

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ZAMIA CORPORATION, d/b/a )  
LANDSCAPER'S CHOICE, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 02-3914  
 )  
SERGMAR, INC. AND HARTFORD FIRE )  
INSURANCE COMPANY, )  
 )  
Respondents. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

A formal hearing was held pursuant to notice in the above-styled case by Lawrence P. Stevenson, assigned Administrative Law Judge of the Division of Administrative Hearings, on January 6, 2003, in Naples, Florida.

APPEARANCES

For Petitioner: Ronald L. Torp, Jr., President  
Zamia Corporation  
218 Sabal Palm Road  
Naples, Florida 34114

For Respondent: Marian Birsa, Agent  
Sergmar, Inc. Sergmar, Inc.  
2881 Santa Barbara Boulevard  
Naples, Florida 34116

For Respondent  
Hartford Fire  
Insurance Company: No Appearance

STATEMENT OF THE ISSUES

Whether Respondent, Sergmar, Inc., owes Petitioner, Zamia Corporation, d/b/a Landscaper's Choice, \$674.07 for the sale of landscaping plants.

PRELIMINARY STATEMENT

On June 24, 2002, Petitioner filed a Producer Complaint with the Department of Agriculture and Consumer Services (the "Department") alleging that Sergmar, Inc. ("Sergmar"), had failed to pay twelve invoices for various landscaping plants for an adjusted total of \$6,182.23. The Department notified Sergmar and its bond surety, Hartford Fire Insurance Company, of the Producer Complaint by separate letters dated July 5, 2002. On or about July 25, 2002, Sergmar filed an Answer admitting the debt and requesting 60 days to collect other outstanding invoices and settle the balance. By letter dated August 1, 2002, Petitioner notified the Department that it had entered a proposed settlement plan with Sergmar and that it agreed with Sergmar's request to abate the proceeding. On August 2, 2002, the Department placed the case in abeyance to provide the parties an opportunity to settle the issue.

By letter dated August 21, 2002, Petitioner notified the Department that it had received no money from Sergmar pursuant to the settlement plan, and that it wished to resume processing of its Producer Complaint. By order dated September 12, 2002,

the Department ordered Sergmar to pay Petitioner the amount of \$6,182.23 within 15 days of the date the order became final.

By letter faxed on September 13, 2002, Petitioner notified the Department that Sergmar had made a partial payment, but that an open balance of \$635.30 remained to be paid. Petitioner requested that the Producer Complaint be reinstated for the amount still due and owing. By letter dated September 24, 2002, Sergmar disputed the allegation that it owed any more money to Petitioner.

Because of the factual dispute, the Department forwarded the case to the Division of Administrative Hearings ("DOAH") on October 7, 2002. The case was noticed for hearing on November 22, 2002. On November 12, 2002, Petitioner filed a motion for continuance, which was granted by Order dated November 14, 2002. The case was rescheduled for January 6, 2003, when it was heard.

At the hearing, Ronald Torp testified on behalf of Petitioner, Zamia Corporation. Petitioner's Exhibits 1 and 2 were admitted into evidence. Marian Birsa testified on behalf of Sergmar, which offered no exhibits. The parties stipulated that the invoices forwarded to DOAH by the Department were accurate and could be relied upon by the undersigned in preparing this Recommended Order.

No Transcript of the proceeding was ordered. None of the parties made post-hearing submissions.

FINDINGS OF FACT

1. Petitioner is a producer of agricultural products as defined by Section 604.15(5), Florida Statutes. Petitioner operates a landscape supply company that produces plants, among other landscaping supplies, at a location in Naples, Florida.

2. Respondent Sergmar is a dealer in agricultural products as defined by Section 604.15(1), Florida Statutes. At the time of the transactions in question, Sergmar was licensed as a dealer in agricultural products supported by a surety bond in the amount of \$4,999 provided by the Hartford Fire Insurance Company.

3. Between February 21, 2002, and March 29, 2002, Petitioner sold Sergmar nursery plants and trees produced by Petitioner. As of March 29, 2002, the balance owed Petitioner by Sergmar was \$7,498.04. As of April 30, 2002, finance charges had increased the balance to \$7,676.01.

4. Sergmar began attempting to pay down the balance in May and June 2002. Sergmar made one valid payment of \$500 during this period. However, other Sergmar checks in partial payment of the balance were returned for insufficient funds three times during this period.

5. On June 24, 2002, Petitioner filed a Producer Complaint with the Department, seeking an order that Sergmar be directed to pay an adjusted balance of \$6,182.23. Petitioner arrived at the "adjusted balance" by writing off some items and eliminating finance charges from its claim. As of June 24, 2002, Sergmar actually owed Petitioner a total balance of \$6,997.17.

6. On or about July 25, 2002, Sergmar filed an Answer admitting the debt. Sergmar's letter stated: "We fully intend to pay for it. We are trying to collect outstanding invoices. We request 60 days to settle [the] balance."

7. By letter dated August 1, 2002, Petitioner notified the Department that it had entered a proposed settlement plan with Sergmar and that it agreed with Sergmar's request to abate the proceeding. On August 2, 2002, the Department placed the case in abeyance to provide the parties an opportunity to settle the issue.

8. By letter dated August 21, 2002, Petitioner notified the Department that it had received no money from Sergmar pursuant to the settlement plan, and that it wished to resume processing of its Producer Complaint. By order dated September 12, 2002, the Department ordered Sergmar to pay Petitioner the amount of \$6,182.23 within 15 days of the date the order became final.

9. While Petitioner's claim was pending, service charges continued to accumulate on the principal balance. By August 31, 2002, Sergmar owed Petitioner \$7,635.30.

10. On September 6, 2002, before the Department entered its order, Sergmar presented Petitioner with a cashier's check for \$7,000.

11. By letter faxed to the Department on September 17, 2002, Petitioner stated that Sergmar had made a partial payment of the balance but that it still owed \$635.30 to Petitioner. The letter requested that the Department "continue the complaint for the balance owed."

12. By letter to the Department dated September 24, 2002, Sergmar objected to the request that the claim against its surety bond remain open. Sergmar admitted that it still owed \$635.30 to Petitioner, and stated that it intended to pay off that amount over the next two months. However, Sergmar also noted that Petitioner's Producer Complaint requested \$6,182.23 and that Sergmar had paid Petitioner \$7,000. Sergmar contended that the \$7,000 payment more than satisfied the amount requested in the Producer Complaint and that the Department should therefore close the proceeding against Sergmar's surety bond.

## CONCLUSIONS OF LAW

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

14. Petitioner introduced testimony and the invoices of the transactions establishing that Sergmar owed Petitioner a total of \$7,635.30 in principal and finance charges. Sergmar conceded that it owed that amount to Petitioner. The evidence further established that Sergmar paid Petitioner \$7,000 of that amount, leaving a balance of \$635.30 that both parties agreed was owed by Sergmar to Petitioner. Finally, the evidence established that the Producer Complaint invoking the jurisdiction of the Department requested payment of only \$6,182.23.

15. 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.

16. The evidence established that Sergmar more than complied with the Department's Order that it pay \$6,182.23 to Petitioner. Having paid in full the amount claimed in the Producer Complaint and the Department's order, Sergmar correctly asserts that the claim has been satisfied for purposes of the Department's jurisdiction under Section 604.21, Florida Statutes. Petitioner must look elsewhere to enforce its claim for the remaining \$635.30 concededly owed to it by Sergmar.

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, Sergmar, Inc. has satisfied the Department's Order, dated September 12, 2002, that it pay \$6,182.23 to Zamia Corporation, d/b/a Landscaper's Choice, and that no further action on the Producer Complaint filed by Zamia Corporation is necessary.

DONE AND ENTERED this 7th day of February, 2003, in  
Tallahassee, Leon County, Florida.

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LAWRENCE P. STEVENSON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 7th day of February, 2003.

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.