



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

Deputy Williams testified that he has over 15 years of experience with Fruit and Vegetable Standardization inspection. Inspector Abdel-Fatah testified that he has been inspecting CFMs since 2005. Deputy Williams stated that on August 17, 2013, he and Inspector Abdel-Fatah inspected the Appellants stall at the West Covina CFM. Inspector Abdel-Fatah testified that he noticed an employee of the Appellant was removing Thompson seedless grapes from the display table and moving them to his van; Thompson seedless grapes were not listed on the Appellant’s certified producer certificate issued by Tulare County. Deputy Williams and Inspector Abdel-Fatah stated that they observed the Appellant selling Flame seedless grapes that appeared to be treated with gibberellic acid (Exhibit F). Deputy Williams testified that he made this determination based on the size of the berries, their green discoloration (untreated grapes in mid-August would be really dark red in color), and that use of the acid indicates the grapes would have come from a large production vineyard, whereas the Appellant only had five vines. The Tulare Deputy Agricultural Commissioner confirmed that Jose and George Ibarra did not have a permit on file to apply gibberellic acid to their grapes.

Deputy Williams and Inspector Abdel-Fatah testified that they also found the Appellant selling varieties of yellow peaches and yellow nectarines not listed on their certificate. The inspectors observed four varieties of peaches on display, two of the yellow variety. However, the certificate presented at the time of the market indicated the Appellant was certified for three varieties: one white, one doughnut, and one yellow. The certificate presented at the time of the market also indicated the Appellant was certified to sell two pearl white varieties of nectarines. Inspector Abdel-Fatah issued the Appellant a Notice of Noncompliance #571385 (Exhibit H) for reasonable cause to believe the Appellant was selling produce not of their own production. The Notice instructed the produce to be removed from sale.

On August 17, 2013 at the Downey CFM, Deputy Williams testified that he observed the Appellant selling Flame seedless grapes and the same varieties of yellow peaches and nectarines as at the West Covina CFM. He also observed green grapes for sale under the Flame seedless grapes. Deputy Williams issued Notice of Noncompliance #582093 (Exhibit L) for reasonable cause to believe the Appellant was selling produce not of their own production, which instructed the Appellant to pull for sale the grapes, nectarines and peaches and to obtain proper certification.

On August 18, 2013, at the Toluca Lake CFM, Deputy Williams observed the Appellant selling the same varieties of yellow peaches and nectarines as those sold at the West Covina and Downey CFMs. Notice of Noncompliance #582094 (Exhibit N) was issued for reasonable cause to believe the Appellant was selling produce not of their own production.

On August 21, 2013, Inspector Abdel-Fatah stated that he contacted the Tulare County Agricultural Commissioner to verify whether or not the Appellant produced the commodities in question. Deputy Agricultural Commissioner David Case informed Inspector Abdel-Fatah that the Appellant did not grow Thompson seedless grapes, and also provided an updated amended certified producers’ certificate (Exhibit E). The amended certificate showed that the Appellant was certified to sell three varieties of nectarines (Diamond Pearl White, Kay Pearl White, and Honey Glaze [sic] Yellow) and three varieties of peaches (Doughnut White, Ivory Princess, and Sweet Dream Yellow).

Honey Blaze Yellow nectarines are described as deep red in color with harvest dates of June 13-June 28 (Exhibit Q). The yellow nectarines sold by the Appellant in mid- to late August appeared to be fresh to the inspectors (Exhibit G). Sweet Dream Yellow Peaches are described as having a full bright red color, with harvest dates of July 15-July 30 (Exhibit P). The yellow peaches observed by the inspectors had little to no red color (Exhibit G).

At the hearing the Appellant stipulated that they sold produce not of their own production. The Appellant stated that he did not have control over the people selling his produce. He testified that the employees sold this produce without his permission.

#### **IV. DETERMINATION OF ISSUES**

The Appellant requested an appeal from the Secretary of the California Department of Food and Agriculture on the basis that their employees took it upon themselves to sell the commodities in question and that they were not made aware of the on-going issues in a timely manner in order to remedy the situation. The Appellant disputes the six thousand six hundred dollar (\$6,600) fine and the eighteen (18)-month suspension on the grounds that it is unfair and will cause an economic hardship.

Violation of 3 CCR Section 1392.4(a) is a serious violation under Food and Agricultural Code Section 47025(c). The photographic evidence and testimony of Deputy Williams and Inspector Abdel-Fatah support the eleven (11) counts listed in the Notice issued by the Respondent. The Appellant is responsible for his employees and ensuring that they follow the regulations necessary for participation in the CFM program. Accordingly, the fine of six thousand six hundred dollars (\$6,600) and the eighteen-(18) month suspension are upheld

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

In the Matter of the Appeal of: )  
)  
Jose and George Ibarra )  
36561 Road 52 )  
Kingsburg, CA 93631 )  
)  
)  
)  
Appellant )  
\_\_\_\_\_ )

File No. 1314-CF 033

**DECISION AND ORDER  
ON APPEAL**

**V.  
DECISION**

Considering all of the evidence in the record, the Department finds to deny Jose and George Ibarra's appeal of the Los Angeles County Agricultural Commissioner/Director of Weights and Measures' Decision and Order. The Appellant is ordered to pay a fine of six thousand six hundred dollars (\$6,600) for 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 18, 2014.

IT IS SO ORDERED this 17<sup>th</sup> day of July, 2014.



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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.