

12-22-04

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

FILED

2005 FEB 23 P 1: 25

C. M. Payne & Son, Inc.,

Petitioner,

AP

vs

DOAH CASE NO. 04-3191
LB CASE NO. 05-0008
FINAL ORDER
AGENCY CLERK #A35513

FLB
CWS

Garrison Irrigation, Inc., and
Continental Casualty Company,

Respondents.

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 July 23, 2004, the Petitioner, C. M. Payne & Son, Inc., a producer of agricultural products as defined by Section 604.15 (5), Florida Statutes, timely filed an administrative complaint pursuant to Section 604.21, Florida Statutes, to collect \$1,540.80 for sod 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 Continental Casualty Company in the amount of \$10,000. The Respondent filed a response to the complaint wherein they disputed the claim as being valid. A hearing was not requested by the Respondent, but was requested by the Department due to disputed issues of fact. Therefore, on September 8, 2004, this matter was referred to the Division of Administrative Hearings (DOAH) for an administrative hearing in accordance with the provisions of Section 120.57 (1), Florida Statutes. An administrative

hearing was scheduled in this matter for October 27, 2004. The Judge rendered his Recommended Order on December 22, 2004, a copy of which is attached hereto to Exhibit A, to which neither party filed written exceptions with this Department. The Judge concluded that the sum of \$2,996 was due from the Respondent and recommended that the Department enter a Final Order against the Respondent in that amount.

In the Judge's **PRELIMINARY STATEMENT**, in paragraph two (2) he states "On August 12, 2004, the Department noticed the Commissioner of Agriculture under the provisions of the Agriculture Bond and License Law, Sections 604.15 through 604.34, Florida Statutes (2004), of Petitioner's complaint." The Judge's statement is hereby modified to read as follows: On August 16, 2004, (the date the **NOTICE OF FILING OF A COMPLAINT** was mailed to all parties, the Department noticed the Respondents under the provisions of the Agriculture Bond and License Law, Sections 604.15 through 604.34, Florida Statutes (2004), of Petitioner's complaint. In the **PRELIMINARY STATEMENT**, paragraph four (4) the Judge shows the date the complaint was referred to DOAH by the Department as September 9, 2004, however, the date the Department mailed the letter to DOAH requesting the hearing was September 8, 2004. Therefore, the Judge's statement is hereby modified to show the date the complaint was referred to DOAH as September 8, 2004.

Beginning with paragraph four (4) of the Judge's **FINDINGS OF FACT ("Findings")**, he determines the following relevant and material Findings:

4. On January 23, 2004, Petitioner sold 16 pallets of Bahia sod to Garrison and, on Invoice 20027, billed Garrison a total of \$599.20 for the 16 pallets of sod.

5. On January 26, 2004, Petitioner sold 32 pallets of Bahia sod to Garrison and, on Invoice 20033, billed Garrison a total of \$1,198.40 for the 32 pallets of sod.

6. On January 27, 2004, Petitioner sold 16 pallets of Bahia sod to Garrison and, on Invoice 20039, billed Garrison a total of \$599.20 for the 16 pallets of sod.

7. On February 2, 2004, Petitioner sold 16 pallets of Bahia sod to Garrison and, on Invoice 20044, billed Garrison a total of \$599.20 for the 16 pallets of sod.

Based on the Findings in the four (4) paragraphs listed above, in paragraph ten (10) the Judge finds that the Respondent is indebted to the Petitioner in the amount of \$2,996.

The Department concurs with the Judge that the four (4) claimed invoices listed above that were included in the Petitioner's complaint totals, \$2,996, however, included in the \$2,996, are charges for pallets totaling \$360, charges for freight totaling \$1,000 and sales tax charged on the pallets and freight at a rate of 7% totaling \$95.20. The Department has no authority to award pallet charges, freight charges and sales tax charged on the aforementioned charges under the purview of Sections 604.15-604.34, Florida Statutes (2004). Accordingly, only the portion of the complaint for agricultural products and applicable sales tax on the agricultural products are enforceable against the Respondent's bond. The Judges findings are hereby modified to only allow the claimed charges for the sod the Petitioner sold to the Respondent in the total amount of \$1,440 plus the applicable 7% sales tax on the sod of \$100.80 for a total of \$1,540.80.

In the Judge's **CONCLUSIONS OF LAW**, paragraph sixteen (16), the Department takes exception to the Judge's conclusion that the Respondent is indebted to the Petitioner in the amount of \$2,996. For reasons cited above, the non agricultural charges and sales tax charged on said charges are hereby deducted from the unpaid invoices leaving a balance due Petitioner from the Respondent of \$1,540.80.

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. As qualified herein, the Judge's **RECOMMENDATION** is hereby modified to reflect that the Respondent, Garrison Irrigation, Inc., pay Petitioner \$1,540.80 for purpose of mailing this Order consistent with the requirements of Sections 604.21(7) and (8), Florida Statutes. The Judge's recommendation is modified to include that payments shall be made within fifteen (15) days after this Final Order is adopted. In the event Respondent fails to pay Petitioner \$1,540.80 within fifteen (15) days of the Final Order, Continental Casualty 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 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 22nd day of February, 2005.

**CHARLES H. BRONSON
COMMISSIONER OF AGRICULTURE**



TERRY L. RHODES
Assistant Commissioner of Agriculture

Filed with Agency Clerk this 22nd day of February, 2005.



Agency Clerk

COPIES FURNISHED TO:

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