

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Skinner Nurseries, Inc.,

Petitioner,

vs

DOAH CASE NO. 05-3372
LB CASE NO.: 09-0077,
FINAL ORDER
AGENCY CLERK #A63585

Akers Holdings, LLC,

And

Fidelity and Deposit Company of Maryland,

Respondents.

2009 SEP -4 A 10:37
DIVISION OF
ADMINISTRATIVE
HEARINGS
FILED

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 March 17, 2005, the Petitioner, Skinner Nurseries, Inc., an Agent for producers of Florida agricultural products as defined by Section 604.15(10), Florida Statutes, timely filed an administrative claim pursuant to Section 604.21, Florida Statutes, to collect \$30,066 for nursery plants and trees they sold to Respondent, a licensed dealer in agricultural products. The claim was forwarded to the Division of Administrative Hearings ("DOAH") for further proceedings. Following the receipt of a Recommended Order from DOAH, the Department issued an ORDER FOR SUPPLEMENTAL PROCEEDINGS on June 10, 2008, seeking a clarification of the Recommended Order. DOAH entered an ORDER RE-OPENING FILE on June 18, 2008. On

July 2, 2008, the Claimant filed a second amended claim against the Respondent with the Department which consisted of invoices not included in the original claim. The record of the proceedings established that the Claimant received payments totaling \$10,938.41 on its original claim balance of \$30,066, leaving a balance due on its original claim of \$19,127.59. On July 16, 2008, the Department issued a NOTICE OF AGENCY'S PARTIAL DENIAL OF CLAIM ("Denial") wherein certain invoices in the second claim were deemed not timely filed. The Administrative Law Judge issued an ORDER ON AGENCY'S PARTIAL DENIAL OF CLAIM on June 25, 2009 finding that the second amended claim relates back to the original claim and arises out of the same conduct, transactions, or occurrence. The Judge ordered that Petitioner is entitled to receive the full amount of its claim, but limited by the \$30,000 bond. On July 7, 2009, DOAH issued its AMENDED RECOMMENDED ORDER, a copy of which is attached hereto as EXHIBIT "A". No written exceptions were filed with the Department.

Upon the consideration of the foregoing and being otherwise fully advised in the premises, it is **ORDERED**:

1. The FINDINGS OF FACT set forth in the Amended Recommended Order are adopted in toto as this agency's Findings of Fact.

2. The CONCLUSIONS OF LAW set forth in the Amended Recommended Order are adopted in toto as this agency's conclusions of Law for the particular set of facts and circumstances stated in the Amended Recommended Order.

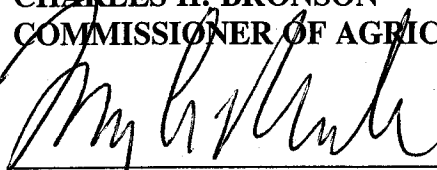
3. Accordingly, for purposes of this Final Order and consistent with the requirements of Sections 604.21(7) and (8), Florida Statutes, Respondent shall make payment to the Petitioner in the sum of \$30,000 within fifteen (15) days after this Final Order is adopted. In the event

Respondent fails to pay Petitioner \$30,000 within fifteen (15) days of the Final Order, Fidelity and Deposit Company of Maryland, 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 Order is final and effective on the date filed with the Agency 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 and Rule 9.110, Florida Rules of Appellate Procedure. 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 Final Order was filed with the Agency Clerk.

DONE AND ORDERED this 3rd day of September, 2009.

**CHARLES H. BRONSON
COMMISSIONER OF AGRICULTURE**



**TERRY L. RHODES
Assistant Commissioner of Agriculture**

Filed with Agency Clerk this 3rd day of September, 2009.



Agency Clerk

COPIES FURNISHED TO:

Honorable Chief Judge Robert S. Cohen
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