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

In the Matter of the Appeal of:	)	
	)	File No. 13/14 – M45
Suresh Gautam	)	
United Independent Taxi # 995	)	**DECISION AND ORDER**
22201 Vanowen Street	)	**ON APPEAL**
Canoga Park, CA 91303	)	
	)	
Appellant	)	
	)	

I
PROCEDURAL HISTORY

On January 23, 2013, Los Angeles County Department of Agriculture, Weights and Measures (hereinafter "Respondent") issued a Notice of Proposed Action (hereinafter "Notice") against United Independent Taxi # 995, and its owner, Suresh Gautam (hereinafter "Appellant"). The Notice set forth one violation of Business and Professions Code (BPC), Section 12510(a)(1), which provides in part: "Any person, who by himself or herself, or through or for another...Uses, for commercial purposes, or retains in his or her possession an incorrect weight or measure or weighing or measuring instrument" is guilty of a misdemeanor. The Notice also set forth one violation of Title 4, California Code of Regulations (4 CCR), Section 4000, 5.54., Taximeters, paragraph T.1.1. (Tolerance Values). BPC Section 12015.3, subdivision (a) provides for the imposition of an administrative penalty in lieu of a criminal prosecution for these violations.

On February 13, 2014, Hearing Officer Greg Creekmur conducted an administrative hearing to determine if Appellant had committed the violations alleged in the Notice. Hearing Officer Creekmur upheld the penalty for violation of BPC Section 12510(a)(1), operating a taxi cab with an incorrect meter, and that the amount of the civil penalty was acceptable for these violations at two hundred fifty dollars ($250).

On April 1, 2014, Respondent issued a decision, ruling that Appellant committed the violations alleged in the Notice and imposed a penalty in the amount of two hundred fifty dollars ($250) specified in the original Notice. Appellant filed a timely appeal with the Department of Food and Agriculture (hereinafter "the Department") dated April 22, 2014, objecting to the violations. Appellant listed the grounds for appeal as follows:

1. The operator has no choice in device selection and there is no technology to tell that the device is not operating correctly (restated several times in the letter).
2. According to Appellant, "It is unfair to presume that I would knowingly retain in my possession or use for commercial purposes a malfunctioning device."
3. If an official can't tell by looking at a device that it is out of compliance, how is the taxicab operator supposed to know?
4. No definition of "Continuously Maintained" exists for National Institute of Standards and Technology, Handbook 44 (HB 44) 1.10., General Code paragraph G-UR.4.1; therefore, the Department must establish service intervals for meter servicing and testing in order to label equipment as "not maintained" in proper operating condition.
5. It is unfair to hold a device operator responsible for any fine, especially on a first violation.
6. The fine must be reversed because neither Los Angeles County Weights and Measures nor Los Angeles Department of Transportation does not mandate nor offer any specific training in measuring device diagnostics and operation.
7. A taxi driver is not a meter expert and should not be held responsible when the regulatory agency has failed to require vehicle maintenance facilities to make written disclosures that their work may affect meter operation.

II
STATEMENT OF FACTS

Los Angeles County Weights and Measures Inspector Sergio Zaragoza testified that he has been a weights and measures inspector and testing meters for nine years. Los Angeles County Weights and Measures Inspector Kho Lam testified that he has been a weights and measures inspector, testing meters for five years. Inspector Zaragoza and Inspector Lam testified that they are familiar with and followed the procedures for testing taximeters outlined in the CCR. On January 23, 2013, Inspectors Zaragoza and Lam were assigned by Respondent to conduct routine taximeter inspections. They testified that they conducted an inspection on United Independent Taxi Cab # 995 at the Authorized Taxicab Supervision Facility at the Los Angeles International Airport located in Los Angeles, California. During the inspection, Inspectors Zaragoza and Lam determined that the vehicle was over-registering on the calibrated mile by six percent (6.0%). The maximum allowable over-registration is one percent (1.0%) for taximeters. The inspectors repeated the test and confirmed that the device was over-registering, the second time at five and six tenths percent (5.6%). Inspectors Zaragoza and Lam issued a Notice of Violation (NOV) that was signed by Suresh Gautam, the operator of cab # 995, citing the violations of BPC Section 12510(a)(1), "Presumption of Intent to Violate the Law" for driving with an incorrect taximeter, and 4 CCR Section 4000, (5.54) Taximeters, T.1.1 (a), for possessing a taximeter that is not within the legal tolerance.

During the pre-hearing, Appellant admitted that the violations had occurred. Appellant testified that there was no way for him to know that the meter was over-registering. Appellant stated that the over-registration was likely due to a transmission

repair, combined with one of the tires being low, and that the company puts forth effort to keep their cabs in compliance. As a result, Appellant argued he should have received only a warning letter because the violations were unintentional.

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.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.3rd 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)

IV
DETERMINATION OF ISSUES

Preliminarily, the Department finds that sufficient evidence of the violations was presented during the course of the hearing. An independent examination of the evidence adduces no basis for disputing it. The verbal testimony of the official, the admissions of Appellant during the hearing, and the physical evidence of the NOV, are sufficient to prove the violations occurred.

Appellant is requesting the violations be dismissed because there was no way he could have known that the taximeter was not operating correctly, Respondent does not provide any specific training in measuring device diagnostics and operation, and a first-time penalty should be a warning. BPC Section 12510(a) is a strict liability statute, and the fact that the violations occurred is all that is necessary to prove the violations. Although Appellant made corrections after the inspection, the corrections do not change the fact that violations did occur.

Respondent properly utilized the penalty guidelines established in 4 CCR Section 4802 to evaluate the severity of Appellant's misconduct. It provides for the designation of violations as "A", "B", or "C", with ranges for the penalty amounts of each. Respondent determined that the violations fell under Category B, which allows for a fine between one hundred fifty dollars ($150) to six hundred dollars ($600). Appellant stipulated during the hearing that the violations had occurred. Respondent appropriately calculated the fine above the minimum amount given that the device over-registration exceeded allowable tolerance by an average of five point eight percent (5.8%).

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V
DECISION

For the foregoing reasons, Respondent's decision is affirmed and the civil penalty of two hundred fifty dollars ($250) is determined to be appropriate in this matter. Appellant is therefore ordered to pay a civil penalty in the amount of $250 to the Los Angeles County Department of Weights and Measures.

This Decision and Order shall be effective JULY 17, 2014.

IT IS SO ORDERED this 17TH day of JUNE, 2014.

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