



## II. STANDARD OF REVIEW

The Department may not consider evidence outside the records, but must consider the entire record, and deny the appeal if there is any substantial evidence to support the findings. (*Smith v. County of Los Angeles* (1989) 211 Cal.App.3<sup>rd</sup> 188, 198-199) Substantial evidence is defined as evidence of “ponderable legal significance” which is “reasonable in nature, credible and of solid value”, distinguishable from the lesser requirement of “any evidence.” (*Newman v. State Personnel Board* (1992) 10 Cal.App.4<sup>th</sup> 41, 47; *Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873) In other words, the Department cannot substitute its judgment for the judgment of the finder of fact if there is enough relevant and reliable information to establish a fair argument in support of the result, even if other results might have also been reached. (*Smith v. County of Los Angeles, supra*; *Bowers v. Bernards, supra*, 10 Cal.App. 4<sup>th</sup> at 873-874)

## III. STATEMENT OF FACTS

On September 23, 2014, Inspector Gerda Jasinskaite, Agricultural Inspector II, (hereinafter “Inspector Jasinskaite”) conducted an inspection of the stall of John Sweredoski, at the Long Beach Bixby Park Certified Farmers’ Market (CFM). She observed for sale 14 1-pint baskets of cherry tomatoes, 15 pounds of ginger, 20 heads of red and green cabbage, 3 pint baskets of okra, 15 fennel bulbs, 20 leeks, and 14 heads of cauliflower. (Exhibit D) She suspected the produce for sale was not produced by the Appellant because the fennel and leeks were fleshy, large, had similar size and looked commercially produced. Some of the cabbage for sale had wrapper leaves, some did not. The ginger looked like storage ginger and had a similar appearance to ginger Inspector Jasinskaite saw when she inspected wholesale markets. (Hearing testimony of Inspector Jasinskaite, Exhibit G)

On September 28, 2014, Inspector Jasinskaite conducted an inspection of the stall of John Sweredoski at the Pacific Palisades CFM. She observed for sale fennel, leeks, and cabbage. (Exhibit E) She saw fleshy, large leeks and fennel, cabbage that was uniform in size, some with wrappers, and some without. The produce that was similar in appearance to what she observed at the Long Beach Bixby CFM on September 23, 2014. (Hearing testimony of Inspector Jasinskaite, Exhibit G)

On September 30, 2014 Inspector Jasinskaite and Inspector Gary Phinney visited the growing grounds of Sweredoski Farms. The inspectors were met by farm foreman, Joe Figueroa (hereinafter “Mr. Figueroa”). Inspector Jasinskaite asked to see the cherry tomatoes. She observed two rows of tomato plants, of which two plants were the cherry tomatoes variety. She noted that the two cherry tomato plants were dry and could not have produced the quantity of produce that was for sale at the Long Beach Bixby CFM. (Exhibit F) Mr. Figueroa took the inspectors to where okra was produced. There was not any in the ground. There were a few dry stalks, leading the inspector to determine that the okra was harvested a long time ago (Hearing testimony, Exhibit F) Inspector Jasinskaite asked Mr. Figueroa to take her to the area where the fennel, cabbage, leeks and ginger were grown. She stated that Mr. Figueroa said that none of these crops were in the ground and were harvested a while ago, with no exact date given. (Exhibit G, Hearing testimony of Inspector Jasinskaite)

On October 5, 2014, Deputy Director Edmund Williams (hereinafter “Mr. Williams”) and Inspector Phinney conducted an inspection of the Sweredoski Farms stall at the Alhambra CFM. They observed for sale leeks, green onions, carrots, cilantro, and cabbage. Mr. Williams suspected the produce was not grown by the Appellant because the produce looked commercially processed, commercially handled and trimmed, and had gone through a packing operation. The carrots were scuffed as if they had gone through a conveyor belt, the way commercial carrots are packed after washing. The leeks were trimmed based on traditional commercial processing, the green onions were bunched in the correct size for commercial packing, and the cilantro was bunched by rubber bands like a commercial product is bunched. His observation and a prior conversation with Inspectors’ Jasinskaite and Phinney about their inspection of the growing location, led him to believe the products sold were not produced by the Appellant. (Hearing testimony of Mr. Williams)

The same day, October 5, 2014, Mr. Williams and Inspector Phinney visited the Sweredoski growing grounds. As they drove in, they saw few crops in various stages of maturity, but did not see any leeks, or carrots in production. They stopped and met with Mr. Figueroa, who showed them herbs, cucumbers, bitter melon, and beans that were for sale at the Alhambra CFM and in production. Mr. Williams said that Mr. Figueroa told them that there was no cilantro, leeks, cabbage or green onions, and the carrots were not ready for harvest. He acknowledged the produce did not come from Sweredoski farms. (Exhibit J, Hearing testimony of Mr. Williams)

Title 3, CCR, section 1392.4.1 classifies violations of the requirements of the Direct Marketing program as minor, moderate and serious. Within each classification, there is a range within which a civil penalty can be imposed. In this proceeding, Respondent determined that violations 1 through 10 are serious violations. Katherine Takata, Advocate for the Agricultural Commissioner/Director of Weights and Measures, testified that the Respondent sought to suspend the Appellant from participation in any California CFM for twelve (12) months, and to collect a civil penalty amount of six hundred dollars (\$600) per violation, to be punitive in order and to change behavior and because this is the Appellants second violation of Title 3 CCR, section 1392.4, subsection (a) in twelve months. (Exhibit O) She characterized the violations as an illustration of disregard on the part of the Appellant for the core principles behind the California Certified Farmers’ Markets.

The Appellant testified that he accepts responsibility for the violations and agrees to pay the civil penalty. He further requested that the suspension for a period of twelve (12) months be reduced, and instead requested to be allowed to continue participation in the California Certified Farmers’ Markets with the produce currently growing on his farm. (Hearing testimony of John Sweredoski)

**IV.  
DETERMINATION OF ISSUES**

Appellant admitted the violations at the hearing. The Department has additionally reviewed the record and finds sufficient evidence in support of all of the violations set forth in the Notice of Decision. Appellant has appealed the imposition of a suspension from participation in a CFM for twelve (12) months pursuant to Food and Agricultural Code section 47025, subdivision (d).

The Department declines to order a reduction in the suspension period as requested. Selling produce not of one's own production is considered a serious violation because it undermines the integrity of the Direct Marketing program. (Tit. 3, Cal. Code Regs. sec. 1392.4.1) Appellant engaged in numerous instances of this practice as set forth in the Notice and Notice of Decision. Respondent sought to suspend the privilege of participation, within its authority for such a violation, and the Hearing Officer concluded that such a suspension period was appropriate for the violation. Both acted within their discretion, and the Department should not infringe upon it.

###

**BEFORE THE  
DEPARTMENT OF FOOD AND AGRICULTURE  
OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
)  
John Sweredoski )  
dba Sweredoski Farms )  
4111 E. Willow Street )  
Long Beach, CA 90815 )  
)  
Appellant )  
\_\_\_\_\_ )

File No. 1415-CF 023

**DECISION AND ORDER  
ON APPEAL**

**V.  
DECISION**

Based upon the record, the Department denies John Sweredoski's appeal of the Los Angeles County Agricultural Commissioner/Director of Weights and Measures' Decision and Order. Appellant is ordered to pay a fine of six thousand dollars (\$6,000) for ten (10) count for a serious violation Title 3 CCR 1392.4 subsection (a), and is suspended for twelve (12) months from participation in any California Certified Farmers' Market.

This Decision and Order shall be effective October 7, 2015.

IT IS SO ORDERED this 7<sup>th</sup> day of October, 2015.

  
\_\_\_\_\_  
RICHARD ESTES  
Staff Counsel  
California Department of Food and Agriculture

**APPELLANT'S RIGHT TO SEEK JUDICIAL REVIEW**

Judicial review of the decision of the Department may be sought within thirty (30) days of the effective date of this decision pursuant to Section 1094.5 of the California Code of Civil Procedure.