

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SKINNER NURSERIES, INC., )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 04-0634  
 )  
 ABOVE ALL LAWN CARE & )  
 LANDSCAPING, INC.; and HARTFORD )  
 FIRE INSURANCE COMPANY, )  
 )  
 Respondents. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

In accordance with notice, this cause came on for final hearing, before P. Michael Ruff, duly-designated Administrative Law Judge of the Division of Administrative Hearings, on November 1, 2004, in Ocala, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Chris Diaz, pro se  
Skinner Nurseries, Inc.  
2970 Hartley Road, Suite 302  
Jacksonville, Florida 32257

For Respondents: No appearance

STATEMENT OF THE ISSUE

The issues to be resolved in this proceeding concern whether the Respondent, Above All Lawn Care & Landscaping, Inc. (Above All), should be required to pay the sum of \$7,129.05 to

the Petitioner for landscape plants and materials allegedly purchased by the Respondent from the Petitioner, and, with regard to the Hartford Fire Insurance Company, whether it should be obligated for the payment of the plants and materials in question to the extent of its surety bond number 2 1BSBBU 6765 (the Bond), in the bonded amount of \$4,999.00.

PRELIMINARY STATEMENT

This is a proceeding under the Florida Agriculture Bond and License Law, Sections 604.15 through 604.34, Florida Statutes. This cause arose from the filing of an Amended Complaint and copies of that complaint, which were mailed by the Florida Department of Agriculture (Department) to the Respondent, the Respondent's registered agent, and the co-Respondent, the Hartford Fire Insurance Company, as surety.

The complainant, Skinner Nurseries, Inc., maintains that certain trees, shrubs, and various nursery stock or materials were purchased and delivered to the above-named Respondent and the charges therefore were never paid. Thus, exclusive of freight charges, it is contended by the Petitioner that \$7,129.05 are due and owing to it from the Respondent, Above All. Upon a hearing being requested, the cause was transmitted to the Division of Administrative Hearings and the undersigned administrative law judge.

The cause came on for hearing as noticed. At the hearing the Petitioner put on its case but the Respondent failed to appear to put on its testimony and evidence, even at this second opportunity for hearing which has been accorded to the Respondent. The testimony of Chris Diaz, representing the Petitioner, was taken at hearing and the Petitioner's Composite Exhibit 1, consisting of invoices concerning the goods and shipments in question, were offered by the Petitioner and admitted into evidence. On conclusion of the hearing, the parties were given an opportunity to submit proposed recommended orders but have declined to do so. Accordingly this Recommended Order is entered based upon the administrative law judge's hearing of the testimony, reading of the exhibits, observing the candor and demeanor of the witness, and the review of the undersigned's notes.

#### FINDINGS OF FACT

1. The Petitioner, Skinner Nurseries, Inc. (Skinner), is a corporation whose address is 2970 Hartley Road, Suite 302, Jacksonville, Florida.

2. The Respondent Above All is a corporation whose address is Post Office Box 2772, Ocala, Florida. The Respondent was licensed as a dealer in agriculture products at times pertinent hereto and was supported by surety bond number 2 1BSBBU 6765, in the amount of \$4,999.00. The surety bond was issued by the co-

Respondent, Hartford Fire Insurance Company, as surety. The conditions and provisions of the bond were to assure proper accounting and payment to producers, their agents or representatives for agricultural products purchased by the Respondent, Above All.

3. On July 23, 2003 through August 1, 2003, Skinner Nurseries, Inc. sold the Respondent certain nursery plants as an agent for Florida producers, totaling \$7,129.05. That amount remains unpaid to Skinner.

4. The subject complaint was filed with the Department within six months of the dates of sale. The only response to the complaint by the Respondent was that to the effect that it agreed that amounts were owed to Skinner, but it disagreed with the amounts Skinner was claiming.

5. The testimony of Chris Diaz establishes that invoices in the amount of \$7,129.05 represent the number of trees, shrubs, and various nursery stock or materials sold and shipped to the Respondent. The Petitioner sent statements on a monthly basis, as well as certified letters, to the Respondent and received no payment at all in return, not even as to an undisputed amount. The amount of \$7,079.05 referenced in the Administrative Complaint does not include freight charges. The goods and materials in question were shipped from the Bunnell

nursery site of Skinner to the Respondent's location in Ocala, Florida.

6. The Respondent did not appear at either hearing scheduled and presented no testimony or evidence. The facts that are established by the Petitioner are thus undisputed. The Respondent has never paid any of the amounts represented by the subject invoices contained in Petitioner's Composite Exhibit 1 in evidence.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2004).

8. Section 604.20(1), Florida Statutes, provides:

Before any (agriculture commodity dealers) license is issued, the applicant therefore shall make and deliver to the department a surety bond or certificate of deposit in the amount of at least \$3,000.00, or in such greater amount as the department may determine, . . . such bond must be executed by surety corporation authorized to transact business in the state . . . . Such bond or any certificate of deposit assignment or agreement shall be upon a form prescribed or approved by the department and shall be conditioned to secure the faithful accounting for and payment to producers, or their agents or representatives of the proceeds of all agricultural products handled or purchased by such dealer.

9. Section 604.21(1), Florida Statutes, provides:

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 six 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.

10. The Respondent failed to appear and produce any evidence in opposition to the complaint and to the testimony and evidence adduced from the Petitioner. Thus, the evidence was undisputed that the Petitioner is owed the sum of \$7,129.05 by the Respondent, which remains unpaid. Therefore it must be concluded that the Respondent is indebted to Skinner Nurseries, Inc., in the amount of \$7,129.05. This indebtedness is in violation of the conditions and provisions of the surety bond that the Respondent has on file with the Department, as provided for in Section 604.20(1), Florida Statutes.

#### RECOMMENDATION

Having considered the foregoing Findings of Fact, Conclusions of Law, the evidence of record, and the candor and demeanor of the witness, it is, therefore,

RECOMMENDED that a final order be entered by the Department of Agriculture and Consumer Services requiring that Above All Law Care & Landscaping, Inc., pay the complainant Skinner Nurseries, Inc., the amount of \$7,129.05, to be paid within fifteen days from the date of entry of a final order in this matter. In the event that the Respondent does not comply with that order then the surety, Hartford Fire Insurance Company, should be ordered to provide payment under the conditions and provisions of the applicable bond.

DONE AND ENTERED this 27th day of December, 2004, in Tallahassee, Leon County, Florida.



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P. MICHAEL RUFF  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of December, 2004.

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.