

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROOKS TROPICALS, INC.,)
)
 Petitioner,)
)
 vs.) Case No. 01-3320
)
 SMALL INDIAN CORPORATION and)
 CUMBERLAND CASUALTY AND)
 SURETY COMPANY,)
)
 Respondents.)
)
 _____)
 BROOKS TROPICALS, INC.,)
)
 Petitioner,)
)
 vs.) Case No. 01-3321
)
 SMALL INDIAN CORPORATION and)
 CUMBERLAND CASUALTY AND)
 SURETY COMPANY,)
)
 Respondents.)
 _____)

RECOMMENDED ORDER

The parties presented these cases by Stipulation to Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Carolann Swanson
General Counsel
Brooks Tropical, Inc.
Post Office Box 900160
Homestead, Florida 33090

For Respondent Small Indian Corporation:

W. Sam Holland
Hinshaw and Culbertson
200 South Biscayne Boulevard
Suite 800
First Union Financial Center
Miami, Florida 33131

For Respondent Cumberland Casualty and Surety Company:

no appearance

STATEMENT OF THE ISSUE

The issue is whether, as provided by the relevant statutes, Respondents owe Petitioner money for the sale of agricultural products.

PRELIMINARY STATEMENT

By Amended Complaint served June 14, 2001, Petitioner alleged that Respondents owed it \$1190 for the sale of avocados on November 25, 2001. This complaint commenced DOAH Case No. 01-3320.

By Amended Complaint served June 14, 2001, Petitioner alleged that Respondents owed it \$54,519.25 for the sale of avocados, limes, and papayas from November 28, 2000, through February 5, 2001. This complaint commenced DOAH Case No. 01-3321.

By responsive pleadings served July 18, 2001, Respondent Small Indian Corporation requested a formal hearing.

During the prehearing conference conducted by telephone on October 11, 2001, the parties agreed to present the case by stipulation. Accordingly, on October 12, 2001, the parties filed a Stipulation, which is the source of all of the factual findings contained in this Recommended Order.

FINDINGS OF FACT

1. At all material times, Petitioner, which is located in Homestead, Florida, has been a producer of agricultural products. At all material times, Respondent Small Indian Corporation (Respondent) has been a dealer in agricultural products.

2. Respondent Cumberland Casualty and Surety Company, as surety (Surety), issued a bond to Respondent, as principal, in the amount of \$27,600 for the period, November 26, 1999, through November 25, 2000. Surety also issued a bond to Respondent in the same amount for the following bond year.

3. During the periods covered by this case, Petitioner sold to Respondent numerous avocados, limes, and papayas. The shipments were timely and conformed in quality and quantity to the orders. Petitioner timely issued invoices to Respondent for the sales of these agricultural products, but Respondent never paid any portion of these invoices.

4. On May 25, 2001, Petitioner filed a complaint with the Department of Agriculture and Consumer Services (Department) for the period from November 22, 2000, through February 5, 2001.

5. The Department required Petitioner to file separate complaints by bond year. Thus, Petitioner filed an amended complaint for \$1190 for the bond year ending November 25, 2000, and an amended complaint for \$54,591.25 for the bond year ending November 25, 2001. The date of the lone invoice within the bond year ending November 25, 2000, was November 22, 2000. The amended complaint concerning the bond year ending November 25, 2000, commenced DOAH Case No. 01-3320, and the amended complaint concerning the bond year ending November 25, 2001, commenced DOAH Case No. 01-3321. The allegations as to dates and amounts of invoices are all correct.

CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the subject matter. Sections 120.57(1) and 604.21(6), Florida Statutes.

7. Section 604.21(1), Florida Statutes requires that all complaints against agricultural dealers, such as Respondent, and their sureties, such as Surety, must be filed within six months from the date of the sale.

8. The complaint filed on May 25, 2001, was timely as to all invoices except the sole invoice that is the subject of DOAH

Case No. 01-3320 and totals \$1190. The six-month filing deadline for this invoice expired on May 22, 2001. Thus, Petitioner has proved its entitlement only to the \$54,591.25 that is the total of the invoices that are the subject of DOAH Case No. 01-3321.

RECOMMENDATION

It is

RECOMMENDED that the Department of Agriculture and Consumer Services enter a final order dismissing the amended complaint in DOAH Case No. 01-3320 and finding Respondent liable to Petitioner in DOAH Case No. 01-3321 for the sum of \$54,591.25.

DONE AND ENTERED this 5th day of November, 2001, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of November, 2001.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order must be filed with the agency that will issue the final order in this case.