



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

Inspector Ibrahim Abdel-Fatah (hereinafter "Inspector Abdel-Fatah") testified that he has been inspecting CFM's since 2005. On October 20, 2013, Inspector Abdel-Fatah stated that he inspected Appellant's stall at the Montrose CFM. Inspector Abdel-Fatah noticed Appellant was selling mangoes (Exhibit D). When Inspector Abdel-Fatah checked Appellant's certificate, he noticed that the estimate of production for mangoes was zero (Exhibit X). Inspector Abdel-Fatah stated that he issued Appellant a violation for reasonable cause on the belief that the mangoes were not of his own production. That same day, Inspector Abdel-Fatah observed Appellant selling mangoes at the Old Town Pasadena CFM.

Inspector Abdel-Fatah further testified that on October 21, 2013, he contacted the San Diego Agricultural Commissioner to verify production of mangoes on Appellant's growing grounds. An inspection of the growing grounds and storage area was conducted by Mark Lyles, Senior Agricultural/Standards Inspector for San Diego County. The inspection found trees where fruit had already been picked, or with immature fruit. The inspection of the storage area found a twenty (20)-pound box of mangoes. The mangoes found in the storage area (Exhibit I) were a different color and shape from those observed by Inspector Abdel-Fatah at the Montrose and Old Town Pasadena CFM's.

Deputy Agricultural Commissioner Ed Williams (hereinafter "Deputy Williams") testified that on November 16, 2013, he conducted an inspection of Appellant's stall at the Santa Monica CFM. He noticed mangoes with different levels of maturity and possibly different varieties (Exhibit J). In a box found behind the stall, Deputy Williams stated that he found mangoes showing signs of damage by hot water treatment and one piece showed scale insects on the fruit. He took three (3) pieces of the mangoes from the box from behind the stall and sent them to their lab.

The mango samples tested positive for dead white mango scale (*Aulacaspis tubercularis*) (Exhibit N). This type of scale is found in South America and Florida. Based on these findings, Deputy Williams issued Notice of Noncompliance # 571437 for selling produce not of Appellant's own production (Exhibit L).

Inspector Abdel-Fatah testified that on December 22, 2013, he inspected Appellant's stall at the Brentwood CFM. He observed that two (2) lots of Haas avocados Appellant was selling were different colors, and upon close inspection, there appeared to be scale on the avocados. Appellant is certified to sell Haas avocados. Inspector Abdel-Fatah took a sample of the avocados for further testing.

On December 30, 2013, Appellant went to the Los Angeles County Agricultural Commissioner's Office and met with Deputy Williams. In the meeting, Appellant admitted that the avocados were not of his own production and were sold at the Brentwood CFM by mistake, that they should have gone to his restaurant clients. Appellant also admitted to Deputy Williams that mangoes were not of his own production. Following the meeting between Appellant and Deputy Williams, Inspector Abdel-Fatah issued Notice of Noncompliance #582764 for selling avocados not of Appellant's own production at the Brentwood CFM (Exhibit T).

Prior to the opening of the hearing, Appellant admitted to Katherine Takata, advocate for Respondent, that he did purchase the mangoes sold at the Santa Monica, Montrose, and Old Town Pasadena CFM's. He also repeated his admission to purchasing the avocados seen at the Brentwood CFM, but maintained they were sold by mistake.

Appellant explained during testimony that he was experiencing frustration for being expelled from the Santa Monica CFM for not cooperating with his revised producer certificate. Appellant stated that due to this frustration, he purposely and repeatedly sold mangoes not of his own production. Appellant maintained that selling the particular avocados sold at the Brentwood CFM was an honest mistake

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

Initially, the Department determines that there is sufficient evidence of the violations. Appellant does not dispute that the violations did occur, but maintains that the avocados were mistakenly sold at the Brentwood CFM. Appellant does not dispute the fine but requests leniency on the six (6)-month suspension on the grounds that it is unfair and will cause an economic hardship. By his own admission, Pedro Gallardo repeated, with intent, selling products not of his own production and as such, the appeal is denied.

Violation of 3 CCR Section 1392.4(a) is a serious violation under Section 47025(c) of the Food and Agricultural Code. The civil penalty and suspension are consistent with the serious nature of the violations. Therefore, the Department upholds the civil penalty in the amount of one thousand eight hundred dollars (\$1,800) and the suspension from participation in any California Certified Farmers' Market for six (6) months.

###

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

In the Matter of the Appeal of: )  
)  
)  
Pedro Gallardo )  
PO Box 7580 )  
Lawndale, CA 90260 )  
)  
)  
)  
Appellant )  
\_\_\_\_\_ )

File No. 1314-CF 023

**DECISION AND ORDER  
ON APPEAL**

**V.  
DECISION**

Considering all of the evidence in the record, the Department finds to deny Mr. Gallardo's 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 eight hundred dollars (\$1,800) for three violation of 3 CCR Section 1392.4 (a) and is suspended for six (6) months from participation in any California Certified Farmers' Market.

This Decision and Order shall be effective August 11, 2014.

IT IS SO ORDERED this 10 day of July, 2014.



\_\_\_\_\_  
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.