

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

Taveras Market LLC,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0239728

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 Taveras Market LLC (hereinafter “Taveras Market LLC” or “Appellant”) by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a permanent disqualification against Taveras Market LLC.

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 February 5, 2021, the Retailer Operations Division informed the Appellant that Taveras Market LLC was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 –282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm." 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). Per UPS confirmation of delivery, the charge letter was delivered to the Appellant at the store address of record on February 9, 2021.

In a response to the Retailer Operations Division of February 18, 2021, the Appellant replied to the charges therein stating that it believes that all of the SNAP transactions noted in the charge letter are within the SNAP regulations and are not violative. It is normal for customers to come into the store many times and purchase something they may have forgotten. Therefore, the Appellant does not know why it is being disqualified from the SNAP.

After considering the Appellant's reply and the evidence in the case, the Retailer Operations Division issued a determination letter dated February 26, 2021, informing the Appellant that Taveras Market LLC was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations. The letter also stated that the Appellant was not eligible for a trafficking civil money penalty (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 March 8, 2021, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated March 25, 2021.

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 the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

7 U.S.C. § 2021(b)(3)(B) states, inter alia:

... 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(a) 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].

7 CFR § 278.6(e)(1)(i) states:

Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, inter alia:

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...

7 CFR § 278.6(f)(1) states, inter alia:

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR § 278.6(i) states, inter alia:

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 ...

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 penalty. [Emphasis added].

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from May 2020 through October 2020. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from the accounts of individual SNAP households within a set time period; and
- There were EBT transactions conducted that are large based on the observed store characteristics and recorded food stock.

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking.

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 reply to the charge letter and in the administrative review request, the Appellant stated the following summarized contentions, in relevant part:

- With regard to the SNAP transactions documented in charge letter Attachment 1, the Appellant cannot control what customers purchase nor does it have the power to limit their shopping.
- The owner has watched the SNAP video many times and has found that these transactions are for eligible food items only.
- Many customers will make a purchase then go outside and come back to make another purchase because they have forgotten something.
- With regard to the SNAP transactions documented in charge letter Attachment 2, the Appellant has a special consisting of a free 25-pound bag of rice with the purchase of \$50.00 or more.
- Also, the Appellant offers free home delivery to customers.
- Last year one of the store's customers had her SNAP card used without authorization, but she never came to the store to review the video recording and the owner is unsure if she reported the violation.
- The owner acknowledges that some products were not priced due to issues with the store's scanner.
- The owner has found customers who have maliciously changed the price from one item to another by changing the stickers around, which is why he does not have sticker prices on items all the time.
- The Appellant requests reconsideration of the SNAP disqualification.

In support of these contentions, the Appellant submitted for review 202 register receipts and one vendor purchase invoice dated July 30, 2020 5 U.S.C. § 552 (b)(6) & (b)(7)(C) noting the purchase of infant formula. Two additional purchase invoices were provided for infant formula purchases, dated March 11, 2020 and November 24, 2020; however, the invoices were dated outside of the review period.

ANALYSIS AND FINDINGS

SNAP Authorization

FNS authorized Taveras Market LLC for participation in the SNAP on November 19, 2015. During the review period of May 2020 through October 2020, Taveras Market LLC was classified as a convenience store. The owner signed a SNAP application for the store and acknowledged he/she was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would “accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm’s employees, paid or unpaid, new, full-time or part-time.” The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible items.

Store Visit Observations

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an August 11, 2020 store visit conducted by a FNS contractor to observe the nature and scope of the firm’s operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm’s irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 1,200 square feet in size with no additional storage outside of public view;
- No storage coolers/freezers;
- No shopping carts and no hand-held baskets available for customer use;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- One small checkout counter area with limited check-out counter space which was partially obstructed by an ice cream freezer;
- No optical scanners;
- Does not primarily sell one food type such as meat, poultry, dairy, seafood, fruits, baked goods, or vegetables;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;

- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- Had an ATM or money transfer service;
- No indication from the store visit report that the firm has a special pricing structure, such as prices ending in \$x.x9 and/or \$x.00;
- Transaction totals are not rounded up or down at the checkout counter;
- Telephone orders were taken;
- Delivery service was offered;
- Firm was a WIC Program vendor and stocked infant formula and foods;
- The four most expensive SNAP-eligible foods items in stock were Alimentum infant formula at \$32.99 per 12.6 ounces (8 units in stock); Enfamil Prosobe infant formula at \$24.99 per 12.9 ounces (4 units in stock); Similac Advance infant formula at \$23.99 per 12.4 ounces (4 units in stock); and Enfamil infant formula at \$22.99 per 12.5 ounces;
- No fresh or frozen unprocessed meats, poultry, or seafood in stock;
- Frozen food items included such items ice cream, pizza, vegetables, Hot Pockets, waffles, rolls, sandwiches/burgers, and juice;
- Had a kitchen and prepared, made-to-order sandwiches sold;
- Had a deli counter and deli meats and cheeses were sold by the pound; however, no signs were posted notating prices;
- Meat items included units of canned fish, canned/potted meat, sausage, hot dogs, bacon, and eggs;
- Dairy included milk (cow and coconut varieties), butter, margarine, yogurt, and cheese;
- A limited variety and amount of fresh produce;
- Other staple foods available for purchase included such items as juice, pasta, rice, cereal, loaf bread, tortillas (corn and wheat varieties), flour, corn meal, buns/rolls, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, condiments, snack foods, spices/seasonings, and coffee; and
- Ineligible nonfood items included tobacco products, health and beauty aids, paper products, household cleaning supplies, mobile phones/phone cards, toys, and household items.

The available inventory of SNAP eligible food at the time of the store visit showed food stock that would be typical of a convenience store, where households normally purchase a limited number of items. 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. There was little indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of groceries. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from those of similar sized competitors.

Charge Letter Attachments

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

The Retailer Operations Division presented a case that the Appellant trafficked 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 during the review period. A singular transaction could appear in more than one Attachment as it can meet the criteria for several different types of flags. As patterns of unusual transactions appear across multiple Attachments the case of trafficking becomes more convincing.

Repeat Transactions by the Same Household (Charge Letter Attachment 1)

This charge letter Attachment documents 30 sets of transactions (76 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits to meet the parameters of this scan. These transactions were conducted by 23 different SNAP households. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

The Appellant contends that with regard to the SNAP transactions documented in charge letter Attachment 1, the firm cannot control what customers purchase nor does it have the power to limit their shopping. The owner has watched the SNAP video many times and has found that these transactions are for eligible food items only. Many customers will make a purchase then go outside and come back to make another purchase because they have forgotten something.

Although it is not uncommon for customers to have more than one transaction per day and there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, it is not common that such multiple transactions are for large dollar amounts. 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 the Appellant's stock and facilities and are therefore, indicative of trafficking.

5 U.S.C. § 552 (b)(7)(E).

The report and photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Taveras Market LLC multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items or food cases for sale. The store visit evidence indicates that the Appellant has a small checkout area which was partially obstructed by an ice cream freezer with one cash register and one EBT POS device for ringing-up SNAP transactions. There were no shopping carts or hand-held baskets at the time of the store visit available to

customers for transporting food within the store. There were no optical scanners or conveyor belts to expedite high dollar or rapid consecutive purchases.

It is recognized that sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are 38 SNAP authorized retailers, including 3 supermarkets and 3 super stores, located within a 0.5 mile radius of Taveras Market LLC that can meet the nutritional needs of SNAP customers. Some of the area authorized SNAP stores noted are larger than Taveras Market LLC and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

The record indicates that SNAP customers who shopped at Taveras Market LLC during the review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores or the availability of other food stores does not appear to be an explanation for the Appellant's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

The Appellant did not provide any compelling justification or evidence as to why SNAP households are conducting multiple transactions from individual accounts in short periods of time at Taveras Market LLC or evidence that all of the irregular transactions cited in this charge letter Attachment were for eligible food items only. Based on the analysis above and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

Excessively Large Transactions (Charge Letter Attachment 3)

This charge letter Attachment documents 226 SNAP transactions, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transaction amounts are not consistent with the store's observed characteristics and food inventory. The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

The food stock and facilities of the Appellant as reported in the store visit documentation do not appear sufficient to provide for all of one's food needs. People generally do not spend large sums at such stores. They usually stop at convenience stores to pick up a few staple food items, such as bread, milk, or a can or two of food that they may consider are not worth a trip to the supermarket to purchase. The Appellant contends that the large transactions are not the result of trafficking of SNAP benefits. However, it is rare for a convenience store such as Taveras Market LLC to have purchases like those included in this Attachment to the charge letter.

The FNS store visit report and photos show that Taveras Market LLC offers a moderate stock of SNAP eligible foods with no fresh unprocessed meats, poultry, or seafood, no frozen unprocessed meats, poultry, or seafood, a limited variety and amount of fresh produce, and a lack of an abundant depth and breadth of staple foods. The store visit inventory report, which was signed by the store manager, and photos also show only a few expensive eligible foods in stock that would account for these large amounts, no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, specials such as buy one food item and get one for free, and grocery package deals, no evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high

prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers. There is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area. There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar sized competitors. These large transaction amounts are also not consistent with the Appellant store's inventory.

As noted previously, the store visit observations indicate that the firm had a small checkout area with limited check-out counter space which is partially obstructed by an ice cream freezer. In addition, the firm had only one cash register and one EBT POS device for ringing-up SNAP purchases. There were no shopping carts or hand-held baskets available to customers for transporting food within the store and no optical scanners or conveyor belts to expedite high dollar or rapid consecutive purchases. The customers have no place to put multiple purchases or carry the items while shopping. As a customer this would be inconvenient at best and it would make it hard for the cashiers to keep a running total of items purchased. As such, even if cashiers do know the price of goods by memory, these factors call into question that this is a reasonable explanation for the transactions.

While there is no definition in the SNAP regulations for an excessively large purchase or transaction, FNS makes its determination based on the store type, characteristics and stocked inventory. The burden is on the Appellant to prove transactions FNS identified as large for the store type (in this case, a convenience store) are for legitimate purchases. According to the store visit of August 11, 2020, the subject store did not have inventory to support the numerous large transactions. The Appellant also provided no evidence of continuously purchasing inventory throughout the review period to satisfy the large transactions. The store must have stocked inventory to repetitively generate large sales, which was not evident in the store visit.

The Appellant has provided several contentions with regard to the transactions documented in Attachment 2, including a claim that the store has a special consisting of a free 25-pound bag of rice with the purchase of \$50.00 or more and the firm offers free home delivery to customers. However, these services alone do not explain the excessively large purchase transactions noted in the charge letter. **5 U.S.C. § 552 (b)(7)(E).**

5 U.S.C. § 552 (b)(7)(E).

The Appellant contends that last year one of the store's customers had her SNAP card used without authorization, but she never came to the store to review the video recording and the owner is unsure if she reported the violation. However, no evidence was given to show the customer's card(s) had been used fraudulently and FNS did not receive any proof/invoices from the owner that substantiates this claim. FNS does acknowledge the Appellant's claim that some items may not have been priced and that it is possible for customers to have switched some sticker prices around in the past. However, these explanations do not substantiate that the excessively large purchase transactions noted in Attachment 2 are the result of purchases of eligible staple foods and not the result of trafficking.

5 U.S.C. § 552 (b)(7)(E).

While the Appellant firm may be located in a neighborhood with households that qualify for SNAP benefits, these factors are not an indication that questionable transactions would be occurring at any given store. The subject store shows unusual transaction patterns that are not displayed in other similarly stocked stores. If specific household needs are causing these questionable transactions at the subject store, it would be expected that similar patterns would also present themselves at nearby firms as well. But this is simply not the case.

In support of its contentions that the questionable SNAP transactions included in the charge letter Attachment are legitimate food purchases and not the result of trafficking of SNAP benefits, the Appellant provided FNS with 202 register receipts and one vendor purchase invoice dated July 30, 2020 5 U.S.C. § 552 (b)(6) & (b)(7)(C) which noted the purchase of infant formula. Two additional purchase invoices were provided for infant formula purchases, dated March 11, 2020 and November 24, 2020. However, these invoices were dated outside of the review period and therefore were excluded from the analysis as they have no bearing on this case.

5 U.S.C. § 552 (b)(7)(E). As such, the register receipts provided by the Appellant do not validate that the transactions in the Attachment were for legitimate food purchases and not the result of trafficking of SNAP benefits.

It is also important to note that some of the review period EBT receipts and cash receipts as well as the WIC receipts show high dollar purchases of various types of infant formula priced at \$22.99, \$24.99, \$23.99, \$29.99, \$32.99, \$34.99, \$42.99, \$44.99, and \$52.99 each. However, the store visit report indicates that the four most expensive SNAP-eligible foods in stock were Alimentum infant formula at \$32.99 per 12.6 ounces (8 units in stock); Enfamil Prosobe infant formula at \$24.99 per 12.9 ounces (4 units in stock); Similac Advance infant formula at \$23.99 per 12.4 ounces (4 units in stock); and Enfamil infant formula at \$22.99 per 12.5 ounces. In addition, one of the EBT register receipts indicates the sale of ineligible non-food items (four pans at \$0.33-\$0.34 each).

While FNS acknowledges that as a WIC Program vendor the firm stocks infant formula and infant foods, it is important to note that the majority of households that qualify for WIC Program benefits also qualify for and are SNAP recipients. In most cases, these households utilize their WIC Program benefits to purchase infant formula and infant foods in lieu of their SNAP benefits in order to save their SNAP benefits for other needed food items. It is unlikely that WIC Program recipients would routinely or consistently choose to utilize their SNAP benefits to purchase infant formula and foods at the subject firm. In addition, there are 18 other WIC authorized vendors within a 1 mile radius of Taveras Market that can also meet the WIC purchase needs of area customers.

5 U.S.C. § 552 (b)(7)(E). As such, the Appellant has failed to establish a sufficient food inventory to account for its estimated WIC sales and EBT redemptions for the review period. This is a strong indication that trafficking occurred at the subject store during the review period.

5 U.S.C. § 552 (b)(7)(E).

The USDA employs a computerized fraud detection tool to identify EBT transactions that form patterns that have characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. The Retailer Operations Division analyzes the transaction data and patterns along with other documentation such as, information from the onsite store visit report including photographs of stock and the store layout, an analysis of recipient shopping behavior, and comparisons with similar store types in local area, to render a determination as to whether or not the questionable transaction patterns were, more likely than not, the result of trafficking. The regulations at 7 CFR § 278.6(a) state 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, and that 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.

Based on the discussion above and in the absence of credible evidence 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, the Retailer Operations determined that the Appellant’s contentions did not outweigh the evidence. Assertions that the firm has not violated program regulations, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations. As noted herein, the Appellant has the burden of providing credible, relevant evidence, which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true. This burden has not been met.

CIVIL MONEY PENALTY

As previously indicated, the February 26, 2021 determination letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated April 13, 2020 advised the Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The regulations specify that such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. The letter indicates that no information was provided by the Appellant for consideration; therefore, on review the Retailer Operations Division’s determination that the Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

CONCLUSION

The Retailer Operations Division’s analysis of the Appellant’s EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable

transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellant's contentions do not outweigh this evidence.

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against Taveras Market LLC 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
ADMINISTRATIVE REVIEW OFFICER

May 24, 2021