

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SKINNERS WHOLESALE NURSERY,)
INC.,)
)
Petitioner,)
)
vs.) Case No. 05-3083
)
GREENBLADES OF CENTRAL FLORIDA,)
INC. AND WESTERN SURETY)
COMPANY,)
)
Respondents.)
_____)

RECOMMENDED ORDER

This cause came on for formal hearing before Robert S. Cohen, Administrative Law Judge with the Division of Administrative Hearings, on October 24, 2005, and on November 14, 2005, in Jacksonville, Florida.

APPEARANCES

For Petitioner Skinners Wholesale Nursery, Inc.:

Tom Robinson, pro se
Skinner Nurseries, Inc.
13000 State Road 11
Bunnell, Florida 32110

For Respondent Greenblades of Central Florida, Inc.:

Joseph Robbins, Jr., pro se
Greenblades of Central Florida, Inc.
11025 Southeast Highway 42
Summerfield, Florida 34491

For Respondent Western Surety Company:

No appearance.

STATEMENT OF THE ISSUE

The issue is whether Respondent, Greenblades of Central Florida, Inc., and its surety, Western Surety Company, are liable for funds due to Petitioner from the sale of agricultural products.

PRELIMINARY STATEMENT

On or about June 24, 2005, Petitioner filed a Producer Complaint with the Florida Department of Agriculture and Consumer Services (the "Department"). The Complaint alleged that Respondent or its surety owed funds to Petitioner for nursery products in the amount of \$20,512.97 purchased by Respondent under the provisions of the Agricultural Bond and License Law, Sections 604.15 through 604.34, Florida Statutes. Thereafter, on or about July 20, 2005, Petitioner filed an Amended Complaint with the Department reducing the amount owed to \$8,689.47. On or about August 15, 2005, Respondent filed a response to the Amended Complaint.

The matter was referred to the Division of Administrative Hearings on August 24, 2005. A Notice of Hearing issued scheduling the matter for October 24, 2005. The hearing commenced that morning in Jacksonville, Florida, with the testimony of Petitioner's witnesses since neither Respondent nor

a representative of its surety appeared. During the hearing, Respondent sent by facsimile to Judge Cohen's office, a request for a continuance based upon hurricane-related emergency duties Respondent was obligated to perform. After a telephonic hearing on Respondent's motion, the hearing was re-scheduled for November 14, 2005, to allow Respondent to present its case and for any rebuttal from Petitioner. Petitioner chose not to appear on November 14, 2005, and the hearing commenced and was completed that day.

At the hearing, Petitioner presented the testimony of Thomas W. Robinson and Sandra Salyers and offered Exhibits numbered 1 through 7, all of which were admitted, into evidence. Respondent presented the testimony of Joe Robbins and Bill Spriet and offered Exhibit numbered 1, which was admitted into evidence.

No transcript was filed. Neither Petitioner nor Respondent submitted proposed findings of fact and conclusions of law.

References to statutes are to Florida Statutes (2004) unless otherwise noted.

FINDINGS OF FACT

1. Petitioner is a producer of agricultural products as defined by Section 604.15(5), Florida Statutes. Petitioner

operates a nursery supply company that produces trees, plants, and other landscaping supplies at a location in Bunnell, Florida.

2. Respondent is a dealer in agricultural products as defined by Section 604.15(1), Florida Statutes. At the time of the transactions in question, Respondent was a licensed dealer in agricultural products supported by a surety bond provided by Western Surety Company.

3. This matter arose over a Producer Complaint filed by Petitioner on June 24, 2005, in which it alleged that Respondent owed \$20,512.97, based upon five invoices for nursery goods delivered to various job sites where Respondent was providing landscaping services. The five invoices set forth in the original Producer Complaint are as follows:

<u>Date of Sale</u>	<u>Invoice #</u>	<u>Amount</u>
Dec. 28, 2004	64679	\$2,884.72
Jan. 11, 2005	64828	3,878.75
Jan. 11, 2005	64829	1,926.00
Feb. 1, 2005	65229	2,086.50
Feb. 3, 2005	65127	9,737.00

4. Petitioner later amended its Complaint to withdraw its claims under Invoice Nos. 65229 and 65127, as untimely filed, resulting in an amended amount due of \$8,689.47.

5. Respondent filed a Response to the Producer Complaint on August 15, 2005, admitting the amounts due under Invoice Nos. 64679 and 64828, totaling \$6,763.47, and denying the amount

claimed in Invoice No. 64829, \$1,926.00, as never having been filled, resulting in Respondent's using another vendor to fill the order.

6. Respondent admitted the amounts due under Invoice Nos. 64679 and 64828; therefore, no further discussion is necessary for those items, except to note that Delivery Receipt No. 17751, relating to Invoice No. 64828 contains the note "Reject 1 Live Oak." Therefore, the amount of Invoice No. 64828 must be reduced by \$214.00 (\$200 for the tree and 7 percent Florida Sales Tax).

7. With respect to Invoice No. 64829, however, Petitioner produced at hearing only an unsigned invoice without either a sales order or a receipt for delivery of goods, as was its custom concerning deliveries of nursery goods. Accordingly, Petitioner provided no proof that the order under Invoice No. 64829 was actually delivered to Respondent.

8. Respondent and its surety, Western Surety Company, currently owe Petitioner \$2,884.72 under Invoice No. 64679, and \$3,664.75 under Invoice No. 64828, for a total amount owed of \$6,549.47.

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. §§ 120.569, 120.57(1), and 604.21(6), Fla. Stat.

10. Section 604.15, Florida Statutes, contains the following definitions in pertinent part:

(1) 'Agricultural products' means the natural products of the farm, nursery, grove, orchard, vineyard, garden, and apiary (raw or manufactured);

(2) 'Dealer in agricultural products' means any person, partnership, corporation, or other business entity, whether itinerant or domiciled within this state, engaged within this state in the business of purchasing, receiving, or soliciting agricultural products from the producer or the producer's agent or representative for resale or processing for sale; acting as an agent for such producer in the sale of agricultural products for the account of the producer on a net return basis; or acting as a negotiating broker between the producer or the producer's agent or representative and the buyer.

* * *

(5) 'Producer' means any producer of agricultural products produced in the state.

11. Section 604.17, Florida Statutes, requires dealers in agricultural products to have a license to engage in such business.

12. Before dealers receive their licenses, they must deliver to the Department a surety bond or a certificate of deposit. The surety bond or certificate of deposit secures payment to producers for agricultural products sold to dealers.

§ 604.20(1), Fla. Stat.

13. Petitioner has met its burden of proving, by a preponderance of the evidence, that Respondents are indebted to Petitioner for unpaid invoices in the amount of \$6,549.47.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Florida Department of Agriculture and Consumer Services enter a Final Order requiring Respondent, Greenblades of Central Florida, Inc., or its surety, Respondent, Western Surety Company, to pay Petitioner \$6,549.47 for unpaid invoices.

DONE AND ENTERED this 25th day of January, 2006, in Tallahassee, Leon County, Florida.



ROBERT S. COHEN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of January, 2006.

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.