

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOHN STEPHENS, INC.,)
)
 Petitioner,)
)
 vs.) Case No. 04-2279
)
 C & J FRUIT AND MELONS, INC.,)
 AND AUTO OWNERS INSURANCE,)
)
 Respondents.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, the above-styled matter was heard before Daniel M. Kilbride, Administrative Law Judge of the Division of Administrative Hearings, on October 8, 2004, in Lakeland, Florida. The following appearances were entered:

APPEARANCES

For Petitioner: John A. Stephens
General Manager and Director
John Stephens, Inc.
Post Office Box 1098
Fort Meade, Florida 33841

For Respondent C & J Fruit and Melons, Inc.:

No appearance

For Respondent Auto Owners Insurance:

Jason Lowe, Esquire
GrayRobinson, P.A.
Post Office Box 3
Lakeland, Florida 33802

STATEMENT OF THE ISSUE

Whether Respondent, C & J Fruit and Melons, Inc. (C & J Fruit), a citrus fruit dealer and registered packer, owes Petitioner, John Stephens, Inc., a citrus dealer, a sum of money for grapefruit and oranges sold and delivered to C & J Fruit's citrus fruit-packing house for processing.

PRELIMINARY STATEMENT

On or about April 23, 2003, Petitioner, John Stephens, Inc., filed a complaint with the Florida Department of Agriculture and Consumer Services (Department) alleging that Respondent, C & J Fruit & Melons, Inc., owes Petitioner the sum of \$18,857.00, for citrus fruit sold and delivered during the 2001-2002 citrus shipping season. C & J Fruit filed an answer denying the claim. Subsequently, on June 28, 2004, this matter was referred to the Division of Administrative Hearings to conduct a formal hearing pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes (2004). Counsel for Respondent, Auto Owners Insurance (Auto Owners), filed a notice of appearance and discovery ensued. This matter was set for hearing on September 9, 2004; however, due to inclement weather, the case was continued until October 8, 2004.

At the hearing, C & J Fruit did not appear. Diligent search and inquiry was made to locate a former officer of the corporation, which is no longer in business. Clemon Browne, the

former principle of the corporation, could not be found. However, his deposition was subsequently admitted in evidence as Petitioner's Exhibit 1. Auto Owners was represented and both parties were ready to proceed. After waiting an appropriate period of time, the hearing was commenced. Petitioner presented the testimony of three witnesses and offered seven exhibits in evidence, which were admitted over objection. Auto Owners participated in the cross-examination of witnesses, but did not offer any witnesses or exhibits in evidence.

The Transcript of the hearing was filed on October 20, 2004. Both parties requested the opportunity to submit post-hearing proposals. However, neither Petitioner nor either of the Respondents has filed proposed findings of fact at the time of the preparation of this Recommended Order.

Based upon all of the evidence, the following findings of fact are determined:

FINDINGS OF FACT

1. Petitioner, John Stephens, Inc., is a Florida-licensed citrus fruit dealer operating within the Department of Agriculture and Consumer Services' regulatory jurisdiction.

2. Respondent, C & J Fruit & Melons, Inc., was a Florida-licensed citrus fruit dealer and operated a registered packing house in Frostproof, Florida, during the 2001-2002 citrus shipping season.

3. Respondent, Auto Owners Insurance, was the surety for C & J Fruit's citrus fruit dealer's license in the amount of \$14,000.00, for the 2001-2002 season.

4. At the beginning of the 2001-2002 season, Petitioner and C & J Fruit entered into a verbal contract under which Petitioner agreed to contract with various grove owners and grove harvesters in the Polk County, Florida, area. The understanding was that Petitioner would obtain various varieties of grapefruit, oranges, and tangerines from the growers and harvesters and deliver the fruit to C & J Fruit's packing house. Petitioner was responsible for payment to the grove owners and harvesters. C & J Fruit would process the fruit, supply the citrus fruit to retail and wholesale suppliers, and account and pay for the fruit received from Petitioner.

5. Petitioner and C & J Fruit had conducted business in this fashion for many years prior to this season.

6. On October 23, 2001, C & J Fruit sought protection from creditors under Chapter 11 of the United States Bankruptcy Code in the U.S. Bankruptcy Court, Middle District of Florida, Tampa Division, Case No. 01-19821-8W1.

7. Following the filing of bankruptcy, no other supplier would provide C & J Fruit with citrus fruit. With Petitioner's consent, C & J Fruit filed an emergency motion to authorize a secured interest to Petitioner, if it would continue to supply

C & J Fruit's packing house with fruit. The bankruptcy court granted the motion, and in November 2001, Petitioner began supplying C & J Fruit's packing house with fresh citrus fruit.

8. The preponderance of evidence proves that Petitioner delivered to C & J Fruit's packing house during November 2001 pursuant to the contract: 540 boxes of grapefruit at \$3.00 per box for a total of \$1,620.00; 3,044 boxes of oranges at \$4.00 per box for a total of \$12,176.00; 330 boxes of tangerines at \$3.50 per box for a total of \$1,155.00; and 1,953 boxes of navel oranges at \$2.00 per box for a total of \$3,906.00. C & J Fruit was billed for this amount. Accordingly, C & J Fruit was obligated to pay Petitioner the total sum of \$18,857.00 for the fruit. When payment was not received in a timely matter, shipment of citrus fruit to the packing house was discontinued.

9. Petitioner performed all of its duties under the contract, and C & J Fruit failed to pay or account for the citrus fruit delivered to its packing house under the terms of the contract. C & J Fruit is, therefore, indebted to Petitioner in the amount of \$18,857.00

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes (2004).

11. Chapter 601, Florida Statutes (2002), is known as "The Florida Citrus Code of 1949" and is enforced by the Department.

12. "Citrus fruit" is defined in Subsection 601.03(7), Florida Statutes (2002), as

[A]ll varieties and regulated hybrids of citrus fruit and also means processed citrus products containing 20 percent or more citrus fruit or citrus fruit juice, but, for the purposes of this chapter, shall not mean limes, lemons, marmalade, jellies, preserves, candies, or citrus hybrids for which no specific standards have been established by the Department of Citrus;

Additionally, the term "grapefruit" is defined to mean "the fruit Citrus paradisi Macf., commonly called grapefruit and shall include white, red, and pink meated varieties"

§ 601.03(22), Fla. Stat. (2002).

13. A "citrus fruit dealer" is defined in Subsection 601.03(8), Florida Statutes (2002), as

[A]ny consignor, commission merchant, consignment shipper, cash buyer, broker, association, cooperative association, express or gift fruit shipper, or person who in any manner makes or attempts to make money or other thing of value on citrus fruit in any manner whatsoever, other than of growing or producing citrus fruit, but the term shall not include retail establishments whose sales are direct to consumers and not for resale or persons or firms trading solely in citrus futures contracts on a regulated commodity exchange;

14. Both Petitioner and C & J Fruit are citrus fruit dealers under this definition. C & J Fruit was also authorized to operate a packing house in Frostproof, Florida, and to pack and ship citrus fruit for market for the 2001-2002 season.

15. Citrus fruit dealers are required to be licensed by the Department in order to transact business in Florida. § 601.55(1), Fla. Stat. (2002). As a condition of obtaining a license, such dealers are required to provide a cash bond, a certificate of deposit, or a surety bond in an amount to be determined by the Department "for the use and benefit of every producer and of every citrus fruit dealer with whom the dealer deals in the purchase, handling, sale, and accounting of purchases and sales of citrus fruit." § 601.61(3), Fla. Stat. (2002).

16. Section 601.65, Florida Statutes (2002), provides that "[i]f any licensed citrus fruit dealer violates any provision of this chapter, such dealer shall be liable to the person allegedly injured thereby for the full amount of damages sustained in consequence of such violation." This liability may be adjudicated in an administrative action brought before the Department or in a "judicial suit at law in a court of competent jurisdiction."

17. Subsection 601.64(4), Florida Statutes (2002), defines as an "unlawful act" by a citrus fruit dealer the failure to pay

promptly and fully, as promised, for any citrus fruit which is the subject of a transaction relating to the purchase and sale of such goods.

18. Any person may file a complaint with the Department alleging a violation of the provisions of Chapter 601, Florida Statutes (2002), by a citrus fruit dealer. § 601.66(1), Fla. Stat. (2002). The Department is charged with the responsibilities of determining whether the allegations of the complaint have been established and adjudicating the amount of indebtedness or damages owed by the citrus fruit dealer. § 601.66(5), Fla. Stat. (2002). If the complaining party proves its case, the Department shall "fix a reasonable time within which said indebtedness shall be paid by the [citrus fruit] dealer." Thereafter, if the dealer does not pay within the time specified by the Department, the Department shall obtain payment of the damages from the dealer's surety company, up to the amount of the bond. § 601.66(5) and (6), Fla. Stat. (2002).

19. Petitioner bore the burden of proving the allegations in its Complaint against C & J Fruit by a preponderance of the evidence. See Florida Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981); Florida Department of Health and Rehabilitative Services v. Career Service Commission, 289 So. 2d 412, 415 (Fla. 4th DCA 1974); and § 120.57(1)(j), Fla. Stat. (2004).

20. Petitioner carried its burden of proving that C & J Fruit failed and refused to pay, as agreed, for citrus fruit that Petitioner delivered to C & J Fruit's packing house in Frostproof, Florida.

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that a final order be entered requiring Respondent, C & J Fruit and Melons, Inc., to pay to Petitioner, John Stephens, Inc., the sum of \$18,857.00.

DONE AND ENTERED this 29th day of December, 2004, in Tallahassee, Leon County, Florida.



DANIEL M. KILBRIDE
Administrative Law Judge
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Filed with the Clerk of the
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this 29th 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.