

10-25-02

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

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DIVISION OF
ADMINISTRATIVE
HEARINGS

Rolling Meadows Ranch, Inc.,

Petitioner

AP

DOAH CASE NO. 02-3109
LB CASE NO. 2003-0031

vs.

Golden Gem Growers, Inc., and
Fidelity & Deposit Company of Maryland,

DSM-003

Respondents

FINAL ORDER

The dispute between the parties arose under the State of Florida's "Citrus Fruit Dealer License and Bond Law" [§§ 601.55-601.73, 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 22, 2001, the Rolling Meadows Ranch, Inc. (hereinafter called "Rolling Meadows"), a producer of citrus fruit as defined by §601.03(7), Florida Statutes (2002), filed a timely administrative complaint in accordance with §601.66, Florida Statutes (2002), against the Respondent, Golden Gem Growers, Inc. (hereinafter called "Golden Gem"), a State of Florida licensed citrus fruit dealer for the purpose of collecting monies due in the amount of \$244,888.86 for fruit that Rolling Meadows had delivered to Golden Gem for packing, handling, marketing, shipping, and selling in accordance with the terms and conditions of their September 14, 2000, Account Sale Marketing Agreement and May 9, 2001, Fresh Fruit Packing and Account Sales Agreement. At the time of the agreements Golden Gem's license was secured by a bond that was underwritten by the Co-Respondent, Fidelity and Deposit Company of Maryland (hereinafter called "Fidelity"), for the amount of \$100,000. On July 9, 2001, the Florida Department of Agriculture and Consumer Services (hereinafter called "Department") notified Golden Gem and Fidelity that Rolling Meadows had filed a complaint against Golden Gem. On July 30, 2001, Golden Gem submitted a timely reply and disputed Rolling Meadow's claim for \$244,888.86. Because

Golden Gem's reply raised a disputed issue of material fact, the Department referred the case to the Division of Administrative Hearings (hereinafter called "DOAH") on August 8, 2001, for an administrative hearing in accordance with §120.57 (1), Florida Statutes (2002). On August 14, 2001, the assigned Administrative Law Judge scheduled the DOAH hearing for October 18, 2001. On September 14, 2001, Golden Gem filed for Chapter 11 bankruptcy and one week later, unaware that Golden Gem had filed for bankruptcy, Rolling Meadow's moved to have the DOAH hearing re-scheduled to November 27, 2001. On November 26, 2001, Rolling Meadows filed a Motion for Abeyance on the belief that the Bankruptcy Court's automatic stay of proceedings against Golden Gem prohibited DOAH from hearing the disputed issue of material fact between Rolling Meadows and Golden Gem. Accordingly, the Administrative Law Judge held the DOAH hearing in abeyance and three weeks later closed the case with leave for either Rolling Meadows or Golden Gem to request its re-opening.

On April 29, 2002, Rolling Meadows petitioned the Department to refer the case back to DOAH. On that same date, Rolling Meadows also petitioned DOAH for leave of court to amend its complaint. Upon receipt of the Department's request, the Administrative Law Judge re-scheduled the case and heard it on September 26, 2002. On October 25, 2002, the Administrative Law Judge issued his Recommended Order. (A copy of the Judge's Recommended Order is attached hereto as Exhibit A).

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 Facts with the addition of the following modifications that are based on substantial evidence.

1. On September 14, 2001, Golden Gem filed for a re-organization of its corporate assets under Chapter 11.
2. Pursuant to 11 U.S.C. §362(a)(3), the Bankruptcy Court ordered an automatic stay that

prohibited virtually all legal proceedings and other collection efforts against Golden Gem until such time when the Bankruptcy Court has granted a petitioning party relief from the automatic stay.

3. At the time of the DOAH hearing, Rolling Meadows had not been granted relief from the automatic stay.

4. Fidelity provided a \$100,000 bond for Golden Gem. The terms and conditions of the bond are conditioned to comply with the terms and conditions of all contracts, verbal or written, made by the citrus fruit dealer with producers or with other citrus fruit dealers relative to the purchasing, handling, sale, and accounting of purchases and sales of citrus fruit.

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. In making these modifications the finding is made that the modified conclusions of law are more reasonable because they add greater detail and clarity to the status of the parties with respect to the disputed issue of material fact.

1. §601.66(5), Florida Statutes (2002), states that "[u]pon the failure by the dealer to comply with a final order of the Department of Agriculture and Consumer Services directing payment, the Department of Agriculture and Consumer Services shall call upon the surety company to pay over to the Department of Agriculture and Consumer Services, out of the bond theretofore posted by the surety for such dealer, the amount of damages sustained but not exceeding the amount of the bond."

2. A corporate surety bond that is provided by a debtor in order to obtain a [state] license is not property of the [bankruptcy] estate. (See *In the Matter of Buna Painting and Drywall Co., Inc.*, 503 F.2d 618 (9th Cir. 1974); *In re Apache Construction, Inc.*, 34 B.R. 415 (Bankr.D.Ore.1983).)

3. Order that determines that debtor is liable to a certain claimant is enforceable only against the surety and such enforcement does not violate the bankruptcy court's automatic stay. (See *In re Fintel*, 10 B.R. 50 (BankrD.Ore.1981).)

4. A surety bond is not property of the [bankruptcy] estate and is not subject to the automatic stay of 11 U.S.C. §362(a)(3). (See *In the Matter of John E. Lockard d/b/a J.W.L. Construction*, 884 F.2d 1171 (9th Cir. 1989); *In re Fintel*, 10 B.R. 50 (BankrD.Ore.1981).)

5. 11 U.S.C. §524(3) provides that “[e]xcept as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.”

6. Paying claims out posted surety bonds does not result in the enforcement of a money judgment against the debtor or its [bankruptcy] estate because the debtor can not and could not claim any interest, legal or equitable, in the surety bonds. (See *In re Mansfield Tire and Rubber Company*, 660 F.2d 1108 (6th Cir. 1981).)

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 modified by the Department, as the Department’s Findings of Fact;

2. That the Recommended Order’s Conclusions of Law are adopted, as modified by the Department, as the Department’s Conclusions of Law; and

3. That the Recommended Order’s Recommendation is modified to reflect that, because of the bankruptcy court’s automatic stay, an order to pay cannot be issued to Golden Gem and that Fidelity is required to pay to the Department an amount that does not exceed its posted surety, which in this case is \$100,000, the proceeds of which are to be held for distribution pursuant to the provisions of the Florida Citrus Code.

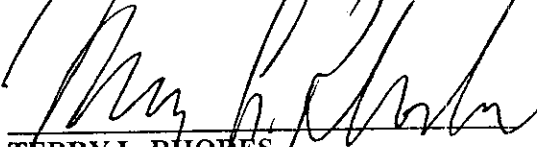
This order is effective on the date when it is filed with the Clerk of the Department.

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.

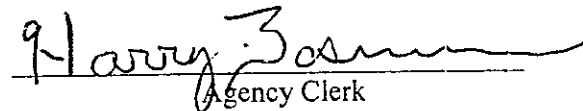
DONE AND ORDERED this 14th day of March, 2003.

CHARLES H. BRONSON
COMMISSIONER OF AGRICULTURE



TERRY L. RHODES
Assistant Commissioner of Agriculture

Filed with Agency Clerk this 14th day of March, 2003.



Agency Clerk

COPIES FURNISHED TO:

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