

**FILED**

AUG 14 2012

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SUTTER  
CLERK OF THE COURT  
By B. Miller Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SUTTER

RAJ KUMAR SHARMA, et.al.,

Case No. CVCS 11-1343

Plaintiffs

RULING ON PETITION FOR  
WRIT OF MANDATE

-vs-

STATE OF CALIFORNIA, DEPARTMENT  
OF PESTICIDE REGULATION

Defendant

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This matter comes before me on an amended petition for writ of mandate filed by petitioners. The writ is denied.

Background

Raj Sharma and Paramjit Sandhu ("Petitioners") operate an agricultural business known as Sunrise Orchards. They were charged by Sutter County's Agricultural Commissioner with allowing pesticides to drift onto the property owned by Garibay and Janet Paredes at 4448 Bear River Drive in Rio Oso on March 27, 2010 and also failing to assure an employee used eye protection and chemical resistant gloves while loading chemicals in an air blast sprayer. After a hearing, the Commissioner fined Sunrise Orchards \$2,500 for violating section 6614 (allowing pesticides to drift) and section 6702 (failing to take precautions to assure employees handle pesticides in accordance with the law) of Title 3 of the California Code of Regulations.

Petitioners appealed the Commissioner's decision to the Director of the Department of Pesticide Regulation, who, after reviewing the record of the hearing and the hearing officer's findings, found there was substantial evidence to support that decision.

This writ proceeding followed. Petitioners claim (1) they did not receive a fair trial and their due process rights were violated; (2) the hearing officer misapplied the law; and (3) the Department abused its discretion in upholding the Commissioner's decision because the evidence did not support the findings of the hearing officer.

#### Standard of Review

Whether petitioners received a fair trial at the administrative level is a question of fact for me to rule upon by independently weighing the evidence. *Western Airlines, Inc. v. Schutzbank* (1968) 258 Cal.App.2d 218, 226. Assuming I find the trial was fair, I must then determine if the hearing officer abused the officer's discretion by misapplying the law. *Yamaha Corp of America v. State Board of Equalization* (1998) 19 Cal.4<sup>th</sup> 1, 7. In so doing, I must afford a strong presumption of correctness to the administrative findings, and the party challenging the administrative ruling bears the burden to prove that the administrative findings are contrary to the weight of the evidence. *Crawford v. City of Los Angeles* (2009) 175 Cal.App.4<sup>th</sup> 249, 253. Normally, to determine if the evidence supports the hearing officer's findings, I must determine if those findings are supported by substantial evidence in the light of the entire record. CCP §1094.5(c); *Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal3rd 28, 32.

#### Discussion

Having reviewed the record, I conclude the hearing was fair and petitioners were not deprived of any due process rights. Petitioners received legal notice of the hearing. (AR T8 000097:1-9.) Petitioners did not object to the notice received. They also received notice they could review the evidence before the hearing, they could present evidence, and they could be represented by an attorney. (AR T13 000263.) Petitioners had a reasonable opportunity to be heard and exercised an unfettered right to present evidence and examine witnesses.

The hearing officer was not biased and/or prejudiced against petitioners. No evidence offered by petitioners was improperly excluded by the hearing officer. Nothing in the record supports petitioners' suggestion that the hearing officer and the employee or complainants acted in collusion against petitioners. Whether the complainants could have avoided the drift is irrelevant and the hearing officer's failure to consider it is not evidence of bias. (Cal. Code Regs.,

Tit. 3, §6614.) The alleged failure of the hearing officer to consider the complainants' failure to file a report of loss and the officer's mistaken reference to the applications drifting east are not evidence of bias by the hearing officer. Other claimed theories of bias or prejudice not claimed by the petitioners were not raised at the hearing and have been waived.

The hearing officer correctly applied the applicable law concerning violations of sections 6614 and 6702, given the facts. As to the drift violation, the argument that the petitioners, personally, did everything they could to avoid the drift is unavailing, in that petitioners need not be the actual "applicator" to be responsible for the drift. Cal. Code Regs., Tit. 3, §6614. The permits were issued to Sunrise Orchards and, as such, petitioners are in control of their employees who might cause the drift to occur. *Ford Dealers Assn. v. DMV* (1982) 32 Cal. 3<sup>rd</sup> 347, 360. Petitioners recognized their responsibility in this regard. (AR T8 000249:11-13.)

The claim that the finding of a section 6702 violation was improper is rejected. Whether the employee was washing the tank, rather than mixing a load, without protective clothing is irrelevant. The violation occurs when an unprotected employee is handling or using a pesticide, and this includes "cleaning". Title 3, §§6702(b)(5) and 6738(c)(1).

Petitioners' argument that the violation was based on the employee's misconduct, for which they should not be responsible, is not valid. Petitioners were charged with their own failure to provide proper supervision and not having a written workplace disciplinary policy.

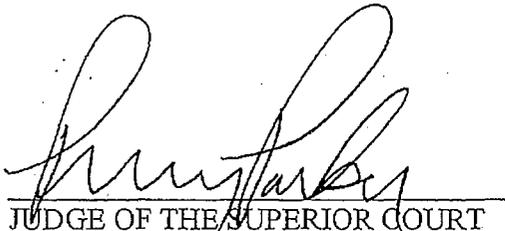
Finally, having reviewed the entire record, I conclude there is substantial evidence to support the findings that petitioners violated sections 6614 and 6702. See citations to the AR contained in Opposition of Department of Pesticide Regulations, filed May 7, 2012 at pg. 20:7 to page 22:21.

#### Conclusion

Counsel for respondent shall prepare an order consistent with this ruling and submit it to me for signature after complying with CRC, Rule 3.1312.

The Clerk shall mail a copy of this ruling to petitioners and counsel for respondent forthwith.

Dated: August 14, 2012

  
JUDGE OF THE SUPERIOR COURT