

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

**Yucaipa EZ Stop Inc,**

**Appellant,**

**v.**

**Case Number: C0200886**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS) that the permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP) imposed upon Yucaipa EZ Stop Inc. (hereinafter “Appellant”) by the Retailer Operations Division, Investigations and Analysis Branch, hereinafter “ROD Office” is hereby sustained.

**ISSUE**

The issue accepted for review is whether the ROD Office took appropriate action, consistent with 7 U.S.C. § 2021, 7 CFR § 278.6(a) and 7 CFR § 278.6 (e)(1) and (i) in its administration of the SNAP when it imposed a permanent disqualification upon Appellant.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 C.F.R. § 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 August 23, 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 during the months of December 2016 through May 2017. The letter noted that the sanction for trafficking is permanent disqualification, as provided by 7 CFR §278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR §278.6(i). The record reflects that the SNAP Office received and duly considered Appellant’s replies to the Charge Letter. By a letter dated September 28, 2017, Appellant was informed that it was permanently disqualified from participation as a retail store

in the SNAP and was ordered upon receipt of the letter to cease accepting SNAP benefits; consequently, Appellant ceased to accept said benefits. On October 9, 2017, Appellant requested an administrative review of the SNAP Office's decision; the request was granted.

### STANDARD OF REVIEW

In appeals of adverse actions an appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed. That means 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

The controlling statute in this matter is contained in the **Food & Nutrition Act of 2008**, as amended, at 7 U.S.C. § 2021 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6 (e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern.

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 & Nutrition Act of 2008**, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, **evidence obtained through a transaction report under an electronic benefit transfer system....** (Emphasis added.)

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, 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, (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

7 CFR §278.6(f)(1) states, in part:

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

7 CFR §278.6(i) states, in part:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations...

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

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.

### **SUMMARY OF THE CHARGES**

- A series of 91 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) ended in a same cents value (Attachment 1).
- A series of multiple SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from individual benefit accounts in unusually short time frames (Attachment 2).
- A series of excessively large SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from recipient accounts (Attachment 3).

### **APPELLANT'S CONTENTIONS**

In Appellant's reply to the Charge Letter and in its written request for review dated October 9, 2017, it was argued that:

There were two employees conducting these violative transactions without notifying the store, even though these employees were trained in accordance with California state law and were aware of the rules. One employee was fired on May 14, 2017 for stealing cash from the register. Police were notified of the theft; Appellant references a specific Yucaipa Police Department Case Number. The second employee left the store on May 20, 2017, before facing any consequences and without giving any notice. The store has suffered loss of inventory and cash due to the above. Appellant requests the business be given a chance to remain SNAP-authorized and not be punished for violations committed

by employees.

## ANALYSIS AND FINDINGS

At the outset it should be noted that the ROD Office ordered a contracted store visit to the Appellant firm as part of its investigation into Appellant's questionable transaction activity; the visit was conducted on June 15, 2017, as a result of which documentation was obtained including photographs of the interior and exterior of the store, a store layout diagram and a store inventory survey. This documentation reflected the following:

- Estimated 964 square feet of retail space.
- Optical scanners used.
- No shopping carts or baskets.
- No night window or plastic checkout barrier used.
- No evidence of wholesale business.
- Prices in standard retail variations of \$.x9. Photos: 2, 15, 20, 27, 33, 34, 36, 45, 47 and 48.
- Two checkout areas.
- Two cash registers.
- One card reader.
- No food stored outside public view.
- No storage coolers or freezers.
- No food stored offsite.
- Not a specialty food store.
- No telephone or online orders.
- No delivery offered.
- No transaction total rounding.
- Most expensive items:
  - Cashews - \$5.99 for 10 ounces.
  - Red Bull - \$8.99 for 4-pack.
  - Beef Jerky - \$14.99 for 10-ounces.
  - Coca-cola - \$5.99 for 12-pack.
- All above questions were completed in collaboration with store personnel.
- Checkout-counter spaces (2) were both approximately 1 X 2 feet and surrounded by tobacco products, alcohol, snack food and other non-food items. Photos: 10, 16, 18, 23, 26 and 28.
- The firm sold tobacco products, alcohol, lottery tickets, automotive products, health and beauty products, clothing and other non-food items.
- The firm also operated as a gas station. Photos: 6 and 44.
- No kitchen/food preparation area.
- Hot food sold.
- Microwave oven present.
- Deli section present.
- No meat/seafood bundles/specials or fruit/vegetable boxes. No fresh meat offered.
- Typical convenience store layout and inventory. Photos: 4, 5, 7, 10, 19, 20, 26, 32 and

41.

The documentation presents no indication of advertised specials, promotions, bulk or expensive food items. As noted above, photographs reflect that several visible prices of food and other items were in standard retail variations of \$.x9. The checkout area was set up in convenience store fashion, utilizing a small check-out area (approximately 1 by 2 feet of useable space) but was otherwise surrounded by tobacco products, alcohol, snack food and other non-food items. There were no shopping carts or baskets with which customers could transport large orders to the small check-out area or to waiting transportation. This documentation reflects that the firm was a typically-stocked convenience store in all relevant respects. It is worth noting that the average SNAP purchase in a convenience store in the state of California during the analysis period was \$7.31, reflecting that large purchases are not routinely made in such stores.

In regard to Appellant's contentions above, it is noted for the record that the transactions conducted on May 14 and 19, (the day one employee was said to have been caught stealing cash and the day prior to the second employee leaving the firm's employ), were not conducted by the household number/card number responsible for most of the Charge Letter transaction activity.

Appellant provides no documentation to support its contention that the employees committing the violations were trained, terminated and/or disciplined. No documentation of any corrective action taken has been provided. It is noted for the record that Appellant's initial reply to the Charge Letter indicated that one employee had committed the violations; Appellant amended the reply to state that violations were committed by two employees, although Appellant stated it was unable to recall the last name of either employee and could recall the first name of one employee only. The ROD Office further notes that the transactions detailed in the Charge Letter were in fact primarily conducted using one SNAP benefit card; the identity of the card holder is known to the ROD Office and is included as part of the administrative record in this case. Appellant references a police report but does not provide a copy of same and provides no details about the contents of said report.

Moreover, Appellant has asserted that the Owner of the firm had no knowledge of violations of the SNAP regulations, did not personally commit violations thereof and notes that employees committed the violations. This contention cannot be accepted as a valid basis for dismissing any of the charges or for mitigating the impact of the violations upon which they are based. Appellant is liable for all violative transactions handled by full or part-time, paid or unpaid store personnel, whether or not ownership is aware of such transactions. Regardless of whom the ownership of a store may utilize to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions. To allow store ownership to disclaim accountability for the acts of persons to whom it delegates responsibility to act on behalf of the firm would render virtually meaningless the enforcement provisions of the **Food & Nutrition Act of 2008** and the enforcement efforts of the USDA. Additionally, ownership of the Appellant firm signed an FNS-252, SNAP Application for Stores, on August 11, 2004, by means of which Appellant acknowledged and agreed to accept responsibility to prevent violations of the program by any and all employees of the firm. Owners may indeed be held accountable for the actions of employees, sanctions may be imposed for trafficking regardless of the owner's lack of knowledge of violations, and permanent disqualification of even an "innocent owner" is

consistent with the legislative history of the statute and regulations. Furthermore, culpability need not be imputed to an owner through the actions of an employee if the owner was involved in the violative activity, whether accidental or otherwise. Again, to allow store ownership to disclaim accountability for the acts of persons to whom the responsibility to handle store business has been assigned would render inert the enforcement provisions of the **Food and Nutrition Act of 2008** and corresponding provisions of the regulations.

Lastly, once trafficking is established, there is no latitude to impose a lesser sanction, with the exception of a trafficking civil money penalty. There is provision at 7 CFR §278.6(i) for the imposition of a civil money penalty in lieu of permanent disqualification for trafficking. Appellant was advised of this provision in the SNAP Office's Charge Letter dated August 23, 2017, which also advised that documentation of eligibility for that alternative sanction was to have been provided within a specific time limit. In the absence of any such documentation, a civil money penalty was not imposed in lieu of permanent disqualification by the SNAP Office. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) in 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 specified (within 10 days of receiving the letter of charges), the firm shall not be eligible for such a penalty." As Appellant did not request such consideration and provided no evidence or information in support thereof, the SNAP Office's decision not to impose a civil money penalty is sustained as appropriate pursuant to 7 CFR §278.6(b)(1), §278.6(b)(2)(ii), §278.6(b)(2)(iii) and §278.6(i).

### **CONCLUSION**

In view of the above, the decision of the ROD Office to permanently disqualify Appellant from participation in the SNAP is hereby sustained. The decision will become final upon the 30<sup>th</sup> day following Appellant's receipt of this document.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

Under the provisions of the Freedom of Information Act (FOIA), 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.

DANIEL S. LAY  
Administrative Review Officer

June 1, 2018