

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

Win Fa Market, )  
)  
Appellant, )  
)  
v. )  
)  
Retailer Operations Division, )  
)  
Respondent. )  
\_\_\_\_\_)

**Case Number: C0188709**

**FINAL AGENCY DECISION**

It is the decision of the USDA that there is sufficient evidence to support a finding that the permanent disqualification of Win Fa Market (hereinafter Win Fa or Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance 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(a), (c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant.

**AUTHORITY**

7 USC § 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 April 21, 2016, the Retailer Operations Division charged 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 September 2015 through February 2016. 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 Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant, through counsel, replied to the charges by letter dated May 11, 2016. Appellant denied trafficking and indicated that the transactions were due to the firm's practice of extending credit to customers and allowing repayment with SNAP benefits. Appellant submitted EBT receipts for the transactions listed in the charge letter attachments. Although Appellant denied trafficking, it requested that if a CMP is imposed that it be minimal.

The Retailer Operations Division sent the retailer a letter on May 12, 2016, requesting documentation of the alleged credit accounts. The receipts submitted by Appellant previously did not establish the existence of credit accounts. Appellant did not provide any additional documentation to the Retailer Operations Division.

After considering Appellant's reply and the evidence presented in the case, the Retailer Operations Division issued a determination letter dated June 6, 2016. The determination letter informed Appellant that it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that Appellant was not eligible for a trafficking CMP because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated June 9, 2016, Appellant, through counsel, appealed the Retailer Operations Division's determination and requested an administrative review. The appeal was granted, and implementation of the sanction was held in abeyance pending completion of this review.

### **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a clear preponderance of the evidence, that the administrative actions 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.

### **CONTROLLING LAW**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a), (c) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 271.2 states, in part, that, "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 § 271.2 defines trafficking as: "(1) 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 § 278.6(a) states, inter alia, 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 on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an *electronic benefit transfer system*, . . .” (emphasis added)

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(e)(1) reads, 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, 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.”

**7 USC 2018 (b)(7)(e)**

### **SUMMARY OF THE CHARGES**

The Appellant firm was charged and determined to be trafficking based on an analysis of EBT transaction data from September 2015 through February 2016. This involved the following SNAP transaction patterns which are indicative of trafficking:

- There were multiple purchase transactions made too rapidly to be credible.
- There were multiple transactions made from individual benefit accounts in unusually short time frames.
- The majority or all of individual recipient benefits were exhausted in unusually short periods of time.
- There were excessively large purchase transactions made from recipient accounts.

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**

In the administrative review request postmarked June 9, 2016, Appellant, through counsel, stated

the following summarized contentions, in relevant part:

- The Retailer Operations Division had agreed that it was credit violations rather than trafficking.
- Appellant denies that trafficking occurred.
- The owner and his wife are the only persons who process SNAP benefits.
- Appellant questions what sort of compliance policy is expected from a small business beyond the owner telling his wife not to extend credit to SNAP participants.
- It is irrational that a “ma and pa” operation would be permanently disqualified because it did not have a formal compliance and policy program.
- The permanent disqualification will not only destroy the long standing business and the owner’s livelihood, but it will also deprive the Asian-American community of one of the few markets which caters to their culture and heritage.

Counsel submitted the following documents in support of its contentions:

- the Retailer Operations Division’s June 6, 2016, permanent disqualification letter;
- the Retailer Operations Division’s April 21, 2016, charge letter without the attachment;
- Appellant’s May 11, 2016, response to the charges;
- the Retailer Operations Division’s May 12, 2016, letter from requesting documentation of the credit accounts;
- the Retailer Operations Division’s May 18, 2016, email message to Appellant’s counsel acknowledging receipt of a package; and
- A CD that contained three Excel spreadsheets and six folders, one for each month of the review period September 2015 through February 2016; each folder contained receipts for that month with transaction numbers from the charge letter handwritten on top of each matching receipt; the folders were as follows:
  - Sep 2015 - 43 pdf documents;
  - Oct 2015 -46 pdf documents;
  - Nov 2015 - 37 pdf documents;
  - Dec 2015 - 38 pdf documents;
  - Jan 2016 - 31 pdf documents; and
  - Feb 2016 - 24 pdf documents.

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

## **ANALYSIS AND FINDINGS**

### **Store Visit**

FNS authorized Win Fa as a medium grocery on October 30, 2013. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a February 20, 2016, store visit 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 firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Win Fa is approximately 3,000 square feet, with no additional food storage outside of public view.
- There were shopping baskets and shopping carts for customer use.
- There was one cash register and one point-of-sale device.
- There was no optical scanner for the speedy processing of transactions.
- The counter space was small and cluttered.
- The store specializes in Asian food items.
- There was frozen meat, poultry, and fish and limited fresh meat items.
- There was a of variety fresh produce.
- Much of the remaining stock consisted of accessory foods such as candy, spices, and carbonated and uncarbonated drinks.
- Ineligible items included alcohol, lottery, and household products.

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.

### **Charge Letter Attachments**

**Charge Letter Attachment 1. Multiple purchase transactions were made too rapidly to be credible.** 7 USC 2018 (b)(7)(e) As documented by the store visit report, Appellant does not have an optical scanner and the checkout area is very constricted. Despite these limitations, Appellant was rapidly processing consecutive SNAP transactions many of which were high dollar transactions. The steps required to process a legitimate SNAP purchase include the following:

1. unloading items from a cart or basket;
2. separating eligible items and ineligible items;
3. handling by the cashier of individual items to determine the price, which in this case involved manual keying of amounts;
4. weighing any individual items sold by weight;
5. entering prices into a register or adding machine both for eligible foods and for ineligible items, which are typical in larger purchases;

6. inputting manufacturers cents-off coupons, if applicable;
7. bagging the items for carry out;
8. handing the customer bagged items to make room for more food items the customer is bringing to the counter;
9. informing the customer of the totals (one for eligible foods and one for non-eligible items, if applicable);
10. pressing the “SNAP transaction key” on the point-of-sale device;
11. swiping the card;
12. entering by the customer of the required PIN;
13. cashier entry of the purchase amount;
14. confirming customer has a sufficient benefit balance;
15. processing and approval of the transaction by the system;
16. printing out register and EBT receipts;
17. accepting an alternate form of payment for nonfood items and possibly handling cash change; and,
18. removing products from the checkout area so the next customer in line can begin another transaction.

While such transactions may well be conducted in succession, performing these actions on large transactions cannot be done rapidly. The amount of time required is generally proportional to the dollar amount of the transaction; typically, the larger the dollar amount transacted the longer the time period between transactions. Limited counter space as well as manually key- entering 19-digit EBT card numbers adds additional time to transactions. Appellant processed orders considerably faster than supermarkets typically process them, yet it has only one small checkout counter, no optical scanner and none of the logistical tools (such as conveyor belts, rotating bagging platforms or order separators) that are routinely used in rapid throughput operations.

Frequent and large transactions conducted swiftly to purchase eligible foods at Appellant’s store are highly unlikely given Appellant’s checkout arrangement with very little checkout-counter space. Yet, the questionable transaction data cited in the charge letter attachment reveals a number of consecutive transactions involving large-dollar amounts, and occurring within a span of only a few minutes. It is highly unlikely that multiple large transactions occurring within only a few minutes could involve solely the sale of eligible foods.

**Charge Letter Attachment 2. Multiple transactions were made from individual benefit accounts in unusually short time frames. 7 USC 2018 (b)(7)(e)**

The SNAP transactions noted in the charge letter are questionable because they display characteristics of use inconsistent with the nature and extent of the store’s stock and facilities. Although it is not uncommon for customers to have more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. Moreover, the Retailer Operations Division determined these households are making what would appear to be normal food purchases at supermarkets, super stores, or other ethnic stores on the same day, day prior, or day after conducting transactions at Appellant.

Appellant did not provide any compelling justification as to why households are conducting multiple transactions at Win Fa or evidence that all the irregular transactions cited in the charge letter were for eligible food items only. Multiple transactions over a short period of time, especially of high dollar value, are indicative of attempts to diminish attention to signs of

trafficking.

**Charge Letter Attachment 3. The majority or all of individual recipient benefits were exhausted in unusually short periods of time.** [7 USC 2018 (b)(7)(e)]

A government report on SNAP shopping patterns<sup>1</sup> 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. 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.

Appellant did not present any valid explanations or documentation that would legitimize these transactions and these transactions are more likely the result of trafficking.

**Charge Letter Attachment 4: Excessively large purchase transactions were made from recipient accounts.** [7 USC 2018 (b)(7)(e)]

On the day of the store visit, there were bulk bags of rice but no other larges packages were noted. The store visit report also noted that there were no specials or bundles. Although there was frozen meat, poultry, and fish available, there was very limited fresh meat available. Thus, it is questionable what these households are purchasing that can total these large amounts.

The transactions shown above are unusually large for a New York medium grocery store. The average medium grocery store SNAP transaction in New York during the review period was \$14.62. [7 USC 2018 (b)(7)(e)]

Sometimes a firm may have higher than average SNAP transactions amounts due to the lack of access to other SNAP authorized stores. The Retailer Operations Division determined that there are 45 surrounding stores within a half-mile radius of Appellant including 40 small groceries, 22 other medium groceries, seven large groceries, 77 combination stores, and nine super stores.

Appellant, through counsel, contends that Appellant is the only Asian ethnic store in the area. However, the Retailer Operations Division determined that there are at least four SNAP authorized stores within a two-mile radius of Appellant that carries comparable stock to Appellant. The Retailer Operations Division also determined that households that conducted transactions on the attachments are also shopping at these other ethnic stores and conducting smaller transactions. These households do not rely on Appellant for all of its Asian ethnic groceries.

There were 559 households with transactions on the charge letter attachments. Most of them, 500 or 89%, used an area large grocery, supermarket, or superstore within three days of the suspicious transaction listed on the attachment. The Retailer Operations Division considered this is a strong indicator the store is not a primary food source.

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

7 USC 2018 (b)(7)(e) When such patterns are unsupported by special pricing structures, they are a strong indicator that the figures are contrived and are indicative of trafficking in SNAP benefits.

7 USC 2018 (b)(7)(e) Appellant contends that it extended credit to SNAP recipients and payments were made with SNAP benefits. Accepting SNAP benefits for payment on credit is a violation of Section 278.2(f). It is the agency's position that credit violations constitute owner or management involvement and a one year disqualification is the base sanction. In addition, a retailer is to be assessed a fiscal claim for each transaction determined to be a credit account violation. When a retailer claims credit to explain irregular transactions and data patterns, FNS requires a level of detail regarding the legitimacy of credit accounts since retailers have long admitted to credit in an attempt to garner a lesser penalty after committing more egregious violative acts. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items. 7 USC 2018 (b)(7)(e).

Appellant submitted copies of register receipts that match the transactions. However, each of the receipts received do not show what items were sold. Each item is identified only as "N TXBL GROC". Insofar as Appellant's expectation that the register receipts would prove that there was no trafficking in SNAP benefits, register receipts that do not detail specific individual items cannot support a contention that eligible items were rung up on the register and prove nothing. If the retailer had a scanner linked to his cash register and could produce such a detailed list, such a list could possibly begin to explain some of the transactions. However, even these can be contrived. Any kind of transaction can be rung up as eligible food. Since the cash register receipts do not identify individual items purchased, it does not support the veracity of the transactions.

While credit accounts were claimed to explain the transactions listed in the attachments, exculpatory evidence was not provided. In this case, exculpatory evidence would be in the form of an accounts receivable ledger, which lists the full name of each recipient, their SNAP number, address or other contact/identifying information, as well as the dates and amounts of each credit transaction, and what eligible items were purchased and what transactions were to repay outstanding balances. Absent this type of detailed documentation, it is not possible to compare alleged credit payments against the transactions outlined in the charge letter attachments to determine if these were legitimate. FNS policy states that if a retailer is not able to account for all of the suspicious EBT transactions for which he has been charged, the determining office must evaluate the remaining transactions and determine whether trafficking has occurred. Under review, the evidence more substantially supports a conclusion that the transaction activity as documented in the charge letter attachments was due primarily to trafficking in SNAP benefits.

In summary, Appellant's layout, business structure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. 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.

Therefore, based on this empirical data, and in the absence of evidence to legitimize such transaction patterns, a conclusion can be drawn, through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation.

### **Appellant Hardship**

With regards to the Appellant’s contention the permanent disqualification will destroy its business, it is recognized that economic hardship is a likely consequence whenever a store is permanently disqualified from participation in SNAP. 7 USC 2018 (b)(7)(e). To excuse ownership from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement 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, Appellant’s contention that the firm is incurring economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposition.

### **Recipient Hardship**

Appellant, through counsel, contends that the permanent disqualification will also deprive the Asian-American community of one of the few markets which caters to their culture and heritage. As indicated previously, the Retailer Operations Division determined that there are four stores within a two mile radius of Appellant that sell similar foods. Moreover, where there is a hardship to SNAP households, FNS may impose a hardship CMP on a firm in lieu of a disqualification where there is a lack of authorized stores in the area. However, the regulations at 7 CFR §278.6(f)(1) clearly state that “a civil money penalty for hardship to [SNAP] households may not be imposed in lieu of a permanent disqualification.” Because the Retailer Operations Division has taken action to permanently disqualify Appellant’s firm, a hardship CMP in lieu of disqualification cannot be granted.

### **Civil Money Penalty**

In the charge letter dated April 21, 2016, the Retailer Operations Division informed Appellant of its right to request a trafficking CMP under 7 CFR §278.6(i). Appellant was also informed that it would need to provide both the request and supporting evidence within ten calendar days of receiving the charge letter and that no extension of time could be granted for making the request or for providing the required evidence. The criteria for a trafficking CMP in lieu of disqualification is defined under 7 CFR §278.6(i) which reads, inter alia:

*In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of a permanent disqualification for trafficking, the firm shall, at a minimum, establish by **substantial evidence** [emphasis added] 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 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; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations*  
....

Appellant, through counsel, contends that it should not have been denied a CMP because it should not be required to have a training program considering that the owner and his wife are the only store employees. The record shows that on August 9, 2013, ownership signed the application for SNAP authorization and agreed to the following:

*“I will receive Supplemental Nutrition Assistance Program training materials upon authorization. It is my responsibility to ensure that the training materials are reviewed by all firm’s owners and all employees (whether paid or unpaid, new, full-time or part- time); and that all employees will follow Supplemental Nutrition Assistance Program regulations. If I do not receive these materials I must contact the Food and Nutrition Service to request them;”*

There is no provision in the regulations to waive the training requirements for a firm in which the owner and a spouse are the only employees of the firm.

In summary, the Appellant firm fell short of the regulatory standard for a trafficking CMP as it did not provide substantial evidence that it met all four criteria required by 7 CFR §278.6(i).

Therefore, the Retailer Operations Division’s decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

## **CONCLUSION**

The Retailer Operations Division’s analysis of Appellant’s EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. 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 charged by the Retailer Operations Division. The determination to impose a permanent disqualification against Appellant is sustained.

## **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. 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's owner resides or is 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), 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.

MARY KATE KARAGIORGOS  
ADMINISTRATIVE REVIEW OFFICER

October 7, 2016

DATE