

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

**World Eagles Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0214983**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) finds there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification of World Eagles Market (hereinafter “Appellant”) from participating 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, when it imposed a permanent disqualification against World Eagles Market.

**AUTHORITY**

7 U.S.C. § 2023 and 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**

The record shows that FNS initially authorized World Eagles Market for SNAP participation as a fruit and vegetable specialty store on November 7, 2012. In a letter dated February 6, 2019, the Retailer Operations Division charged Appellant with trafficking, as defined in Section 271.2 of SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of July 2018 and December 2018 and information obtained during a visit to the store by an FNS contractor on December 17, 2018. The attachments enclosed with the

charge letter specify the questionable and unusual SNAP transactions indicative of trafficking which were conducted at Appellant's firm during the review period. 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 Appellant may request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking within 10 days of receipt of the charge letter, under the conditions specified in 7 CFR § 278.6(i).

Appellant responded to the trafficking charges in a series of telephone calls dated February 7, 2019, February 12, 2019, February 27, 2019, and February 28, 2019, and by letter dated February 21, 2019. In these responses, Appellant denied the trafficking charges, explained the firm did not have a cash register because the firm was not in the best neighborhood and the owner did not want to attract crime, contended that the firm cannot track multiple purchases by the same family on a given day, and explained that SNAP redemptions were a large part of the firm's business. Appellant also sent in documents for the Retailer Operation Division's consideration, including bank statements, sales tax records, inventory purchase receipts, and a cash deposit and sale record.

After considering Appellant's reply and the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated February 28, 2019. This letter informed 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 Appellant was not eligible for a trafficking CMP because Appellant failed to submit sufficient evidence to demonstrate the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked March 13, 2019, Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

### **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. This 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 found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and the law is 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 for trafficking of SNAP benefits.

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 [SNAP benefits] or trafficking in [SNAP benefits] 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, 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....

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 § 278.2(a) states, in part:

[SNAP benefits] may be accepted by an authorized retail food store only from eligible households...only in exchange for eligible food. [SNAP benefits] may not be accepted in exchange for cash...[and] may not be accepted in payment of interest on loans or for any other nonfood use.

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....** Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for [a] period of 12 months to 10 years for a firm's second sanction; and **disqualification shall be permanent for a disqualification based on paragraph (e)(1) of this section.** [Emphasis added.]

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(e)(1)(i) states, in part:

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

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.

### SUMMARY OF CHARGES

World Eagles Market was charged with trafficking, and subsequently permanently disqualified from participating in SNAP based on an analysis of FNS records, which included observed store characteristics, recorded food stock, and store pricing gathered during a store visit, as well as Electronic Benefit Transfer (EBT) transaction data for July 2018 through December 2018. Government analyses has found that transactions involving trafficking consistently display particular characteristics or patterns. In this case, the data for Appellant reflected the following transaction patterns, which commonly indicate trafficking:

- **Charge Letter Attachment 1:** Multiple transactions made from the accounts of individual SNAP households within a set time period; and
- **Charge Letter Attachment 2:** Purchase transactions that are large based on the observed store characteristics and recorded food stock.

### APPELLANT'S CONTENTIONS

Appellant made no contentions as part of its request for administrative review, but did submit copies of 52 inventory purchase receipts for foods purchased from various vendors. In reaching a decision, full attention was given to all evidence presented.

### ANALYSIS AND FINDINGS

This review examines the relevant information regarding the trafficking determination. Once a trafficking determination is made based upon EBT data and information obtained during a store visit, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole that it did not engage in trafficking. If Appellant fails to show

this, the case will be sustained. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

## **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 store visit conducted by an FNS contractor on October 17, 2018, 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:

- World Eagles Market is a fruit and vegetable specialty store, approximately 450 square feet in size, with no storage outside of public view;
- At the time of the store visit, the firm had no shopping carts or shopping baskets for customers to use;
- The store visit photographs show no cash register for food purchases; the store visit report states that the owner handles cash personally. Agency records reflect the use of one EBT point-of-sale device;
- It appears the firm does not use optical scanners to process transactions;
- There is no checkout area. Store visit photos show the EBT point-of-sale device is placed on a shelf in the back of the store;
- The store does not sell bulk quantities of food items, such as bundles of meat or seafood or large boxes of fruit and vegetables;
- The store has no kitchen/deli area and sells no deli, prepared, or hot foods;
- The firm does not appear to have a special pricing structure, such as ending most products with ".00" cents;
- The firm does not appear to round prices up or down at checkout;
- The store does not sell a significant amount of non-foods;
- The store does not take telephone or online orders, but does offer delivery; and
- The most expensive food items for sale at the store include a 2.5-kilogram container of baby formula for \$42.00, a 2500-gram container of powdered milk for \$42.00, a 900-gram container of powdered milk for \$20.00, and a 423-ounce package of jumbo bouillon for \$80.00.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be typical of a fruit and vegetable specialty store, where households normally purchase fruit and vegetables. The firm had a limited number of other food items as well, but given the size of the store and availability of food items, it appears unlikely that households would frequently visit World Eagles Market to purchase large quantities of groceries, especially considering the absence of shopping carts and baskets or a check out area, and the availability of much larger grocery stores in the area, including a super store, a supermarket, a medium grocery store, and 19 small grocery stores within a half-mile radius of the store. Given the available

inventory and the store's characteristics, this review finds no reason why the Appellant's SNAP redemption patterns would differ significantly from those of nearby, similarly-sized stores.

### **SNAP Transaction Analysis**

**Charge Letter Attachment 1: Multiple transactions were made from the accounts of individual SNAP households within a set time period.** This attachment lists 22 sets of transactions (46 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Violating stores often conduct multiple transactions from the same household account in short time periods to avoid the detection of single high-dollar transactions that cannot be supported by the retailer's inventory, store type, or structure. Further, 28 of the 46 transactions ended in even dollar amounts (".00" cent values), although this unusual pricing pattern was not identified in the store visit report. Often trafficking violations include transactions that end in even dollar amounts, or in the same cents values.

In making its determination, the Retailer Operations Division identified multiple larger stores, likely with more reasonable prices, located within half a mile of Appellant. Further, the record shows that customers conducting multiple large transactions at Appellant frequently spent a lesser amount of SNAP benefits at better-stocked and more competitively-priced grocery stores within a short time period of shopping at Appellant. Customers that have access to larger stores are unlikely to spend large amounts of SNAP benefits at a small fruit and vegetable specialty store.

For example, during the investigation period, one household shopped at 19 other stores, including larger, better stocked, and likely better priced super stores, super markets, and large grocery stores within a 22.34-mile radius of Appellant. On one day, this household 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This reflects a highly unusual shopping pattern for a SNAP household.

On administrative review, Appellant did not offer any specific contentions related to the transactions listed in Attachment 1. After receiving the charge letter, Appellant argued to the Retailer Operations Division that it could not track household behavior to determine if multiple purchases were being made on the same day. Unfortunately, Appellant did not offer any relevant evidence to support this contention, such as cash register receipts to show that the transactions were actual purchases of food. While there are legitimate reasons why a SNAP recipient might return to a store in a short period of time, the examples in Attachment 1 indicate a series of purchases that total to large amounts. SNAP benefits are intended to supplement the food budget for households whose net income is near or below the Federal Poverty Level. It is unlikely that customers who must rely on SNAP benefits to make ends meet prefer to pay higher prices and spend considerable amounts of their benefits at a small specialty store.

Moreover, households listed in this attachment conducted this strange shopping pattern of making substantial purchases at Appellant multiple times during the review period. Given the common practice of violating retailers breaking up large, suspicious transactions into multiple, smaller transactions to avoid detection, a firm's explanation and evidence for why these transactions are occurring in a short time period in a small specialty store should be both rational and compelling. Because Appellant has offered no evidence or explanation, this review

concludes that trafficking was a likely cause of the transaction patterns listed in Charge Letter Attachment 1.

**Charge Letter Attachment 2: Purchase transactions that are large based on the observed store characteristics and recorded food stock.** This attachment lists 125 large purchase SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with other fruit and vegetable specialty stores in the state of Pennsylvania. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a fruit and vegetable specialty store in Pennsylvania was \$13.74. In Philadelphia County, the average was even lower, at \$12.45 per transaction. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Given that the Appellant firm has a few high priced items, such as infant formula and powdered milk, there may be some legitimate SNAP transactions sprinkled among the transactions listed in Attachment 2. However, store visit photos show just a few units of these items on the store shelves, while the remaining inventory of food items is limited, with the exception of fruits and vegetables. As noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from nearby, similar-sized competitors, especially considering the absence of a checkout area or shopping carts and baskets, and the availability of much larger stores in the area. The firm's average transaction amounts are significantly higher than other convenience stores in the same county and State.

The substantial number of high-dollar transactions in a six-month period calls into question the legitimacy of these transactions. Attachment 2 lists 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Based on the store layout, infrastructure, and available inventory, it is not credible that the Appellant would so frequently conduct large transactions closely resembling those typically found at a supermarket or superstore. Further, it is not plausible that the firm's customers would regularly carry very large amounts of merchandise around the store without the benefit of shopping carts or shopping baskets, or that they would choose to purchase a large number of items frequently, especially since larger, better stocked stores are readily available and in the vicinity of the Appellant firm. Appellant is not set up to process high-dollar transactions, as indicated by its lack of a checkout area or counter space. Although Appellant does sell some African foods, these foods are also found at nearby competitor SNAP authorized retailers at significantly lower prices. There appear to be no legitimate bases for SNAP customers' unusual attraction to the firm such as a superior selection of staple foods, price advantages, package specials, bulk or promotional items, an extensive variety of otherwise unavailable ethnic food items, or special services rendered.

Appellant failed to provide any contentions or convincing evidence to establish the legitimacy of these excessively large transactions, such as itemized cash register receipts. Based on all of the factors discussed in this section, the large volume of transactions for high-dollar amounts is unlikely to indicate a pattern of legitimate food purchases, and therefore this review concludes that trafficking was a likely cause of the transaction patterns listed in Charge Letter Attachment 2.

## Appellant's Evidence

In its response to the charge letter, Appellant provided the Retailer Operations Division a large amount of evidence, including bank statements, sales tax records, inventory purchase invoices, and a cash deposit and sales record. Appellant also submitted 52 inventory purchase invoices for administrative review, though with no explanation or contentions. Presumably this evidence was submitted to demonstrate that Appellant had sufficient inventory to support the SNAP redemptions that occurred during the review period.

It should be noted that of the 52 inventory purchase receipts submitted for administrative review, 11 were dated outside of the review period, and three did not have total amounts that were legible. Of the remaining inventory receipts, only one referred to Appellant as the buyer. The inventory purchase receipts dated in the days just prior to the store visit showed the purchase of products that Appellant did not appear to sell during the store visit, such as Alaskan Pollock fish and a variety of Jamaica soups. Further, Appellant, in the response to the charge letter, said **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The validity of these invoices is questionable.

Even counting these invoices, Appellant did not submit invoices reflecting sufficient inventory to cover the store's food sales. Further, the invoices submitted fall far short of demonstrating that the firm had sufficient inventory to support the SNAP redemptions that occurred during the review period. The Retailer Operations Division found that during the review period, the retail sales tax records demonstrate the firm **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Given that sales of this purchased inventory was likely proportionate to the amount of SNAP redemptions as compared to total food sales, Appellant has not shown that it had sufficient inventory to support the SNAP redemptions that occurred during the review period.

Regardless, inventory records, bank statements, and tax records, alone, do not give a complete picture of the activities taking place at a store and they offer virtually no insight into what transpired at the point of sale. Sales or accounting records, such as cash register receipts or other documentation identifying individual transactions, may have been useful to show what happened between the firm and its customers. Without such evidence, this review is left to speculate on the firm's activities. It is the finding of this review that the Appellant's evidence does not sufficiently explain the unusual transaction patterns listed in the charge letter, and thus do not provide a valid basis for reversing the permanent disqualification decision or for mitigating the penalty imposed.

## Summary

It is the finding of this review that the attachments furnished with the charge letter adequately identify irregular patterns of SNAP transactions, thereby indicating that trafficking was likely taking place. The transactions listed in the charge letter are highly unusual and substantially different from comparable stores in the area. Based on these and other factors, such as the store's physical characteristics and inventory, the case for trafficking is convincing.



In an appeal of adverse action, the onus is on the Appellant to prove, by a preponderance of the evidence, that the administrative action should be reversed. This means submitting sufficient and compelling evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the charge letter were not caused by trafficking. Unfortunately, the Appellant offered little reliable evidence and no contentions regarding specific transactions listed in the charge letter. This is wholly insufficient to warrant reversal of the agency’s permanent disqualification determination. In the absence of reasonable evidence from the Appellant, it is the conclusion of this review that the transactions listed in the charge letter attachments were, more likely than not, the result of trafficking violations committed by the Appellant.

### **CIVIL MONEY PENALTY**

As noted earlier, the Retailer Operations Division determined that the Appellant firm was not eligible for a trafficking CMP 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 CMP 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 Appellant did not request a CMP when it replied 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) and § 278.6(i), a CMP in lieu of permanent disqualification for trafficking is not an option in this case.

### **CONCLUSION**

The Retailer Operations Division’s analysis of the Appellant’s EBT transaction record 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. Store visit photographs and documentation further supported the trafficking determination.

In the absence of reasonable explanations for such transactions 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. Accordingly, it is more likely true than not true that trafficking of SNAP benefits occurred, as charged by the Retailer Operations Division. Based on the discussion above, the determination by the Retailer Operations Division to impose a permanent disqualification against World Eagles Market, 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 SNAP regulations. 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 the Appellant's 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.

MICHELLE WATERS  
Administrative Review Officer

June 26, 2019