

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

Deputy Director, Pest Exclusion Produce Quality Bureau, Edmund Williams (hereinafter “Mr. Williams”) testified that he has worked as Deputy Director for the Respondent for 3 years, previously worked with the California Department of Food & Agriculture for 30 years, and has experience working in wholesale and retail packing houses, including flower inspections at wholesale markets and Certified Farmers’ Markets. Mr. Williams testified that he conducted a routine inspection of the Appellant’s stall at the Calabasas CFM on January 31, 2015, and found him selling various flowers, including roses, gerbera daisies, and hydrangeas. Mr. Williams suspected the flowers were not of the Appellants’ own production based on the quantity, variety, and quality of the roses, gerbera daisies, and hydrangeas that were being sold. He stated the gerbera daisies had long stems, had a wide variety of colors, and here of high quality. The roses were young, had tight buds, with long thick stems. The hydrangea were large, very fresh, had blue green tinted petals, with dark green leaves (Exhibit C). It did not seem feasible to Mr. Williams that the quantity of flowers being sold at the Calabasas CFM could be produced by a small scale producer, and the quality was unusual for the end of January.

Deputy Director, Pest Exclusion Produce Quality Bureau, and Department Advocate, Katherine Takata (hereinafter “Ms. Takata”) contacted the Ventura County Agricultural Commissioner’s Office to conduct a production site inspection of Eagles Flowers. On February 3, 2015, Ventura County Inspectors Ameer Atrash and Vanessa Cruz inspected the production site of Eagle Flowers. Mr. Duran was not present during the investigation. On February 4, 2015, Inspectors Atrash and Cruz met with Mr. Duran and his employee Alex Sanchez at the production site. Inspectors Atrash and Cruz asked to see the flowers in question. At the growing site, Inspectors found rose plants with sparse growth, small, open flowers with short thin stems. The hydrangeas were unhealthy in appearance, had wilted pink and maroon blooms, and green leaves with large brown spots. No other hydrangeas were found on the production site.

On June 29, 2015, Ventura County Agricultural Commissioner’s Office sent their investigational report to Ms. Takata (Exhibit D). On July 7, 2015, Mr. Williams issued Notice of Noncompliance Number 597207 to Juan Duran/Eagles Flowers, for selling roses and hydrangeas not of their own production at the Calabasas CFM (Exhibit F).

Dr. Jerald Turney, Plant Pathologist, (hereinafter “Dr. Turney”) testified that he received his undergraduate degree from Cal Poly Pomona in Botany and his Doctorate in Plant Pathology from UC Riverside. He has worked for the Los Angeles County Agricultural Commissioner’s Office for 15 years. Prior to that he worked as a horticulturalist and certified arborist, and has worked in the landscape maintenance industry for 40 years. Dr. Turney also has an Agricultural Pest Control license. Dr. Turney testified that based on the photographic exhibits entered into the record, the flowers sold by the Appellant at the Calabasas CFM were greenhouse produced, not available in winter months in California, and most likely imported from South America. The roses grown at the growing site were not the same variety as in the photos from the Calabasas CFM. Dr. Turney testified that the condition of the hydrangeas in the photos from the production site were typical for the season.

The Appellant testified that he sells flowers of his own production. He did not enter into the record any evidence to counter the counties’ case.

IV. DETERMINATION OF ISSUES

The evidence presented by the Respondent supports a finding that the Appellant violated 3 CCR Section 1392.4, which is a serious violation under Food and Agriculture Code Section 47025(c). The photographic evidence and expert testimony demonstrates that what Appellant sold at the Calabasas CFM was not of the Appellants own production.

Appellant contends that there was a lack of consistency because different personnel inspected the produce at the Calabasas CFM and the Appellant’s growing grounds. Respondent presented sufficient evidence that the experience and qualifications of the inspectors did not require that the same personnel conduct both inspections. Appellant raised additional arguments supported by photographic evidence to explain why the produce at the Calabasas CFM was of Appellant’s production. However, these photographs were not submitted during the November 2, 2015 hearing. As such, they were not considered in this appeal because the Department’s review is limited to the hearing record.

Accordingly, the Department upholds the Respondent’s decision in this matter and finds that the fine of one thousand four hundred dollars (\$1,400) for two counts of violation of 3 CCR Section 1392.4(a) and is suspended for three (3) months from participation in any California Certified Farmers’ Market is 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. 1415-CF 048

**DECISION AND ORDER
ON APPEAL**

**V.
DECISION**

Considering all of the evidence in the record, the Department finds to deny Juan Duran/Eagles Flowers appeal of the Los Angeles County Agricultural Commissioner/Director of Weights and Measures' Decision and Order. Appellant is ordered to pay a fine of one thousand four hundred dollars (\$1,400) for two counts of violation of 3 CCR Section 1392.4(a) and is suspended for three (3) months from participation in any California Certified Farmers' Market.

This Decision and Order shall be effective May 25, 2016.

IT IS SO ORDERED this 25TH day of APRIL, 2016.



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.