

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WILLIAM E. GABLE, JR., d/b/a)
GABLE ENTERPRISES,)
)
Petitioner,)
)
vs.) Case No. 02-1443
)
YNNOR DISTRIBUTION GROUP, INC.,)
AND FIDELITY DEPOSIT COMPANY OF)
MARYLAND,)
)
Respondents.)
_____)

RECOMMENDED ORDER

A formal hearing was held pursuant to notice in the above-styled case by Stephen F. Dean, assigned Administrative Law Judge of the Division of Administrative Hearings, on June 21, 2002, in Tallahassee, Florida.

APPEARANCES

For Petitioner: William E. Gable, Jr.
Gable Enterprises
6511 Bradley Road
Marianna, Florida 32448

For Respondent: No appearance

STATEMENT OF THE ISSUES

Does Respondent, Ynnor Distribution Group, Inc., owe Petitioner, William E. Gable, Jr., d/b/a Gable Enterprises, \$13,430.02 for the sale of four shipments of watermelons?

PRELIMINARY STATEMENT

Petitioner filed a Producer Complaint with the Department of Agriculture and Consumer Services (Department) alleging that Ynnor Distribution Group, Inc. (Ynnor), had failed to pay for four shipments of watermelons sold to Ynnor. The Department gave notice to Ynnor and Fidelity Deposit Company of Maryland, as surety, of the complaint and amount.

Ynnor filed a response in which it acknowledged the debt of \$13,430.02, but asserts William E. Gable, Jr., owed Ynnor \$3,117.18. Ynnor disputes the watermelons were from Florida.

Mr. Gable responded to Ynnor's counterclaims. Mr. Gable demanded strict proof of the \$3,117.18 claimed by Ynnor.

Because of the factual dispute, the Department forwarded the case to the Division of Administrative Hearings on or about April 9, 2002. An Initial Order was sent to the parties on April 15, 2002. Thereafter, the case was noticed for hearing on June 21, 2002, and heard, as noticed. At hearing, only Mr. Gable appeared.

Mr. Gable testified and introduced his records as Exhibits numbered 1, 2, 3, and 4. Mr. Gable introduced his records of account as a summary of his testimony regarding the amounts owed, as reflected in Exhibits numbered 1, 2, 3 and 4. Subsequent to the hearing, Petitioner did not file any proposed findings, but did send in two letters reflecting offers by Ynnor

to settle for \$4,500.00, which Petitioner rejected. There was no further action on the account.

FINDINGS OF FACT

1. On July 17, 2001, Mr. Gable sold Ynnor 42,330 pounds of watermelon for \$3,128.19. (Exhibit 1)

2. On July 17, 2001, Mr. Gable sold Ynnor 42,740 pounds of watermelon for \$3,150.70. (Exhibit 2)

3. On July 19, 2001, Mr. Gable sold Ynnor 46,283 pounds of watermelon for \$4,165.47. (Exhibit 3)

4. On July 24, 2001, Mr. Gable sold Ynnor 44,540 pounds of watermelon for \$2,985.70. (Exhibit 4)

5. The total amount Ynnor owed Mr. Gable was \$13,430.02. (Exhibit 4)

6. There was no payment on the account by Ynnor.

7. Mr. Gable called the recipient of the watermelons. They were all received in good shape and payment for the watermelons was made by the recipient to Ynnor.

8. Ynnor did not attend the hearing. No evidence was received on the amount Ynnor alleged as a counterclaim.

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the parties and subject matter pursuant to Sections 120.57 and 604.21, Florida Statutes.

10. Petitioner, in this cause, introduced testimony and the records of four transactions with Ynnor establishing that Ynnor owed Petitioner a total of \$13,430.02. Ynnor did not appear and presented no evidence on the basis and amount of the counterclaim. Not only did Petitioner prove the amount of the claim, but Ynnor admitted the indebtedness in that amount in its pleadings.

11. Section 604.21, Florida Statutes, provides:

(1) Any person claiming herself or himself to be damaged by any breach of the conditions of a bond or certificate of deposit assignment or agreement given by a licensed dealer in agricultural products as hereinbefore provided may enter complaint thereof against the dealer and against the surety, if any, to the department, which complaint shall be a written statement of the facts constituting the complaint. Such complaint shall be filed within 6 months from the date of sale in instances involving direct sales or from the date on which the agricultural product was received by the dealer in agricultural products, as agent, to be sold for the producer. No complaint shall be filed pursuant to this section unless the transactions involved total at least \$250 and occurred in a single license year.

(2) Upon the filing of such complaint in the manner herein provided, the department shall investigate the matters complained of; whereupon, if, in the opinion of the department, the facts contained in the complaint warrant such action, the department shall send to the dealer in question, by certified mail, notice of the filing of the complaint. Such notice shall be accompanied by a true copy of the complaint. A copy of such notice and

complaint shall also be sent to the surety company, if any, that provided the bond for the dealer, which surety company shall become party to the action. Such notice of the complaint shall inform the dealer of a reasonable time within which to answer the complaint by advising the department in writing that the allegations in the complaint are admitted or denied or that the complaint has been satisfied. Such notice shall also inform the dealer and the surety, if any, of a right to a hearing on the complaint, if requested.

(3) If the dealer admits the allegations of the complaint but fails to satisfy same within the time fixed by the department, the department shall thereupon order payment by the dealer of the amount found owed.

(4) If the dealer, in her or his answer, denies the allegations of the complaint and waives a hearing, the department may order a hearing or enter an order based on the facts and circumstances set forth in the complaint and the respondent's answer thereto. If the department determines the complaint has not been established, the order shall, among other things, dismiss the proceedings. If the department determines that the allegations of the complaint have been established, it shall enter its findings of fact accordingly and thereupon enter its order adjudicating the amount of indebtedness due to be paid by the dealer to the complainant.

(5) Any order entered by the department pursuant to this section shall become final 14 days after issue if neither the department nor a party whose material interest is affected by the order requests a hearing on the order within 14 days following the date of issue.

(6) Any party whose material interest is affected by a proceeding pursuant to this section shall be granted a hearing upon request. Such hearing shall be conducted pursuant to chapter 120. The order of the department, when issued pursuant to the

recommended order of an administrative law judge, shall be final upon issuance.

(7) Any indebtedness set forth in a departmental order against a dealer shall be paid by the dealer within 15 days after such order becomes final.

(8) Upon the failure by a dealer to comply with an order of the department directing payment, the department shall, in instances involving bonds, call upon the surety company to pay over to the department out of the bond posted by the surety for such dealer or, in instances involving certificates of deposit, call upon the financial institution issuing such certificate to pay over to the department out of the certificate under the conditions of the assignment or agreement, the amount called for in the order of the department, not exceeding the amount of the bond or the principal of the certificate of deposit. If the bond or the principal of the certificate of deposit is insufficient to pay in full the amount due each complainant as set forth in the order of the department, the department shall distribute the proceeds pro rata among such complainants. The proceeds from a bond or the principal from a certificate of deposit shall be paid directly to the department to be distributed by it to successful complainants, except the accrued interest on a certificate of deposit shall be paid to the dealer. Such funds shall be considered trust funds in the hands of the department for the exclusive purpose of satisfying duly established complaints. Payments made to the department pursuant to this section shall be considered payments made upon demand and may not be considered voluntary payments.

(9) Nothing in this section may be construed as relieving a surety company from responsibility for payment on properly established complaints against dealers involved in a federal bankruptcy proceeding and against whom the department is prohibited from entering an order.

(10) Upon the failure of a surety company to comply with a demand for payment of the proceeds on a bond for a dealer in agricultural products, a complainant who is entitled to such proceeds, in total or in part, may, within a reasonable time, file in the circuit court a petition or complaint setting forth the administrative proceeding before the department and ask for final order of the court directing the surety company to pay the bond proceeds to the department for distribution to the complainants. If in such suit the complainant is successful and the court affirms the demand of the department for payment, the complainant shall be awarded all court costs incurred therein and also a reasonable attorney's fee to be fixed and collected as part of the costs of the suit. In lieu of such suit, the department may enforce its final agency action in the manner provided in s. 120.69.

RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law, it is

RECOMMENDED that the Department of Agriculture and Consumer Services enter its final order finding that Respondent, Ynnor Distribution Group, Inc., owes Petitioner, William E. Gable, the amount of \$13,430.02.

DONE AND ENTERED this 27th day of November, 2002, in
Tallahassee, Leon County, Florida.

STEPHEN F. DEAN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of November, 2002.

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 should be filed with the agency that will issue the final order in this case.