

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

Two Star Deli and Grocery Store,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0187838

FINAL AGENCY DECISION

It is the decision of the USDA that there is sufficient evidence to support that the Retailer Operations Division properly imposed a permanent disqualification of Two Star Deli and Grocery Store as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a permanent disqualification against Two Star Deli and Grocery Store (hereinafter referred to as “Two Star Deli” or “Appellant.”)

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 9, 2016, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of July 2015 through December 2015. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated the Appellant had the right to respond to the charges within ten (10) days of receipt to provide explanations for the irregular SNAP transaction patterns. The letter also stated that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten (10) days of receipt under the

conditions specified in 7 CFR § 278.6(i). The charge letter was delivered by UPS on February 10, 2016.

In a letter dated February 17, 2016, the Appellant's former counsel (now deceased) responded to the charges denying that the firm had trafficked in SNAP benefits and requested case file information under the Freedom of Information Act (FOIA). The Appellant did not request a trafficking CMP under 7 CFR § 278.6(i).

The agency issued its formal FOIA response to the Appellant on March 29, 2016. The FOIA response letter stated that the Appellant could appeal the FOIA response. The Appellant then submitted a FOIA appeal on May 6, 2016.

A final decision on the FOIA appeal dated August 13, 2020 was delivered to the Appellant's current counsel on August 18, 2020. The Retailer Operations Division also sent a letter dated August 18, 2020 that the Appellant had ten (10) days to respond to the original charge letter. The Appellant failed to respond.

After considering the Appellant's original response to the charge letter and the evidence in the case, the Retailer Operations Division issued a determination letter dated December 2, 2020. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and 7 CFR § 278.6(e)(1). The determination letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of 7 CFR § 278.6(i) of the SNAP regulations. The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked December 11, 2020, the Appellant, through counsel, requested an administrative review of the Retailer Operation Division's determination. The request for administrative review was granted.

STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

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

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

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

7 CFR § 271.2 states that the definition of “coupon” includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

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 (1) defines trafficking, in part, as:

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 defines eligible food, in part, as:

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

7 CFR § 278.6(a) states, in part:

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

7 CFR § 278.6(i) states, in part:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking ... if the firm timely submits to FNS substantial evidence which demonstrates

that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.

7 CFR § 278.6(b)(2) states, in part:

(ii) Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence as specified in § 278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1). [Emphasis added.]

(iii) If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty. [Emphasis added.]

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from July 2015 through December 2015. This involved the following transaction patterns which are trafficking indicators:

- **Charge Letter Attachment 1:** Multiple transactions were made from individual benefit accounts in unusually short time frames. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- **Charge Letter Attachment 2:** Excessively large purchase transactions were made from recipient accounts. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

APPELLANT'S CONTENTIONS

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

- The permanent disqualification for trafficking is based on an erroneous conclusion based solely on a faulty analysis of records with no additional or further investigation. The agency solely used EBT records which is inadequate proof and will arbitrarily cause the owner to lose his business.
- The agency did not properly consider the basis for determination factors described in 7 CFR § 278.6(d). There were no specific violations conducted by individual personnel of the firm; there were no warnings; and there was no evidence of intent to violate the regulations.
- SNAP transactions constitute approximately 30 percent of this owner's sales and provide the income necessary to keep this business profitable so it can continue its operation. This owner would not jeopardize this source of business and his livelihood, by engaging in the illegal activity charged herein for such low dollar amounts.

- The owner has continuously trained and tested his employees concerning the SNAP regulations and requirements. The fact that there is no prior violations proves that the owner has been in compliance with the rules and regulations of the SNAP.
- Regarding Charge Letter Attachment 1, these were all legitimate transactions and none were made in exchange for cash. Many of these transactions were made by customers who live in proximity to the store and who make frequent trips such as when they need to make a convenience buy or picking children up from school. The owner is permitted to allow such repeat transactions. It is not the responsibility of the owner to police these transactions. The time between transactions are as close **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** which is not unusual in the retail grocery business.
- Regular customers of this owner will often call the store by telephone to place their large grocery orders, and then personally pick-up these orders at which time they pay for the telephone orders and purchase additional items, which they cannot do at a supermarket. They also buy items on their way home from picking up their children from school or to and from church. The business practices resulting in the use of individual benefit accounts in short time frames or large purchase transactions are not for any unlawful purpose. It is designed to accommodate the needs of regular and repetitive customers of this business.
- Regarding Charge Letter Attachment 2, the average transaction amounts are in the normal range of acceptable amounts each month. Any larger purchases were made immediately after benefits were added to the card at the beginning of the month. These include customers placing orders in advance and paying for them when picking up or having the food delivered. The average purchase **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** is not unusual.
- Customers prefer to shop at the Appellant store to avoid crowded supermarkets where they have to wait in long lines, selling the same items for similar prices.
- This store, in addition to basic items like meat, fruits, vegetables, milk, eggs, and bread, also sells items such cereal, prepared foods, other dairy products, rice, beans, and other cooking ingredients. It has numerous shelving for eligible foodstuffs, three (3) refrigerators with six (6) doors each for cold drinks and food items. There is one (1) six (6) foot freezer which contains different ice creams and frozen desserts. It has a 13 foot deli counter where it sells a vast array of sandwiches and a variety of cold cuts on rolls, subs and other bread. The baby food items are expensive with cans of Enfamil selling at \$20.00 per container, \$24.99 per midsize container and \$ 34.99 per large container which is a common item sold in volume, in this owner's store. It is ludicrous for FNS to refuse to allow an owner to sell large containers of Enfamil without risking allegations of trafficking.
- This firm has met the criteria for a trafficking CMP in that: (1) the firm has developed an effective compliance policy; (2) the firm has established that both its compliance policy and program were in operation at the location where the alleged violation(s) occurred prior to the occurrence of violations cited in the charge letter; (3) the firm had developed and instituted an effective personnel training program; and that the owner was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval in the violations or it is only the first occasion in which a member of firm management has become aware of the violations.
- In the alternative, FNS should subject this owner to a civil money penalty in that as per Section 278.6(a), disqualification would cause hardship to participating households as it is the only retail SNAP participating store on the block. The store is located near large

multi-family apartment complexes and a family shelter. There is a great need for the families who live and work in the neighborhood, many of which families are large, to have convenient access to basic items like Enfamil, Similac, milk, eggs, baby food, cereal, bread, juice and other infant and child-care products.

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

ANALYSIS AND FINDINGS

Authorization and Compliance History

The Food & Nutrition Service (FNS) authorized Two Star Deli for the SNAP on November 28, 2011. The Retailer Operations Division classified the store as a small grocery store based on reported sales and observed store inventory. Although Two Star Deli has no previous compliance history, this does not "prove" that there was no trafficking in the present case as urged by the Appellant.

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a January 15, 2016 store visit conducted by an FNS contractor to observe the nature and scope of the store's operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the store's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Two Star Deli operates out of an urban, residential storefront and is approximately 600 square feet in size.
- The store had no shopping carts and no handheld shopping baskets for customer use.
- The store had one (1) cash register and one (1) point-of-sale device.
- The store did not have an adding machine, optical scanner or conveyor belts at the checkout.
- The checkout area consisted of small window opening of approximately two (2) feet by two (2) feet in a Plexiglas a barrier. There was no ledge on the customer's side for stacking food for purchase. The limited space for stacking food at the checkout area made it not conducive to conducting large transactions.
- There were no signs or flyers that the store offered delivery services or took telephone orders.
- The store's exterior signage promoted hot and cold sandwiches; beer; soda; cigarettes; coffee; tea; lotto and phone cards.
- The store had narrow aisles and some partially empty shelves with food items pushed to the front.

The SNAP eligible staple food stocked by the store consisted mainly of inexpensive canned and packaged goods. There was no fresh meat, fish, poultry or fresh produce for purchase with the exception of a bag of plantains and a small scattering of other fresh produce in insignificant amounts. The store had a small deli area which advertised meat and cheese by the pound with the most expensive items being bologna, pastrami or roast beef at \$9.49 per pound. It should also be noted that **contrary to the Appellant's assertion the store did not carry any infant formula** for sale.

The store sold a large amount of inexpensive accessory food items such as snack foods, ice cream, candy, potato chips, coffee, tea, carbonated and non-carbonated drinks, condiments, and spices. The ineligible items sold by the store included tobacco products, alcohol, cleaning products, health and beauty aids, paper goods and pet food. The store also sold SNAP ineligible prepared sandwiches not intended for home preparation and consumption.

Given the available inventory as noted above, there is no indication from the store visit report that the store would be likely to have SNAP transaction patterns significantly different from similar-sized competitors offering similar food items.

Basis of Determination under 7 CFR § 278.6(d)

The Appellant contends that the Retailer Operations Division did not properly apply the three factors under 7 CFR § 278.6(d) before imposing a permanent disqualification on the firm. The SNAP regulations at 7 CFR § 278.6(d) states, in part, that in making a disqualification determination FNS shall **consider**:

- (1) The nature and scope of the violations committed by personnel of the firm,
- (2) Any prior action taken by FNS to warn the firm about the possibility that violations are occurring, and
- (3) Any other evidence that shows the firm's intent to violate the regulations.

This review finds that the Retailer Operations Division properly followed 7 CFR § 278.6(d) as required. With regard to the nature and scope of the violations, trafficking in SNAP benefits is an extremely serious violation and both 7 U.S.C. § 2021(b)(3)(B) and 7 CFR § 278.6(e)(1)(i) state that a **first time** violation warrants a permanent disqualification.

Based on the above, the regulations do not require that a warning letter be sent before a store is permanently disqualified for trafficking in SNAP benefits. It is true that SNAP regulations allows for the issuance of warning letters in some less serious cases. Specifically, 7 CFR § 278.6(e)(7) states “send the firm a warning letter if violations are too limited to warrant a disqualification.” However, trafficking in SNAP benefits is not a violation that is considered “too limited to warrant a disqualification.”

Lastly, the firm's intent is not relevant in a trafficking case as the definition of trafficking at 7 CFR § 271.2 (1) does not require an element of intent.

Trafficking Case Based on Irregular Transaction Patterns

The Appellant states that the USDA, using EBT transactions, has wrongfully concluded that this firm has engaged in trafficking activities as defined in Section 271.2 of the SNAP regulations. According to the Appellant, such an erroneous conclusion was apparently based solely on a faulty analysis of records, with no additional or further investigation. The Appellant further alleges that EBT transactions should require a more careful review before making such a major decision based totally upon computer generated reports.

With regard to these contentions, FNS employs a computerized fraud detection tool to identify SNAP transactions that form patterns having characteristics indicative of trafficking. However, this tool does **not** by itself determine or conclude that trafficking has occurred. The Retailer Operations Division must still analyze the transaction data and patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior and a comparison of stores in the area, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking.

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

Owner Accountability

Store owners are accountable for the proper training of staff and the monitoring and handling of SNAP benefit transactions. The store owner signed the SNAP application for Two Star Deli on September 15, 2011. That application included a signed certification that all owners 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 including accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible non-food items.

Multiple Transactions by the Same Household within a Short Time Period

The Appellant claims that the agency is punishing the owner for making a legitimate business judgement to allow multiple transactions. This is not correct. SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of this small grocery store’s stock and facilities and are thus indicative of trafficking.

5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(7)(E)

It is also noteworthy that **even the smallest** transaction in each set was at least 2-3 times greater than the average transaction for a Bronx County small grocery store during the review period. As stated previously, there is nothing special about the Appellant firm to justify it having multiple transactions much higher than the average for a Bronx County small grocery store.

The Appellant claims that some of these transactions were food ordered over the telephone followed by an in store purchase. However, the store visit report did not record that the store accepted telephone orders or provided food delivery service.

In conclusion, the store visit report and pictures show that is unlikely that SNAP customers would shop at the store and purchase such a large volume of items multiple times during a short time period. In addition, the store's small checkout window and lack of counter space makes it unsuitable for conducting large transactions. The store also had no shopping carts and no shopping baskets for transporting food within the store which would be required for the larger dollar transactions. 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

The Appellant claims that the agency is punishing the owner for making a legitimate business judgement in processing large dollar transactions. This is not correct. SNAP households have no limit on the amount of eligible food they may purchase (subject to the remaining balance on the card). However, the SNAP transactions noted in the charge letter are questionable **not** because they exceed any regulatory limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of this small grocery store's stock and facilities and are thus indicative of trafficking.

5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(7)(E)

The substantial number of high dollar purchases atypical of a SNAP authorized small grocery store calls into question the legitimacy of these transactions. As noted previously, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellant states that these transactions are to be expected in light of the nature of the neighborhood and very high volume of traffic in the store. Also, when the weather is hot or cold, customers only want to go out when necessary and buy in bulk to avoid going out numerous times. [Note: the review period was July 2015 through December 2015]. Furthermore, many of the transactions resulted from customers who had budgeted their benefits and some had placed telephone orders and received deliveries when their monthly benefits become available. The Appellant further contends that, although there are larger stores in the area, supermarkets are not preferred by the residents as they are crowded with long lines.

The Appellant's contentions are not credible. The store visit report showed no evidence that the store offered telephone pre-orders or delivery service. If shoppers are trying to avoid crowded situations, they could hardly do so by shopping at the Appellant store which is only about 600 square feet in size and has limited room to maneuver and no shopping carts or baskets. It is also not likely that a shopper would completely forgo a supermarket or superstore which would likely have a better selection of staple food items, in both depth and variety, at likely better prices than Two Star Deli.

Sometimes a store may have higher than normal SNAP transactions due to the lack of access to other SNAP authorized stores in the area. However, agency mapping systems document that, during the review period, there were at least four (4) supermarkets, a large grocery store, two (2) medium grocery stores and six (6) small grocery stores, all SNAP authorized, located within a half-mile radius of Two Star Deli. Therefore, a lack of access to SNAP authorized stores does not appear to explain the Appellant store's excessively large transaction patterns. When a supermarket or superstore is available, it is highly unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a small grocery store with a limited selection of staple foods like Two Star Deli. It is also noteworthy that the other SNAP authorized stores in the area do not exhibit the same irregular transaction patterns identified in the charge letter despite the shared neighborhood characteristics.

Lastly, the case record documents that the Retailer Operations Division conducted an analysis of three (3) selected households identified in the charge letter to analyze their shopping patterns at Two Star Deli compared to their shopping patterns at other SNAP authorized stores. All of these households frequently shopped at Two Star Deli. However, all of these households also had access to, and shopped at, larger stores including supermarkets. However, despite this access to better stocked supermarkets, these sampled households often conducted excessively large transactions at Two Star Deli on the same day or within a few days of shopping at these much larger stores. It is highly unlikely that a small grocery store with a limited staple food inventory like Two Star Deli would have legitimate SNAP transactions comparable or larger than these SNAP authorized supermarkets with a better selection and variety of staple food items at likely better prices.

It should be noted that the Appellant stated in response to all the charges that the Appellant owners would not risk the store's SNAP authorization for the value of the irregular transactions cited in the charge letter. This statement offers no probative value and is insufficient to explain the irregular transaction patterns cited in the charge letter.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and shopping baskets support the Retailer Operations Division determination. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

Hardship to the SNAP Community

The Appellant claims that a permanent disqualification would represent a hardship to the SNAP recipients as the store provides necessary items to the densely populated community which lives in low cost subsidized multi-storied apartments. Regarding this contention, there is no provision in SNAP law or regulations that would negate, waive or reduce a **permanent disqualification** for trafficking due to a purported hardship to SNAP recipients.

Where there is a hardship to SNAP households due to a lack of authorized stores in the area, FNS may impose a hardship CMP on a firm in lieu of a **less than** permanent disqualification. However, the regulations at 7 CFR § 278.6(f)(1) clearly state that “a civil money penalty for hardship to SNAP households may not be imposed in lieu of a **permanent** disqualification.” [Emphasis added.] Because the Retailer Operations Division has taken action to permanently disqualify the Appellant firm, a hardship CMP in lieu of disqualification cannot be granted.

TRAFFICKING CIVIL MONEY PENALTY

The Appellant did not request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR § 278.6(i) even though it was informed of the right to do so in the charge letter. The SNAP regulation at 7 CFR § 278.6(b)(2)(ii) mandates that a request for a trafficking CMP along with supporting documentation shall be submitted within ten (10) days of receipt of the charge letter.

The SNAP regulation at 7 CFR § 278.6(b)(2)(iii) also states, in part, that “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 ... the firm **shall not be eligible** for such a penalty.” [Emphasis added.]

Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program prior to the violations. Therefore, the Retailer Operations Division’s decision not to impose a trafficking CMP in lieu of disqualification is **sustained** as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

The Retailer Operations Division’s analysis of the Appellant’s EBT transaction record in comparison with actual store circumstances was the primary basis for its determination to permanently disqualify the retailer. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Stores caught in trafficking violations consistently display particular, characteristic patterns of transactions, including those cited in the letter of charges.

In the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges support trafficking as the most likely explanation. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did in fact occur as determined by the Retailer Operations Division. Based on the discussion above, the decision to impose a permanent disqualification against Two Star Deli and Grocery Store, Appellant, is **sustained**.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision. Please note that the judicial filing timeframe is specified in the Act, and this office cannot grant an extension.

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

RONALD C. GWINN
Administrative Review Officer

March 2, 2021