

11-6-02

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

FILED

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Sam Jones, d/b/a Jones Farm,

02-2925

Petitioner,

AP

DIVISION OF
ADMINISTRATIVE

vs.

DOAH CASE NO. 02-2925
LB CASE NO. 2003-0030

Southern Hay Sales, Inc., and
Old Republic Surety Company,

DEED

Respondents.

FINAL ORDER

The dispute between the parties arose under the State of Florida's "Agricultural License and Bond Law" [§§ 604.15-604.34, Florida Statutes (2002)] and came before the State of Florida's Commissioner of Agriculture and Consumer Services for review, consideration and final agency action.

I. BACKGROUND

On June 10, 2002, the Petitioner, Sam Jones, d/b/a Jones Farm (hereinafter referred to as "Jones Farm"), a producer of agricultural products as defined by §604.15(5), Florida Statutes (2002), filed two timely administrative complaints in accordance with §604.21, Florida Statutes (2002), against the Respondent, Southern Hay Sales, Inc. (hereinafter referred to as "Southern Hay"), a State of Florida licensed dealer in agricultural products for the purpose of collecting monies due in the amounts of \$1,241.95 and 1,274.40 (or a combined total of \$2,516.35) for the December 10, 2001 and January 16, 2002, sales of hay. At the time of the sales Southern Hay's license was secured by a bond that was underwritten by the Co-Respondent, Old Republic Surety Company (hereinafter referred to as "Surety") for the amount of \$5,000. On June 14, 2002, the Florida Department of Agriculture and Consumer Services (hereinafter referred to as "Department") notified Southern Hay and Surety that Jones Farm had filed two complaints. On June 19, 2002, Southern Hay submitted a timely reply and disputed Southern Hay's claim for \$2,516.35. Because Southern Hay's reply raised a disputed issue of material fact, the Department referred the case to the Division of Administrative Hearings (hereinafter referred to as

“DOAH”) for an administrative hearing in accordance with §120.57 (1), Florida Statutes (2002). That hearing was conducted on October 8, 2002, and the presiding Administrative Law Judge issued his Recommended Order on November 6, 2002. (A copy of the Judge’s Recommended Order is attached hereto as Exhibit A). On November 27, 2002, the Department received Southern Hay’s undated and untimely written exceptions to the Judge’s Recommended Order without the required copy of the transcripts.

The entire record of this dispute is the Department’s case file.

II: FINDINGS OF FACT

After careful review and consideration of the case file, the Department adopts the Recommended Order’s Findings of Fact. As noted, Southern Hay provided the Department with undated and untimely written exceptions to the Recommended Order’s Finding of Facts. The failure of a party disputing the findings of facts made by a hearing officer in a recommended order to ensure that the agency has before it a record of the hearing prior to the issuance of a final order will result in the exclusion of the transcript from the record and will bar the disputing party from presenting a version of facts different from those facts recited in the final order. [See *Florida Department of Corrections v. Bradley*, App. 1 Dist., 510 So.2d 1122 (1987).] Nevertheless, in adopting the Recommended Order’s Finding of Facts the Department specifically states that it reviewed and considered Southern Hay’s untimely written exceptions to the Recommended Order’s Finding of Facts and determined that Southern Hay did not present any matters that in any way rebutted the Recommended Order’s Finding of Facts.

III. CONCLUSIONS OF LAW

After careful review and consideration of the case file, the Department accepts the Recommended Order’s Conclusions of Law with the addition of the following modifications:

1. §604.21(7), Florida Statutes (2002), states that “[a]ny indebtedness set forth in a departmental order against a dealer shall be paid by the dealer within 15 days after such order becomes final.”

2. §604.21(8), Florida Statutes (2002), requires that upon failure of a dealer to comply with an order that directs payment the Department shall call upon the surety company to pay over to the Department out of the posted bond the amount called for in the order of the Department.

The Department's modifications to the Conclusions of Law are provided for the purpose of more clearly defining Southern Hay's and Surety's legal responsibilities with regard to the Recommended Order's Recommendation that the Department issue a Final Order that requires Southern Hay and Surety to pay Jones Farm the adjudged past due indebtedness of \$1,241.95.

Upon careful review and consideration of the case file

IT IS ORDERED AND ADJUDGED:

1. That the Recommended Order's Findings of Fact are adopted as the Department's Findings of Fact; that the Recommended Order's Conclusions of Law are adopted, as modified by the Department as the Department's Conclusions of Law;

2. That the Recommended Order's Recommendation is modified to reflect that Southern Hay is required to pay Jones Farm \$1,241.95 within fifteen (15) days after the rendition of this Final Order; and

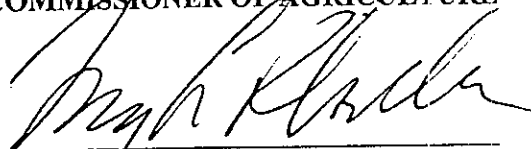
3. That the Recommended Order's Recommendation is modified to reflect that, in the event that Southern Hay fails to pay Jones Farm \$1,241.95 within fifteen (15) days of the effective date of this Final Order under the terms and conditions of its bond, the Surety is required to pay \$1,241.95 to Charles H. Bronson, Commissioner of Agriculture and Consumer Services. (In the event that the responsibility for the payment of the \$1,241.95 passes to Surety, the Department will provide written notice to the Surety.)

Pursuant to §120.68, Florida Statutes (2002) and Rule 9.110, Florida Rules of Appellate Procedure (2003); any party adversely affected by the issuance of this Final Order is entitled to judicial review of the Department's final administrative action. Judicial review must be initiated by the adversely affected party's filing a petition or notice of appeal with the Agency Clerk, Florida Department of Agriculture and Consumer Services, 5th Floor, Mayo Building, Tallahassee, Florida 32399-0800. Within

thirty (30) days of the effective date of this Final Order (that is, when it was filed with the Department's clerk), the adversely affected party must also file a copy of its petition for review or notice of appeal, accompanied by the legally prescribed filing fees with the appropriate District Court of Appeal.

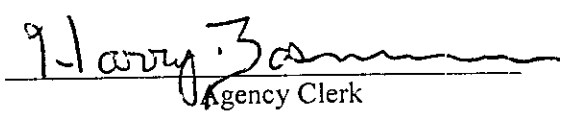
DONE AND ORDERED this th 4 day of ~~February~~ ^{March 4th}, 2003.

CHARLES H. BRONSON
COMMISSIONER OF AGRICULTURE



TERRY L. RHODES
Assistant Commissioner of Agriculture

Filed with Agency Clerk this ⁱⁿ 4 day of March, 2003.


Agency Clerk

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