

3.1.05

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

FILED

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DIVISION OF
ADMINISTRATIVE
HEARINGS

LPS
closed

DOAH Case No. 04-0262
DACS 2005-0077

AP

SOUTH FLORIDA SOD, INC.,)
)
 Petitioner,)
)
 vs.)
)
 WEST FLORIDA IRRIGATION &)
 LANDSCAPING, INC., AND OLD)
 REPUBLIC SURETY COMPANY,)
)
 Respondents.)
)
 _____)
 BAYSIDE SOD, INC.,)
)
 Petitioner,)
)
 vs.)
)
 WEST FLORIDA IRRIGATION &)
 LANDSCAPING, INC., AND OLD)
 REPUBLIC SURETY COMPANY,)
)
 Respondents.)
)
 _____)

FINAL ORDER

This cause has come before the Department for entry of a Final Order after the entry of a March 1, 2005 Recommended Order of the Division of Administrative Hearings on the above-styled complaints. Complainants, South Florida Sod, Inc. and Bayside Sod, Inc., producers of Florida agricultural products sold sod to the West Florida Irrigation & Landscaping, Inc. resulting in the two complaints totaling \$29,360.80 and \$18,750.68, respectively. The surety and Co-Respondent is Old Republic Surety Company.

The Administrative Law Judge:

RECOMMENDED that the Department of Agriculture and Consumer Services enter a final order ordering Respondent, West Florida Irrigation & Landscaping, Inc., to pay \$29,350.80 to South Florida Sod, Inc., and \$18,750.68 to Bayside Sod, Inc., together with pre-judgment interest calculated at the rate specified in Section 55.03, Florida Statutes (2003); and further requiring Old Republic Surety Company to make payment, up to the amount of its bond, in the event that West Florida Irrigation & Landscaping, Inc., fails to make payment in a timely manner.

On March 21, 2005, the Department received an Exception in the form of a letter dated March 13, 2005 from Mr. Robert W. Owens, President of Respondent, West Florida Irrigation & Landscaping, Inc., bearing a post-mark of March 14, 2005. No other Exceptions were filed. The Exception filed by Respondent is timely. Affidavits attached to the Exception are a part of the record before the Division of Administrative Hearings. However, the filed Exception does not contain citations to the pages and lines of the transcript of the proceedings and no transcript was ordered or filed in the proceedings as noted in the Recommended Order.

Having considered the Recommended Order and the Exception of Respondent, the Department finds that the Recommended Order, a copy of which is attached hereto as Exhibit "A", should be adopted in toto, except as to the finding of entitlement to pre-judgment interest. The

Department does not have any authority to award interest.
Section 604.20(1), Florida Statutes.

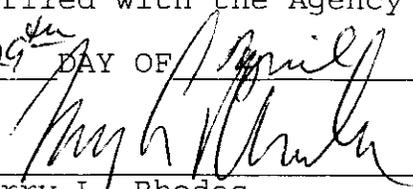
Accordingly, it is thereupon

ORDERED AND ADJUDGED that the RECOMMENDED ORDER is adopted ``in toto'', except for the provision as to the award of prejudgment interest. Respondent, West Florida Irrigation & Landscaping, Inc., is hereby ordered to pay \$29,360.80 to South Florida Sod, Inc., and \$18,750.68 to Bayside Sod, Inc. within fifteen (15) days of the date of this Order. In the event that Respondent does not comply with this Order within fifteen (15) days from the date of the Order, Old Republic Surety Company, as Surety for the Respondent, is hereby ordered to provide payment under the conditions and provisions of the Bond, to CHARLES H. BRONSON, COMMISSIONER OF AGRICULTURE AND CONSUMER SERVICES, as Obligee on the Bond. Should responsibility for payment evolve to the Surety, Old Republic Surety Company will be notified by this office. This Order shall become final upon issuance.

Any party to these proceedings adversely affected by this Final Order is entitled to seek review of this Final Order pursuant to Section 120.68, Florida Statutes (2004) and Rule 9.110, Florida Rules of Appellate Procedure (2004). Review proceedings must be instituted by filing a petition or notice of appeal with the Agency Clerk, 5th Floor, Mayo Building, Tallahassee, FL 32399-0800. A copy of the

petition for review or notice of appeal, accompanied by the filing fees prescribed by law must also be filed with the appropriate District Court of Appeal within thirty (30) days of the date this Order was filed with the Agency Clerk.

DONE AND ORDERED THIS 29th DAY OF April, 2005.


Terry L. Rhodes
Assistant Commissioner

Filed with the Agency Clerk on this 29th day of April, 2005.


Agency Clerk

Copies furnished by certified mail to:

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