

12-27-04

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Skinner Nurseries, Inc.

Petitioner,

DOAH CASE NO. 04-0634
LB CASE NO.: 04-0001, ORDER
LB CASE NO.: 05-0003,
FINAL ORDER
AGENCY CLERK # A35326

pmr
Clos

Above All Lawn Care & Landscaping, Inc., and
Hartford Fire Insurance Company

AP

Respondents.

2005 FEB -7 P 2:37
FILED

FINAL ORDER

THIS CAUSE, arising under Florida's "Agricultural License and Bond Law"

(Sections 604.15-604.34), Florida Statutes, came before the Commissioner of Agriculture of the State of Florida for consideration and final agency action. On October 23, 2003, the Petitioner, Skinner Nurseries, Inc., as Agent for producers of agricultural products as defined by Section 604.15(4), Florida Statutes, timely filed an administrative complaint pursuant to Section 604.21, Florida Statutes, to collect \$7,079.05 for nursery plants and trees they sold to Respondent, a licensed dealer in agricultural products. Respondent's license for the time in question was supported by a bond required by Section 604.20, Florida Statutes, written by Hartford Fire Insurance Company in the amount of \$4,999. On November 7, 2003, a Notice of Filing of an an Amended Complaint was mailed to Respondent and Co-Respondent. The Respondent did not file an answer to the complaint or request a hearing. The Co-Respondent acknowledged receipt of the complaint, but did not contest the matter or request a hearing.

On January 25, 2004, the Department issued an Order in this matter wherein the parties are given 14 days to request a hearing prior to the Order becoming final. The Respondent filed a timely response to the Order wherein they noted alleged discrepancies in the amounts

said to be owed in the complaint. The Department requested a DOAH hearing. A DOAH hearing was scheduled for April 27, 2004. The April 27, 2004 hearing was held, however the Respondent failed to appear. Prior to the scheduled April 27, 2004 hearing, the Respondent filed a Motion with DOAH asking that the hearing be conducted in Ocala, FL or telephonically. For reasons unknown the Respondent's Motion did not reach the Administrative Law Judge ("Judge") assigned to the case.

Accordingly, the Judge scheduled a new hearing in this cause for November 1, 2004. An administrative hearing was held in this matter on November 1, 2004. The Judge found in favor of the Complainant for \$7,129.05 and a **RECOMMENDED ORDER** was issued on December 27, 2004, a copy of which is attached hereto as Exhibit A, to which neither party filed written exceptions with this Department.

In the Judge's **RECOMMENDED ORDER** under **STATEMENT OF THE ISSUE;** **PRELIMINARY STATEMENT;** and **FINDINGS OF FACT;** the Judge contends the Petitioner is due \$7,129.05 based on the Petitioner's testimony, exhibits and evidence. In the Judge's **CONCLUSIONS OF LAW** and **RECOMMENDATION,** he concludes the Petitioner is owed \$7,129.05 by the Respondent and recommended the Respondent pay Petitioner \$7,129.05.

It is factual that the invoices in the complaint filed with the Department totals \$7,129.05, however, in two (2) of the claimed invoices there were freight charges totaling \$50. The Department has no authority to award freight charges under the purview of Florida Statutes, Section 604.15-604.34.

The Judge's **RECOMMENDATION** is hereby modified to deduct the \$50 freight charges from his recommended amount of \$7,129.05 leaving a balance due Petitioner from the Respondent of \$7,079.05.

The record consists of this Department's file in this matter.

Upon the consideration of the foregoing and being otherwise fully advised in the premises, it is

ORDERED:

1. Except as modified herein, the Judge's FINDINGS OF FACT are adopted as this agency's Findings of Fact.

2. Except as modified herein the Judge's CONCLUSIONS OF LAW are adopted as this agency's Conclusions of Law.

3. The Judge's RECOMMENDATION is accordingly modified to reflect that the Respondent Above All Lawn Care & Landscaping, Inc., pay petitioner \$7,079.05 is hereby adopted. For purposes of this Final Order consistent with the requirements of Sections 604.21(7) and (8), Florida Statutes, payments shall be made within fifteen (15) days after this Final Order is adopted. In the event Respondent fails to pay Petitioner \$7,079.05 within fifteen (15) days of the Final Order, Hartford Fire Insurance Company, as Surety for 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. The Department will notify the Surety in the event it (the Surety) is required to pay. This Final Order is final and effective on the date filed with the Clerk of the Department.**

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 (2002) and Rule 9.110, Florida Rules of Appellate Procedure (2003). 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 3rd day of February, 2005.

CHARLES H. BRONSON
COMMISSIONER OF AGRICULTURE


TERRY L. RHODES
Assistant Commissioner of Agriculture

Filed with Agency Clerk this 3rd day of February, 2005.


Agency Clerk

COPIES FURNISHED TO:

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