

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

In the Matter of the Appeal of: )  
)  
Javier Berumen dba Berumen Farms, Inc. )  
14482 Beach Blvd., Suite K )  
Westminster, CA 92683 )  
)  
Appellant )  
\_\_\_\_\_ )

File No. 1415-CF 004

**DECISION AND ORDER  
ON APPEAL**

**I.  
STATEMENT OF THE CASE**

On August 20, 2014, the Los Angeles Agricultural Commissioner/Director of Weights and Measures (hereinafter “Respondent”) formally issued a Notice of Proposed Action, Grounds Therefore, and Opportunity to be Heard (hereinafter “Notice”) to Javier Berumen and Vanessa Delgado, dba Berumen Farms (hereinafter “Appellant”). The Notice was for six (6) counts of violation of California Food and Agricultural Code Section 47002 and Title 3, California Code of Regulations, Section 1392.4, subdivision (a), which prohibits certified farmers from selling produce not of their own production. The Respondent sought to recover an administrative penalty in the amount of three thousand six hundred dollars (\$3,600) and suspend Javier Berumen and Vanessa Delgado from participation in any California Certified Farmers’ Market (hereinafter “CFM”) for eighteen (18) months.

Hearing Officer Greg Creekmur conducted a hearing on September 22, 2014, with both parties in attendance. Hearing Officer Creekmur determined that the Appellant had committed the violations and upheld the proposed penalty payment of \$3,600 and suspension from participation in any CFM for 18 months. On November 20, 2014, the Respondent adopted the decision as submitted. On December 3, 2014, the Appellant submitted an appeal to the Secretary of the Department of Food and Agriculture (hereinafter “the Department”) on the basis that the claims made against him are inaccurate.

**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.3<sup>rd</sup>

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

Sections 47000, *et seq.*, of the California Food and Agricultural Code establish the California Certified Farmers' Market Program. Producers who participate in the program are issued certificates subject to regulatory requirements that substantiate that they only sell agricultural commodities that they have produced directly to the public. (Tit. 3, Cal. Code Regs., Secs, 1392, *et seq.*) The Secretary or county agricultural commissioners may impose civil penalties and suspensions for violations of the program. (Food & Agric. Code, Sec. 47025; Tit. 3, Cal. Code Regs., Sec. 1392.10)

Appellant has been a farmer for over 30 years and is the owner of Berumen Farms, which sells produce at CFMs. Berumen Farms operates under Certified Producers Certificate 30-31028-35 issued by Orange County, and Certified Producers Certificate 40-40708-081-0 issued by San Luis Obispo County.

Inspector Ibrahim Abdel-Fatah (hereinafter "Inspector Abdel-Fatah") has worked as an inspector for the Respondent for 16 years, has done CFM inspections since 2005, and has a commodity regulation license issued by the State. Inspector Abdel-Fatah testified that he conducted a routine inspection of the Appellant's stall at the La Canada Flintridge CFM on June 14, 2014, and found him selling various vegetables, including celery and broccoli. Inspector Abdel-Fatah suspected the celery and broccoli were not of the Appellants' own production based on the color, pack, and size of both the celery and broccoli. He stated the celery for sale at the La Canada Flintridge CFM appeared to be commercially cut and packed, was light in color, uniform in size, and in tight bunches (Exhibit D). The broccoli was uniform in size, dark green color, a large head, and the florets were tight. Inspector Abdel-Fatah contacted the Orange County Agricultural Commissioner to verify production at the growing location.

Inspection of the growing location was conducted on June 18, 2014 (Exhibit E), by Inspector Arif Kever (hereinafter "Inspector Kever") of the Orange County Agricultural Commissioner's Office. Inspector Kever reported that the celery at the growing ground was dark green in color, and had loose and sprawling stocks. The broccoli had small heads and was on the verge of flowering.

Inspector Abdel-Fatah issued Notice of Noncompliance Number 548412, dated June 22, 2014, to Javier Berumen and Vanessa Delgado/Berumen Farms, for two counts of violation of 3 CCR 1392.4(a), selling product not of their own production at the La Canada Flintridge CFM (Exhibit F).

On August 10, 2014, Inspector Abdel-Fatah inspected the Appellant's stall at the Studio City CFM (Exhibit H). Inspector Abdel-Fatah suspected that the celery and broccoli were not of the Appellants' own production. Inspector Abdel-Fatah observed that the celery and broccoli were the same color and size as observed at the La Canada Flintridge CFM on June 14, 2014.

Inspector Gerda Jasinskaite (hereinafter “Inspector Jasinskaite”), has worked for the Respondent for six years, has done CFM inspections for one year, and has a commodity regulation license issued by the State. Inspector Jasinskaite testified that she inspected the Appellants stall at the Southgate CFM on August 11, 2014. Inspector Jasinskaite suspected that the celery and broccoli were not of the Appellant’s own production. Inspector Jasinskaite observed that the celery was a light green color, had long stalks, and in tight bunches. The broccoli observed had large heads, were uniform in size, and had tight florets (Exhibit I). Inspector Jasinskaite testified that celery from small productions were usually packed looser and were darker green.

Los Angeles County Deputy Departmental Advocate, Katherine Takata, testified that Inspector Abdel-Fatah and Inspector Jasinskaite have experience working on the wholesale produce market, contributing to their knowledge in identifying and inspecting wholesale produce. Inspector Abdel-Fatah has three years and Inspector Jasinskaite has one.

Inspector Abdel-Fatah testified that he contacted the Orange County Agricultural Commissioner to verify the growing location. On August 11, 2014, Orange County Inspector, Otto Rieger (hereinafter “Inspector Rieger”) inspected the Appellant’s growing location (Exhibit J). Inspector Rieger reported that the broccoli had flowering florets and celery had dark green, short, and sprawling stalks. Inspector Rieger also reported that Vanessa Delgado, present during the inspection, stated that broccoli observed at the Studio City and Southgate CFMs may have come from their growing location in San Luis Obispo County. The Orange County Agricultural Commissioner contacted the San Luis Obispo County Agriculture County to inspect the Berumen Farms growing location in Nipomo.

San Luis Obispo county inspector Jennifer Steele (hereinafter “Inspector Steele”), inspected the Nipomo growing location (Exhibit K). Inspector Steele’s report, dated August 13, 2014, stated that both the celery was young and the broccoli was young with no florets.

The Appellant testified that produce from the Nipomo growing location was planted around May 1, 2014 and was harvested 90 days later, approximately early August 2014.

Inspector Abdel-Fatah issued Notice of Noncompliance Number 548537, dated August 14, 2014, to Javier Berumen and Vanessa Delgado/Berumen Farms, for four counts of violation of Title 3, California Code of Regulations, Section 1392.4, subdivision (a), selling product not of own production at the Studio City and South Gate CFMs (Exhibit L).

The Appellant testified that he spends most of his time with his construction business and does not regularly visit the growing location or the CFMs. He also testified that he could not determine if the violations that occurred are substantiated because he was not contacted prior to an inspection of the growing location and therefore not present during the inspection. The Appellant submitted photos from their Nipomo growing location taken over the last six months (Exhibit 1).

#### IV. DETERMINATION OF ISSUES

The Appellant has appealed the Respondent's decision to suspend its privilege to participate in the market and the imposition of the civil penalty pursuant to Food and Agricultural Code section 47025, subdivision (d). In reviewing the decision, the Department has determined that there is substantial evidence to support it as required.

The Respondent presented extensive evidence in support of the six counts of Appellant selling produce not of its own production as related in the Statement of Facts and the Hearing Decision. Such conduct is one of the most serious violations of the law authorizing the direct marketing of agricultural products. By engaging this conduct, Appellant was able to evade size, standard pack, container and labeling requirements otherwise applicable to distributors of agricultural commodities. (*See* Food & Agric. Code, Sec. 47002) An agricultural commissioner may suspend the right of Appellant to participate in any CFM for a period of up to 18 months for these violations as happened in this case. (Tit. 3, Cal. Code Regs., Sec. 1392.10, subd. (c))

The Respondent is also authorized to concurrently impose a civil penalty for this conduct as well. (Food & Agric. Code, Sec. 47025) Such conduct is considered a serious violation justifying a civil penalty between four hundred one dollars (\$401) and one thousand dollars (\$1,000) per violation because of its intentional nature. (Food & Agric. Code, Sec. 47025, subd. (b) (1); Tit. 3, Cal. Code Regs., Sec. 1392.4.1, subd. (c) [Table A]) In this instance, the Respondent imposed a penalty towards the lower end of the range of six hundred dollars (\$600) per violation for a total of three thousand six hundred dollars (\$3,600). Accordingly, such a reasonable determination cannot be considered an abuse of discretion.

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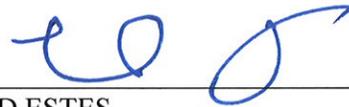
**DECISION AND ORDER  
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**DECISION**

The Department denies the appeal in its entirety. Appellant is ordered to pay a civil penalty of three thousand six hundred dollars (\$3,600). Appellant is additionally suspended for a period of eighteen (18) months from participation in any California Certified Farmers' Market.

This Decision and Order shall be effective February 22, 2015.

IT IS SO ORDERED this 23rd day of January, 2015.



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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 date of this order, January 23, 2015, pursuant to Section 1094.5 of the California Code of Civil Procedure.