

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review Branch
Alexandria, VA 22302**

Kings Market,)	
)	
Appellant,)	
)	
v.)	Case Number: C0184803
)	
Retailer Operations Division,)	
)	
Respondent.)	
_____)	

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is sufficient evidence that a permanent disqualification of Kings Market from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

ISSUE

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

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

The agency’s record shows that FNS initially authorized Kings Market for SNAP participation as a small grocery store on May 29, 2002. In a letter dated March 22, 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 between the months of February 2015 and July 2015. The irregular redemption activity included multiple transactions that were made from individual SNAP recipient accounts in unusually short timeframes; the majority or all of an individual SNAP recipient’s benefits that were exhausted in unusually short periods of time; and excessively large purchase amounts that were made from SNAP recipient accounts. The letter noted that

the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In a faxed letter dated April 6, 2016, the Appellant replied to the charges and provided the following explanations for the unusual transactions cited in the charge letter:

- Customers order their food by phone so that it is ready to pick up as soon as they arrive
- Customers will often make transactions for multiple people using the same EBT card and ask for separate receipts
- As for large purchases, the store does catering, where customers can order large numbers of food items at a discounted price, such as 20 submarine sandwiches, meat trays, sliced meat, etc.
- The closest store is 10-15 miles away
- Many customers do not have a driver's license, so when they are able to come in to the store, they get their meat and grocery orders at one time.

After considering the Appellant's response and after reviewing the documentation in the case, the Retailer Operations Division determined that the Appellant's explanations were not sufficient to justify the unusual transaction patterns listed in the charge letter attachments. As a result, the Retailer Operations Division concluded that trafficking had occurred as described in the charge letter and issued a determination letter dated April 26, 2016. This determination letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but that a CMP was not appropriate in this case because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked May 6, 2016, the Appellant appealed the Retailer Operations Division's determination and requested an administrative review. The request was granted.

STANDARD OF REVIEW

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

CONTROLLING LAW AND REGULATIONS

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

7 U.S.C. § 2021(b)(3)(B) states, *inter alia*:

... 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(c) states, *inter alia*:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(a) states, *inter alia*:

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

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, *inter alia*:

Trafficking means: The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone...

7 CFR § 271.2 states, *inter alia*:

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

7 CFR § 278.6(b)(1) states, *inter alia*:

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

7 CFR § 278.6(b)(2)(ii) states, *inter alia*:

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

7 CFR § 278.6(b)(2)(iii) states:

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

7 CFR § 278.6(i) states, *inter alia*:

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... In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of permanent disqualification for trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in § 278.6(i)(1); and

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of the violations cited in the charge letter sent to the firm; and

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in § 278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations...

SUMMARY OF CHARGES

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from February 2015 through July 2015. This involved the following transaction patterns which are common trafficking indicators:

- There were multiple transactions made from individual household benefit accounts within unusually short timeframes
- The majority or all of individual recipient benefits were exhausted in unusually short periods of time
- Excessively large purchase transactions were made from recipient accounts.

APPELLANT'S CONTENTIONS

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

- The firm is being wrongly accused of violating SNAP regulations based on assumption, not actual facts or evidence.
- The store is located in a low income/rural area and the next closest store is 10-15 miles away.
- The majority of customers receive SNAP benefits, and most do not have a driver's license, so it is very hard for them to travel 10-15 miles to another store. As a result, they do all of their food shopping at the store. This explains Attachment 2 and 3.
- As for Attachment 1, the store's customers make separate transactions and want them to be on separate receipts. Separate transactions allow customers to see their remaining balance so that they can continue to shop or wait until another day.
- As for excessively large transactions, the firm does food catering, including offering subs, meat trays and sliced meats. Most of the customers have large families, so it is very easy to rack up large bills.
- Customers also call in orders, which are generally ready within 15 minutes. It is not unusual for them to forget an item and return shortly thereafter to make another purchase. This also explains Attachment 1.
- Disqualifying the firm permanently would be unfair and cause hardship to the firm.
- The community also needs the store to supply themselves "with food to eat and something to drink."
- The firm is a small business in a rural community where many community members receive SNAP and most of their benefits are exhausted at Kings Market out of convenience and due to the firm's good business practices.

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

ANALYSIS AND FINDINGS

The primary issue for consideration is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other

words, did the Retailer Operations Division, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and questionable transactions cited in the charge letter were the result of trafficking?

Contractor Store Visit

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information gathered during an evaluation of EBT transactions as well as information obtained from an August 22, 2015 store visit which was conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- Kings Market is a small grocery store, roughly 2,000 square feet in size, operating in a rural, commercial area of Lincoln, Delaware.
- At the time of the visit, the firm had no shopping carts and no shopping baskets for customer use.
- The store visit photographs show one cash register and one EBT point-of-sale device.
- The store does not appear to use optical scanners to process transactions.
- The store's staple food stock is marginal in each of the four staple food categories. The store also sells SNAP-eligible, non-staple accessory food items, such as carbonated and uncarbonated drinks, candy, and condiments. Additionally, the store sells ineligible nonfood items, such as tobacco, pet food, and miscellaneous household merchandise.
- The checkout area consists of a small, cluttered countertop (approximately 24 inches by 36 inches) where items can be placed to be rung up. The cramped checkout area is not suitable for conducting large or rapid transactions and there is no conveyor belt to expedite the purchase.
- There is no indication that the firm has a special pricing structure, although judging by the store visit photographs, the prices of many items appear to end in 9, such as \$1.09, \$1.89, \$1.99, etc.
- Attached to the store's meat counter is a sign that says, "CLOSED By Order Of Delaware Health and Social Services," with an effective date of May 14, 2013. After seeing this sign, the Retailer Operations Division contacted the Delaware Office of Food Protection for more information and learned that the Appellant firm was visited by DHSS in 2012 and was found to be out of compliance with state health and safety codes. The firm was given time to correct the numerous problems that were found and was revisited by DHSS on May 14, 2013. However, the problems had not been adequately addressed. Accordingly, the Health Department posted the sign on the meat counter and revoked the firm's food processing license, which meant that the Appellant was no longer permitted to prepare any type of perishable foods on the premises. It was, however, allowed to sell pre-packaged foods. At the time of the store visit, Kings Market appeared to be selling prepared foods, such as cold subs, in violation of the order to not sell such items.
- According to the store visit report, no hot foods were being sold at the time of the visit.

- Although there was a menu board which indicated that there was meat and cheese available for purchase by the pound, there was no evidence of such items available in the store.
- The report also indicated that the store contained empty and broken coolers, sparsely stocked shelves, and generally dirty, unkempt conditions.

The available inventory of SNAP-eligible food items at the time of the visit showed stock that would be typical of a small grocery store or convenience store. There was no indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of grocery items. The available food was primarily of a low dollar value and there was no hint that the firm sold any high-priced meat or seafood bundles or other bulk items. Given the available inventory, there was no sign that the firm would be likely to have SNAP redemption patterns that differed significantly from those of similar-sized competitors.

SNAP Transaction Analysis

Charge Letter Attachment 1: Multiple transactions were made from individual benefit accounts in unusually short time frames. [7 USC 2018 (b)(7)(e)] As noted earlier, the store visit photographs show a small store with a marginal amount of staple food inventory, most of which is low-priced or single-serving items. [7 USC 2018 (b)(7)(e)] The store offers no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale.

[7 USC 2018 (b)(7)(e)]

The Appellant has argued that some customers make multiple purchases during a visit, but want each transaction to be on a separate receipt. The Appellant argues that this allows customers to see their remaining balance so that they can continue to shop or wait until another day. The Appellant further contends that it is not unusual for a customer to forget an item and return to the store to make another purchase.

Unfortunately, neither of these arguments is a valid explanation for the transactions cited in Attachment 1. For example, the time that elapsed between transactions is not indicative of a customer making multiple purchases in a single visit and simply requesting separate receipts.

[7 USC 2018 (b)(7)(e)]

As for the contention that customers would return to the store to pick up a forgotten item, this explanation also makes very little sense. The transactions cited above, often well over \$100.00, are clearly not for a forgotten item or two. Instead, these have all the markings of a firm attempting to conceal large trafficking violations by having customers return to the store multiple times for slightly smaller transactions.

[7 USC 2018 (b)(7)(e)]. Other than trafficking, it is difficult to conceive why a household would choose to spend such a large portion of its benefits at Kings Market when the household was already at a supermarket earlier in the day.

Given the common practice of violating retailers breaking up large, suspicious transactions into multiple, smaller transactions to avoid detection, a firm's explanation for why these

large, multiple SNAP transactions from individual accounts are occurring in a small grocery store should be both rational and compelling. The Appellant's contentions in this regard are neither.

Charge Letter Attachment 2: In a series of transactions, the majority or all of individual recipient benefits were exhausted in unusually short periods of time. [7 USC 2018 (b)(7)(e)] It is not uncommon for violating retailers to conduct trafficking transactions in which a household spends the vast majority of its allotment in a very short period of time. The conclusion that trafficking has occurred is further solidified when these balance-depleting purchases occur in small stores such as Kings Market, where there is limited staple food inventory and a lack of shopping carts or baskets to help facilitate large purchases. As discussed previously, the food available in the Appellant store is primarily of a low-dollar value and there no indication that the firm sells any high-priced meat or seafood bundles or other bulk items. Therefore, it makes little sense that households would regularly spend almost the entirety of their SNAP allotment in a single transaction or in a series of transactions in a short period of time in a small grocery store like Kings Market.

Moreover, a government report on SNAP shopping patterns indicates that on average, after the first day of benefit issuance, approximately 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It typically takes about two weeks to deplete 80 percent of one's benefits, and three weeks to deplete 90 percent.¹ Depleting a large portion of one's SNAP balance early in the benefit month, especially at a small store that sells no high-priced bulk items, thereby leaving little or no benefits for the rest of the month is inconsistent with the normal shopping behavior of SNAP benefit households.

The Appellant has argued that the majority of its customers receive SNAP benefits and most of them do not have a driver's license, so it is difficult for them to travel 10-15 miles to another store. As a result, they do all of their food shopping at the store.

This unsubstantiated argument has no basis in fact. Agency records clearly show that the vast majority of SNAP households who spent money at Kings Market during the review period also shopped at supermarkets or superstores within a five-to-seven mile radius of the Appellant firm, demonstrating that transportation is not the limitation that the Appellant makes it out to be. But when these same households empty their accounts at Kings Market after first shopping at a local supermarket, a conclusion can be drawn that trafficking is the most likely explanation for such unusual behavior.

Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts. [7 USC 2018 (b)(7)(e)] However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar-sized competitors, especially considering the absence of shopping carts and shopping baskets and the store's constricted checkout area. The substantial number of high-dollar purchases in a six-month period calls into question the legitimacy of these transactions.

[7 USC 2018 (b)(7)(e)]

Based on the available inventory in the store it is simply not credible that the Appellant

would so frequently conduct transactions that more closely resemble those of a supermarket or superstore. It is not plausible that the firm's customers would carry large amounts of merchandise around the store without the benefit of shopping carts or baskets, especially since larger, better stocked stores are in the vicinity of the Appellant firm.

According to agency records, there are six SNAP-authorized retail stores of equal or greater size within seven miles of the Appellant firm, including one superstore, five supermarkets and one small grocery store.

In reviewing the contractor's store visit photos and report, it is difficult to comprehend what would lure a household to spend large amounts of SNAP benefits in a small grocery store with no shopping carts or baskets rather than going to a nearby supermarket or superstore where prices are likely lower, where inventory is significantly larger, and where shopping carts would help facilitate the purchase of large numbers of items.

The Appellant has argued that large transactions are the result of food catering offered by the firm. It contends that it sells large numbers of submarine sandwiches, meat trays and sliced meats. It also states that most of its customers have large families, so it is very easy to rack up large transactions. The Appellant has also argued that it is difficult for most customers to travel to other stores 10-15 miles away and so these customers do all of their food shopping at Kings Market.

As with the Appellant's other contentions, these arguments are not supported by any evidence or documentation. There are no signs or other evidence in the store to imply that the firm offers any catering services or that it sells large numbers of sandwiches or meat. 7 USC 2018

(b)(7)(e)

Also, as noted earlier, agency records show that most SNAP household that shop at Kings Market also shop at nearby supermarkets or superstores, demonstrating that transportation is not an issue. These records also show that during the review period many households spent small amounts of their benefits at supermarkets, but large amounts at Kings Market. Considering the available food inventory, store conditions, and structure of Kings Market, such shopping behavior is not rational and is a strong indicator of trafficking.

It is noted that stores caught in trafficking violations, both during onsite investigations and in EBT analysis cases, consistently display particular characteristics or patterns. These patterns

often include frequent, large transactions that cannot be supported by the retailer's inventory, store type, and structure. It is the conclusion of this review that Kings Market, with its low-dollar inventory, lack of shopping carts and baskets, and its constricted checkout area cannot support the large numbers of high-dollar transactions identified in Attachment 3. Therefore, the most logical explanation for such repetitive transactions is trafficking.

Based on the above analysis, it is the determination of this review that the Retailer Operations Division has satisfactorily demonstrated that Kings Market trafficked in SNAP benefits. Similarly, the Appellant has failed to sufficiently rebut such a claim. The attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place at the firm during the review period. Conversely, the Appellant has failed to provide a rational explanation as to why such patterns might exist. As there are multiple unexplained patterns of irregular transactions, the case of trafficking is convincing.

Charges Based on Assumptions

The Appellant has argued that the firm is wrongly accused of violating SNAP regulations and that the charges are based on assumptions, not actual facts or evidence.

With regard to this contention, SNAP regulations at 7 CFR § 278.6(a) clearly state that findings of a violation may be based on facts “established through...evidence obtained through a transaction report under an electronic benefit transfer system” (emphasis added). These transaction reports are created from actual transactions and adequately identify highly irregular patterns that stand out significantly from transactions conducted at similar-sized stores. When such repetitive, unusual transactions exist, retailers are given an opportunity to provide a reasonable, documented explanation as to why their transactions are so different from similar type stores.

In this instance, the Appellant has not provided a single document to substantiate its claims that the transactions were legitimate. Without a plausible explanation by the Appellant as to why such unusual patterns exist, this review has no alternative but to conclude that the transactions cited in the charge letter are more likely than not the result of trafficking.

As stated earlier, the requirement of the Retailer Operations Division is to adequately establish that the Appellant firm engaged in the violation of trafficking. This means that the Retailer Operations Division, through a preponderance of the evidence, must establish that it is more likely true than not true that the irregular and questionable transactions cited in the charge letter were the result of trafficking. After a review of all of the evidence in this case, it is the determination of this review that the Retailer Operations Division has met this burden.

The Appellant's burden is to prove, also by a preponderance of the evidence, that the administrative action should be reversed. This is done by 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.

It is the determination of this review that the Appellant's unsubstantiated explanations are wholly insufficient to support a conclusion that the decision made by the Retailer Operations Division should be reversed.

Therefore, the Appellant's contention that the charges of trafficking are based on assumption rather than fact is not supported by the evidence and is not a valid basis for dismissing the charges or for mitigating the penalty imposed.

Hardship to the Appellant

The Appellant contends that a permanent disqualification decision would be unfair and would cause hardship to the firm.

With regard to this contention, Federal statute at 7 U.S.C. § 2021(b)(3)(B) makes it clear that disqualification for trafficking shall be permanent, even on the first occasion. FNS is afforded no latitude in imposing penalties for trafficking. Further, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty on the basis of possible economic hardship to either the ownership personally or to the firm resulting from the imposition of such a penalty.

To allow store ownership to be excused from being assessed administrative penalties based on a purported economic hardship to the Appellant or firm would render virtually meaningless the provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA. Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with Program regulations, but also to those retailers who have been disqualified from the Program in the past for similar violations. Therefore, the Appellant's contention that the firm has incurred or may incur economic hardship based on the assessment of an administrative penalty does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Hardship to SNAP Recipients

The Appellant contends that its SNAP customers depend on the store for obtaining their grocery needs.

With regard to this contention, it is recognized that some degree of inconvenience for SNAP households is likely whenever a SNAP-authorized store is disqualified and the household is forced to use its SNAP benefits elsewhere. However, as noted earlier, agency records reflect several SNAP-authorized stores located within a few miles of the Appellant firm.

Regulations at 7 CFR § 278.6(f) do allow, in some circumstances, for a civil money penalty to be imposed in lieu of disqualification when there is an absence of other SNAP-authorized retailers in the area. However, the regulations are also clear that a civil money penalty for hardship to SNAP households may not be imposed in lieu of permanent disqualification for trafficking. Therefore, the Appellant's implication that the firm's customers may experience

hardship as a result of the firm's permanent disqualification does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

CIVIL MONEY PENALTY

As noted earlier, the Retailer Operations Division determined that the firm was not eligible for a civil money penalty in lieu of permanent disqualification pursuant to 7 CFR § 278.6(i) because it did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In accordance with regulation at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider the sanction of a CMP in lieu of permanent disqualification, but the firm must also submit appropriate documentation within designated timeframes as required by the regulation. As best as can be determined, the Appellant did not request consideration of a CMP in its response to the Retailer Operations Division or submit any documentation to support its eligibility for such a sanction. Additionally, the Appellant made no mention of a trafficking CMP in any portion of its request for administrative review. Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii), it is the determination of this review that the Appellant is not eligible for a civil money penalty in lieu of permanent disqualification for trafficking.

CONCLUSION

The Retailer Operations Division's analysis of the Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Kings Market from SNAP participation. This data provided sufficient evidence that the questionable transactions during the review period had characteristics that were consistent with trafficking in SNAP benefits. Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, 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 the evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter point to 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 occur as determined by the Retailer Operations Division. Based on the analysis above, the decision to impose a permanent disqualification against the Appellant, Kings Market, is sustained.

RIGHTS AND REMEDIES

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

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If such a request is received, FNS will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

JON YORGASON
ADMINISTRATIVE REVIEW OFFICER

October 4, 2016
DATE