

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

**Zabee Corps,**

**Appellant,**

**V.**

**Case Number: C0222634**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the USDA that the record indicates that Zabee Corps, (hereinafter Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retailer in the program, as initially imposed by the Retailer Operations Division was appropriate.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant by letter dated February 20, 2020.

**AUTHORITY**

7 U.S.C. § 2023 and the 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 November 21, 2019, 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 March 2019 through August 2019. The letter noted that the penalty 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).

In correspondence dated November 29, 2019, Appellant replied to the charge letter and generally stated that two workers were laid off consequent to the repetitive mistakes. A few short comings were also discovered in the training and conduct of the workers which included helping needy customers when they had exhausted their benefits on the promise that when they are replenished, their dues will be cleared. This mistake was often repeated as the management failed to brief them about the rule that customers can not clear their pending dues with their food stamp card. In case of inclement weather, some transactions were made where customers bought items in bulk. That was against verbal guidelines provided by the management. Ownership indicated that same amount transactions within the same time frame were due to problems in the credit card machine and duplicate transactions that were later reimbursed to the customer. Ownership also indicated that bearers of EBT were accompanied by the parents or spouse and they wanted to have different bill for different transactions and some kids got candies and juices for their separate gatherings at schools or birthday parties after their parents made their purchases.

## **CREDIT CLAIM**

In correspondence dated January 13, 2020, Retailer Operations Division informed Appellant that the acceptance of SNAP benefits as payment for items sold to a household on credit is a violation of SNAP regulation 278.2(f). A firm that commits such violations shall be disqualified from participation for a period of one year. Please provide documentation to support that food items were purchased on credit as noted in the response provided on December 9, 2019. Please provide the requested documentation and any information, explanation, or evidence you have regarding the charges outlined in our letter on November 21, 2019, within 10 calendar days of your receipt of this letter.

In correspondence dated January 20, 2020, Appellant replied to the January 13, 2020 letter and stated that most of the transactions were made just after getting their benefits on the card. Ownership listed names of the store's very frequent customers. Ownership admitted that workers made the mistake of clearing dues using the food stamp card not knowing the rules. Ownership stated that old ledgers were destroyed after two or three months, once a customer resolved the matter or no challenges were made against credit card receipts. It also provided documents in support of its position.

After giving consideration to the Appellant's reply and evidence of the case, Retailer Operations Division issued a determination letter dated February 20, 2020. The letter informed Appellant that it was permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also stated that Retailer Operations Division considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. However, Retailer Operations Division determined that Appellant was not eligible for the CMP because it failed to submit sufficient evidence to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated February 23, 2020, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted.

## STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving 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, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a) (c) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store in the event that personnel of the firm have engaged in trafficking SNAP benefits.

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

7 CFR § 278.6(c) reads, in part, “*Review of Evidence*. 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)...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...”

7 CFR § 278.6(e)(1) reads, in part, “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.” Trafficking is defined, in part, in 7 CFR § 271.2, as “the buying or selling of SNAP benefits for cash or consideration other than eligible food.”

7 CFR § 271.2 states in part that, “Eligible foods mean: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption.”

## SUMMARY OF THE CHARGES

The charges on review were based on an analysis of SNAP electronic benefit transfer (EBT) transactions dated during the six month period of March 2019 through August 2019. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from the accounts of individual SNAP households within a set time period.

2. Your store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock.

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking.

### **APPELLANT'S CONTENTIONS**

The Appellant made the following summarized contentions in its response to the permanent disqualification letter issued by Retailer Operations Division, and its request for administrative review, in relevant part:

1. Workers denied any malpractices/irregular sales against SNAP.
2. Workers did make the recurring mistake of giving credit to the needy customers and later getting the same tab cleared upon receipt of the SNAP benefits. Proof of credit tabs has been provided in the original USDA SNAP correspondence.
3. Attachment 1 – Problems in the credit card machine and duplicate transaction was made and later the amount was reimbursed to the customer.
4. Attachment 2 – Bearer of EBT was accompanied by the parents, spouse and they wanted to have different bills for different transactions. Some card holders wanted to return favors to their parents and some kids got candies and juices for their separate gatherings at schools or birthday parties after their parents made the purchase. These are actual problematic and frequently made transactions and made just after getting their benefits on the card. Workers made the mistake of clearing their dues using the food stamps and because they did not know the rule precisely. The store offers different deals and discounts in different weeks.
5. Credit records maintained at the business are provided in original form for the period covering March 2019 to August 2019. Each sheet covers roughly a week.
6. We found a few receipts as indicated in the USDA letter dated November 21, 2019.
7. Please help the business which is already suffering due to COVID-19. We have admitted to the mistake and have explained our position in the past correspondence.

Appellant provided 29 pages of alleged credit accounts in support of its position. The documentation does not contain the required information and therefore does not rise to the level of evidence required to consider credit accounts in this case. Additionally, the documentation contains information that would suggest that customers were given non-food items on credit as well as cash loans which would be consistent with trafficking.

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

### **ANALYSIS AND FINDINGS**

The FNS authorized the business as a convenience store on September 28, 2018. The file indicates that in reaching a disqualification determination, Retailer Operations Division

considered information obtained during a September 28, 2019, store visit to the business conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the EBT transactions at Appellant that formed patterns indicative of trafficking. The firm review summary documented the following store size, description, and characteristics:

- One checkout area with one cash register and one POS device. A small counter area partially obstructed by other smaller items available for sale with one specialty register.
- Estimated to be approximately 1100 square feet.
- No shopping baskets or carts available for customers.
- No adding machines but there is an optical scanner available at checkout.
- Store does not operate through a night window or plastic barrier with food stock behind the barrier.
- No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
- No unusual pricing structure such as ending most products with 00 cents and does not round transaction totals.
- Non-Staple food is stored in an area outside of public view that is approximately 250 square feet in size.
- There are no storage freezers or coolers but no food stored off site.
- Store is not primarily selling one food type such as meat, poultry, dairy, seafood, fruits, baked goods or vegetables.
- Store does not take telephone or online orders and does not offer delivery
- Highest priced eligible food items were Filippo Berio Oil (\$7.99), Ham (\$9.99/LB), Roast Beef (\$12.99/LB), Prosciutto (\$13.00/LB).
- Store stocks a significant amount of non-food items such as but not limited to paper products, household products, tobacco products, alcohol products, cleaning products, lottery tickets.
- Store stocks limited amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products. No fresh fruits or produce, no fresh meat or poultry. Most meats are canned, packaged or frozen.
- There is a kitchen/prepared food area with hot foods sold for onsite consumption.
- Store has a deli or prepared food section with posted prices. Stock is not used in preparation of food.
- No meat or seafood specials or bundles or fruit/vegetable boxes sold.

The issue for consideration is whether Retailer Operations Division has presented a convincing case that Appellant likely trafficked in SNAP benefits. Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

**Attachment 1 of the Charge Letter – Multiple transactions were made from the accounts of individual SNAP households within a set time period.**

There were 22 sets of 64 SNAP transactions that met the parameters of this attachment. Multiple transactions conducted by the same household account within a set time period is a method which violating stores use to avoid the detection of single high dollar transactions that cannot be supported by the retailer's inventory and structure.

Appellant contends that blank receipts were printed and duplicate amounts were entered however customers were issued refunds. Although there are a few duplicate amounts cited in the charge letter, the system confirms that none of these amounts were refunded, making this explanation invalid.

The Appellant contends that co-shopping contributed to the transactions in this Attachment. It states that the card holder was with family members and requested to have different bills, card holders wanted to return favors to parents and couples were purchasing together but were not living together. With regard to this contention, it's not unlikely that in such scenarios a family would shop together but it is unusual that they would request different transactions. This shopping behavior is unusual and Appellant did not provide any evidence as proof of this shopping pattern.

The Appellant contends that grocery items were purchased for kids after the parent's purchases were made. With regard to this contention, and in such an instance it's expected to see an initial transaction followed by a subsequent small transaction. In this attachment all of the transactions are for significant amounts which do not reflect the picking up of a few additional items or for purchasing an item or two selected by a child. Additionally, the store has no shopping carts and no baskets. It would be difficult for a SNAP household to carry the amounts as reflected in this attachment in hand to the counter. It is important to note that the record reflects that upon review of other comparable stores in the area, the shopping pattern in this Attachment did not exist.

Retailer Operations Division also conducted an analysis of the shopping habits of three of the households identified in the charge letter. This analysis concluded that these households also shopped at other area grocery stores including full-line supermarkets and superstores that offer a much larger quantity and variety of eligible food items for likely better prices either on the same day or within days of visiting Appellant's firm. This again indicates that lack of access to other stores is not at issue. However, despite this access to large supermarkets and superstores, these households consistently conducted much higher transactions at the Appellant firm than at better stocked supermarkets/superstores in and around the Richmond County area of New York. This is another strong trafficking indicator.

Based on the analysis above and in the absence of any compelling evidence to the contrary, the irregular and unusual transaction pattern cited in the charge letter is unlikely and a strong indicator of trafficking in SNAP benefits. In conclusion, it is therefore more likely true than not true that the irregular transactions cited in the charge letter Attachment 1 are due to trafficking in SNAP benefits.

**Attachment 2 of the Charge Letter - Your store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock**

There were 111 SNAP transactions that met the parameters of this attachment. Based on the results of the contracted store visit, the large transaction amounts are not consistent with the store's inventory of low priced foods. The firm does not offer food in bulk or any ethnic or specialty foods that sell for a high price. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions.

Appellant provided several pages of credit ledgers in support of its contention that credit records maintained at the business cover the period of March 2019 to August 2019. Appellant contends that each sheet covered roughly one week. With regard to this contention and the documentation provided, none of the people listed on the credit ledgers were identified as SNAP recipients. Appellant states that most of the names listed are nicknames or just first names which does not allow them to be identified in the State's Admin Terminal. There are a few entries with first and last names however, one of those names was not found in the State Terminal while the others yielded zero results in the State Admin Terminal. The one name that was located in the State Admin Terminal was not identified in the store's transaction history. Additionally, the majority of the credit ledger lists amounts only with a few listings of cigarettes and alcohol which are not SNAP eligible items. If credit accounts are a store practice, the decrease in the SNAP transactions that occurred after receipt of the charge letter would not be expected because the store would be attempting to collect the money for the outstanding tabs. The credit ledgers alone are not sufficient in determining that the transactions in the charge letter were legitimate SNAP transactions.

Based on this empirical data, and in the absence of sufficient evidence as to the legitimacy of such transactions, a conclusion can be drawn, through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter evidence trafficking as the most likely explanation. In this case, ownership did not provide sufficient evidence to legitimize Appellant's transaction data as outlined in the Attachments. Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence that the store was trafficking and concluded, through a preponderance of evidence, that trafficking is the most probable explanation for the questionable transactions listed in the charge letter attachments.

The transaction data and overall firm record convincingly demonstrate repetitive patterns of unusual, irregular, and inexplicable SNAP activity for this type of firm indicative of trafficking. Once Retailer Operations Division established the convincing case against Appellant, ownership bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. That means the Appellant has the burden of providing 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. If this is not demonstrated, the case is to be sustained.

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

Retailer Operations Division has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns in two attachments of EBT transaction data, the inadequacy of the firm's eligible food stock as observed and recording during the onsite visit to support such large transactions, the lack of evidence of invoices of foods in inventory to cover SNAP redemption totals for the review months, the lack of explanation for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant, and the irregular SNAP transaction data of Appellant as compared to other convenience stores in the State.

Generally, stores caught in trafficking violations consistently display particular characteristic transaction patterns including those cited in the charge letter and, in the absence of evidence for the legitimacy of such transaction patterns, based on information submitted by the Appellant and a comparison of the store's characteristics and available stock to the transaction patterns cited in the charge letter, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns evidence trafficking as the most likely explanation. While ownership was afforded the opportunity to provide valid explanations and evidence that support that the questionable transactions were the result of legitimate purchases of eligible food items, Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence in the record.

The purpose of the administrative review process is to ensure that firms aggrieved by Retailer Operations Division's adverse actions have the opportunity to have their position fairly considered by an impartial review authority prior to that adverse action becoming final. Appellant has been duly given, and has taken the opportunity to present to USDA through the administrative review process whatever evidence and information it deems pertinent in support of its position that Retailer Operations Division's adverse action should be reversed. Therefore, any evidence and information that Appellant presented to Retailer Operations Division, as well as any such information submitted subsequently, have now been considered in this administrative review in rendering the final agency administrative decision in this case. The record does not indicate any departure from established policy or procedures with regard to Appellant's right to a fair and thorough review.

### **CIVIL MONEY PENALTY**

The Appellant did not timely 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 dated November 21, 2019. 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**

Ownership has not provided sufficient evidence to rebut the convincing case that Appellant most likely trafficked in SNAP benefits. As such, the SNAP regulations are specific with regard to the action that must be taken if personnel of the firm have trafficked, which is that FNS shall disqualify the firm permanently.

Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Zabee Corps from participation in the SNAP. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Therefore, based on a review of all the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged by Retailer Operations Division. Based on the discussion herein, the determination to impose a permanent disqualification against Zabee Corps is sustained.

## **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) with respect to 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.

Under the Freedom of Information Act (FOIA), 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.

Monique Brooks  
ADMINISTRATIVE REVIEW OFFICER

August 3, 2020