

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SAM JONES, d/b/a JONES FARM,)
)
 Petitioner,)
)
vs.) Case No. 02-2925
)
SOUTHERN HAY SALES, INC., AND)
OLD REPUBLIC SURETY COMPANY,)
)
 Respondents.)
_____)

RECOMMENDED ORDER

Administrative Law Judge Don W. Davis of the Division of Administrative Hearings (DOAH) held a Final Hearing in this case on October 8, 2002, in Jasper, Florida.

APPEARANCES

For Petitioner: Sam Jones, pro se
Route 3, Box 172
Jasper, Florida 32052

For Respondent
Southern Hay
Sales, Inc.: Stephen C. Bullock, Esquire
116 Northwest Columbia Avenue
Lake City, Florida 32055

For Respondent
Old Republic
Surety Company: No Appearance

STATEMENT OF THE ISSUE

The issue is whether Respondent Southern Hay Sales Inc., (Southern Hay) and its surety, Respondent Old Republic Surety

Company (Old Republic), are liable for funds due to Petitioner from the sale of agricultural products.

PRELIMINARY STATEMENT

On or about June 6, 2002, Petitioner filed a complaint with the Florida Department of Agriculture and Consumer Services (Department). The complaint alleged that Southern Hay or its surety, Old Republic, owed funds to Petitioner for hay purchased by Southern Hay under the provisions of the Agricultural Bond and License Law, Sections 604.15 through 604.34, Florida Statutes.

Southern Hay filed an answer on or about June 24, 2002. The answer denied the factual allegations of the complaint.

On July 19, 2002, the Department referred this matter to the Division of Administrative Hearings (DOAH). The case was transferred to Judge Don W. Davis on October 7, 2002. A Notice of Hearing issued scheduling the case for formal hearing on October 8, 2002.

At the hearing, Petitioner presented the testimony of two witnesses. Southern Hay presented the testimony of two witnesses and two exhibits. Old Republic made no appearance.

A transcript of the hearing procedure was not filed with DOAH. Southern Hay and Petitioner filed Proposed Findings of Fact and Conclusions of Law which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is a producer of agricultural products as defined by Section 604.15(5), Florida Statutes. Petitioner produces hay on a farm owned by Petitioner near Jasper, Florida.

2. Respondent Southern Hay is a dealer in agricultural products as defined by Section 604.15(1), Florida Statutes.

3. Hay is a natural product of a farm and, therefore, an agricultural product as defined in Section 604.15(3), Florida Statutes.

4. Old Republic is Southern Hay's surety.

5. Both Petitioner and Southern Hay have participated in a business arrangement since at least 1997, whereby Petitioner grew and sold to Southern Hay varying quantities of hay. Petitioner would cut, process, and then store the hay in trailers provided by Southern Hay. Petitioner would deem Southern Hay to be indebted for a load of hay when a trailer of hay was hauled away by Southern Hay personnel.

6. On January 16, 2002, Petitioner received a signed check from Southern Hay. While there is a dispute as to who filled out the check, resolution of that question is not relevant for purposes of this matter. Suffice it to say that Southern Hay's check number 1183 was written in the amount of \$2,596.45 and dated January 16, 2002. Delivery of the check to Petitioner satisfied all outstanding invoices for payment where hay had

been picked up, with the exception of Petitioner's invoice number 302 documenting an obligation to Petitioner from Southern Hay in the amount of \$1,241.95 for hay. Southern Hay's representative maintained at final hearing that an additional check was issued on February 15, 2002, which included payment for invoice number 302. No cancelled check was presented to corroborate the testimony of Southern Hay's representative and such omission, coupled with the general demeanor of the representative, prevents the testimony of the representative, Andrew Snider, from being credited in this regard.

7. Southern Hay and its surety, Old Republic, currently owes Petitioner for an unpaid invoice in the amount of \$1,241.95.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over this subject matter and the parties to this action pursuant to Sections 120.569, 120.57(1), and 604.21(6), Florida Statutes.

9. Section 604.15, Florida Statutes, contains the following definitions in pertinent part:

(1) 'Dealer in agricultural products' means any person, whether itinerant or domiciled within this state, engaged within this state in the business of purchasing, receiving, or soliciting agricultural products from the producer or her or his agent or representative for resale or processing for

sale; acting as an agent for such producer in the sale of agricultural products for the account of the producer on a net return basis; or acting as a negotiating broker between the producer or her or his agent or representative and the buyer.

* * *

(3) 'Agricultural products' means the natural products of the farm, nursery, grove, orchard, vineyard, garden, and apiary (raw or manufactured); . . .

* * *

(5) 'Producer' means any producer of agricultural products produced in the state.

10. Section 604.17, Florida Statutes, requires dealers in agricultural products to have a license to engage in such business.

11. Before dealers receive their licenses, they must deliver to the Department a surety bond or a certificate of deposit. The surety bond or certificate of deposit secures payment to producers for agricultural products sold to dealers. Section 604.20(1), Florida Statutes.

12. Petitioner has met its burden of proving, by a preponderance of the evidence, that Respondents are indebted to Petitioner for unpaid invoices in the amount of \$1,241.95.

RECOMMENDATION

Based upon the findings of fact and conclusions of law,
it is

RECOMMENDED:

That the Florida Department of Agriculture and Consumer Services enter a final order requiring Respondent Southern Hay Sales, Inc., or its surety, Respondent Old Republic Surety Company, to pay Petitioner for an unpaid invoice in the amount of \$1,241.95.

DONE AND ENTERED this 6th day of November, 2002, in Tallahassee, Leon County, Florida.

DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th 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.