

11-1-01

AT

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

FILED

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DIVISION OF
ADMINISTRATIVE
HEARINGS

SPYKE'S GROVE INC., D/B/A FRESH
FRUIT EXPRESS, EMERALD ESTATE,
NATURE'S CLASSIC,

Petitioner,

DOAH CASE NO.: 01-2649A

v.

CARLYN'S and WESTERN SURETY COMPANY

mmp - CWS

Co-Respondents,

FINAL ORDER

THIS CAUSE, arising under Chapter 601, Florida Statutes, came before the
Commissioner of Agriculture of the State of Florida for consideration and final agency action.

PROCEDURAL BACKGROUND

On or about April 30, 2001, the Petitioner, a dealer in citrus fruit products, timely filed an
administrative complaint pursuant to Section 601.66, Florida Statutes, against Co-Respondent,
Carlyn R. Kulick, d/b/a Carlyn's ("Kulick or Carlyn's") a licensed dealer in citrus fruit products.
The Respondent's license for the relevant time period was supported by a bond issued by
Western Surety Company, Co-Respondent, as required by Section 601.61, Florida Statutes.
Petitioner asserted a claim in the amount of \$1,335.22, and Respondent timely filed an answer
denying the claim. Pursuant to Section 601.66, Florida Statutes, the Department forwarded the
matter to the Division of Administrative Hearings for a hearing in accordance with Section
120.57, Florida Statutes. A formal hearing was conducted in this cause on September 19,

2001, before Administrative Law Judge, Michael M. Parrish. The Administrative Law Judge issued a Recommended Order on November 1, 2001, a copy of which is attached as Exhibit "A." Only the Respondent filed written exceptions.

The issue in this cause concerns whether Respondent is indebted to the Petitioner as stated in the complaint filed by Petitioner and, if so, in what amount.

STANDARD OF REVIEW

Section 120.57(1)(l) establishes the standard for review of a Recommended

Order:

(l) The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. . . . The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. . . .

An agency cannot substitute its view for that of the hearing officer if the recommended order and the findings thereunder are supported by substantial competent evidence. School Bd. of Leon County v. Hargis, 400 So.2d 103 (Fla. 1st DCA 1981); International Brotherhood of Painters and Allied Trades, AFL-CIO, Local 1010 v. Anderson, 401 So.2d 824 (Fla. 5th DCA 1981).

RULINGS ON RESPONDENT'S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE'S FINDINGS OF FACT

A. Respondent's exception to that portion of the FINDINGS OF FACT that determined the business relationship between the parties, is rejected because no transcript of the proceedings was provided by the Respondent as required by Paragraph 2 of the letter sent to the respondent on September 26, 2001. The Department is not allowed to reject or modify the findings of fact unless the agency first determines from a review of the entire record that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.

B. Respondent's exception to the portion of the paragraph 8 of the Recommended Order, is rejected because no transcript of the proceedings was provided by the Respondent as required by Paragraph 2 of the letter sent to the respondent on September 26, 2001. The Department is not allowed to reject or modify the findings of fact unless the agency first determines from a review of the entire record that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.

C. Respondent's exception to that portion of the findings of fact regarding the shipping of the fruit is rejected because no transcript of the proceedings was provided by the Respondent as required by Paragraph 2 of the letter sent to the respondent on September 26, 2001. The Department is not allowed to reject or modify the findings of fact unless the agency first determines from a review of the entire record that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not

comply with the essential requirements of law.

D. Respondent's exception to that portion of the findings of fact that referred to the lack of communication is rejected because no transcript of the proceedings was provided by the Respondent as required by Paragraph 2 of the letter sent to the respondent on September 26, 2001. The Department is not allowed to reject or modify the findings of fact unless the agency first determines from a review of the entire record that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.

Upon consideration of the foregoing and the evidence submitted, and being otherwise advised in the premises, it is hereby **ORDERED AND ADJUDGED:**

- I. The Hearing Officer's Recommended Order is adopted in its entirety.
- II. The Hearing Officer's Recommendation -- that the Department enter a final order requiring Respondent to remit \$1,069.78 to the Petitioner -- is **ACCEPTED.**
- III. The Hearing Officer's Recommendation that **CARLYN R. KULICK, D/B/A CARLYN'S** shall pay Petitioner, **SPYKE'S GROVE INC., D/B/A FRESH FRUIT EXPRESS, EMERALD ESTATE, NATURE'S CLASSIC**, within thirty (30) days after this Order becomes final -- is **ACCEPTED.**
- IV. This Order further specifies that in the event Respondent fails to pay Petitioner \$1,069.78 within thirty (30) days of the Final Order, **WESTERN SURETY COMPANY**, as Surety for Respondent is hereby ordered to provide payment under the conditions and provisions of the bond to **CHARLES H. BRONSON, COMMISSIONER OF AGRICULTURE AND CONSUMER SERVICES**, as Oblige on the Bond -- is

ACCEPTED.

Should responsibility for payment evolve to the Surety, WESTERN SURETY COMPANY will be notified by this office.

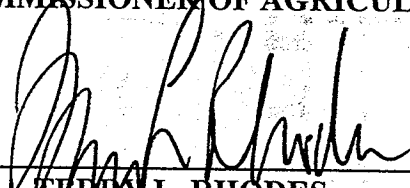
NOTICE

Any party to these proceedings adversely affected by this Final Order is entitled to seek review of the order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedure. Review proceedings must be instituted by filing a petition or notice of appeal with the Clerk, Room 515 May Building, Tallahassee, Florida 32399-0800, and a copy of the same with the appropriate District Court of Appeal within thirty (30) days of rendition of this Order.

DONE AND ORDERED this 9th day of January, 2002.

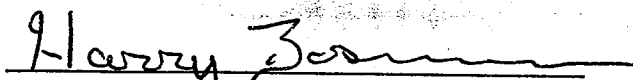
CHARLES H. BRONSON
COMMISSIONER OF AGRICULTURE

BY:



TERRY L. RHODES
Assistant Commissioner of Agriculture

Filed with the Agency Clerk this 9th day of January, 2002.


Agency Clerk

Copies Furnisher:

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