

**BEFORE THE
DEPARTMENT OF RESOURCES, RECYCLING & RECOVERY
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF:

Piyin Recycling – Maria Mercado

Address: 2033-B 7th Street, Mendota, California

Type of Entity: Revocation of Probationary Certificate

File No.: IH13-005-BCR

Certificate No.: RC14674

PRECEDENTIAL DECISION No.: 23-08

**Designation of decision as precedential under Government
Code Section 11425.60**

Pursuant to Government Code Section 11425.60, the Department of Resources, Recycling and Recovery hereby designates as precedential its decision, dated July 30, 2013, in the above-referenced action.

This decision is designated precedential effective September 10, 2023,
Sacramento, California.

Dated: September 10, 2023.

As approved by Rachel Machi Wagoner on September 10, 2023,
Department of Resources, Recycling & Recovery.

Date: July 30, 2013
By: Y.C.

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STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

9 In the Matter of:

DRRR Case No. IH13-005

10
11 **The Revocation of a Probationary**
12 **Certification To Operate a Recycling**

DECISION OF HEARING OFFICER

13 **Center:**

14 **Maria Mercado** as Operator of
15 **Piyin Recycling (RC14674)**

16 **IH13-005-BCR**

17 **RESPONDENT.**

18
19 **INTRODUCTION**

20
21 The parties in this matter are the Respondent, MARIA MERCADO
22 (“Respondent”) as operator of PIYIN RECYCLING, a recycling center located at
23 2033–B 7th Street, Mendota CA 93640 (“Piyin”), and the Department of Resources
24 Recycling and Recovery (“Department”) through the Division of Recycling
25 (“Division”). Both Respondent and the Department are represented by counsel.

26 The purpose of this hearing is to review the Division’s revocation of
27 Respondent’s probationary certificate to operate Piyin (RC14674.) Based on the
28 testimony of witnesses, documentary evidence and other matters provided at the
hearing, the Division’s revocation is converted to suspension for thirty (30) days and

1 Respondent is placed on probation for an additional year.

2 **FACTUAL BACKGROUND**

3 Piyin is a family-owned and operated, sole proprietorship that became
4 operational on October 15, 2010. Piyin is managed by Respondent's husband, Jose
5 Guadalupe Diaz. Respondent and her son, Cristian Carbajal, are the other two
6 employees. Piyin's probationary certificate was scheduled to expire on November 30,
7 2012.

8 Prior to the probationary review that is the subject of this proceeding, Piyin had
9 three previous minor violations. On December 23, 2010, a test sale was conducted
10 and Piyin was issued a Notice of Noncompliance for payment of CRV on scrap
11 material. On February 9, 2011, Piyin had an aluminum load denied because it
12 contained previously baled material. And on June 19, 2012, Piyin was issued a Notice
13 of Violation for paying CRV on containers which did not have a refund value.

14 The Division conducted Piyin's probationary review visit on October 17, 2012.
15 Based on the violations discovered, the auditor's initial recommendation was
16 extension of Piyin's probationary certification; however, when the forensic review was
17 completed, there were indications that some of the purchase logs had been falsified;
18 therefore, the recommendation was changed to revocation.

19 By letter dated June 5, 2013, the Division notified Respondent of the revocation
20 of Piyin's certificate, which became effective on July 10, 2013.

21 On June 12, 2013, Respondent's son emailed a conforming request for an
22 informal hearing on her behalf.

23 On Friday, July 19, 2013, on behalf of Carroll Mortensen, Director of the
24 Department, an informal hearing appealing this matter was held at 801 K Street,
25 Sacramento, California, Tamar Dyson, Attorney III, presiding. The Division was
26 represented by Kris Chisholm, Staff Counsel. Jessica Wingert, Associate
27 Management Auditor, and Tim Chester, Document Examiner II, testified as expert
28 witnesses. Jessica Wingert was also a percipient witness as to the specifics of her

1 probationary review visit.

2 Respondent and Piyin were represented by Leonard Lang, owner of Upper
3 Room Consulting. Maria Mercado and her son, Cristian Carbajal, were present as
4 witnesses. Christian Carbajal also served as Respondent's interpreter.

5 **ALLEGED VIOLATIONS**

6 The Division has based its revocation on numerous allegations that
7 Respondent, as operator of Piyin, violated the California Beverage Container
8 Recycling and Litter Reduction Act, Public Resources Code, Division 12.1 (the "Act")
9 and Title 14, Division 2, Chapter 5 of the California Code of Regulations (the
10 "Regulations") by:

- 11 1. Fabricating, altering, falsifying or otherwise preparing Piyin's logs outside
12 the normal course of business in violation of §14538(a)(b), §14533(a) and
13 §14597(a) of the Act and §2090(c) of the Regulations.
- 14 2. Failing to prepare and retain daily summaries of all receipt and log
15 transactions for each shipping report, in violation of §2525(i) of the
16 Regulations.
- 17 3. Failing to accurately base shipping records on receipts and logs, in violation
18 of §2090(c) and §2530(c) of the Regulations.
- 19 4. With respect to purchases of \$100 or more in refund value, failing to include
20 additional identifying information or a statement why such information could
21 not be obtained in violation of §2525(a)(7) of the Regulations.
- 22 5. With respect to receipts and/or logs, failing to obtain both the printed name
23 and signature of the person selling or donating the material or a statement
24 explaining why such information could not be obtained for all transactions,
25 in violation of §2525(a)(6) of the Regulations.
- 26 6. Committing recordkeeping and compliance violations including, but not
27 limited to, the failure to:
28 a. Correct errors on logs by using a single line through the error, in

- 1 violation of §2090(c) of the Regulations;
- 2 b. Post prices for comingled material in violation of §2500(e)(2) of the
- 3 Regulations; and
- 4 c. Include the material type (commodity type) for purchases made in the
- 5 “other commodities” section of the log.

6 For ease of reference, these violations are referenced below as “Counts”.

7

8 **OFFICIAL NOTICE, EVIDENCE PRESENTED**

9 **AND QUALIFICATION OF EXPERTS**

10 At the Division’s request, official notice was taken of the following:

- 11 1. The provisions of the Act and the Regulations; specifically, the provisions
- 12 contained in the Table of Contents of the Division Exhibit Binder.
- 13 2. Division Exhibit 1, Division’s Revocation Letter to Respondent.
- 14 3. Division Exhibit 2, Respondent’s request for informal hearing.
- 15 4. During the course of the hearing, Division Exhibits 3 through 9 were
- 16 admitted with no objection by Respondent.

17 Jessica Wingert and Tim Chester were qualified as experts. Leonard Lang’s

18 objections to Tim Chester’s qualifications as an expert were overruled but noted for

19 the record.

20 **STIPULATIONS**

21 The parties are to be commended for stipulating as follows:

22 As to Count One: The Division stipulated, based on the findings in the

23 Probationary Review Report (Division Exhibit 3) that, but for the falsification findings

24 as a result of the forensic examination, it would not have sought the revocation of

25 Piyin’s certificate.

26 The Division also clarified that the violation statements are not intended to infer

27 that Piyin Recycling never prepared their records properly; only that the alleged

28 recordkeeping violations were found in the documents presented as evidence.

1 **LEGAL ANALYSIS**

2 The above violations alleged by the Division may serve as a basis for discipline
3 under §14591.2(b)(3) of the Act. Such discipline may, at the Department's discretion,
4 include revocation of a probationary certification pursuant to §14541 and
5 §14591.2(c)(1) of the Act. In addition, falsification under §14597(a) of the Act, if
6 established, is considered so egregious that it may serve as an independent basis for
7 revocation of a probationary certification.

8 To prevail, the Department is required to establish these allegations by a
9 preponderance of evidence.¹ Then the burden of proof shifts to Respondent to
10 demonstrate, also by a preponderance of the evidence, that the Department abused
11 its discretion in revoking Respondent's probationary certificate.

12 1. The Department Has Met Its Burden To Establish That Respondent Committed
13 Violations Alleged In Counts Two, Three, Four, Five, and Six (a) through (c).

14 a. Discussion of Respondent's Mitigation Evidence.

15 Because Respondent has admitted to Counts Two, Four, Five and Six (c),
16 discussion of these Counts is limited to evidence presented by Respondent in
17 mitigation.²

18 As to Count Two, failure to prepare and retain daily summaries of all receipt
19 and log transactions for each shipping report in violation of §2525(i) of the
20 Regulations, in mitigation, Leonard Lang, on behalf of Respondent, offered no
21 evidence, other than an oblique observation that daily summaries were not required in
22 the beginning of the Beverage Container Recycling Program and are not necessary
23 for auditing. However, as he himself admitted, daily summaries were required at the

24 _____
25 ¹ Evidence Code §115: "Burden of proof" means the obligation of a party to establish by evidence a requisite
26 degree of belief concerning a fact in the mind of the trier of fact or the court. . . . Except as otherwise
27 provided by law, the burden of proof requires proof by a preponderance of the evidence.

28 Evidence Code §500: Except as otherwise provided by law, a party has the burden of proof as to each fact the
existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.

²It should be noted, however, even absent the stipulations, the Department has established these counts by a
preponderance of testimonial and documentary evidence. (See Division Exhibits 3, 4, 5, 6, 7 and 9) and the
testimony of Jessica Wingert.)

1 time Respondent operated Piyin and are required at present. This is not evidence in
2 mitigation, nor is it otherwise of any assistance to Respondent's case. Therefore, it is
3 found that the Department has established Count Two by a preponderance of the
4 evidence.

5 As to Count Four, failure to include additional identifying information with
6 respect to purchases of \$100 or more in refund value, the Department presented
7 evidence that 10 records containing customer identification numbers were missing the
8 state of issuance of those identifications. (Division Exhibit 5). Respondent testified³
9 that all of the material came from California; however, she was not aware that they
10 were required to add the state of issuance of each of the identifications to the receipt
11 until Leonard Lang informed her during a training session conducted after the
12 revocation.

13 During cross examination, the Department offered Division Exhibit 9 which
14 contained a receipt with the letters "CA" written before the identification number as
15 evidence that Respondent was aware that the state of issuance was required.
16 Respondent stated that the identification number was her handwriting but the "CA"
17 was not.

18 Even assuming Respondent's credibility as to her lack of awareness of this
19 requirement, she is required to operate Piyin in accordance with the Act and the
20 Regulations; ignorance of a requirement does not excuse her failure to comply.
21 Therefore, it is found that the Department has established Count Four by a
22 preponderance of the evidence.

23 As to Count Five, failure to obtain both the printed name and signature of the
24 person selling or donating the material, or a statement explaining why such
25 information could not be obtained, in violation of §2525(a)(6) of the Regulations,
26 Respondent offered in mitigation that a lot of her customers are farm workers from
27 Central America and they do not know how to write. Therefore, they would leave the
28 space blank or enter an "x". She testified that she was told about the requirement by

³ Most of Ms. Mercado's testimony was offered through her son, Mr. Cabajal, acting as interpreter.

1 the Division but no one told her how to correct it. She did not know that she needed to
2 enter an explanation until Leonard Lang informed her during his training.

3 Again, Respondent's credibility as to her lack of awareness of this requirement
4 does not obviate her obligation to operate Piyin in accordance with the Act and the
5 Regulations. Therefore, it is found that the Department has established Count Five
6 by a preponderance of the evidence.

7 As to Count 6(c), violation of §2525(a)(1) for failure to include the material type
8 (commodity type) for purchases made, in mitigation Respondent offered that this
9 usually occurred when there are a lot of customers, especially on weekends and in the
10 afternoons after the farm workers get off work. They only have three people working
11 at Piyin - Respondent, her husband and her son. It is also often hot, so that puts
12 pressure on them to work faster and sometimes they miss entries.

13 Out of 14 records, commodity codes were missing in 16 transactions. On those
14 same records, Respondent apparently had time to fill in the other required entries on
15 the logs. Therefore, this evidence in mitigation is unpersuasive and it is found that the
16 Department has established Count Six (c) by a preponderance of the evidence.

17 **b. The Department has Met Its Burden To Establish That Respondent**
18 **Committed The Violations Alleged In Counts Three, and Six.**

19 Jessica Wingert testified that, while reviewing records during her visit to Piyin
20 on October 17, 2012, she observed several instances of overwriting and missing
21 signatures which merited further investigation. She requested to take the records
22 back to the Division for further review⁴.

23 Part of her review included performing reconciliations for sample records of
24 each material type. This sample reconciliation revealed a total loss to the Beverage
25 Container Fund (the "Fund") of \$780.91. (Division Exhibit 4.) This failure of the
26 receipts and logs to reconcile with the shipping reports constitutes a violation of
27 §2090(c) and §2530(c) of the Regulations. (Count Three.) Respondent agreed that
28 she sometimes did not prepare daily summaries but would prepare her shipping
reports by adding up the weights on an adding machine and sometimes attaching the

⁴ Jessica Wingert received purchase receipts and logs from January 2012 through October 2012.

1 register tape or a Post-It™ to the logs. The Department admitted that some of the
2 logs had separate summaries attached.

3 As for the failure of the purchase logs and receipts to reconcile with the
4 shipping report, Leonard Lang, on behalf of Respondent, offered no controverting
5 evidence. Instead, he attempted to denigrate the Department's evidence by making a
6 series of unfocused arguments unrelated to the issue of the accuracy of the
7 reconciliations or veracity of Jessica Wingert's testimony. For example, on one of the
8 shipping reports Respondent claimed less than the amount supported by Piyin's
9 records. Leonard Lang argued that since they "shorted themselves" there was no
10 threat to the Fund. This analysis ignores that the complete reconciliation results
11 reflected an overpayment of \$780.91.

12 Leonard Lang next attempted to testify that the gradations of the weights on the
13 processor's scales had some impact on the reconciliation. The Department's
14 objection to Leonard Lang's testimony was sustained because he offered no
15 foundational evidence.

16 Leonard Lang also questioned Jessica Wingert about the fact that the Division
17 made a mistake in the Division of Recycling's Integrated Information System (DORIIS)
18 by spelling the name of Respondent's center "Pillyn" instead of "Piyin." (Division
19 Exhibit 4, pg. 2). Jessica Wingert testified that she observed the correct spelling on
20 the sign when she visited the facility; therefore she spelled the name both ways when
21 she prepared the daily summaries for the reconciliations.

22 None of Leonard Lang's cross examination on this issue successfully rebutted
23 the Department's clear evidence of the violation. Accordingly, it is found that the
24 Department has established Count Three by a preponderance of the evidence.

25 Division Exhibit 7, and Jessica Wingert's corresponding testimony, was
26 presented by the Department in support of Count Six (a), failure to correct errors on
27 logs by using a single line through the error (commonly referred to as "overwriting"), in
28 violation of §2090(c) of the Regulations.

29 In Respondent's defense, Leonard Lang engaged in a cross examination of
30 Jessica Wingert so circuitous as to necessitate a request by the Hearing Officer for
31 clarification of the exact nature of his argument. In response, Leonard Lang
32 explained that, in his opinion, §2090(c) of the Regulations, which requires an operator

1 to line through mistakes, does not pertain to the operator's logs and receipts because
2 the heading of §2090 is entitled: "REPORTING NOTICES AND CLAIMS SUBMITTED
3 TO THE DIVISION." His argument is that the requirement of §2090(c) applies only to
4 reports "submitted to the Division" such as DR-6's or DR-14's. Instead, receipts and
5 logs are "records" and, therefore, covered by §2085 of the Regulations because the
6 title of this provision is "RECORDS." Since §2085 does not require lining through
mistakes, Leonard Lang argues that the Piyin's logs did not violate §2090(c).

7 Leonard Lang's reliance upon the literal wording of the headings of the
8 Regulations as determinative of their meaning, while perhaps understandable in a
9 layman, is nonetheless misguided. Headings in a statute or regulation are unofficial and
10 only relevant if the text is ambiguous. *Wasatch Property Management v. Degrade*,
11 (2005) 35 Cal.4th 1111, 1119 ("This court, however, has noted that '[t]itle or chapter
12 headings are unofficial and do not alter the explicit scope, meaning, or intent of a
13 statute) (quoting *DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 602). *Monterey/Santa
14 Cruz County Bldg. and Const. Trades Council v. Cypress Marina Heights LP* (2011) 191
15 Cal.App.4th 1500, 1514 (noting that chapter and article headings are only relevant if the
text of the statute is ambiguous).

16 §2090(c) provides in relevant part, "When using paper forms, all reports,
17 notices, claims and all *applicable supporting data* shall be accurate, complete, and
18 typed or legibly handwritten in English using permanent ink. Errors shall be voided
19 only using a single line through the error." (Emphasis added.) This wording is not
20 ambiguous. Clearly, operator purchase logs and receipts are "supporting data" and, if
21 requested, are required to be submitted to the Department. Operator purchase logs
22 and receipts are also "records" within the meaning of §2085 and, therefore, required to
23 be originals and maintained and located in accordance with that provision.

24 Accordingly, it is found that the Department has established Count 6(a) by a
preponderance of the evidence.

25 With respect to Count 6(b), failure to post prices for comingled material in
26 violation of §2500(e)(2) of the Regulations, this violation was established by Jessica
27 Wingert's probationary review report. Respondent did not deny the violation; however,
28 she testified that they discouraged purchases of co-mingled material and only take it
when the customer insists because it is not as profitable. In those instances she used

1 the prices quoted by the State to pay the customer the appropriate comingled rate. The
2 Department testified that the operators are not required to post prices for any
3 commodity that they are not handling, but if they purchase it, they are required to post
4 the price. Since Respondent admitted that she purchases the materials if the customer
5 insists, she was required to post the prices. Therefore, it is found that the Department
6 has established Count 6(b) by a preponderance of the evidence.

7 2. Analysis of Count One, Violation of §14538(a)(b), §14553(a), and
8 §14597(a).

9 a. What Constitutes Falsification Under the Act?

10 During the hearing, it became clear that Leonard Lang was confused about the
11 elements required to establish falsification under the Act, as alleged in Count One. The
12 entirety of his defense was based upon the premises that “mistakes were made but
13 there was no intentional misconduct,” “no fraudulent intent,” and “no damage to the
14 Fund.” This defense is based on the erroneous conclusion that fraud punishable under
15 the Act is the same as fraud in other contexts. Therefore, it seems prudent at this time
16 to take a moment to discuss the requirements for a finding of a violation of falsification
17 under the Act.

18 A finding of falsification under the Act is different than the definitions of fraud or
19 deceit under Civil Code §1572, §1709 and §1710, which generally apply to contract
20 actions.⁵

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23 ⁵ Civil Code §1572: Actual fraud, within the meaning of this Chapter, consists in any of the following acts,
24 committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or
25 to induce him to enter into the contract: (1) The suggestion, as a fact, of that which is not true, by one
26 who does not believe it to be true; (2) The positive assertion, in a manner not warranted by the information of
27 the person making it, of that which is not true, though he believes it to be true; (3) The suppression of that
28 which is true, by one having knowledge or belief of the fact; (4) A promise made without any intention of
performing it; or, (5) Any other act fitted to deceive.

Civil Code §1709. One who willfully deceives another with intent to induce him to alter his position to his
injury or risk, is liable for any damage which he thereby suffers.

Civil Code §1710. A deceit, within the meaning of the last §, is either:
(1) The suggestion, as a fact, of that which is not true, by one who does not believe it to be true; (2) The
assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;

1 Under the Act, any person participating in conduct “intended to defraud” the Beverage
2 Container Recycling Program is punishable under the Act.⁶ This provision does not
3 require “damage to the Fund,” only “conduct intended to defraud.” Falsifying documents
4 required under the Act or Regulations is, in itself, evidence of the intent to defraud,
5 without any actual intent, and is punishable by revocation.⁷ A fraudulent claim is one
6 based upon falsified documents and submitting such claims is also punishable by
7 revocation.⁸

8 Therefore, under the Act there is a specialized definition of fraud in hearings
9 pursuant to the Act and Regulations which requires falsifying documents or submitting
10 claims based upon falsified documents. So the relevant issue is not whether there was
11 deceitful intent, but rather, was there a document or claim based upon a false
12 document? Black’s Law Dictionary defines “false” as follows:

13
14 **false, adj.** 1. Untrue <a false statement. 2. Deceitful: lying <false witness>3. Not
15 genuine; inauthentic <false coinage>.. What is false can be so by intent, by
16 accident or by mistake. Black’s Law Dictionary, Eighth Edition (2004)
17 Thompson-West. (*Emphasis added*)
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20 (3) The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts
21 which are likely to mislead for want of communication of that fact; or, 4. A promise, made without any
22 intention of performing it.

23 ⁶ §14595: “...It is further intent of the Legislature that any person participating in conduct intended to
24 defraud the state’s beverage container recycling program shall be held accountable for that conduct.”

25 ⁷ 14597(a) “No person shall falsify documents required pursuant to this division or pursuant to regulations
26 adopted by the department, The falsification of these documents is evidence of intent to defraud and for
27 purposes of subdivision (b) of §14591.1 constitutes intentional misconduct. The department may also take
28 disciplinary action pursuant to §14591.2 against a person who engages in falsification including, but not
limited to, revocation of any certificate or registration.

29 ⁸ 14597(b) No person shall submit, or cause to be submitted a fraudulent claim pursuant to this division, A
30 fraudulent claim is a claim based in whole or in part upon false information or falsified documents, Any
31 person who submits a fraudulent claim is subject to the assessment of penalties pursuant to subdivision (b) of
32 §14591,1, The department nay take action for full restitution for a fraudulent claim, pursuant to §14591.4
and nay also take disciplinary action pursuant to 14591.2 including but not limited to revocation of any
certificate or registration.

1 Accordingly, under §14597(a) of the Act, a document that is false, be it by intent,
2 accident or by mistake, is of itself, evidence of intent to defraud. This definition, while
3 harsh, is what governs this proceeding.⁹ Leonard Lang’s protestations to the contrary,
4 the definitions of fraud in the Civil Code, with their requisite malicious intent, simply do
5 not apply in these proceedings.

6
7 b. The Department Established a *Prima Facie* Case Of Falsification Under the
8 Act.

9 In support of Count One, the Department called Tim Chester as an expert and
10 entered the PowerPoint presentation of his forensic (TSS) report into evidence as
11 Division Exhibit 8. Leonard Lang stipulated as to Tim Chester’s forensic findings, but
12 not to his conclusions. Tim Chester’s report outlined five types of anomalies which,
13 taken together, in his expert opinion, demonstrate patterns which typically are
14 indicators of falsified entries. Out of the 31 days of records examined, 18 days of
15 records contained one or more of these anomalies.¹⁰

16 The first type of anomaly was reflected in 13 daily logs. The forensic findings
17 indicated that, except for the last three or four entries, the signatures and entries for
18 material type, weight, and/or amount paid were made using one type of ink. However,
19 these last three or four entries on the log for material type, weight and/or amount paid,
20 and as well as the daily totals for the pages, responded differently to the testing than

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22 ⁹ *Faulder v. Mendocino County Bd. of Supr’s* (2006) 144 Cal.App.4th 1362, 1371 (“Terms defined by the
23 statute in which they are found will be presumed to have been used in the sense of the definition”); *In re*
24 *Monrovia Evening Post* (1926) 199 Cal. 263, 269–270 (“It is well settled that a legislative body has the power
25 within reasonable limitations to prescribe legal definitions of its own language, and when an act passed by it
26 embodies a definition it is binding on the courts.”). *Chen v. Franchise Tax Bd.* (1998) 75 Cal.App.4th 1110,
1123 (“When the language of a statute is defined by reference to a definitional provision, the express
definition should not be disturbed to reach an implicit, not readily apparent, or convoluted result.”). *See*
Carachuri-Rosendo v. Holder (2010) 130 S.Ct. 2577, 2585 (noting that Congress “has the power to give words
unorthodox meanings”).

27 ¹⁰ Tim Chester’ report, which is included in Exhibit 4 as part of Jessica Wingert’s probationary review
28 report, is based upon Piyin’s documents for the month of July, 2012, which he considered to be a
representative month. The Power Point Presentation contained the last page of the daily customer logs for 17
days; however the TSS report found anomalies on 18 days of records.

1 the other entries. Mr. Chester testified that this is an indicator that those entries were
2 written in a different type ink (ink variations). Tim Chester testified that ink variations
3 are typically an indication that the logs had been previously completed with printed
4 name and signatures in one ink, and the last three or four entries and totals were
5 inserted later.¹¹

6 The second type of anomaly was reflected in two entries which contained
7 customer signatures; however, the amount paid was blank. Tim Chester stated that
8 this typically indicates to him that there was no actual customer.

9 The third and fourth type of anomaly were evidenced by four logs with several
10 printed names and signatures inserted at the end of the log and containing no entries
11 for material type, weight and amount paid. On these sheets, the last completed entry
12 contained a large total and there were no daily totals entered at the bottom. Mr.,
13 Chester testified that this was also an indication that these were pre-signed
14 transactions with the amounts and totals to be entered at a later time.

15 The fifth type of anomaly was present on many of the sheets. The signatures
16 appeared to have common authorship which, in Mr. Chester's experience, often
17 indicates non-existent customers.

18 Tim Chester's expert conclusion was that transactions identified as falsified
19 contained ink variations, repetitive patterns and insertion of transactions into
20 previously completed log pages. He testified that none of the anomalies in his
21 representative sample contained alterations with ink variations that changed the
22 entries so as to result in a higher payment to the operator.

23 It is found that the Department, through the expert testimony of Tim Chester,
24 established a prima facie case of falsification under § 14597(a) of the Act which, in
25 itself, would support revocation of Respondent's certification.

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¹¹ These later-added entries are typically used to substantiate claims for non-CRV, or out-of-state materials to the processor, resulting in a fraudulent payment to the operator.

1 c. The Respondent Provided Sufficient Rebuttal Evidence That The
2 Transactions On Which Count One Is Based Were Not False.

3 Now that the Department has established falsification, the burden shifts to
4 Respondent to prove by a preponderance of the evidence that there was no
5 falsification; i.e. that the entries were not false. It should be noted that Respondent
6 admitted that the log pages were not properly completed. However, it is found that
7 she offered sufficient factual explanations as to why the anomalies were not false.

8 (1) Ink Variations: Respondent testified that when it became busy at the end of
9 the day she would relieve her husband at the center while he went to the processor.
10 The customers signed the log with the pen attached to the clipboard¹² and she
11 usually used the pen in her purse to enter the material type, weight and amount paid.
12 She testified that, on page 51 of Division Exhibit 8, the writing for those entries
13 indicating ink variations was her handwriting. Either she or her husband would finish
14 the totals at the end of the page. On cross-examination Tim Chester admitted that the
15 forensic testing used in this case could not identify for certain whether an entry had
16 been made at the time of purchase or at some later time.

17 Respondent's testimony also seems credible because Tim Chester did not find
18 any evidence that alterations were made to increase the amount paid to Respondent.
19 In fact, the entries were, in many instances, for insignificant amounts. Several were
20 for as little as 57 cents. That militates in favor of them being actual entries from actual
21 customers.

22 (2) Two signatures with no total amount paid. Respondent did not offer any
23 testimony in explanation of this anomaly. However, considering that there were only
24 two of these transactions, and considering further Respondent's testimony as to the
25 type of customers and working conditions at Piyin, it seems reasonable that an actual
26 customer would sign a log containing a blank as to the amount paid as long as the
27

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¹² Jessica Wingert's report verified that there was one pen attached to the clipboard.

1 customer received payment for the recyclables sold.

2 (3) Customer signatures with missing information on material weight, type and
3 amount paid and (4) missing daily totals. Respondent testified that the anomalies
4 beginning on page 43 of Division Exhibit 8 happened when three to four people in
5 one vehicle brought their material to the Piyin together. Although the material was
6 weighed separately, the customers did not tell them which bag belonged to each
7 person. Each customer would sign the log and the operator would pay one person
8 who would divide the money between the others. This usually happened at the end of
9 the day when the field workers would get off work. They had one car so the one with
10 the car would drive everyone to the center.

11 Upon examination, the amounts paid for the last completed entry on the logs
12 were unusually high in comparison to the other entries in the forensic sample (\$95,
13 \$85, \$152.21 and \$75.15.) Also worthy of note is the fact that these logs were
14 completed in July 2012 and Jessica Wingert requested them in October 2012. If they
15 were false signatures, why hadn't Respondent entered the additional entries which
16 would allow Piyin to receive payment? These facts tend to support Respondent's
17 testimony that there were multiple customers for each of those entries.

18 These same sheets contained the Division's evidence of the fourth anomaly, no
19 daily summaries reflected at the end of the log. As discussed with respect to Count
20 Two, Respondent testified that she would add up the totals later using an adding
21 machine and attach the tape or a Post-It™ to the log for the day. These are the totals
22 she would use to prepare her shipping reports. As noted earlier, the Department
23 acknowledged that some of the logs contained daily summaries on separate pieces of
24 paper.

25 (5) As for the fifth anomaly, Tim Chester testified that he saw evidence of
26 common authorship throughout his examination of the records. Respondent did not
27 provide any rebuttal evidence on this issue; however, considering the above findings
28 as to the other anomalies, is found that this ground alone is insufficient to constitute a

1 preponderance of evidence of falsification to support Count One.

2 Based on the foregoing, it is found that the Department has established a *prima*
3 *facie* case for revocation based upon Tim Chester's expert opinion that the documents
4 he examined indicated falsification under the Act. It is further found that the
5 underlying factual basis for that opinion has been refuted by a preponderance of the
6 percipient witness testimony of Respondent and Cristian Carbajal, who proffered
7 credible explanations for the anomalies. These explanations reflect an operator who
8 failed to comply with the Act and the Regulations but whose conduct does not
9 demonstrate falsification of the documents forming the basis for Tim Chester's TSS
10 report.

11 This finding in no way denigrates Tim Chester's expert opinion in this case. His
12 testimony that, based on his many years of forensic experience, operator logs such as
13 the 18 he examined typically indicate a pattern of falsification, is extremely credible.
14 However, as he admitted, he did not and indeed, could not, know for certain what
15 actually occurred at the center.

16 Because experts typically have no personal knowledge of the facts of the case,
17 it is axiomatic that they assume facts in the course of reaching their opinions.¹³ An
18 expert can be barred if his or her assumed facts are completely contrary to anything
19 the evidence could possibly support. Expert testimony can be controverted by lay
20 testimony or other evidence establishing inconsistent facts.¹⁴ Expert evidence based
21 on possibilities or erroneous factual assumptions may have less weight than that of
22 other evidence touching on actual physical facts and conditions.¹⁵ As trier of fact the
23 Hearing Officer is the exclusive judge of credibility in this proceeding and may reject
24

25 _____
26 ¹³ *Arterberry v. San Diego Gas & Electric Company* (SDGEC) 2007 WL 1176015 at 4(Cal.P.U.C.).

27 ¹⁴ *Helbing v. Helbing*, 89 Cal.App.2d 224, 200 P.2d 560 (1st Dist. 1948); *Cloud v. Market St. Ry. Co.*,
74 Cal.App.2d 92, 168 P.2d 191 (1st Dist. 1946)

28 ¹⁵ *Northern California Power Co. v. Waller*, 174 Cal. 377, 163 P.214 (1917); *Hagy v. Allied Chemical*
& *Dye Corp.*, 122 Cal.App.2d 361, 165 P.2d 86 (3d. Dist. 1919).

1 expert testimony in favor of nonexpert testimony or other evidence.¹⁶

2 CONCLUSION

3 In summary, Tim Chester's conclusion of falsification was rebutted by a
4 preponderance of evidence controverting the facts underlying his opinion. These facts
5 were presented by a percipient witness who could identify her signature and explain
6 the conditions surrounding the preparation of the logs. As to the logs involving ink
7 variations, many of the amounts added were smaller sums which would not have
8 resulted in much additional revenue. This supports Respondent's testimony that she
9 made these entries at the end of the day, using a pen from her purse, while the
10 customers used the pen attached to the log. The Act and the Regulations do not
11 require all log entries to be completed with the same pen.

12 As to the logs containing customer signatures with no other information, the
13 amount paid for the last completed transaction was unusually large, and no entries
14 were made which would allow additional payments from the processor. This supports
15 Respondent's testimony that those entries represented one large payment to multiple
16 customers. Should the material weight and amounts have been broken down on the
17 log and allocated to each customer? Certainly. Does that mean that they were false
18 entries? Respondent provided sufficient evidence that they were not.

19 This conclusion is also compelled by the unique circumstances of this case.
20 Had the records supporting Tim Chester's report demonstrated just one instance of an
21 alteration in the record which changed the amount of CRV paid to Respondent, the
22 revocation would have been upheld. But Tim Chester testified that there were no
23 such alterations in his representative sample. Had the reconciliations performed by
24 Jessica Wingert included the documents tested by Tim Chester and demonstrated a
25 variance in the amount claimed and the amount paid to Respondent, the revocation
26

27 _____
28 ¹⁶ *Lauderdale Associates v. Department of Health Services*, 67 Cal.App. 4th 117, 78 Cal.Rptr.2d 802
(1st Dist. 1998)

1 would have been upheld. And had the Division not already determined, prior to
2 receiving the forensic report, that the non-falsification violations only merited additional
3 probation, the revocation would have been upheld. This decision today simply
4 reinstates the Division's initial determination.

5 It should also be clarified that these findings in no way exonerate Respondent.
6 Certification is a privilege, not a vested right or interest. §14541.5 of the Act.
7 Respondent has admitted, and the Department has established, that her operational
8 and recordkeeping practices demonstrate an abject failure to comply with the Act and
9 Regulations. For that Respondent deserves to be disciplined.

10 Accordingly, as discipline for Respondent's violations of Counts Two through
11 Six, I am converting the Division's revocation of Piyin's certification to suspension for a
12 period of thirty (30) days, with credit for the time Piyin has already been closed. I am
13 also imposing an additional one year period of probation to afford Respondent the
14 opportunity to bring her operations and recordkeeping into compliance and prove that
15 she merits certification. After this proceeding Respondent has no excuse should Piyin
16 fail its next probationary review.

17 In my decision I have given no weight to the arguments presented by
18 Respondent's representative, Leonard Lang. For the most part, I found the majority of
19 Leonard Lang's questions, arguments, and defenses to be spurious, lacking any legal
20 foundation and totally irrelevant. Mr. Lang's misinterpretations of the Act and
21 Regulations, laborious discourses into aspects of his past history and experience
22 with the Beverage Container Program that have little relevance today, allegations that
23 the Department has been enforcing underground regulations, and the like were
24 distracting and unnecessarily time consuming. Respondent's credible testimony was
25 all that was necessary to reach this result in this case.

1 **DECISION**

2 In light of the foregoing, based upon the entire record of this proceeding, and the
3 matters officially noticed and stipulated, I make the following orders with respect to the
4 violations listed in Counts Two through Six, committed by Respondent as operator of
5 Piyin and proven by the Division by a preponderance of evidence:

6 The revocation of Piyin Recycling's certification (RC14674) is converted to a
7 thirty (30) day suspension commencing on July 10, 2013 and ending on August 10,
8 2013; and.

9 The probationary certification of Piyin Recycling is extended for a year, from
10 August 11, 2013 through August 11, 2014, subject to reasonable conditions to be
11 imposed at the complete discretion of the Division.

12
13 **IT IS SO ORDERED**

14
15
16 July 30, 2013
Date

17 
TAMAR DYSON
Senior Staff Counsel