

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BOBBY WILLIAMS, d/b/a BOBBY)
WILLIAMS FARMS,)
)
Petitioner,)
)
vs.) Case No. 04-2881
)
DAL DON PRODUCE, INC. AND)
FIDELITY AND DEPOSIT COMPANY OF)
MARYLAND,)
)
Respondents.)
_____)

RECOMMENDED ORDER

Administrative Law Judge Daniel Manry conducted the administrative hearing of this case on October 1, 2004, in Sebring, Florida, on behalf of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Bobby Williams, pro se
Bobby Williams Farms
5005 Placid View Drive
Lake Placid, Florida 33582

For Dal Don Produce, Inc.:

(No Appearance)

For Fidelity & Deposit Company of Maryland:

(No Appearance)

STATEMENT OF THE ISSUE

The issue for determination in this proceeding is whether Respondent, Dal Don Produce, Inc. (Dal Don), owes Petitioner \$5,956 for watermelons for the reasons stated in the Producer Complaint filed with the Department of Agriculture and Consumer Services (Department) on December 26, 2003.

PRELIMINARY STATEMENT

On December 26, 2003, Petitioner filed a Producer Complaint with the Department pursuant to Section 601.66, Florida Statutes (2003). By letter dated August 16, 2004, the Department referred the matter to DOAH to conduct an administrative hearing. Neither of the Respondents in this case appeared at the administrative hearing.

At the hearing, Petitioner presented the testimony of two witnesses and submitted three exhibits for admission into evidence. The identity of the witnesses and exhibits and any attendant rulings, are set forth in the official record of this proceeding. Petitioner did not request a transcript of the administrative hearing and did not file a proposed recommended order.

FINDINGS OF FACT

1. Pursuant to an agreement between Petitioner and Dal Don, Petitioner delivered seven loads of watermelons to Dal Don

between November 11 and 24, 2003. The watermelons weighed approximately 291,016 pounds.

2. Dal Don agreed to pay Petitioner \$21,956.60 for the watermelons. Dal Don paid Petitioner only \$16,000. Dal Don owes Petitioner \$5,956.60. Dal Don did not provide Petitioner with an accounting or explanation for the unpaid amount.

3. Fidelity & Deposit Company of Maryland (Fidelity) is the surety for Dal Don and provided bond for Dal Don pursuant to Surety Bond Number 08374953 (the bond). The conditions and provisions of the bond are to assure proper accounting and payment to producers, including Petitioner. In the absence of payment from Dal Don, responsibility for payment evolves to Fidelity.

CONCLUSIONS OF LAW

4. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to Subsection 120.57(1), Florida Statutes (2004). DOAH provided the parties with adequate notice of the administrative hearing. Neither Dal Don nor Fidelity appeared at the hearing or otherwise submitted any evidence.

5. The burden of proof is on Petitioner. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 2d DCA 1981). Petitioner must show by a preponderance

of the evidence that he is entitled to the remedy claimed in the Producer Complaint.

6. Petitioner satisfied his burden of proof. Dal Don is licensed as a dealer in agricultural products. Dal Don failed to make proper payment and account for watermelons that Petitioner delivered to Dal Don. §§ 601.03, 601.64, 601.65, and 601.69, Fla. Stat. (2003).

7. Sections 601.65 and 601.69, Florida Statutes (2003), require Dal Don to account for all of the watermelons that Petitioner delivered to Dal Don. Dal Don has breached its statutory duty to account for the watermelons it received from Petitioner.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department enter a final order adopting the findings and conclusions in this Recommended Order and requiring Respondents to pay Petitioner the sum of \$5,956.60.

DONE AND ENTERED this 3rd day of November, 2004, in
Tallahassee, Leon County, Florida.



DANIEL MANRY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of November, 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.