

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ROLLING MEADOW RANCH, INC.,            )  
  )  
      Petitioner,                            )  
  )  
vs.    )     Case No. 02-3109  
  )  
GOLDEN GEM GROWERS, INC., and        )  
FIDELITY AND DEPOSIT COMPANY OF    )  
MARYLAND,                                )  
  )  
      Respondents.                        )  
\_\_\_\_\_                                    )

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the administrative hearing of this case on September 26, 2002, in Winter Haven, Florida, on behalf of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner:     Brandon J. Rafool, Esquire  
                          1519 Third Street Southeast  
                          Winter Haven, Florida 33880

For Respondents:    No Appearance

STATEMENT OF THE ISSUE

The issue is whether Respondent, Golden Gem Growers, Inc. (Golden Gem), owes Petitioner the money alleged in the Amended Complaint based on two written contracts between Petitioner and Golden Gem.

PRELIMINARY STATEMENT

On April 29, 2002, Petitioner filed an Amended Complaint with the Office of Citrus License and Bond, Florida Department of Agriculture and Consumer Services (Department) pursuant to Section 601.66, Florida Statutes (2001). (All references to statutes are to Florida Statutes (2001) unless otherwise stated.) The Amended Complaint seeks payment of the balance allegedly due from Golden Gem based on fruit accounted but unpaid for and based on fruit for which Golden Gem has not accounted.

By letter dated August 1, 2002, the Department referred the matter to DOAH to conduct an administrative hearing. Neither of the Respondents in this case appeared at the administrative hearing.

At the hearing, Petitioner presented the testimony of three witnesses and submitted four exhibits for admission into evidence. The identity of the witnesses and exhibits and any attendant rulings, are set forth in the official record of this proceeding. Petitioner did not request a transcript of the administrative hearing.

FINDINGS OF FACT

1. During the citrus growing season of 2000-2001, Golden Gem was a citrus fruit dealer defined in Subsection 601.03(8) and was licensed and bonded in accordance with Chapter 601.

Golden Gem operated a packinghouse in Alturas, Florida, and regularly purchased citrus fruit for sale in the fresh fruit market. Fidelity & Deposit Company of Maryland (Fidelity) is the surety on the fruit dealer's bond issued to Golden Gem for the 2000-2001 season.

2. On September 14, 2000, Petitioner and Golden Gem entered into Contract No. AS-7199. The contract provided, in relevant part, that Petitioner was to deliver Valencia oranges and other citrus fruit to Golden Gem and that Golden Gem was to handle, pack, ship, sell, and market the fresh fruit provided by Petitioner.

3. On May 9, 2001, Petitioner and Golden Gem entered into Contract No. AS-7208. The contract provided, in relevant part, that Petitioner was to deliver Valencia oranges to Golden Gem and that Golden Gem was to handle, pack, ship, sell, and market the fresh fruit provided by Petitioner.

4. Contracts AS-7199 and AS-7208 require Golden Gem to detail and account for all the Valencia oranges delivered by Petitioner and packed by Golden Gem. Each contract provides for attorney's fees to the prevailing party.

5. Petitioner delivered 115,740 boxes of Valencia oranges to Golden Gem and Golden Gem processed all 115,740 boxes. Golden Gem packed the oranges into 182,650 cartons but accounted to Petitioner for only 159,731 cartons.

6. Golden Gem collected \$1,172,715.40 for 159,731 cartons of Petitioner's Valencia oranges. Golden Gem was entitled to deduct expenses for packing, shipping, and handling in the total amount of \$630,475.10. Golden Gem owed a net payment to Petitioner of \$542,240.30. Golden Gem paid \$518,284.82 to Petitioner. The balance owed for the fruit accounted for by Golden Gem is \$23,955.48.

7. Golden Gem owes Petitioner an additional \$85,757.36 for the proceeds of an additional 22,919 cartons of Valencia oranges for which Golden Gem has not accounted to Petitioner. The amount due is net after adjusting the gross price for handling charges that Golden Gem is entitled to under the terms of the contracts. Golden Gem owes Petitioner a total amount of \$109,712.84 for Valencia oranges that Petitioner delivered to Golden Gem in the 2000-2001 shipping season.

8. Petitioner is the prevailing party. Petitioner incurred reasonable attorney's fees of \$10,570.00 and costs of \$398.24.

#### CONCLUSIONS OF LAW

9. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to Section 120.57(1). DOAH provided the parties with adequate notice of the administrative hearing. Neither Golden Gem nor Fidelity appeared at the hearing or otherwise submitted any evidence.

10. The burden of proof is on Petitioner. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 2d DCA 1981). Petitioner must show by a preponderance of the evidence that it is entitled to the remedy claimed in the Amended Complaint.

11. Petitioner satisfied its burden of proof. Golden Gem is a licensed citrus fruit dealer that breached the relevant contracts by failing to make proper payment and account for fruit that Petitioner delivered to Golden Gem. Sections 601.03, 601.64, 601.65 and 601.69.

12. Sections 601.65 and 601.69 require Golden Gem to account for all fruit delivered by Petitioner. Golden Gem has breached its duty to account for every piece of fruit under Sections 601.64 and 601.69.

13. Petitioner argues that it is entitled to attorney's fees and costs pursuant to Section 601.61(2). Section 601.61(2) provides that if a dealer violates Chapter 601 the dealer is liable to the injured party for the full amount of damages. In Holly Hill Fruit Products, Inc. v. Bob Station, Inc., 275 So. 2d 583 (Fla. 2d DCA 1973), the court reversed the Department's final order because the Department failed to adjudicate the claimant's right to interest under the contract.

14. The contracts in this case authorize the prevailing party to collect reasonable attorney's fees and costs. However,

fees and costs, unlike principal and interest, are not damages within the meaning of Section 601.61(2). Fees and costs are expenses incurred in collecting damages. The undersigned lacks jurisdiction to enforce a contractual right to fees and costs in the absence of express statutory authority to do so.

RECOMMENDATION

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

RECOMMENDED that the Department enter a Final Order adopting the findings and conclusions in this Recommended Order and requiring Respondents to pay Petitioner the sum of \$109,712.84.

DONE AND ENTERED this 25th day of October, 2002, in Tallahassee, Leon County, Florida.

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DANIEL MANRY  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 25th day of October, 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.