

Agriculture (hereinafter “Department”) on the basis that the claims made against him are unsupported and that the fine and suspension are disproportionate to the violation.

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.3rd 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)

III. STATEMENT OF FACTS

Appellant is the owner of Eagles Flowers, which sells cut flowers at CFMs. Appellant operates under a Certified Producer certificate issued by Ventura County. Inspector Gary Phinney (hereinafter “Inspector Phinney”) testified that he has worked for the Respondent for 9 years, and is currently on the Standardization Task Force which inspects organic produce, eggs, and Certified Farmers’ Markets. He also possesses a Commodity Regulations License issued by the State of California. Inspector Phinney testified that he inspected Appellant’s stall at the Bank of America CFM on October 9, 2015. He observed cut flowers for sale, including long-stem roses [Exhibit D]. Inspector Phinney was suspicious that the roses were not of Appellant’s own production because the roses for sale appeared to be greenhouse quality long-stem roses. He also knew that Eagles Flowers had been inspected earlier in 2015 for the same violation.

On October 26, 2015, Respondent requested a production site inspection of Eagles Flowers from Ventura County Agricultural Commissioner Korinne Bell. Inspectors Ameer Atrash and Vanessa Cruz testified that they inspected Eagles Flowers production site on October 27, 2015 as a result of the request.

Inspector Ameer Atrash (hereinafter “Inspector Atrash”) testified he has worked for Ventura County Agricultural Commissioner’s Office for over one year, worked for the Standardization program during the time of production site inspection, and possesses a Commodity Regulations License issued by the State of California. Inspector Vanessa Cruz (hereinafter “Inspector Cruz”) testified that she worked for the Ventura County Agricultural Commissioner’s Office over two years, works for the Standardization program, and possesses a Commodity Regulations License issued by the State of California. In an email to her supervisor, Inspector Cruz noted that the roses they observed being grown at Eagles Flowers were garden roses, not of the same quality seen at Bank of America CFM [Exhibit E]. Roses observed at the production site were small, sparsely grown, budding was small with very tight buds, mature flowers were open and the leaves were loose, and the stems were short and thin [Exhibit F]. Photos provided to Ventura County taken by Inspector Phinney showed long-stem roses with tight heads, tight buds. At the time of inspection, Inspectors Atrash and Cruz were unable to find the same quality of cut roses

as those in photos taken by Inspector Phinney at Bank of America CFM. On January 27, 2016, Inspector Phinney issued Notice of Noncompliance (“NNC”) #597476 to Appellant for selling product not of his own production at the Bank of America CFM on October 9, 2015. [Exhibit G]

Respondent presented evidence that on November 7, 2015, Inspector Phinney inspected Appellant’s stall at the Canoga Park CFM. He observed cut flowers including long-stem roses, which he believed to be greenhouse quality, being offered for sale. [Exhibit I] On November 20, 2015, he issued NNC #549802 to Appellant for selling produce not of his own production. [Exhibit J]

Inspector Danny Estrada (hereinafter “Inspector Estrada”) is an Inspector and has worked for the Respondent in the Produce Safety Pest Exclusion Branch for 2 years, and he possesses a Commodity Regulation License issued by the State of California. Inspector Estrada testified that he inspected the stall of Eagles Flowers at the Brentwood CFM on November 22, 2015. He observed cut flowers, including long-stem roses, he suspected of being greenhouse quality [Exhibit K]. On November 25, 2015, Inspector Estrada issued NNC #597772 for selling long-stem roses not of grower’s own production on November 25, 2015. [Exhibit L]

Appellant testified that during the production site inspection, the inspectors did not take enough photos of the rose plants to sufficiently show that roses were not of his own production. He also testified that inspectors did not walk through the whole growing site. Inspector Cruz countered that they took more photos than were provided for investigation and that they walked two or three sites for roses, accompanied by the Appellant. At the time of the production site inspection, Inspector Atrash testified that he did not see the roses in the photographs provided by Appellant. [Exhibit 2] The roses inspectors witnessed were not of the density or quality as shown in Appellant’s photos. Based on the photos, Inspector Cruz testified that the plants shown in Exhibit 2 are a different variety based on the leaf type, and stem.

Appellant testified that he does not agree with the 18-month suspension due to the economic hardship it will cause, as selling at CFMs is his only source of income.

Respondent determined the penalty for a violation of CCR 1392.4(a) is a serious violation based on a table in CCR 1392.4.1. A fine amount of seven hundred (\$700) per violation was determined, for a total of two thousand one hundred dollars (\$2,100) for three (3) counts of violation of CCR 1392.4(a). Suspension from participation from any CFM for eighteen (18) months was determined on the basis that three prior NOPAs were issued to Appellant for violation of CCR 1392.4(a) [Exhibits P and Q], that the Appellant shows disregard for the values and principles of the CFM program, and to be punitive and to change behavior.

IV. DETERMINATION OF ISSUES

Appellant requests the order be rescinded, or a reduction of the fine to the statutory minimum, and suspension be reduced to three (3) months to run concurrently with a three (3)-month suspension ordered in file No. 1415-CF-048. Appellant contends that he was not presented evidence prior to hearing on April 13, 2016, the inspection of production site was not inspected in a timely manner to determine quality of flowers presented three weeks prior, and that he is selling flowers, not food, where the provenance of flowers is not critical to public health or welfare.

Evidence presented at the hearing contains documentation that informs the Appellant that he is entitled to review the Agricultural Commissioner's evidence supporting the charges, and testimony provided by inspectors who did production site inspection determined that the variety of plant that would produce roses of the type sold at CFMs were not growing at production site. Additionally, the principle of CFM program is the trust that the farmers are selling what they grow, which includes any commodity regulated by the CFM program.

Based on testimony during hearing and evidence on record, it is determined that three separate violations of CCR 1392.4(a) occurred and that long-stemmed roses sold at CFM were not of Appellant's own production. Respondent presented sufficient credible evidence to support the violations. The experience and qualifications of the Respondent's inspectors and Ventura County inspectors were undisputed and the determination they made was supported by the pictorial evidence. It is determined that the fine and suspension are appropriate.

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

In the Matter of the Appeal of:)
)
Juan Duran)
dba Eagles Flowers)
9231 Olds Road)
Oxnard, CA 93033)
)
)
Appellant)
_____)

File No. 1516-CF-037

**DECISION AND ORDER
ON APPEAL**

**V.
DECISION**

Considering all of the evidence in the record, the Department denies the appeal of Juan Duran/Eagles Flowers of the Los Angeles County Agricultural Commissioner/Director of Weights and Measures' Decision and Order. Appellant is ordered to pay a fine of two thousand one hundred dollars (\$2,100) for three (3) counts of violation of 3 CCR Section 1392.4 (a) and is suspended for eighteen (18) months from participation in any California Certified Farmers' Market.

This Decision and Order shall be effective August 6, 2016.

IT IS SO ORDERED this 7 day of JULY, 2016.

Crystal D'Souza

CRYSTAL D'SOUZA
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.