

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

In the Matter of the Appeal of:)
)
Alkanan Inc. dba Recycling Innovations)
Karim Ameri)
18047 Saticoy Street)
Reseda, CA 91335)
)
Appellant)
)

File No. 13/14- BPI166

**DECISION AND ORDER
ON APPEAL**

I
PROCEDURAL HISTORY

On February 26, 2015, Los Angeles County Department of Agriculture, Weights and Measures (hereinafter "Respondent") issued a Notice of Proposed Action (hereinafter "Notice") against Alkanan, Inc. dba Recycling Innovations, (hereinafter "Appellant"). The Notice set forth one violation of Business and Professions Code (hereinafter "BPC") Section 12512 and a civil penalty in the amount of six hundred dollars (\$600). This section states that it is unlawful to purchase a commodity in less than its true quantity. BPC Section 12015.3 subdivision (a) provides for the imposition of an administrative penalty in lieu of a criminal prosecution for these violations.

The Respondent mailed out the Notice and it was received by the Appellant. The Appellant has 20 days after receiving the notice to request a hearing. The record is unclear as to when the Notice was received by the Appellant or if they made a timely request; however, Appellant requested a hearing and mailed the request on April 8, 2015 (42 days after the Notice was signed), and it was granted. On April 20, 2015, a Notice of Hearing was mailed to Appellant. During the hearing, Appellant stipulated that service of documents was proper and timely.

On May 12, 2015, Hearing Officer Ed Williams (hereinafter "Hearing Officer") conducted an administrative hearing. Appellant appeared and contested the violations presenting the certificate of inspection demonstrating that their scale was registered with the county and that it had been tested and then sealed by Respondent. On June 9, 2015, the Hearing Officer's findings were submitted to the Respondent. The Hearing Officer determined that the Appellant had violated BPC Section 12512 by under-weighing the sample presented to them by Respondent.

On June 9, 2015, the Respondent sent the decision, adopting the recommendation of the Hearing Officer and imposed a penalty in the amount of six hundred dollars (\$600) specified in the original Notice. Appellant filed a timely appeal with the Department of Food and Agriculture (hereinafter "Department") mailed July 9, 2015 and which was received by the Department on July 17 2015.

The Appellant's basis for appeal is that the Respondent's primary witness's testimony was not credible.

II STATEMENT OF FACTS

On March 6, 2014, Respondent's Agricultural/Standards Inspector, Ardeshir Famili (hereinafter "Inspector Famili"), did an initial routine inspection of Appellant's business located at 18047 Saticoy Street, Reseda, California. Inspector Famili testified that it is standard procedure to do undercover test sale of recyclables in these circumstances.

Inspector Famili described his procedure of preparing recyclables for the undercover test sale. Inspector Famili testified that he verified the accuracy of the Respondent's scale using certified mass standards prior to weighing the materials to be sold and found the device to be correct. Inspector Famili explained that he does more than one test sale per day, so he prepared various samples to a set weight, in this case at 2.5 pounds. The product was weighed at the Respondent's office prior to bringing it to the business to be sold. After the sale, Inspector Famili stated he documents the transactions.

During the March 6, 2014 inspection, Inspector Famili testified that he did a test sale of 2.5 pounds of aluminum cans. Inspector Famili was shown a receipt, and he testified that it showed that he was compensated for 2.1 pounds at \$2.00/pound, a 0.4 pound or \$0.80 shortage. The business did not give a copy of the receipt to Inspector Famili, but he documented his observations on a Single Transaction Report (Exhibit H). Because Inspector Famili was not paid for the correct weight of materials, he issued a Notice of Violation (hereinafter "NOV"). Respondent presented evidence that they mailed a copy of the NOV (Exhibit E) for this inspection to the Appellant to 18047 Saticoy Street, Reseda, California via regular mail. A copy of the NOV letter, dated March 10, 2014, was submitted as evidence (Exhibit F). Appellant claimed he never received the copy of the NOV.

Inspector Famili testified that on May 20, 2014, he went back to do a follow-up undercover sale, and again sold 2.5 pounds of aluminum cans to Recycling Innovations. Inspector Famili testified that he was again only compensated for 2.1 pounds at \$2.00/pound, a 0.4 pound or \$0.80 shortage. Inspector Famili testified that he was again only shown the receipt and not given a copy. Inspector Famili documented his findings on a Single Transaction Report form on May 20, 2014 (Exhibit H).

Based on the results of this inspection, Respondent stated that they mailed the Notice to Appellant for the second violation to 18047 Saticoy Street, Reseda, California (Exhibit C). The Notice was sent via certified mail. Further it was stated that both the Notice and the NOV were mailed to the same address.

Appellant presented as evidence a document showing that their scale had been registered with Respondent for 2014, a Certificate of Inspection issued by the Respondent showing that their scale had been tested by Inspector R. Alvarez, and

found to meet the required specifications and tolerances on June 12, 2014, and a copy of a flyer showing they pay \$2.00 per pound along with a disclaimer stating, "Price subject to change at any time without notice."

Appellant testified that the business takes care to have product weighed accurately, that they have no intention of harming customers. Additionally, the Appellant claimed that they never received a copy of the Notice of Violation from the first inspection of March 6, 2014.

During the hearing, the Appellant testified that Inspector Famili had incorrectly described the age and height of the attendant on the Single Transaction Report Form. Appellant contends that this demonstrates that Inspector Famili can make errors. Additionally, they questioned why Inspector Famili did not request a receipt. It was explained to Appellant that during an undercover test sale an inspector tries to do a transaction in such a way that sellers are not able to distinguish that the transaction is being documented or that the inspector works for Weights and Measures.

Appellant took time to explain the accuracy of his system and an ability to review transactions electronically from an external site. However, though he alluded to having the receipt, he did not show it electronically or submit the physical receipt as evidence to prove or disprove the facts as to what was the actual price per pound paid to Inspector Famili or the net weight purchased.

III STANDARD OF REVIEW

The Department addresses Appellant's contentions by adopting the standard utilized by the courts when reviewing administrative decisions on mandamus. It may not consider evidence outside the record, 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. 3d 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. 4th 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. 4th at 873-874)

IV DETERMINATION OF ISSUES

Preliminarily, the Department finds that sufficient evidence of the violation was presented during the course of the hearing. The verbal and written testimony provided by the Respondent sufficiently established that good measurement practices were followed in determining the weight of the product prior to sale and that it was kept under his control until the time of the sale.

The Department agrees with the Hearing Officer, that while some of the data recorded relative to the age and height of the attendant on the Single Transaction Report is inaccurate, this information is not relative to the elements of the violation. BPC Section 12512 relates to the weight of the product sold and the price per unit paid. The materials were properly weighed in advance, and the money received for the product sold was less than what was represented for the transaction.

With respect to the fine level, Table A found in the California Code of Regulations, Title 4, Division 9, Chapter 12, Article 2, Weights and Measures Penalty Guidelines, dictates that a violation of BPC Section 12512 is a Type 1 violation or Category A. Category A violations have fine levels that range from four hundred dollars (\$400) to one thousand dollars (\$1000). The fine level was set at six hundred dollars (\$600), an amount allowed under the regulations that is higher than the minimum due to the fact that this inspection was a follow-up to a prior failed inspection where the County issued an NOV.

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**V
DECISION**

For the foregoing reasons, the Respondent's decision and the civil penalty of six hundred dollars (\$600) are upheld in this matter. Appellant is required to pay the civil penalty in the amount of \$600 to the Los Angeles County Department of Weights and Measures.

This Decision and Order shall be effective OCTOBER 2, 2015.

IT IS SO ORDERED this 2nd day of SEPTEMBER, 2015.

Crystal D'Souza
CRYSTAL D'SOUZA
Staff Counsel
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 Code of Civil Procedure.