



On October 15, 2014, Hearing Officer Don O. Cripe (hereinafter "Hearing Officer") conducted an administrative hearing. Appellant appeared and contested the violations and the penalty on the grounds that the 22 blank, except for signature, weighmaster certificates had not been issued. On November 22, 2014, the Hearing Officer's findings were submitted to the Respondent. The Hearing Officer determined that leaving the unsigned certificates on the counter where anyone could take them and use them was like leaving out blank, signed checks and, because they had been signed by the deputy weighmaster, could be used by anyone who took one.

The Hearing officer upheld the penalties for BPC Section 12713 (b), "It is unlawful to issue, or cause to be issued, a weighmaster certificate if the certificate does not contain all the information required by Sections 12714, 12714.5, and 12715 for the commodity weighed, measured, or counted." The amount of the civil penalty would be appropriate for these violations at one hundred fifty dollars (\$150) each, according to the guidelines. The Hearing Officer also upheld the penalties for BPC Section 12718 (h), "Issues a weighmaster certificate that contains alterations or omissions of gross or tare weights, net only weights, or measurements." The amount of the civil penalty was acceptable for these violations at four hundred dollars (\$400) each.

On November 26, 2014, the Respondent sent the decision, adopting the decision by the Hearing Officer, and imposed a penalty in the amount of twelve thousand one hundred dollars (\$12,100) specified in the original Notice. Appellant filed a timely appeal with the Department of Food and Agriculture (hereinafter "the Department") dated December 22, 2014, which was received by the Department on December 29, 2014.

Appellant listed the grounds for appeal as follows:

1. "The application of California [sic] and Professions Code Section 12713(b) to the facts of this case is not supported by law or by the facts;"
2. "The application of California [sic] and Professions Code Section 12718(h) to the facts of this case is not supported by law or by the facts;"
3. The 22 signed weighmaster certificates seized by the county were not issued as they had not been given to anyone; therefore, the alleged violations of Sections 12713 (b) and 12718 (h) could not have occurred.
4. The weighmaster received no training as a weighmaster by the county of Yolo or any other authority on what is proper.

## II STATEMENT OF FACTS

Yolo County Weights and Measures Deputy Sealer David Guerrero testified that on May 13, 2014, he went to 27991 Mace Boulevard, Davis, California to follow up on allegations of wrongful acts by the weighmaster, John Martin. The allegations came from Solano County Weights and Measures officials Doug Echelberger and Steve Parris on May 12, 2014 and included allegations that the Appellant was leaving out signed weighmaster certificates that could be used for the facilitation of fraud by an unscrupulous individual. Mr. Guerrero testified that during his investigation on May 13,

2014, he observed the improper weighing of a truck by a driver and also confirmed the allegation by the complainant of numerous signed, but otherwise blank, weighmaster certificates in reach of anyone who would wish to take one. No deputy weighmaster was on site when Mr. Guerrero entered Appellant's scale house.

Mr. Guerrero observed a truck driver weighing a vehicle in the scale house, and while he may have reached towards the certificates, Mr. Guerrero stated that he did not observe the driver issue himself a weighmaster certificate. The driver asked Mr. Guerrero if "Art", the deputy weighmaster, was around and Mr. Guerrero answered, "I am not sure who Art is." Mr. Guerrero testified he observed the driver leave the scale house, go outside, speak to a woman, and then come back to the scale house. After returning to the scale house, the driver called Arturo Garza or "Art", the deputy weighmaster. About five minutes later, Mr. Garza arrived.

At that point, Mr. Guerrero testified that he disclosed who he was to both the driver and Mr. Garza and informed them that he was investigating a complaint. During the visit, Mr. Guerrero explained that he went over the alleged violations observed of BPC Section 12703 for performing the acts of a weighmaster without a license by the driver; a violation of BPC Section 12728 for improperly weighing the vehicle by the driver; 22 violations of BPC Section 12713 for issuing a weighmaster certificate without the information required by BPC Sections 12714, 12714.5, and 12715 for the commodity weighed; and 22 violations of BPC Section 12718 (h) for issuing a weighmaster certificate that contains omissions of gross or tare weights, net only weights, or measurements. The Notice did not charge the Appellant for violation of BPC Section 12703.

Appellant stipulated during the pre-hearing that it was a violation of the law and improper to weigh a truck without the whole vehicle on the scale. Appellant contended that they could not have violated BPC Sections 12714(b) or 12718(h) because the 22 blank certificates were not issued to anyone. Appellant questioned Respondent for any legal authority which states that the certificates are issued when signed by a weighmaster or deputy weighmaster. Appellant further questioned if the Respondent had provided any instruction on the order in which weighmaster certificates are required to be filled out.

### 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. 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.)

#### IV DETERMINATION OF ISSUES

Preliminarily, the Department finds that insufficient evidence of the violations was presented during the course of the hearing. An independent examination of the evidence adduces the following:

1. Leaving out signed, but otherwise blank, weighmaster certificates does not constitute issuance of a weighmaster certificate.
2. Code Sections BPC 12713 (b) and 12718 (h) are not exclusive, as they both deal with deficiencies of information or, in this case, an omission of data on the same certificate;
3. Violations of BPC Sections 12713 (b) and 12718 (h) are strict liability and there is no legal mandate for the County to provide training on weighmaster laws.

The verbal and written testimony of Mr. Guerrero demonstrate that the legal opinion of the Respondent is that a weighmaster certificate is issued once it has been signed by the deputy weighmaster and is accessible. The Appellant, during the hearing, refuted that and stated that in order to issue a weighmaster certificate, it not only required a signature by the weighmaster or his deputy, but additionally the weighmaster certificate would need to be transferred or physically given to someone. The blank check analogy is flawed and there was no evidence to support that any signed, but otherwise blank, weighmaster certificates were improperly issued.

The Department concurs with Appellant that the issuance of a weighmaster certificate involves more than just signing the form. The signed form must also be transferred to a third party or the end user (person with financial interest in the weight, measure, or count). However, the Department is very troubled about this practice as there is the potential for actual false, deceptive, or misleading business practices, or significant monetary loss to consumers. Weighmaster certificates, as legal documents for commercial transactions, should be kept in a secure manner and always under the control of the weighmaster.

On July 15, 2003, the Fourth Appellate District, Division Two, issued ruling E031802 in response to Superior Court Case Number RIC365726, *Ralph's v. County of Riverside Sealer of Weights and Measures* (2003). The court determined that it is improper for a jurisdiction to impose multiple administrative fines for what is in essence the same violation. In this circumstance, both BPC Sections 12713 (b) and 12718 (h) assert that the weighmaster certificates were incomplete. BPC Section 12713(b) is broader in scope, applying to any incomplete information left off of a weighmaster certificate, including weight or measure, whereas BPC Section 12718(h) is specific to inaccurate or incomplete weight or measure on a weighmaster certificate and makes such a violation a misdemeanor. It would be proper to choose one or the other, as in this instance, both relate to incomplete weighmaster certificates, but not both, as Penal Code Section 654 prohibits duplicative fines.

Appellant asserts that because they had received no training, they should not be held accountable because the weighmaster puts forth effort to be in compliance and did not intentionally break any laws. As a reminder, the majority of all Division 5 laws are strict liability and there is no need to prove intent. It is the responsibility of the business to adhere to all laws and regulations pertaining to weights and measures.

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

In the Matter of the Appeal of: )  
 )  
John Martin )  
License Number 013431 )  
27991 Mace Boulevard )  
Davis, CA 95618 )  
 )  
Appellant )  
\_\_\_\_\_ )

File No. W/MCP-YOL-14-012

**DECISION AND ORDER  
ON APPEAL**

**V**

**DECISION**

For the foregoing reasons, Appellant's position is affirmed and the civil penalty of twelve thousand one hundred dollars (\$12,100) is vacated in this matter. Appellant does not have to pay the civil penalty in the amount of \$12,100 to the Yolo County Department of Weights and Measures.

The Department missed the statutory deadline in which to issue this Decision and Order on Appeal. As such, the Appeal would have been granted and the civil penalties vacated in this matter, were it not already.

This Decision and Order shall be effective APRIL 3, 2015.

IT IS SO ORDERED this 4<sup>TH</sup> day of MARCH, 2015.

*Crystal D'Souza*

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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 30 days of the effective date of this decision pursuant to Section 1094.5 of the Code of Civil Procedure.