

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

Thrift Foods Convenience,

Appellant,

v.

Case Number: C0199832

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a permanent disqualification of Thrift Foods Convenience (hereinafter “Thrift Foods” or “Appellant”) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against Thrift Foods.

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.”

SUMMARY OF CHARGES

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from November 2016 through April 2017. This involved the following transaction patterns which are common trafficking indicators:

- There were multiple transactions made from individual household benefit accounts within unusually short timeframes.

- Excessively large purchase transactions were made from recipient accounts.

CASE CHRONOLOGY

The agency's record shows that FNS initially authorized Thrift Foods for SNAP participation as a convenience store on June 10, 2013. In a letter dated June 6, 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 between the months of November 2016 and April 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In a letter postmarked June 19, 2017, the Appellant, through counsel, responded to the charge letter, vehemently denying that any trafficking had occurred. Instead, the Appellant argued that the larger transactions listed in the charge letter were due to an increase in business as a result of the closure of a nearby 5 U.S.C. § 552 (b)(6) & (b)(7)(C) store in January 2016. The Appellant further argued that any unusual transactions were likely the result of the firm permitting a few of its customers to shop at the store on credit and then pay their debt with SNAP benefits once the household's benefit allotment had been replenished. The Appellant acknowledged that engaging in credit accounts is a violation of SNAP regulations and requested a civil money penalty in lieu of the disqualification period normally assessed in cases where a firm is found to have committed credit account violations.

In support of its response, the Appellant submitted an affidavit from store owner 5 U.S.C. § 552 (b)(6) & (b)(7)(C) disputing the allegations of trafficking and admitting to credit account violations. The Appellant also submitted two handwritten letters from apparent SNAP customers who claimed to shop at Thrift Foods on credit, and six handwritten credit ledgers. The Appellant also submitted a printout from 5 U.S.C. § 552 (b)(6) & (b)(7)(C) showing that a 5 U.S.C. § 552 (b)(6) & (b)(7)(C), located six-tenths of a mile from Thrift Foods, was closed to the public on January 17, 2016.

In response to the Appellant's claim that it had allowed credit accounts at the store, the Retailer Operations Division sent the firm a letter on June 30, 2016. In this letter, the Appellant was asked to provide documentation to support its claim of credit accounts. The letter stated that the documentation must identify specific accounts along with corresponding dates and amounts. The Appellant replied to this letter on July 10, 2017, stating that the explanation, affidavits and documentation submitted earlier "remains current and correct." The Appellant provided no additional documentation or evidence.

It should be noted that if a firm is found to have committed credit account violations instead of trafficking, the firm would be subject to a one-year disqualification from SNAP in accordance with regulations at 7 CFR § 278.2(f).

After considering the Appellant's reply and documentation and further reviewing the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated August 11, 2017. This determination letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The 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, but that a CMP was not appropriate in this case 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 SNAP violations.

In a letter postmarked August 23, 2017, the Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted. It should be noted that in a letter dated September 26, 2017, the Appellant outlined additional contentions for the administrative review officer to consider. This letter was added to the case file and all contentions were considered during the administrative review process.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that 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 AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, in part:

...a disqualification under subsection (a) shall be...permanent upon...the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards...

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, [or] evidence obtained through a transaction report under an electronic benefit transfer system....**
[Emphasis added.]

7 CFR § 278.6(e)(1)(i) states:

FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, in part:

Trafficking means: The buying, 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 § 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(b)(1) states, in part:

Any firm considered for disqualification...under paragraph (a) of this section...shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...

7 CFR § 278.6(c) states, in part:

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) of this section, 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.

7 CFR § 278.6(b)(2)(ii) states, in part:

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(b)(2)(iii) states:

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.

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...

APPELLANT'S CONTENTIONS

The Appellant, through counsel, made the following summarized contentions in its request for administrative review, in relevant part:

- The charge letter and determination letter accuse the Appellant firm of trafficking, but Appellant denies that accusation.
- Appellant reiterates its earlier contention that the "unusual, irregular, and inexplicable activity" described in the charge letter is likely due to the fact that Thrift Foods offers a few of its clients in-store credit.
- While denying engaging in trafficking, the Appellant admits that accepting SNAP benefits in exchange for food sold on credit constitutes a violation of SNAP regulations, subjecting the firm to a one-year disqualification period. However, based on the information already submitted to the Retailer Operations Division, the Appellant formally requests a CMP in lieu of the one-year disqualification for allowing credit accounts.
- Regarding the June 30, 2017 credit account letter, USDA requested documentation to support that food items were purchased on credit as noted in the response to the charge letter. The credit account letter stated that the documentation should include "specific accounts along with corresponding dates and amounts." In this case, the Appellant provided several customer letters wherein those customers supported the firm's admission of providing credit, and not exchanging SNAP for cash. Additionally, the firm provided at least six ledgers of credit accounts that were detailed by name and individual line items.
- Accordingly, the firm has met its burden to refute the trafficking charge while supporting the lesser charge of extending credit.

- The burden is also met by the sworn testimony of the firm’s owner specifically and unequivocally denying any activities that could remotely be labeled as trafficking. This sworn denial is one factor that a federal court must consider when weighing the evidence.
- It is expected that USDA will argue that the handwritten letters and ledgers are not sufficient enough in quantity to properly support the claim that the firm extended credit. However, given the severity of the charge “and the knowledge deficit that burdens the demographic pertaining to the firm’s customer base, it is not unreasonable to assume most of those customers would be too fearful in being prosecuted themselves to put something in writing that supports [a violation of federal law].” This is what happened when the firm attempted to obtain more substantial numbers of letters from customers.
- Additionally, the nature of the firm’s business and the personal relationship the Appellant has with its customers allowed the firm to keep a more informal and handwritten ledger of credit accounts instead of a typed or computerized list. This also supports the claim that extending credit was not a substantial part of the firm’s business, but rather a caring (if misguided) accommodation to the community.
- Extending credit to households is not trafficking according to the definition found in 7 CFR § 271.2.
- The Appellant needs only to prove by a “mere” preponderance of the evidence that the firm did not engage in trafficking and instead engaged in extending credit in order to prevail in Federal District Court. This is an extremely low standard for the Appellant to meet and, as explained, it is more likely than not that the firm engaged in credit accounts rather than trafficking. This is particularly evident when you take in to account the affidavit of the firm’s owner, the supporting customer letters, and the credit ledgers.
- Based on this evidence and the extremely low burden the Appellant must meet in order to prove that the firm did not traffic, the Appellant hereby renews its request that the administrative review be resolved in favor of the Appellant committing the violation of credit accounts, subjecting it to a one-year disqualification period or a CMP in lieu of disqualification, rather than permanent disqualification based on the Retailer Operations Division’s erroneous finding of trafficking.

The preceding may represent only a brief summary of the Appellant’s contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically summarized or explicitly referenced herein.

ANALYSIS AND FINDINGS

The primary issue for consideration in a case based on suspicious SNAP redemption data is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other words, did the Retailer Operations Division, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and unusual transactions cited in the charge letter were the result of trafficking?

Contractor Store Visit

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm's EBT transactions, but also information obtained from a April 27, 2017, store visit which was conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- Thrift Foods is a convenience store, approximately 2,000 square feet in size, operating in Las Vegas, Nevada.
- At the time of the contractor's visit, the firm had no shopping carts, but did have approximately four handheld shopping baskets for customer use.
- The store visit photographs show two cash registers and agency records reflect the use of two EBT point-of-sale devices.
- The store does not appear to use optical scanners to process transactions.
- The store's staple food stock is moderate in each of the four staple food categories and is typical of a convenience store.
- The store visit report also indicates that store sells SNAP-eligible, non-staple accessory food items, such as carbonated and uncarbonated drinks, snacks, candy, and condiments. Additionally, the store sells ineligible nonfood items, such as alcoholic beverages, tobacco products, and other miscellaneous household merchandise.
- The store does not appear to sell hot foods, although there is a microwave oven on top of a stack of plastic crates.
- The firm does not appear to sell any deli meat or cheese by the pound, and the only fresh produce in the store are limes, which are in the same refrigeration unit as the alcoholic beverages.
- The most expensive food item in the store was a 16-ounce jar of Nescafe Instant Coffee, selling for \$9.99. All other eligible food items in the store were \$6.99 or less.
- The checkout areas consist of two very small countertops, perhaps 12 inches wide, where items can be placed to be rung up. Both cash registers are located behind Plexiglas barriers. The constricted checkout areas are not suitable for conducting large or rapid transactions as there is very little space to place more than one or two small items and there is no conveyor belt to expedite the purchase.
- There is no indication from the store visit report that the firm has a special pricing structure, although judging by the store visit report, most items appear to end in 9, such as \$1.49, \$1.99, etc.

The available inventory of SNAP-eligible food items at the time of the store visit showed stock that would be typical of a convenience store. There was no indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of grocery items, especially considering the absence of shopping carts and the limited staple food inventory. The available food was primarily of a low-dollar value and there was no evidence that the firm sold any high-priced meat or seafood bundles or other bulk or specialty items.

Given the available inventory and the store's characteristics, there was no sign that the firm would be likely to have SNAP redemption patterns that differed significantly from those of similar-sized competitors.

SNAP Transaction Analysis

Charge Letter Attachment 1: Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 22 sets of transactions (55 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These sorts of repetitive transactions are extraordinarily unusual for a convenience store that sells typical, low-priced merchandise.

The Appellant has not offered any contentions that directly relate to the specific transactions listed in Attachment 1, except to say that the unusual transactions are likely the result of the firm engaging in credit accounts. The topic of credit accounts will be addressed in greater detail below. But for purposes of Attachment 1, an argument of credit accounts makes very little sense. It is possible that a household with a credit debt may pay off the amount owed, and then make a subsequent purchase shortly afterward. That might explain two transactions in quick succession. But three or four or even five consecutive transactions? Credit accounts make no sense in such patterns.

Agency records also show that the vast majority of households who shop at Thrift Foods also shop at supermarkets and superstores in the area and do so on a regular basis, so there seems to be very little need for a household to spend 5 U.S.C. § 552 (b)(6) & (b)(7)(C) or more in such a repetitive fashion at a marginally-stocked convenience store rather than shopping at a much larger store, where shopping carts and greater variety of inventory would help facilitate the purchase of large numbers of food items.

Because the Appellant has not offered evidence to counter the specific transactions identified in Attachment 1, it is reasonable for this review to conclude that trafficking was likely occurring at the Appellant store.

Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts. This attachment lists 326 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with a convenience store in the state of Nevada. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a convenience store in Nevada was \$6.60. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Given that the Appellant firm does have a small inventory of staple foods as well as some eligible accessory foods, such as soft drinks and snacks, it is probable that there would be an occasional purchase where the transaction amount is high, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As

such, there are almost certainly some legitimate SNAP transactions sprinkled among the transactions listed in Attachment 2. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar-sized competitors, especially considering the lack of high-priced food items and the absence of specially-priced meat bundles, large or expensive packages, or ethnic foods. The substantial number of high-dollar transactions in a six-month period calls into question the legitimacy of these transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Considering the fact that the Appellant store sells primarily low-priced merchandise, and considering how many items it would take to add up to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) or more, it is unlikely that the firm's customers would routinely carry large amounts of merchandise around the store without the benefit of shopping carts, especially since the evidence shows that the firm's customers regularly shop at larger, better stocked stores in the area.

The Appellant has contended that the larger transactions are the result of a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) closing its doors in January 2016. This argument implies that some of the customers who were formerly making large transactions at the nearby 5 U.S.C. § 552 (b)(6) & (b)(7)(C) are now making similar purchases at Thrift Foods.

A look at the Appellant's SNAP transaction history indicates that Thrift Foods' monthly redemptions did indeed increase shortly after the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in question shuttered its doors. So there is little question that the Appellant store received an increase of traffic as a result of the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) closure. However, the closure of a superstore 10 months prior to the review period is an incomplete explanation of the specific large transactions that the Retailer Operations Division identified as questionable.

As noted earlier, Thrift Foods does not offer any unique foods or ethnic varieties. It also has virtually no fresh produce. In comparison with a supermarket or superstore, its overall inventory volume and variety is substantially smaller. It also has no shopping carts to help carry large amounts of groceries. It is certainly possible that some SNAP households started shopping at Thrift Foods more regularly after the local 5 U.S.C. § 552 (b)(6) & (b)(7)(C) closed. However, because of Thrift Foods' physical limitations, it is unlikely that they shopped in the same manner as they would have at a supermarket or superstore.

Agency records show that there are 10 SNAP-authorized superstores located within four miles of Thrift Foods. Records also show that the same households who shopped at the Appellant store also shopped at those superstores, and did so regularly. It is difficult to comprehend, then, what the draw would be to for customers to spend such large amounts at Thrift Foods, a minimally-stocked convenience store, when larger stores were readily available.

Unfortunately, the Appellant has not offered any evidence that would prove or even suggest that the transactions listed in Attachment 2 were legitimate purchases of eligible food. Such evidence might have included itemized cash register receipts showing the purchase of SNAP-eligible food items.

Stores caught in trafficking violations, both during onsite investigations and in EBT analysis cases, consistently display particular characteristics or patterns. These patterns often include frequent, large transactions that cannot be supported by the retailer's inventory, store type, and structure. It is the conclusion of this review that Thrift Foods, with its limited and primarily low-dollar inventory, and its lack of shopping carts cannot support the large numbers of high-dollar transactions identified in Attachment 2. Therefore, the most logical explanation for such transactions is trafficking.

Based on the above analysis, it is the determination of this review that Thrift Foods likely trafficked in SNAP benefits during the review period. The attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place. Conversely, the Appellant has failed to provide a rational explanation or any evidence as to why such patterns might exist. As there are multiple unexplained patterns of irregular transactions, the case of trafficking is convincing.

Credit Accounts

The Appellant's chief argument to counter the charges of trafficking is a claim that the firm was engaged in the practice of allowing customers to obtain food items on credit and then pay for the items with their SNAP benefits at a later time. To support this claim, the Appellant submitted the following: an affidavit from store owner **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** disputing the allegations of trafficking and admitting to credit account violations; two handwritten letters from apparent SNAP customers who claimed to shop at Thrift Foods on credit; and six handwritten credit ledgers. The Appellant further requested a civil money penalty in lieu of the one-year disqualification that would normally be imposed against a firm found to have committed credit account violations.

The Appellant, through counsel, said that it expects that USDA will argue that the handwritten letters and ledgers are not sufficient enough in quantity to properly support the claim that the firm extended credit. The Appellant is correct in this regard, although the quality of the evidence is also problematic.

When a retailer claims that credit accounts are a reason for the irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser one-year disqualification penalty after committing more egregious violations such as trafficking. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items. Such proof should also correspond with the transactions identified in the letter of charges. Unfortunately, the documentation provided by the Appellant falls far short of these expectations. For example, the two handwritten letters offer very little information. Only one of the two letters has both a first and last name listed, and neither includes a home address, EBT card number, or any dates identifying when the supposed credit transactions took place.

As for the ledgers, they do appear to be a credit ledger of some kind, however crude they may be. Unfortunately, none of the ledgers were dated, and none listed anything more than a first name. There are also no markings to indicate which amounts were payments and which were purchases. There is also no evidence that the purchases were food items or that the ledgers were even from the review period or even related to the SNAP program at all.

The Appellant, through counsel, argues that “a preponderance of the evidence” is an extremely low standard for the Appellant to meet, and contends that the credit account evidence meets that standard.

While this review acknowledges that a preponderance of the evidence is a lower standard than what might be found in other legal cases, such as a criminal case, this review does not agree that the Appellant has met its burden. The charge letter identified more than 300 specific transactions that the Retailer Operations Division found to be suspicious. The Appellant has not provided one piece of evidence that points to a specific transaction and suggests that it was a legitimate purchase of eligible food, or was the result of a credit account. The documentation provided by the Appellant is far too vague and ambiguous for this review to conclude that the firm was, more likely than not, committing credit account violations rather than trafficking. And based on the evidence, it is not out of the question to suggest that the firm was committing both credit account violations and trafficking.

It might have been useful if the Appellant had submitted additional evidence, such as itemized cash register receipts or inventory records to help prove that the transactions were legitimate. It is the determination of this review that the firm’s minimal credit account documentation does not, in any respect, constitute a preponderance of the evidence sufficient to eliminate trafficking as a reason for the unusual transaction patterns identified in the charge letter.

In short, the Appellant’s evidence is not persuasive and does not provide a valid basis for dismissing the charges or reducing the penalty to a one-year disqualification. Accordingly, the firm is also not eligible for a civil money penalty in lieu of a one-year disqualification.

Owner Affidavit

As noted earlier, the Appellant owner submitted a signed affidavit attesting that the firm has not engaged in trafficking violations, but rather has allowed SNAP customers to shop on credit and then pay the store back when the household’s benefit allotment was replenished. According to SNAP regulations, a firm that is found to have engaged in credit accounts rather than trafficking is subject to a disqualification period of one year.

With regard to the store owner’s affidavit, this review finds it to be unconvincing. It is not often that a retailer or an employee admits to trafficking, as making such an admission potentially exposes an individual or firm to severe administrative penalties or even criminal charges. On the contrary, experience has shown that owner affidavits routinely attest to irregular transactions being legitimate or the result of credit accounts even when there is strong evidence suggesting otherwise. In this case, the Appellant has offered an impassioned narrative, but only vague

documentation to support its claims, whereas the Retailer Operations Division has presented a compelling case of trafficking. Anecdotal explanations without sufficient and credible evidence do little to convince this review that the questionable transactions listed in the charge letter were legitimate purchases of eligible food or the result of credit accounts.

Hardship to SNAP Recipients

In its affidavit, the Appellant owner stated that even a temporary disqualification would cause severe hardship to SNAP households in the area as Thrift Foods is the only store offering a variety of staple foods at comparable prices. The Appellant also claims that many customers who frequent the store do so on foot, and many would be unable to obtain proper nutrition if the store was permanently disqualified.

With regard to these contentions, it is recognized that some degree of inconvenience to SNAP households is likely whenever a SNAP-authorized store is disqualified and a household is forced to use its benefits elsewhere. Regulations at 7 CFR § 278.6(f) do allow, in some circumstances, for a civil money penalty to be imposed in lieu of disqualification when there is an absence of other SNAP-authorized retailers in the area. However, the regulations are also clear that a civil money penalty for hardship to SNAP households may not be imposed in lieu of permanent disqualification for trafficking.

Therefore, the Appellant's contention that the community will be adversely affected by the firm's permanent disqualification does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Civil Money Penalty

As noted earlier, the Retailer Operations Division determined that the Appellant firm was not eligible for a civil money penalty in lieu of permanent disqualification for trafficking because it did not submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and training program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider a trafficking CMP in lieu of permanent disqualification, but it must also submit appropriate documentation within designated timeframes. The case record shows that the Appellant did not request a trafficking CMP when it responded to the charge letter and there is no evidence that the Appellant submitted any documentation that would indicate that the firm had a compliance policy or training program of any kind.

Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii), a civil money penalty in lieu of permanent disqualification for trafficking cannot be granted in this case.

CONCLUSION

An analysis of the Appellant's EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify Thrift Foods from SNAP participation. This data provided sufficient evidence for this review to conclude that the questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by the Appellant.

Based on a review of all available information in this case, it is the determination of this review that the Appellant has not proven, by a preponderance of the evidence, that the administrative action should be reversed or modified. As such, the decision to impose a permanent disqualification against the Appellant, Thrift Foods, under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt of this decision.

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.

JON YORGASON
Administrative Review Officer

February 27, 2018