

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

C. M. PAYNE AND SON, INC.,)
)
 Petitioner,)
)
vs.) Case No. 04-3191
)
GARRISON IRRIGATION, INC., AND)
CONTINENTAL CASUALTY COMPANY,)
AS SURETY,)
)
 Respondents.)
_____)

RECOMMENDED ORDER

Pursuant to notice and in accordance with Section 120.569 and Subsection 120.57(1), Florida Statutes (2004), this cause came on for final hearing before Fred L. Buckine, the designated Administrative Law Judge of the Division of Administrative Hearings, on October 27, 2004, in Sebring, Florida.

APPEARANCES

For Petitioner: Jennifer Payne, pro se
 C. M. Payne & Son, Inc.
 9404 Payne Road
 Sebring, Florida 33875

For Respondent Garrison Irrigation, Inc.:

No Appearance

For Respondent Continental Casualty Company:

No Appearance

STATEMENT OF THE ISSUES

Whether Respondent, Garrison Irrigation, Inc., failed to pay amounts owing to Petitioner resulting from a verbal contract for four pallets of Bahia sod as set forth in the complaint dated July 20, 2004, and, if so, what amount Petitioner is entitled to recover.

PRELIMINARY STATEMENT

On July 20, 2004, Petitioner, C.M. Payne and Son, Inc., filed a complaint with the Department of Agriculture and Consumer Services (Department), alleging that Respondent, Garrison Irrigation, Inc., failed and refused to pay four invoices, totaling \$1,540.80,¹ for four pallets of Bahia sod, after repeated calls and attempts were made to collect those four outstanding invoices.

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.

On August 24, 2004, Respondent, Joe Garrison, president/owner of Garrison Irrigation, Inc., filed a response to the complaint filed by Petitioner.

On September 9, 2004, the complaint was referred by the Department to the Division of Administrative Hearings where it was assigned to the undersigned Administrative Law Judge and set

for hearing. On that same date, the Initial Order was entered and forwarded to all parties of interest.

On September 21, 2004, Respondent, Continental Casualty Company, filed a letter declining to file an answer or move in any other manner on this matter at this time.

On September 23, 2004, a Notice of Hearing, scheduling the final hearing for October 27, 2004, in Sebring, Florida, and an Order of Pre-hearing Instructions were entered.

At the formal hearing on October 27, 2004, no one appeared on behalf of Respondents, Garrison Irrigation, Inc., and Continental Casualty Company.

The undersigned called his secretary who telephoned Respondent, Joseph L. Garrison, and was informed that he had forgotten the hearing and the date, was out-of-pocket, and would not be attending. Jennifer Payne, wife of John Payne, president of C.M. Payne and Son, Inc., appeared on his behalf and gave testimony.

The hearing was recorded and transcribed. Petitioner was advised of the option and the time frame in which to file a proposed recommended order and declined to do so. The Transcript of the hearing was filed on November 5, 2004. Neither party filed a proposed recommended order.

FINDINGS OF FACT

Based upon observation of the witness and her demeanor while testifying, the documents received into evidence, and the entire record of this proceeding, the following relevant and material findings of fact are determined:

1. At all times material to this proceeding, Petitioner, C.M. Payne and Son, Inc., was a producer of agricultural products as that term is defined in Subsection 604.15(5), Florida Statutes (2004).

2. At all times material to this proceeding, Respondent, Garrison Irrigation, Inc. (Garrison), was licensed as a dealer in agriculture products as that term is defined in Subsection 604.15(1), Florida Statutes (2004). Respondent was licensed under number 13653, supported by Bond No. 929237754 in the amount of \$10,000; written by Respondent, Continental Casualty Company, as Surety (Continental); Inception Date: December 4, 2003; Expiration Date: December 3, 2004; and Execution Date: December 4, 2003.

3. At all times material, Continental is the surety which issued Garrison a surety bond.

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.

8. The terms of the sale between Petitioner and Garrison were for net payment for products sold within 30 days after the invoice date.

9. Garrison did not appear at the hearing to contest or otherwise refute the charges alleged in Petitioner's complaint.

10. Garrison is indebted to Petitioner in the amount of \$2,996.00 for Bahia sod purchases from Petitioner on January 23, 26, and 27, 2004, and February 2, 2004. Garrison has failed to pay Petitioner for the sod purchases.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this action pursuant to Subsection 120.57(1), Florida Statutes (2004).

12. The authority of the Department is derived from Chapter 604, Florida Statutes (2004).

13. Petitioner is an agricultural producer within the meaning of Subsection 604.15(5), Florida Statutes (2004).

14. Garrison is an agricultural dealer as that term is defined in Subsection 604.15(1), Florida Statutes (2004).

15. During all times material, Continental issued a bond to Garrison for agricultural products pursuant to Section 604.20, Florida Statutes (2004).

16. Garrison is indebted to Petitioner in the amount of \$2,996.00 for the purchases of Bahia sod from Petitioner on January 23, 26, and 27, 2004, and February 2, 2004.

RECOMMENDATION

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

RECOMMENDED that the Department issue its final order requiring that Respondent, Garrison Irrigation, Inc., pay to Petitioner, C. M. Payne and Son, Inc., the amount of \$2,996.00 for the purchases of Bahia sod from Petitioner on January 23, 26, and 27, 2004, and February 2, 2004.

It is further RECOMMENDED that if Respondent, Garrison Irrigation, Inc., fails to comply with the order directing payment, the Department shall call upon the surety, Continental Casualty Company, to pay over to the Department from funds out

of the surety certificate, the amount needed to satisfy the indebtedness.

DONE AND ENTERED this 22nd day of December, 2004, in Tallahassee, Leon County, Florida.



FRED L. BUCKINE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of December, 2004.

ENDNOTE

1/ The Commissioner's Notice of Filing of a Complaint, in the paragraph titled "Amount of Complaint," lists the sum of \$1,540.80. This amount was apparently taken directly from the form titled "Producer Compliant." However, the total of the four copies of invoices (20027, 20033, 20039, and 20044) in evidence is \$2,996.00, the amount found to be owed Petitioner by Respondent.

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.