

11-29-01

STATE OF FLORIDA  
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

FILED  
MAY 29 AM 10:56  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

SPYKE'S GROVE, INC., d/b/a  
FRESH FRUIT EXPRESS, EMERAL ESTATE,  
NATURE'S CLASSIC

AT

Petitioner,

FDACS Case No. 01-2920A

v.

CLARK'S COUNTRY FARMERS MARKET  
INC., AND CONTRACTORS BONDING &  
INSURANCE COMPANY,

JVL-CWS

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 April 30, 2001, Petitioner, Spyke's Grove, Inc. ("Spyke's Grove"), a citrus dealer, timely filed an administrative complaint pursuant to Section 601.66, Florida Statutes, against Respondent, Clark's Country Farmers Market, Inc. ("Clark's Market"), a citrus dealer. The Respondent's license for the relevant time period was supported by a bond issued by CONTRACTORS BONDING & INSURANCE COMPANY, Respondent, as required by Section 601.66, Florida Statutes. Petitioner asserted a claim in the amount of \$4,803.55 and Respondent timely filed an answer denying the claim. Pursuant to Section 601.66(4), Florida Statutes, the Department assigned the matter to the Department of Administrative Hearings for a hearing in accordance with Section 120.157(1)(a), Florida Statutes. The Respondent filed a Motion to Compel on October 18, 2001. The Motion was heard on October 22, 2001, before

Administrative Law Judge, John G. Van Laningham. The Administrative Law Judge issued an order on October 23, 2001, granting the Motion to Compel in part and denying as to certain documents not relevant to the proceedings. Administrative Law Judge Van Laningham convened the hearing on October 25, 2001. The Administrative Law Judge Van Laningham issued a Recommended Order on November 29, 2001. A copy of the Recommended Order is attached hereto as "Exhibit A". The Respondent filed written exceptions.

### 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 there under are supported by substantial competent evidence. *School Bd. of Leon County v. Hargis*, 400 So.2d 103 (Fla. 1st DCA 1981); *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**

1. Respondent's third exception appears to assert that duplicate billing was the responsibility of the Petitioner and that the Respondent should not be responsible to pay for the duplicate orders. The Administrative Law Judge found that the Petitioner, pursuant to the course of dealing between these parties, filled orders that were not affirmatively identified prior to the scheduled shipment date. The finding was based on competent substantial evidence. Transcript P. 96 l. 3-7 The Respondent's exception is **REJECTED**.
2. Respondent's fourth exception appears to assert that the Petitioner's business did not reopen for business on December 14, 1999. The Administrative Law Judge in Paragraph 6 of the Recommended Order stated that the firm's telephones were operational on December 14, 1999, and that activities related to shipping resumed on December 17, 1999. These facts are supported by competent substantial evidence. Transcript P. 21 l. 12-15 P 180 l. 13-16 P. 183 l 4-9. The Respondent's exception is **REJECTED**.
3. The Respondent's seventh exception argues that the Respondent did not ship the gift packages. The finding of the court is supported by substantial competent evidence. Transcript P. 171, l. 17-18. The Respondents exception is **REJECTED**.
4. The Respondent's eighth exception related to invoices that the Petitioner withdrew from the complaint and were not litigated. The Court entered no findings regarding the invoices cited by the Respondent. Transcript P. 98, l. 24-25 P. 99, l. 1. The Respondent's exception is **REJECTED**.
5. The Respondent's ninth exception states that the Respondent does not believe she owes

the Petitioner any money. The Respondent does not cite any evidence or testimony to support her allegation. The Administrative Law Judge's finding is supported by substantial competent evidence. Exhibit 32.1-32.7 The Respondent's exception is **REJECTED**.

**RULINGS ON RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW  
JUDGE'S CONCLUSIONS OF LAW**

1. Respondent's fifth exception appears to be related to whether the Petitioner had the duty to notify the Respondent of the fire at the Petitioner's packinghouse. The Administrative Law Judge found the Petitioner did not have the duty and therefore did not materially breach the contract. The Respondent's argument is rejected for the reasons stated by the Administrative Law Judge. Recommended Order Page 6, para. 11, 19 and 37. Transcript P.171. 15-18. The Respondent's exception is **REJECTED**.

2. Respondent's sixth exception regarding the Respondent's action does not contradict the testimony that the Respondent's witness gave at the hearing and is supported by substantial competent evidence. Transcript P. 213, l. 22-25 and P. 214, l. 1-9 Mr. Ball's letter was accepted into evidence and considered by the Court. However, the court found the evidence cited by the Respondent was not corroborated by non-hearsay evidence, relevant, or of probative value. The Administrative Law Judge stated he would weigh the evidence according to its worth in the totality of evidence. Transcript P. 261, l. 13 – 262, l.1 The Administrative Law Judge has the duty to determine the weight given evidence. Strickland v. Florida A&M University, 799 So.2d 276 (2001). The Respondent's exception is **REJECTED**.

3. The Respondent's tenth exception relates to the terms of the contract. The Respondent argues that the contract was not for the sale of goods and that the contract should have included

the specific responsibility of the Petitioner to deliver the gift fruit in a specific condition and given time. The Respondent's exception is **REJECTED** for the reasons stated by the Administrative Law Judge. Recommended Order P. 14, para. 32.

4. Respondent's first exception appears to assert that the Administrative Law Judge's determination that the inquiry logs were hearsay was in error. The Administrative Judge admitted the inquiry logs into evidence to the extent the documents corroborated actions taken by the Respondent and constituted business records of those actions. Transcript. P. 14, 20-25 and P. 15, 1-9 Barfield v. Department of Health, Board of Dentistry, 27 Fla. L. Weekly D 24a (Fla. 1<sup>st</sup> DCA Dec. 19, 2001. The Respondent's exception is **REJECTED**.

5. Respondent's second exception appears to assert that the Petitioner did not show proof of delivery of the products and suggests review of Respondent's exhibit 7 and the contract between the Respondent and Respondent's customers. The Administrative Law Judge found in the Recommended Order, Paragraphs 7, 32 and 33, that the oral contract between the Petitioner and Respondent created no duty on behalf of the Petitioner to deliver the gift fruit into the hands of the donees and bear the risk of loss until such tender of delivery. The Respondent's exception is **REJECTED** for the reasons stated by the Administrative Law Judge.

**ORDERED AND ADJUDGED:**

I. The Administrative Law Judge's Findings of Fact are adopted in toto as this Department's Findings of Fact.

II. The Administrative Law Judge's Conclusions of Law are adopted in toto as this Department's Conclusions of Law.

III. Respondent, Clark's Country Farmers Market, Inc., pay the principle sum of

\$3,333.38 plus 10% interest from February 8, 1999 until December 31, 2000, in the amount of \$298.66 and 11% interest from January 1, 2001 until November 30, 2001, in the amount of \$335.56 and interest of \$1 per day from December 1, 2001, until the date of this Final Order.

This Order is final and effective on the date filed with the Clerk of the Department.

IV. In the event Respondent does not comply with this Final Order, Contractors Bonding & Insurance Company, Co-Respondent, is hereby ordered to provide payment under the conditions and provisions of the bond to CHARLES H. BRONSON, Commission of Agriculture and Consumer Services, as Oblige on the Bond. Should responsibility for payment evolve to the Co-Respondent, Contractors Bonding & Insurance Company will be notified by this office. This Final Order is effective on the date filed with the Clerk of the Department

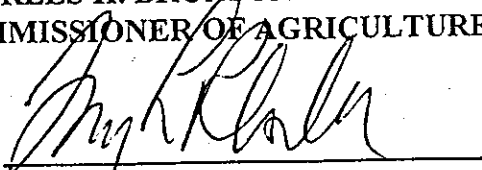
#### NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Final Order is entitled to seek review of this order pursuant to Section 120.68, Florida Statutes (2001), and Rule 9.110, Florida Rules of Appellate Procedure. Review proceedings must be initiated by filing a petition for review or notice of appeal with the Agency Clerk of the Florida Department of Agriculture and Consumer Services, Room 509, Mayo Building, Tallahassee, Florida 32399-0800. A copy of the petition for review or notice of appeal, accompanied by the filing fees prescribed by law must also be filed with the appropriate District Court of Appeal within thirty (30) days of the date this Order was filed with the Agency Clerk.

DONE AND ORDERED this 28<sup>th</sup> day of May, 2002.

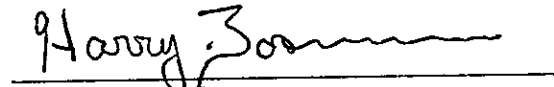
CHARLES H. BRONSON  
COMMISSIONER OF AGRICULTURE

BY:



TERRY L. RHODES  
ASSISTANT COMMISSIONER

Filed with the Agency Clerk this 28<sup>th</sup> day of May, 2002.

  
Agency Clerk

Copy furnished to:

John Van Laningham  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060

Brenda D. Hyatt, Bureau Chief  
Bureau of License and Bond  
407 S. Calhoun Street  
The Mayo Building, 2<sup>nd</sup> Floor  
Tallahassee, Florida 32399

Barbara Spiece, President  
Fresh Fruit Express, Emerald  
Spyke's Grove, Inc.  
7250 Griffin Road  
Davie, Florida 33314

Denise B. Clark  
Clark's Country Farmers Market, Inc.  
18440 U.S. Highway 19, North  
Hudson, Florida 34667

Contractors Bonding & Insurance Co.  
Post Office Box 9271  
Seattle, Washington 98109