

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

Team Dominican Deli Grocery Corp,

Appellant,

v.

**Office of Retailer Operations
and Compliance,**

Respondent.

Case Number: C0226162

FINAL AGENCY DECISION

The record supports that Team Dominican Deli Grocery Corp. (Appellant), committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the USDA that there is sufficient evidence to support that the permanent disqualification of Appellant from participation as an authorized retail food store in the Program, as imposed by the Office of Retailer Operations and Compliance (Retailer Operations), was appropriate.

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.6(a), (c), and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant.

AUTHORITY

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1, provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6, or § 278.7, may file a written request for review of the administrative action with the Food and Nutrition Service (FNS).

CASE CHRONOLOGY

By Charge letter dated April 9, 2020, Retailer Operations informed the owner that it had compiled evidence that Appellant had violated the SNAP regulations based on electronic benefit transfer (EBT) transactions that established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the firm type. The sanction for trafficking is permanent disqualification.

The owner responded to the Charge letter by letter dated on May 13, 2020. Retailer Operations issued a Credit Charge letter dated June 11, 2020. The owner provided a response dated June 17, 2020. Retailer Operations issued a Determination letter dated July 15, 2020. This letter informed Appellant that it was permanently disqualified as a retail food store in accordance with Sections 278.6(c), and 278.6(e)(1) of the regulations. Retailer Operations considered Appellant's eligibility for a civil money penalty (CMP) according to Section 278.6(i) of the regulations, and found it was not eligible because insufficient evidence was submitted timely to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program to prevent violations.

The owner appealed Retailer Operations' determination, and requested administrative review by letter dated July 23, 2020. The appeal was granted by letter dated August 12, 2020. By email dated August 28, 2020, a representative, self-identified as the firm's accountant, provided some customer statements that were not related to credit.

STANDARD OF REVIEW

In an appeal of an adverse action, the Appellant 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 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.

CONTROLLING LAW AND REGULATIONS

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and § 278 of Title 7 of the Code of Federal Regulations (CFR). Sections 278.6(a) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(e)(1) states: "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: "Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food products prepared for immediate consumption."

7 CFR § 278.2(f) states: "SNAP benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in the Food Stamp Program for a period of one year."

7 CFR § 278.6(a) states: “FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system.”

7 CFR § 278.6(b)(2)(ii) states: “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 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).”

7 CFR § 278.6(i) states: “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.”

SUMMARY OF THE CHARGES

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. The charges were based on an analysis of SNAP transaction data during the period of June 2019 through November 2019. The patterns of transaction characteristics indicative of trafficking are:

- **Attachment 1:** Listed are 77 transactions in 29 sets that were made were made from 19 different accounts of individual SNAP households within a set time period. Multiple transactions, conducted within a set time period, is a method stores use to avoid single high dollar transactions that cannot be supported, and are indicative of trafficking.
- **Attachment 2:** Listed are 159 EBT transactions conducted by 61 different households that are large based on the observed store characteristics and recorded food stock.

APPELLANT’S CONTENTIONS

In reaching a decision, consideration has been given to all contentions as presented, including any not referenced. The owner provided vendor invoices, customer statements, photos and training information.

- As stated previously, I offer a variety of grocery food items, deli, produce, and many other food products that are used for daily consumption such as bread, eggs, cold cuts, milk , fruits, vegetables, yogurts, juices, etc. It can be very easy for a participant to expend a large or even all of their benefits at this store.
- I previously sent the receipts for purchases of merchandise available for retail and I also sent pictures of the inside of the store to show your department the different types of products that are sold to our customers.

- I sent the signed documentation given after a training session showing that I provided the corresponding training to my workers regarding the rules and regulations of the SNAP.
- The analysis of the transactions and the charges of trafficking are unfounded. My business would not survive a permanent disqualification of the SNAP and may be forced to close, like the majority of the businesses in the area.
- I once again request that a CMP is issued in place of permanent disqualification.
- I need to apologize for the alleged violations. We have two experienced people working at the counter in alternate shifts. Our counter people know the prices of our merchandise very well and they add up purchases quickly. Once you know the amount of the purchases, the processing of the transaction takes seconds to complete.
- As you can see from the pictures, our store is well stocked. When the store gets busy, I or an employee will add up the purchases on a calculator and then process the purchase through the terminal. We process as many separate customers as quickly as possible. This is something we do regularly; the store can be busy during specific times of the day or month.
- Many families share their SNAP benefits with other family members that may receive their benefits on a different day of the month. A customer will make their purchases, and then charge the items for another family member separately, to obtain a separate invoice and the other family member will reciprocate when they receive their benefits.
- Some customers receive in-store credit that they repay once they receive their monthly benefits. We have a selected amount of customers that depend on us to help provide them with the food for the family once their benefits have been exhausted, especially now during this COVID 19 situation. Once these customers pay off their balance, they then will make another purchase for their home at that time. I am enclosing a letter from a client who lives on the same building the store is located, confirming the credit that she receives.
- I do not agree with your observed store characteristics and recorded food stock. We are a very busy business and maintain an extensive inventory of products to appease our clientele. We offer a large variety of food products, a full range of groceries, deli, and produce that a customer will need to sustain their family.
- We make daily and weekly purchases to maintain our foothold in the neighborhood, as you can see per the number of invoices that we have enclosed.
- I hold semi-annual training sessions for all my employees where we review the rules and regulations of the program and discuss scenarios that might occur while processing EBT transactions to avoid violations. Attached please find the signed documentation given after a training session showing proof that I have provided the corresponding training to my employees in regards to the rules and regulations of the SNAP.
- At the time that the credit is given, we take a piece of paper from the register and write the total amount being charged with the client's name. When payment is made, this piece of paper is given to the client with proof of payment. We do not keep any of these pieces of paper and at this time I have no additional information to supply.
- I apologize for any misinterpretation of the rules and regulations of the SNAP program by allowing these customers to buy food on credit and have discontinued this form of payment.
- This grocery store has always been a rule-abiding business and I have always observed the rules and regulations of the SNAP and under no circumstances would I violate them. It was never my intention to circumvent the rules and regulations of the program.
- Numerous clients had come to the store to show support and request the reversal of the permanent disqualification of the store from SNAP. Please review the letters signed and

notarized by several clients that are having difficulties to buy foods using their EBT cards due to the inability of the store to process EBT transactions.

ANALYSIS AND FINDINGS

Retailer Operations presented a case that 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 Appellant during the review period. As patterns of unusual transactions appear across multiple Attachments the case of trafficking becomes more convincing.

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. The owner 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.

The owner admitted to Retailer Operations that credit was advanced to beneficiaries, a violation of the SNAP regulations. Credit is often claimed by retailers in an effort to garner a lesser sanction than permanent disqualification. A retailer that claims credit accounts for the Attachment patterns must provide adequate evidence that credit accounts existed at the time the suspicious EBT transactions occurred. Such evidence may include an accounts receivable ledger which lists the name of each recipient, and the dates and amounts of each transaction the retailer claims was credit. The information should also show that only eligible foods were acquired on violative credit. A firm that commits documented credit violations is sanctioned with a one year disqualification period and may incur fiscal claims. If the retailer does not provide adequate evidence of credit documentation, the retailer shall be permanently disqualified for trafficking. Retailer Operations determined that the owner's admission of violative credit and the lack of credit evidence to support the sale of eligible foods in Attachment 1 was sufficient to support the charged trafficking.

At the time of authorization each retailer is provided a USDA SNAP training guide that states that credit and trafficking are not allowed. The training guide is also available online and in many languages. This guide states that SNAP customers must pay for their purchases at the time of sale and that a retailer may not accept SNAP benefits as payments on credit accounts. The training packet includes:

- A video and book that explain the SNAP rules.
- Information that the store owner is responsible for carefully reviewing the program rules and making sure all employees fully understand these rules.
- Information that failure to follow the rules can result in disqualification, fines, civil and/or criminal action.

Enclosures provided by FNS to retailers when authorized include:

- A SNAP Permit
- SNAP Training Guide for Retailers and a training video
- Report Abuse of the SNAP Poster - MUST BE POSTED IN YOUR STORE
- We Accept SNAP Benefits - Window Sticker and Poster
- Using SNAP Benefits Poster
- Dos and Don'ts for Cashiers/Penalties for Violations of the SNAP: Double-sided sign
- EBT Fact Sheet
- From the "SNAP EBT Dos and Don'ts card (FNS-136, included in the authorization package) "Do not accept SNAP benefits (EBT) as payment on credit accounts."
- From the SNAP Training Guide for Retailers: "SNAP customers must pay for their purchases at the time of sale. You may not accept SNAP benefits as payments of credit accounts. You may not hold customers' SNAP EBT cards or card account information at your store for future use."

Thus, the owner was provided multiple and redundant resources through which a thorough knowledge of SNAP rules and requirements could be readily obtained. By signing the certification to become a SNAP retailer, the owner(s) confirmed understanding of and agreement to abide by the rules and regulatory provisions. These include violations such as accepting SNAP benefits as payment on credit accounts or loans and trafficking. The certification is clear that violations of Program rules can result in administrative actions such as fines or disqualification from the SNAP.

On review, the documentation advanced as to the claimed credit to explain Attachment 1, it is deemed inadequate to more support that credit to acquire SNAP eligible foods on specified dates more accounts for the transactions than the charged trafficking. The recipient letter to support the claim of a credit account, is not sufficient to overcome the charges of trafficking at Appellant. The credit letter did not record the items allegedly purchased to support that eligible items were transacted on violative credit, nor was there sufficient detail to track alleged credit transaction amounts to recipient transactions listed on the Attachment. The writer of the credit letter was matched by Retailer Operations to its SNAP information. That household had 11 transactions on the Attachment, less than a preponderance of the transactions listed. Retailer Operations matched the additional recipient statements to their SNAP data, and none of these households conducted transactions listed on Attachment 1. As such, the statements are not relevant to the pattern. The owner failed to provide sufficient evidence to support the the Attachment pattern was more likely the result of credit transactions than the trafficking charged.

Retailer Operations found that Appellant's submitted vendor invoices did not tally to a sufficient total to cover the store's SNAP redemptions for the review period. On review however, it is determined that the FNS store photos, the photos submitted by the owner, the store inventory report, as well as the invoices advanced of eligible stock do present a preponderance of evidence that Attachment 2 could be the result of the sale of eligible foods. A such, this Attachment does not more support the charged trafficking.

Upon review, the responding owner has not provided a preponderance of evidence to support that credit more accounted for Attachment 1 than did trafficking. As such Retailer Operations properly permanently disqualified Appellant for trafficking.

CIVIL MONEY PENALTY

The regulations at 7 CFR Section 278.6(i) specify the criteria for a firm's eligibility for a CMP in lieu of permanent disqualification for trafficking. The four criteria listed at the cited regulation are identified as a minimum standard that firms must meet in order to be eligible for CMP consideration. While the owner submitted some training information, the lack of a substantial evidence submission which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations, supports that the owner did not meet the criteria for a CMP. Upon review, it is decided that the owner did not submit substantive documentation as required by the regulations, to support a trafficking civil money penalty in lieu of permanent disqualification, and Retailer Operations properly denied a trafficking CMP.

CONCLUSION

Retailer Operations' analysis of Appellant's SNAP transaction data was the primary basis for its determination to permanently disqualify Appellant. The record also included onsite store photographs, an onsite store inventory report, and household shopping analyses that provided evidence that the questionable transaction patterns during the review period had characteristics that are consistent with trafficking violations in SNAP benefits.

Based upon empirical data, and in the absence of evidence of the legitimacy of the transaction pattern in Attachment 1 presented by Appellant, the preponderance of the evidence supports that trafficking violations did occur as charged by Retailer Operations. Retailer Operations denial of a trafficking CMP was also proper per the applicable regulations. Therefore, the decision to impose a permanent disqualification against Appellant is sustained based on one Attachment pattern. This decision is effective 30 days after the date of delivery to the firm.

RIGHTS AND REMEDIES

Attention is called to Section 14 of the Food and Nutrition Act of 2008, and to 7 CFR § 279.7 of the regulations, with respect to applicable rights to judicial review of this decision. If 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 Appellant's owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of the date of delivery of this Decision to the firm.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

M. Viens
ADMINISTRATIVE REVIEW OFFICER

October 27, 2020