

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BETTY H. SHINN, d/b/a SHINN )  
GROVES, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 05-3540  
 )  
H AND R PACKING AND SALES )  
COMPANY AND OLD REPUBLIC SURETY )  
COMPANY, )  
 )  
Respondents. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing by telephone conference on November 9, 2005.

APPEARANCES

For Petitioner: Betty Shinn, pro se  
Shinn Groves  
Post Office Box 937  
Lake Alfred, Florida 33850

For Respondent: H & R Packing & Sales Company, LLC:

Robert J. Hamilton, III, pro se  
H & R Packing & Sales Company, LLC  
3034 North Kings Highway  
Fort Pierce, Florida 34951

For Respondent Old Republic Surety Company:

No appearance

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent H & R Packing & Sales Company, LLC, must pay Petitioner the full contract price for citrus fruit that said Respondent accepted upon tender despite knowing that the goods were nonconforming.

PRELIMINARY STATEMENT

On April 21, 2005, Petitioner Betty H. Shinn, d/b/a Shinn Groves, filed a Complaint with the Department of Agriculture and Consumer Services in which she alleged that Respondent H & R Packing & Sales Company, LLC, had failed to pay for 790 field boxes of oranges that said Respondent had harvested from Petitioner's grove pursuant to a contract between the parties. Petitioner alleged that the amount due was \$6,320.00. Respondent Old Republic Surety Company was named in the Complaint as surety.

In a letter to the agency dated September 14, 2005, Robert J. Hamilton, III, on behalf of Respondents, denied Petitioner's allegations and requested a hearing. Shortly thereafter, the agency forwarded the matter to the Division of Administrative Hearings.

At the final hearing on November 9, 2005, Petitioner testified on her own behalf, and she called her son, Charles M. Shinn, III, as a rebuttal witness. Additionally, Petitioner offered Petitioner's Exhibits 1 through 6, which were received

in evidence. On behalf of Respondent H & R Packing & Sales Company, LLC, appeared Robert J. Hamilton, III, and Miguel E. Rubio, who are partners in the venture. As well, this Respondent offered one exhibit, which was admitted into evidence as Respondent's Exhibit 1.

Although a court reporter recorded the proceeding, none of the parties ordered a transcript. Each side submitted proposed findings of fact before the deadline established at hearing, which was November 21, 2005.

Unless otherwise indicated, citations to the Florida Statutes refer to the 2005 Florida Statutes.

#### FINDINGS OF FACT

1. Petitioner Betty H. Shinn, d/b/a Shinn Groves ("Shinn"), is in the business of growing citrus fruit and hence is a "producer" within the regulatory jurisdiction of the Department of Agriculture and Consumer Services ("Department").

2. Respondent H & R Packing & Sales Company, LLC ("HRPS"), is a "citrus fruit dealer" operating within the Department's jurisdiction.

3. On November 3, 2004, Shinn and HRPS entered into a contract (the "Contract") whereby HRPS agreed to harvest "fresh fruit quality" navel oranges from a particular section of Shinn's grove, which oranges Shinn agreed to sell to HRPS for the price of \$8.00 per field box.

4. The Contract provided, in pertinent part, as follows:

The SELLER [that is, Shinn] shall take all reasonable and normal precautions to maintain fresh fruit quality during the life of this agreement. Failure to exercise close control to mites and other pests shall constitute a violation of this agreement. Further, the BUYER [i.e. HRPS] may at his option cancel this contract or renegotiate the price to be paid and the conditions of sale.

In addition, the parties agreed that HRPS would pick the fruit no later than January 1, 2005, and pay for the oranges "within 45 days of the week of the harvest."

5. An agent of HRPS's named Frederick Gaines inspected the crop identified to the Contract on a couple of occasions in November and December 2004. At some point he notified Shinn that the oranges were being damaged by rust mites. Shinn arranged to have the crop sprayed with Thiolutax (a miticide), which was done around December 6, 2004.

6. HRPS harvested the crop on January 3, 2005. (HRPS's performance in this regard was nonconforming, because the oranges were to be picked no later than January 1, 2005. By allowing HRPS to proceed after the deadline, however, Shinn waived HRPS's untimely performance.)

7. At or about the time of the harvest, Mr. Gaines orally notified Charles Shinn (who is the son—and an agent—of Petitioner Betty Shinn) that the oranges had been damaged by

rust mites and consequently were not fresh fruit quality. Mr. Shinn suggested that the oranges be "run through" the packing house (where the fruit would be graded on its quality), after which the parties could renegotiate the price, if necessary, to adjust for any material deficiencies in the quality of the crop. This proposal was evidently acceptable to HRPS, for it proceeded to harvest the oranges with knowledge that the crop was (or might not be) fresh fruit quality.

8. HRPS picked 790 field boxes of oranges from Shinn's grove pursuant to the Contract. When these oranges were graded at the packing house, an unusually small percentage (approximately 34%) could be "packed out," that is, packaged and delivered for sale as fresh fruit.<sup>i</sup> The rest "graded out," i.e. failed to meet the standards for sale as fresh fruit, and were sold, at a loss, to juice processors.

9. HRPS was obligated under the Contract to pay Shinn for the oranges on or before February 22, 2005, but HRPS let the deadline pass without either paying for the oranges or notifying Shinn of a breach with respect thereto.

10. By letter dated March 17, 2005, Shinn demanded that HRPS pay the full contract price of \$6,320 for the fruit harvested under the Contract.<sup>ii</sup>

11. HRPS responded to Shinn's demand-letter via correspondence dated March 24, 2005. In this letter, HRPS

acknowledged the Contract's existence but disclaimed the duty to pay in full due to the fruit's generally poor quality. HRPS expressed some willingness to resolve the matter amicably but offered no payment. Shinn was not satisfied and initiated this administrative proceeding.

Ultimate Factual Determinations

12. HRPS harvested and hauled away the oranges identified to the Contract. This performance constituted acceptance of the goods, and such acceptance was made with knowledge of a (possible) nonconformity, namely that the oranges were not fresh fruit quality due to rust mite damage.

13. The apparent nonconformity was made manifest to HRPS shortly after the harvest, when an unusually small percentage of the pertinent crop was "packed out." HRPS failed, however, to notify Shinn of the breach within a reasonable time after confirming the nonconformity. Consequently, HRPS is barred from any remedy for breach.

14. HRPS's failure to pay for the oranges at the Contract rate constituted a breach of the Contract entitling Shinn to recover the full price, together with pre-award interest.

15. Accordingly, HRPS is obligated to pay Shinn the principal amount of \$6,320.00, together with statutory interest of \$378.20 (for the period 02/22/05 - 12/31/05). Interest will continue to accrue on the outstanding balance of \$6,320.00 in

the amount of \$1.56 per day from January 1, 2006, until the date of the final order.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

17. Chapter 601, Florida Statutes, is known as "The Florida Citrus Code of 1949." See § 601.01, Fla. Stat. "Citrus fruit" is defined in Section 601.03(7), Florida Statutes, as

all varieties and regulated hybrids of citrus fruit and also means processed citrus products containing 20 percent or more citrus fruit or citrus fruit juice, but, for the purposes of this chapter, shall not mean limes, lemons, marmalade, jellies, preserves, candies, or citrus hybrids for which no specific standards have been established by the Department of Citrus.

18. The term "citrus fruit dealer" is defined in Section 601.03(8), Florida Statutes, to mean:

any consignor, commission merchant, consignment shipper, cash buyer, broker, association, cooperative association, express or gift fruit shipper, or person who in any manner makes or attempts to make money or other thing of value on citrus fruit in any manner whatsoever, other than of growing or producing citrus fruit, but the term shall not include retail establishments whose sales are direct to consumers and not for resale or persons or firms trading solely in citrus futures contracts on a regulated commodity exchange.

HRPS is a citrus fruit dealer under this definition.

19. Citrus fruit dealers are required to be licensed by the Department in order to transact business in Florida. See § 601.55(1), Fla. Stat. As a condition of obtaining a license, such dealers are required to provide a cash bond or a certificate of deposit or a surety bond in an amount to be determined by the Department "for the use and benefit of every producer and of every citrus fruit dealer with whom the dealer deals in the purchase, handling, sale, and accounting of purchases and sales of citrus fruit." § 601.61(3), Fla. Stat.

20. Section 601.65, Florida Statutes, provides that "[i]f any licensed citrus fruit dealer violates any provision of this chapter, such dealer shall be liable to the person allegedly injured thereby for the full amount of damages sustained in consequence of such violation." This liability may be adjudicated in an administrative action brought before the Department or in a "judicial suit at law in a court of competent jurisdiction." Id.

21. Section 601.64(4), Florida Statutes, defines as an "unlawful act" by a citrus fruit dealer the failure to pay promptly and fully, as promised, for any citrus fruit which is the subject of a transaction relating to the purchase and sale of such goods.

22. Any person may file a complaint with the Department alleging a violation of the provisions of Chapter 601, Florida



Statutes, by a citrus fruit dealer. See § 601.66(1), Fla. Stat. The Department is charged with the responsibilities of determining whether the allegations of the complaint have been established and adjudicating the amount of indebtedness or damages owed by the citrus fruit dealer. See § 601.66(5), Fla. Stat. The Department shall "fix a reasonable time within which said indebtedness shall be paid by the [citrus fruit] dealer," and, if the dealer does not pay within the time specified by the Department, the Department shall obtain payment of the damages from the dealer's surety company, up to the amount of the bond. See § 601.66(5) and (6), Fla. Stat.

23. The Contract between Shinn and HRPS was for the sale of goods. Thus, in addition to being subject to the provisions of Chapter 601, Florida Statutes, the transaction at issue is governed by Florida's Uniform Commercial Code ("UCC"). See § 672.102, Fla. Stat. (describing scope of UCC's Article II on "sales"); § 672.105(1), Fla. Stat. (defining "goods").

24. Shinn bore the burden of proving the allegations in her Complaint against HRPS by a preponderance of the evidence. See Florida Dept. of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981); Florida Dept. of Health and Rehabilitative Services v. Career Service Commission, 289 So. 2d 412, 415 (Fla. 4th DCA 1974); § 120.57(1)(j), Fla. Stat. HRPS,

however, had the burden to establish any breach with respect to goods accepted. See § 672.607(4), Fla. Stat.

25. Section 672.606, Florida Statutes, defines "acceptance" as follows:

(1) Acceptance of goods occurs when the buyer:

(a) After a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that the buyer will take or retain them in spite of their nonconformity; or

(b) Fails to make an effective rejection (s. 672.602(1)), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) Does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by her or him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

(Emphasis added.) As found above, HRPS in fact accepted the oranges that Shinn tendered pursuant to the Contract, despite their nonconformity.

26. Section 672.607, Florida Statutes, explains the consequences of acceptance, as follows:

(1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this chapter for nonconformity.

(Emphasis added.) When HRPS accepted the oranges, it likely assumed, reasonably, that any nonconformity would be seasonably cured through an adjustment of the price. Therefore, HRPS could have revoked its acceptance of the goods without breaching the Contract—but it failed timely to do so. See § 672.608, Fla. Stat. (describing manner of proper revocation).

27. Having accepted the oranges despite their nonconformity, the burden was on HRPS to establish breach with respect to the goods accepted. But before seeking relief for breach, HRPS first needed to notify Shinn about the problem, as provided in Section 672.607, Florida Statutes, which states in relevant part:

- (3) Where a tender has been accepted:
  - (a) The buyer must within a reasonable time after he or she discovers or should have discovered any breach notify the seller of breach or be barred from any remedy[.]

As it happened, HRPS failed, in fact, timely to notify Shinn of the breach after discovery thereof, with the result that HRPS is barred, in law, from any remedy.<sup>iii</sup>

28. Shinn carried its burden of proving that HRPS failed to pay for the citrus fruit when the price became due. Therefore, Shinn is entitled to recover the price for the goods. See § 627.709, Fla. Stat.

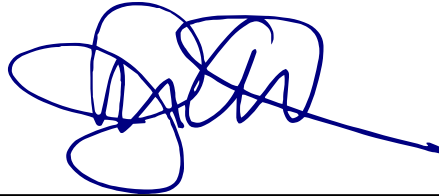
29. Shinn is also entitled to recover simple interest on the outstanding balance at the statutory rate of seven percent per annum until December 31, 2005, and at the rate of nine percent per year beginning January 1, 2006. See § 687.01, Fla. Stat.; § 55.03, Fla. Stat.;

<<http://www.fldfs.com/aadir/interest.html>; see also United Services Automobile Ass'n v. Smith, 527 So. 2d 281, 283-84 (Fla. 1st DCA 1988)(improper to award compound statutory interest).

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department enter a final order awarding Shinn the sum of \$6,320.00, together with pre-award interest in the amount of \$378.20 (through December 31, 2005), plus additional interest from January 1 2006, until the date of the final order, which will accrue in the amount of \$1.56 per day.

DONE AND ENTERED this 13th day of December, 2005, in  
Tallahassee, Leon County, Florida.



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JOHN G. VAN LANINGHAM  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 13th day of December, 2005.

ENDNOTES

<sup>i/</sup> Fresh fruit quality oranges purchased at \$8.00 per field box should yield a "pack out percentage" of around 80-85%.

<sup>ii/</sup> The price was arrived at by multiplying the number of field boxes hauled from the grove (790) times the price per box (\$8.00) as agreed in the Contract.

<sup>iii/</sup> The undersigned believes that the "reasonable time" for notifying Shinn of a breach extended no farther than February 22, 2005, which was the date by which payment under the Contract was to have been made.

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.