices for its higher priced items offered for sale. Many of those items are for various types of powdered baby formula which range in retail price from \$12.99 to \$39.99. This is a very usual purchase for young mothers who are recipients and are trying to maximize their purchasing power by finding the most competitive price. Other notable items on the list include large 10 to 20 pound bags of rice and flower which have retail prices from \$12.99 to \$29.99.
- The store is located in an economically challenged, high density, high crime community of Chicago which sits in a classic food desert. The recipients choose to patronize smaller stores, like Supermercado Amigo, which are closer to their residences instead of taking public transportation to stores outside of their community. Necessarily, they are purchasing items of "higher dollar" amounts more frequently than members of more affluent communities who are able to drive to large supermarkets.
- The store has provided six months of available invoice receipts for products purchased during the review period.
5 U.S.C. § 552 (b)(6) & (b)(7)(C). The data for both register tapes and invoices was limited due to three burglaries at the store during the review period. The five months of the review period with complete invoice history reflect a monthly average 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of wholesale purchases. This volume of purchases more than supports the legitimate SNAP redemptions.

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 and Compliance History

The Food & Nutrition Service (FNS) initially authorized Supermercado Amigo for the SNAP on November 13, 2008. It remained authorized until November 9, 2014 when the store was disqualified for six months due to selling SNAP ineligible items during an undercover investigation. Following the disqualification period, the Appellant reapplied and was authorized on July 30, 2015. During the review period of October 2016 through March 2017, the

Retailer Operations Division classified Supermercado Amigo as a medium grocery store.

The store owner signed the SNAP application for the store on July 16, 2015 and acknowledged that the owner 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.

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a March 27, 2017 store visit conducted by an 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 store’s irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- ☐ Supermercado Amigo is approximately 1,200 square feet in size.
- ☐ The store had one (1) cash register and one (1) point-of-sale device.
- ☐ The store had no optical scanners or conveyor belts at the checkout.
- ☐ The store had no shopping carts and only ten (10) handheld shopping baskets for customer use.
- ☐ There was no food stored outside of public view in a storage area.
- ☐ There were no large bulk foods, international or specialty foods that might sell for a high price. There were no fresh meat/seafood bundles or boxes of fresh fruit and vegetables for sale. The most expensive food items for sale consisted of infant formula and bags of rice.
- ☐ There were entirely empty or partially stocked shelves in the store.
- ☐ The checkout area consisted of a small counter with plastic shelving containing various products for sale. The limited space at the checkout area made it not conducive to conducting large transactions.

The inventory of food items at the time of the store visit was typical of a medium grocery store with limited to moderate amounts of staple food stock. However, the store had very limited amounts of staple food in the meat/poultry/fish category which is very unusual for a medium grocery store. The store did not have any fresh or frozen beef, lamb, pork, chicken or fish. There also were no deli meats or potted/canned meats although the store had more than 20 units of canned fish.

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. Accessory food items included, but were not limited to: coffee, tea, carbonated and non-carbonated drinks, condiments, and spices. The stocked ineligible items included health and beauty products, paper goods, and cleaning products. The store also offered a money transfer service.

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 transaction patterns significantly different from similar-sized competitors. In fact, due to the lack of variety in the meat/poultry/fish category it is likely that the store would generally have smaller average transactions than a typical medium grocery store in Chicago.

Trafficking Case based on Irregular Transaction Patterns

The Appellant states that the Retailer Operations Division based its decision on raw transaction data without consideration of other factors. The Appellant also states that the determination was unsupported by normal investigative techniques including undercover transactions, surveillance, or witness interviews. Based on these contentions, the Appellant claims that the determination was arbitrary and capricious and thus denied the Appellant store due process under the US Constitution.

With regard to these contentions, FNS employs 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 analyze 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. It should also be noted, as stated above, that this administrative review is based on a preponderance of the evidence standard.

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 Appellant alleges the firm is not being afforded proper due process. A review of the charge letter and its attachments shows that the Retailer Operations Division provided the Appellant a sufficient explanation why the irregular transactions were indicative of trafficking and adequately provided the Appellant with an opportunity to respond and explain. Nevertheless, this administrative review process does not include an assessment of the constitutionality of the laws, regulations and procedures under which the agency imposed its adverse action. Constitutional challenges to the laws and regulations governing the SNAP are more appropriately the province of judicial review in a court of law. Accordingly, no further findings or conclusions are rendered in this regard.

Multiple Transactions within a Short Time Period

SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. However, 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 a medium grocery store's stock and facilities and are thus indicative of trafficking.

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. Charge Letter Attachment 1 lists 34 sets of 69 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). It is not credible that a medium grocery store with more limited staple foods would have suspicious SNAP transactions greatly exceeding the average SNAP transaction of a superstore or supermarket in the Illinois. It is even less likely that these excessively large transactions would be conducted multiple times by the same household during a short time period.

The Appellant contends that only the first ten (10) sets of transactions occurred 5 U.S.C. § 552 (b)(7)(E) (2) sets of transactions were conducted 5 U.S.C. § 552 (b)(7)(E). Although the Appellant's observations are correct, it does not negate the irregular nature of these transactions when compared to transactions at other similar sized stores in Cook County and in Illinois. All of the irregular transactions occurred within a 5 U.S.C. § 552 (b)(7)(E) period. 5 U.S.C. § 552 (b)(7)(E).

The Appellant contends that it is not at all unusual for low income recipient families to allocate proportional shares of benefits among themselves. However, the Appellant offers no reliable evidence to support this contention. A SNAP household is defined as a household that purchases and prepares meals together so there would be no need to make separate purchases in order to obtain a separate receipt. Households that purchase and prepare meals separately are

considered separate households. It is also unlikely that a family relying on SNAP to supplement their nutritional needs would share these benefits with another family that purchases and prepares meals separately.

The Appellant further states that the miniscule number of such transactions becomes statistically insignificant given the thousands of reported sales occurring within the review period. Regarding this contention, it is not unusual for violating firms to conduct largely legitimate transactions while also conducting trafficking transactions with a smaller number of trusted households. To state that only a limited number of households may have conducted irregular and abnormal SNAP transactions does not offer an explanation for the transactions cited in the charge letter.

The Appellant provided copies of its available cash register receipts which it alleges match the transactions cited in Charge Letter Attachment 1 and 2. A review of the casefile documents that the Retailer Operations Division analyzed these receipts and found approximately 14 which matched transactions cited in Charge Letter Attachment 1. However, although these receipts indicate “LINK” (Illinois EBT) purchases, they do not itemize the items purchased and therefore do not establish that these transactions were all legitimate purchases of SNAP eligible food. Therefore, these receipts have no probative value for this review. The Retailer Operations Division also determined that there were various discrepancies in the cash register receipts making them unreliable. In particular, one receipt shown as a LINK purchase was for an amount and date that did not match any SNAP transactions in the store’s SNAP redemption history. Other receipts had anomalies in which the receipt transactions numbers were out of sequential order based on date and time of transaction. These anomalies make these receipts further unreliable as evidence.

The store visit pictures show that is unlikely that SNAP customers would want to shop at this store multiple times during a short time frame, 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. In addition, the store’s limited counter space makes it unsuitable for conducting large transactions. The store also had no shopping carts for transporting food within the store. Based on the analysis above, and in the absence of any other credible explanation, the irregular transaction patterns cited in Charge Letter Attachment 1 are more likely than not to be a result of trafficking in SNAP benefits.

Excessively Large Transactions

SNAP households have no limit on the amount of eligible food they may purchase (subject to the remaining balance on the card). However, 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 a medium grocery store's stock and facilities and are thus indicative of trafficking.

The Appellant contends that these transactions demonstrate normal activity for similarly situated stores. However, Charge Letter Attachment 2 cites 251 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

The Appellant contends that the sample of "higher dollar" transactions is statistically 5 U.S.C. § 552 (b)(6) & (b)(7)(C) compared to the thousands of transactions conducted within the review period. As noted above, it is not unusual for violating firms to conduct largely legitimate transactions while also conducting trafficking transactions with a smaller number of trusted households. 5 U.S.C. § 552 (b)(7)(E).

The Appellant provided a list of retail prices for its higher priced food items. Many of those items are for various types of powdered baby formula which range in retail price from \$12.99 to \$39.99. However, the Appellant fails to note that the store is also authorized for the WIC Program and that these products are much more likely to be purchased with WIC benefits rather than SNAP benefits. The Retailer Operations Division confirmed with the Illinois WIC State agency that Supermercado Amigo was authorized as a WIC vendor in 2009 and remained authorized during review period. During the review period, the Appellant store redeemed 5 U.S.C. § 552 (b)(6) & (b)(7)(C)2 in WIC benefits which is nearly double the amount redeemed in SNAP benefits at store. This further indicates that any infant formula carried by the store would be more likely to be purchased with WIC benefits.

The Appellant stated that it had 10 to 20 pound bags of rice and flour which have retail prices ranging from \$12.99 to \$29.99. The sale of these items might normally provide some explanation for a store's higher than normal transaction amounts. However, this is also balanced out by the fact that the Supermercado Amigo did not carry fresh or frozen beef, lamb, pork, chicken or fish at the time of the store visit. These meat, poultry and fish products are typically sold at other medium grocery stores.

The Appellant states that the store is located in an economically challenged, high density, high crime community of Chicago which sits in a classic food desert. Allegedly, the recipients choose to patronize smaller stores, like Supermercado Amigo, which are closer to their residences instead of taking public transportation to stores outside of their community. Necessarily, they are purchasing items of "higher dollar" amounts more frequently than members of more affluent communities who are able to drive to large supermarkets. Regarding these contentions, it is not unusual for a SNAP authorized store to be located in an impoverished area. Sometimes a store may have higher than normal SNAP transactions due to the lack of other SNAP authorized stores in the area. However, the Retailer Operations Division determined that within a one-mile

radius of Supermercado Amigo there were 58 SNAP authorized stores including 12 small grocery stores, nine (9) medium grocery stores, one (1) large grocery store, five (5) supermarkets and one (1) superstore . A government report on SNAP benefit redemption patterns¹ revealed that households most often redeemed their benefits at supermarkets and superstores with only four (4) percent of all households never shopping in a supermarket or superstore. Thus, when a supermarket or superstore is available, it is highly unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a medium grocery store with very limited staple foods like Supermercado Amigo.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three (3) households identified in the charge letter to analyze their shopping patterns at Supermercado Amigo compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at supermarkets and superstores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Supermercado Amigo often 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of shopping at supermarkets and superstores. It is highly unlikely that a medium grocery store with more limited staple foods would have legitimate SNAP transactions comparable or larger than those at better stocked supermarkets and superstores.

In conclusion, the substantial number of high dollar purchases atypical of a SNAP authorized medium grocery store calls into question the legitimacy of these transactions. The store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts support the Retailer Operations Division determination. It is not plausible that the store's customers are carrying large amounts of food around the store with no shopping carts. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

Purchase Invoice Analysis

The Appellant provided six (6) months of available purchase invoices for inventory bought during the review period. The Appellant noted that not all of the purchase invoices could be provided due to burglaries at the store. Giving the benefit of the doubt to the Appellant based on the attorney's statement, the

¹ "Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program," report prepared by Mathematica Policy Research for the Food and Nutrition Service, February 2011.

Retailer Operations Division conducted an analysis to determine if the average monthly wholesale purchases were sufficient to support the SNAP and WIC redemptions during the review period. In its analysis, the Retailer Operations Division used the Appellant's figure 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as the average monthly food purchases during the review period.

In the absence of any information on store retail markup or credit card/cash sales, the Retailer Operations Division gave the store a 40% retail markup and estimated cash and credit card sales as 20% of all food sales. This still resulted in a deficiency of inventory to SNAP/WIC redemptions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

More damning to the Appellant's case is that five (5) of the purchase invoices submitted by the Appellant document purchases of infant formula from Target and Walmart using the EBT cards of five (5) different SNAP households. Not only was the Appellant not authorized to use these EBT cards, it indicates more likely than not that the Appellant purchased these cards from SNAP recipients and used them in purchasing store inventory. Although the Appellant categorically denied the allegations of trafficking, this evidence alone is sufficient to permanently disqualify Supermercado Amigo for trafficking as defined at 7 CFR § 271.2.

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. 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 Supermercado Amigo, 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

December 7, 2017