

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review
Alexandria, VA 22302**

T & E Country Store,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0200741

FINAL AGENCY DECISION

It is the decision of the USDA that the record indicates that T & E Country Store, (hereinafter Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retailer in the program, 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(c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant by letter dated September 27, 2017.

AUTHORITY

7 U.S.C. § 2023 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 July 20, 2017, 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 February 2017 through May 2017. 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 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 a facsimile dated July 30, 2017, the Appellant, through counsel, responded to the charge letter and generally stated that Tiwana Investments LLC (incorrectly identified in the letter as T&E Country Store) is a full service convenience store and meat market which provides products for low income patrons. It is a neighborhood store essential to the residents of the area as there are no large grocery chains in the immediate area (25 to 30 minutes away) and many of the residents do not own transportation. Appellant, through counsel, stated that the allegations of trafficking were vague, overbroad, and lacking in sufficient detail to allow Tiwana to properly defend itself. There was no evidence provided of the alleged violative conduct. There was no corroborating witnesses or affidavits attesting that Tiwana had engaged in illegal conduct. Tiwana specifically denies the inference that these transactions are violations. Appellant, through counsel, provided all receipts in possession of Tiwana which are related to the transactions in question. Appellant also provided pictures of the cash register used with specific marking used to identify food products.

Appellant further stated that patrons frequently walk into the store more than once a day and at various hours. It is not uncommon to sell multiple items more than once a day to the same household in the neighborhood. In regard to the excessively large transactions, the store has a fully stocked meat market which accounts for some of its higher priced items and offers special meat packages on certain days. In the alternative to full dismissal of the allegations, Tiwana Investments LLC chooses not to waive its right to a CMP and it meets all of the criteria listed in Section 278.6(i). A sanction of permanent disqualification will cause Tiwana to sustain immediate and irreparable injury.

After giving consideration to the Appellant's reply and evidence of the case, Retailer Operations Division issued a determination letter dated September 27, 2017. This letter informed ownership that they were permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also states that Retailer Operations considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. However, Retailer Operations Division determined that Appellant was not eligible for the CMP because it failed to submit sufficient evidence to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated October 4, 2017, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means an Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a

whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling statute in this matter is contained in the Food & Nutrition Act of 1977, as amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a) (c) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(a) states, *inter alia*, that “FNS may disqualify any authorized retail food store...from further participation in the program if the firm fails to comply with the Food and Nutrition Act of 1977, 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(c) reads, in part, “*Review of Evidence*. The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1)...the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS...”

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.” Trafficking is defined, in part, in 7 CFR § 271.2, as “the buying or selling of SNAP benefits for cash or consideration other than eligible food.”

7 CFR § 271.2 states in part that, “Eligible foods mean: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption.”

SUMMARY OF THE CHARGES

The charges on review were based on an analysis of SNAP electronic benefit transfer (EBT) transactions dated during the six month period of February 2016 through July 2016. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from individual benefit accounts in usually short time frames.
2. Excessively large purchase transactions were 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

The Appellant made the following summarized contentions in its response to the permanent disqualification letter issued by Retailer Operations Division, and its request for administrative review, in relevant part:

- Appellant denies the allegations of trafficking as vague, overboard and lacking sufficient detail to allow Tiwana to properly defend itself. There was no evidence provided of the alleged violative conduct.
- There is a violation of due process under the Texas and U.S. Constitution.
- All the alleged violations for multiple transactions were legal transactions. Copies of receipts and pictures have been furnished which establishes the validity of the transactions in question.
- Tiwana is the only store in the area, open from 5:30 am to midnight. Due to the stores convenient location in the neighborhood, patrons frequently walk to the store more than once a day and at various hours. It is not uncommon to sell multiple items more than once a day to the same household.
- Regarding excessively large transactions, Tiwana has a fully stocked meat market which accounts for some of its higher priced items and offers special meat packages on certain days. There is no evidence that any of the transactions listed are a violation and in fact the receipts provided prove otherwise.
- A disqualification from SNAP would effectively bankrupt the family business and also greatly penalize the community.

Appellant provided a three page real estate executive summary of store demographics showing population, median age, race and ethnicity, housing and household income stats from a zero to five mile radius. Appellant also provided 20 color photographs on the store's stock, 31 pages of EBT and corresponding cash register receipts for the review period (many of which were illegible) and purchase invoices/receipts for the review period, some being dated outside of the review period. Appellant also provided copies of the register Z-tapes from both registers during the review period. The majority of the register Z-tapes were very light or faded and difficult to read or completely illegible. There were 11 customer statements, seven written in English and four written in Spanish, attesting to the stores service and the need for EBT.

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

ANALYSIS AND FINDINGS

The FNS initially authorized the business as a convenience store on April 2, 2012. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during the June 16, 2017, store visit to the business 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 EBT transactions at Appellant that formed patterns indicative of trafficking. The firm review summary documented the following store size, description, and characteristics:

- Store signage reads Tiwana Country Store/Meat Market.
- Store visit indicates three cash registers, one POS device, and a counter area (with 2 sections) approximately 3ft x 3ft and partially obstructed by other smaller items available for sale and a lottery display.
- Estimated to be approximately 3000 square feet.
- No shopping carts and approximately 12 hand baskets available for customers.
- No adding machines or optical scanners were available at checkout. One specialty register present.
- Store does not operate through a night window or plastic barrier with food stock behind the barrier.
- No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
- No unusual pricing structure such as ending most products with 00 cents and does not round transaction totals.
- No food stored in an area outside of public view
- Store has storage freezers or coolers but not food stored off site.
- Store is not primarily selling one food type such as meat, poultry, dairy, seafood, fruits, baked goods or vegetables.
- Store does not take telephone or online orders and does not offer delivery
- Highest priced eligible food items were Nido (\$20.99 & \$6.99), Coffee (\$6.79), and Water (\$7.99).
- Store stocks a significant amount of non-food items such as but not limited to paper products, household products, tobacco products, alcohol products, automotive products, gasoline, health and beauty aids, lottery tickets, and cleaning products.
- Store stocks minimal amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products. No fresh fruits or produce, no fresh meat or poultry. Most meats are canned, packaged or frozen.
- Some produce appeared in a deteriorated state.
- Shelves were sparsely stocked and some stock contained a layer of dust.
- A kitchen area/prepared food area with hot foods sold for onsite consumption.
- No deli or prepared food section.
- No meat or seafood specials or bundles or fruit/vegetable boxes sold.
- Shelves were not fully stocked.
- Store has an extensive area with tables, chairs and booths, set up like a restaurant, for on-site consumption.
- Prominent menu boards and hot food area and signage on the building that says "Hot Food, plates, burgers, tacos, barbeque, brisket, roasted chicken".

The issue for consideration is whether Retailer Operations Division has presented a convincing case that Appellant likely trafficked in SNAP benefits. Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

Attachment 1 of the Charge Letter - Multiple transactions were made from individual accounts in unusually short timeframes.

During the review period, this attachment lists 15 sets of 41 transactions
5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant contends that Tiwana is the only store in the area open from 5:30 am to midnight and due to the convenient location in the neighborhood, patrons frequently walk to the store more than once a day and at various hours. It is not uncommon to sell multiple items more than once a day to the same household. With regards to these contentions, it must be noted that SNAP households have no limits on the number of times they may use their SNAP cards or how much eligible food they may purchase. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) period. For example, mothers may shop and later send a child to the store to pick-up a forgotten item nonetheless; it is unusual that the second or subsequent transaction amount would be for more than a nominal amount. Additionally, it is questionable why households would visit Appellant up to three times in a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) period expending benefits in amounts 5 U.S.C. § 552 (b)(6) & (b)(7)(C) when its stock is minimal, it carries a minimal amount of fresh meat or fresh produce, which is likely used in preparation of hot foods, it does not offer any specialty or ethnic foods, no foods sold in bulk at high prices and does not carry food items that cannot be purchased at larger, better stocked stores.

Additionally, the record reflects that there are at least 22 SNAP authorized retailers within a two mile radius of Appellant's store which include medium and small grocery stores, combination grocery stores and other convenience stores. The record also reflects that there are two convenience stores, a small grocery store and a combination grocery store within approximately a half mile of Appellant's store.

In conclusion, it is therefore more likely true than not true that the irregular transactions cited in the charge letter Attachment 1 are due to trafficking in SNAP benefits.

Attachment 2 of the Charge Letter - Excessively large purchase transactions were made from recipient accounts.

During the review period, this attachment lists 181 SNAP transactions
5 U.S.C. § 552 (b)(6) & (b)(7)(C). Based on the results of the contracted store visit, the large transaction amounts are not consistent with the store's inventory of low priced foods. The firm

does not offer food in bulk or any ethnic or specialty foods that sell for a high price. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions. 5 U.S.C. § 552 (b)(6) & (b)(7)(C)6. There appears to be no basis for customer attraction to T & E Country Store with there being no great price advantage or specialty food offerings. The food stock offered at the subject firm is readily available to SNAP customers at larger retail food stores, which carry a wider variety of food stock to include fresh meat, dairy, and produce.

Appellant contends that Tiwana has a fully stocked meat market which accounts for some of its higher priced items and offers special meat packages on certain days. There is no evidence that any of the transactions listed are a violation and in fact the receipts provided prove otherwise. With regard to these contentions, the store visit photographs indicate that Appellant's does carry an ample stock of fresh and frozen meats. However, in light of the fact that Appellant also offers hot foods, displays prominent menu boards, has store signage that advertises hot foods to include plates, burgers, tacos, barbeque brisket, roasted chicken, breakfast burritos and other hot food items, and offers a large seating area for on-site consumption, it is plausible that some of Appellant's fresh and frozen meat products are used to prepare these menu items. Additionally, the store visit documentation shows very few meat products displayed with per pound pricing but no signage or indication that Appellant offered meat packages at any time to customers.

Register Receipts Analysis

Appellant provided a photograph of the register buttons which indicates what each number on the register receipt represents (i.e. 1 = tax, 2 = non-tax, 9 = soda/candy, 13 = meat,). Though many of the receipts provided were illegible, a review of those clear enough to read show that the majority of the amounts listed on the register receipts were coded 02, 09 and 13. There were however, seven register receipts that were not coded, according to the register codes, and only showed one charge of a significant amount.

An analysis of the register and EBT receipts provided shows that the receipts are insufficient to adequately explain every transaction as cited in the Attachments. There were a total of 124 EBT receipts and 116 register receipts many of which were either completely faded or illegible. Additionally, the receipts do not cover every SNAP transaction as listed in the Attachments and although some of the register receipt codes show that most of the legible purchases were for snacks, soda, there were some that contained the code for meat products; there were seven (7) transactions that were un-coded and contained a single large transaction amount. Appellant did not provide register or EBT receipts for 66 of the transactions as cited in the charge letter most of which were for excessively large amounts.

It is reasonable to consider that Appellant maintains an expectation that the register receipts would prove that there was no trafficking in SNAP benefits. FNS' position is that register receipts, that do not detail specific individual items, cannot support a contention that eligible items were rung up on the register. Appellant's register contains buttons with codes however, if the retailer had a scanner linked to the cash register and could produce such a detailed list, such a list could possibly begin to explain some of the transactions nonetheless even these can be

contrived. Any kind of transaction can be coded and rung up as eligible food items and therefore provides no rebuttal for all the charges; since the cash register receipts do not identify individual items purchased, and there are a few that are of a substantial amount without a code, the register receipts do not, beyond a preponderance, support a conclusion that all of the SNAP transactions, as cited in the charge letter, are legitimate SNAP transactions.

Purchase Invoice/Receipt Analysis

Appellant provided purchase invoices/receipts to cover the review period and a review of those invoices/receipts shows that Appellant's staple food purchases appeared to exceed its SNAP redemptions. It is important to note that even if the receipts and invoices did show that the store purchased sufficient food inventory to account for the firm's SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions such as multiple transactions made from individual benefit accounts in unusually short time frames. Even the large dollar transactions would remain questionable if there were sufficient food inventory to support such transactions when consideration is made of there being no shopping carts and a few hand baskets available for customer use, the legible register receipts provided are primarily coded as candy/sodas, store visit photographs show what appears to be a layer of dust on some canned goods, the shelves appeared to be sparsely stocked and an area of the store appears to be set up for on-site food consumption to include prominent menus that display breakfast tacos, shrimp baskets, and other cooked menu items.

Although the invoices/receipts provided are sufficient to demonstrate that Appellant purchased enough inventories to support the amounts of its SNAP transactions; nevertheless, there is not enough information to determine whether they account for the sum of Appellant's SNAP and non-SNAP transaction activity. While the overall dollar amount of SNAP activity is relevant, the charge letter did not cite as evidence Appellant's SNAP sales total. Rather, the Retailer Operations Division identified a series of different unusual, irregular and inexplicable transaction patterns.

Retailer Operations Division compared the Appellant's SNAP transactions with the average convenience store in Hidalgo County, Texas. The average transaction amount for a convenience store in the County is \$7.48. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is questionable particularly when the record reflects that Appellant is stocked with mostly inexpensive packaged, canned, snack, and accessory food items, carries an assortment of single-serving beverages, offers minimal amounts of fresh meat and produce, offers hot foods for onsite consumption and does not carry any specialty, ethnic or items in bulk that would sell at high prices.

Retailer Operations also conducted an analysis of the shopping habits of three of the households identified in the charge letter. This analysis concluded that these households also shopped at other area grocery stores including full-line supermarkets and superstores that offer a much larger quantity and variety of eligible food items for likely better prices either on the same day or within days of visiting Appellant's firm. This again indicates that lack of access to other stores is not at issue. However, despite this access to large supermarkets and superstores, these households consistently conducted much higher transactions at the Appellant firm than at better

stocked supermarkets/superstores in and around the Hidalgo County area of Texas. This is another strong trafficking indicator.

Appellant contends that there was no evidence provided of the alleged violative conduct. With regard to this contention, 7 CFR §278.6(a), which establishes the authority upon which FNS may disqualify any authorized retail food store, reads, in part: “Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through ... inconsistent redemption data (and) evidence obtained through a transaction report under an electronic benefit transfer system.” Therefore, that the Retailer Operations Division used computer printouts of transaction data and other reports, in addition to store visit observations and an analysis of household shopping behavior, in rendering a finding that violations indicative of trafficking are occurring, is as valid a means of establishing facts as direct evidence obtained through an on-site investigation and the eye witnessing of trafficking.

Moreover, 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 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. Nevertheless, transactions having such characteristics do sometimes have valid explanations that support that they were the result of legitimate purchases of eligible food items, and this is why opportunities are afforded to charged retailers to explain the questionable transactions cited.

In this case, however, ownership did not provide sufficient evidence to legitimize all of Appellant’s transaction data as outlined in the Attachments and the Retailer Operations Division determined that Appellants’ contentions did not outweigh the evidence that trafficking is the most probable explanation for the questionable transactions listed in the charge letter Attachments.

Summary

The transaction data and overall firm record convincingly demonstrate repetitive patterns of unusual, irregular, and inexplicable SNAP activity for this type of firm indicative of trafficking. Once Retailer Operations Division established a convincing case against Appellant, ownership bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. That means the Appellant has the burden of providing 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. If this is not demonstrated, the case is to be sustained.

As previously noted, 7 CFR § 278.6(a) states that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that

may include facts established through inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

Retailer Operations Division has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns in two attachments of EBT transaction data, the inadequacy of the firm's eligible food stock as observed and recorded during the onsite visit to support such large transactions, the lack of evidence to explain all of the transactions as cited in the charge letter, the lack of explanation for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant, and the irregular SNAP transaction data of Appellant as compared to other convenience stores in the State. While ownership was afforded the opportunity to provide valid explanations and evidence that support that the questionable transactions were the result of legitimate purchases of eligible food items, Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence in the record.

Appellant contends that there is a violation of due process under the Texas and U.S. Constitution. With regard to this contention, it is important to note that the letter of charges provided Appellant the opportunity to reply to the charges and provide explanations for the questionable transactions. Appellant, through counsel, did reply to the charges in writing, denying the charge of trafficking and offering various explanations for the questionable transactions. After considering the evidence of the case and Appellant's reply, Retailer Operations Division determined that a permanent disqualification was warranted. But while administrative action is held in abeyance for most adverse actions against firms pending appeal, there can be no stay of action pending an appeal of a permanent disqualification. 7 U.S.C. at 2023(a)(18) of the Food Stamp Act of 2008, as amended, states, in part: "SUSPENSION OF STORES PENDING REVIEW. Notwithstanding any other provision of this subsection, any permanent disqualification ... shall be effective from the date of receipt of the notice of disqualification."

Furthermore, the regulations at 7 CFR § 278.6(c) state, "in the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section..." which describes disqualification for trafficking, "...the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter."

The purpose of the administrative review process is to ensure that firms aggrieved by Retailer Operations Division' adverse actions have the opportunity to have their position fairly considered by an impartial review authority prior to that adverse action becoming final. Appellant has been duly given, and has taken the opportunity to present to USDA through the administrative review process whatever evidence and information it deems pertinent in support of its position that Retailer Operations Division' adverse action should be reversed. Therefore, any evidence and information that Appellant presented to Retailer Operations Division, as well as any such information submitted subsequently, have now been considered in this administrative review in rendering the final agency administrative decision in this case. The record does not indicate any departure from established policy or procedures with regard to Appellant's right to a fair and thorough review.

CIVIL MONEY PENALTY

Appellant contends that a disqualification from SNAP would effectively bankrupt the family business and greatly penalize the community. With regard to this contention, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm resulting from imposition of such penalty. To allow ownership to be excused from an assessed administrative penalty based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008, as amended, and the enforcement efforts of the USDA. Furthermore, giving special consideration to economic hardship of the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, ownerships contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed

Appellant was notified in the charge letter dated July 20, 2017, that it had 10 calendar days upon receipt of the charge letter to provide required documentation in order to be considered for the trafficking CMP. Appellant failed to provide Retailer Operations Division with the required documentation to be considered for a trafficking CMP in lieu of disqualification. Therefore, Retailer Operations Division correctly determined that Appellant was not eligible for a trafficking CMP as set forth in the SNAP regulations.

CONCLUSION

It is the decision of this review that ownership has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. As such, the SNAP regulations are specific with regard to the action that must be taken if personnel of the firm have trafficked, which is that FNS shall disqualify the firm permanently.

Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify T & E Country Store from participation in the SNAP. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Therefore, based on a review of all the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged by Retailer Operations Division. Based on the discussion herein, the determination to impose a permanent disqualification against T & E Country Store is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (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 (FOIA), 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.

Monique Brooks
Administrative Review Officer

December 19, 2017