STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LIONEL LAGROW,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 06-3219
	)	
CHAPMAN FRUIT COMPANY, INC., AND THE OHIO CASUALTY INSURANCE COMPANY, AS SURETY,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on July 31, 2007, by telephone conference before Carolyn S. Holifield, Administrative Law Judge of the Division of Administrative Hearings. The parties and witnesses were in Sebring, Florida, and the Administrative Law Judge was in Tallahassee, Florida.

APPEARANCES

For Petitioner: W. James Kelly, Esquire
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For Respondent: Kenneth B. Evers, Esquire
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STATEMENT OF THE ISSUE

The issue is whether Respondent owes Petitioner $13,853.00 for failure to harvest Petitioner's 2004 Valencia orange crop, as alleged in the Complaint.

PRELIMINARY STATEMENT

Petitioner, Lionel LaGrow (hereinafter referred to as "Petitioner" or "Mr. LaGrow"), filed a Complaint with the Commissioner of Agriculture on or about June 7, 2006. The Complaint alleged that Respondent, Chapman Fruit Company, Inc., is indebted to Petitioner for $13,853.00 for its failure to pick Petitioner's fruit pursuant to the Contract between the parties. Respondent filed an answer to the Complaint in which it denied the validity of Petitioner's claim.

The matter was initially transmitted to the Division of Administrative Hearings on August 24, 2006. Pursuant to notice, the matter was set for hearing on October 31, 2006, in Sebring, Florida. The hearing was convened as noticed, but was adjourned after Petitioner failed to appear at the hearing. Thereafter, on November 6, 2006, the undersigned issued a Recommended Order of Dismissal.

The Recommended Order of Dismissal notified the parties of their right to submit written exceptions to the Recommended Order of Dismissal. Petitioner timely sent a letter to the Commissioner of Agriculture, indicating that he (Petitioner) had

not received actual notice of hearing. The Commissioner of Agriculture then remanded the matter to the Division of Administrative Hearings for further proceedings. An evidentiary hearing on the notice issued was conducted on January 22, 2007. Following that hearing, an Order Rescinding the Recommended Order of Dismissal and Reopening the Case was issued. The final hearing on the underlying Complaint was scheduled for June 12, 2007, but was continued at the request of Respondent. The matter was then rescheduled and held as noted above.

At hearing, Petitioner testified on his own behalf and called one witness. Respondent presented the testimony of one witness. The parties' Joint Exhibits 1 through 6 and Respondent's Exhibit 1 were received into evidence. The record was left open to allow Respondent to late-file its exhibit. The exhibit was filed and is deemed a part of the record in this case.

No transcript of the proceeding was provided. Both parties timely filed Proposed Recommended Orders which have been considered in preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner, Lionel LaGrow, is a resident of Highlands County, Florida.

2. Respondent, Chapman Fruit Company, Inc. (hereinafter "Respondent" or "Chapman"), is a Florida corporation with its

principal place of business in Hardee County, Florida. Chapman is a duly licensed fruit buyer in the State of Florida and is owned by Ray Chapman (hereinafter referred to as "Mr. Chapman").

3. Mr. LaGrow owns and operates a 26-acre grove in Highlands County, Florida. At all times relevant to this proceeding, Mr. LaGrow's grove contained varieties of citrus referred to as "Earlies," "Mids," and "Valencias." The Earlies and Mids varieties are picked early in each fruit season and the Valencias are picked late in each fruit season.

4. At all times relevant to this proceeding Reggie Cooper (hereinafter referred to as "Mr. Cooper") was an employee of Chapman. Mr. Cooper was authorized by Chapman to enter into binding agreements and to make arrangements for and supervise the picking and hauling of Mr. LaGrow's citrus.

5. Mr. LaGrow and Chapman entered into a Pick and Haul Contract (hereinafter referred to as "Contract") dated November 9, 2001, by which Mr. LaGrow agreed to sell, and Chapman agreed to purchase, fruit grown on the 26-acre tract located in Highlands County, Florida, for shipping seasons 2001-2002, 2002-2003, and 2003-2004. The Contract did not provide prices within the Agreement itself for picking and hauling the fruit. The parties verbally agreed to prices for picking and hauling at the time of each year's harvest.

6. The Contract, as written, was a "Delivered-In" Contract, meaning that Mr. LaGrow retained the right to arrange for picking and hauling the fruit at any time during the term of the Contract.

7. Mr. Cooper made arrangements for and supervised the picking and hauling of Mr. LaGrow's citrus. After the citrus was picked, Chapman provided Mr. LaGrow statements that accurately and fairly account for all fruit harvested by Chapman's contracted harvester. The statements showed the gross income, the costs of picking and hauling, as well as other expenses, and the net income to Mr. LaGrow.

8. The parties followed the procedure described in paragraph 7, beginning in November 2001 of the 2001-2002 citrus shipping season through the harvesting of the Earlies and Mids in the 2003-2004 fruit season.

9. There were 3,531 boxes of Earlies and Mids harvested by Chapman's contractor in November 2001 for the 2001-2002 citrus shipping season from the LaGrow property. When multiplied by the total pounds of solids (19,881.16), a gross purchase price of $15,904.93 resulted. Picking and hauling in the amount of $2.00 per box was deducted leaving $8,180.86 payable to Mr. LaGrow. Chapman tendered a check in the amount of $8,180.86 to Mr. LaGrow.

10. There were 3,103 boxes of Valencias harvested by Chapman's contractor in March 2002 for the 2001-2002 citrus shipping season from the LaGrow property. When multiplied by the total pounds of solids (21,085.57), a gross purchase price of $20,031.29 resulted. Picking and hauling in the amount of $2.20 per box was deducted leaving $13,134.87 payable to Mr. LaGrow. Chapman tendered a check in the amount of $13,134.87 to Mr. LaGrow.

11. There were 1,785 boxes of Earlies and Mids harvested by Chapman's contractor in the 2002-2003 citrus shipping season from the LaGrow property. When multiplied by the total pounds of solids (11,063.98), a gross purchase price of $10,068.22 resulted. Picking and hauling in the amount of $2.86 per box was deducted leaving $4,628.44 payable to Mr. LaGrow. Chapman tendered a check in the amount of $4,628.44 to Mr. LaGrow.

12. There were 1,594 boxes of Valencias harvested by Chapman's contractor in the 2002-2003 citrus shipping season from the LaGrow property. When multiplied by the total pounds of solids (10,582.23), a gross purchase price of $10,053.12 resulted. Picking and hauling in the amount of $2.77 per box was deducted leaving $5,601.87 payable to Mr. LaGrow. Chapman tendered a check in the amount of $5,601.87 to Mr. LaGrow.

13. There were 316 boxes of Earlies and Mids harvested by Chapman's contractor in the 2003-2004 citrus shipping season by

Chapman's contractor from the LaGrow property. When multiplied by the total pounds of solids (1,847.46), a gross purchase price of $1,385.59 resulted. Picking and hauling in the amount of $3.55 per box was deducted leaving $252.57 payable to Mr. LaGrow. Chapman tendered a check in the amount of $252.57 to Mr. LaGrow.

14. There were no problems or disputes between Chapman and Mr. LaGrow regarding the harvesting of the citrus until the 2003-2004 Valencia crop was to be picked.

15. All harvesting of Mr. LaGrow's fruit during the Contract period was performed by Chapman's contracted harvester. There was no fruit harvested from the LaGrow property by any one other than Chapman's contracted harvester during the Contract period.

16. During the Contract period there was a steady decline in production from the LaGrow grove property. From the first year of the Contract to the second year of the Contract there was a nearly 51 percent reduction in the number of net boxes harvested. From the second year of the Contract to the third year of the Contract, with respect to the Earlies and Mids, there was an 82.3 percent reduction in the number of net boxes harvested.

17. There were an insufficient number of boxes of Valencia oranges on the LaGrow property available for harvest in 2004.

Had Chapman harvested, or arranged to harvest the 2004 Valencia crop, once picking and hauling charges were applied, a negative balance owed would have resulted.

18. Mr. Cooper, on behalf of Chapman, made multiple attempts to arrange for harvesting of the 2004 Valencia crop, including, but not limited to, contacting M.E. Stephens, IV, who declined to harvest the fruit based on the quantity available for harvest. For the same reason, other harvesters advised Mr. Cooper that they could not harvest the LaGrow 2004 Valencia crop. Though unsuccessful, Mr. Cooper's efforts to have the crop harvested were reasonable under the circumstances.

19. Mr. Cooper never told Mr. LaGrow that because of the quantity of the Valencia oranges in 2004, he was unable to find a contractor to harvest the fruit.

20. Although it became apparent that Mr. Cooper had not arranged for the Valencia oranges to be harvested, Mr. LaGrow never contacted Mr. Chapman or Mr. Cooper.

21. Under the subject Contract, Mr. LaGrow could harvest or make arrangements to have the Valencia oranges harvested. However, Mr. LaGrow failed to take steps in 2004 to have the Valencia oranges harvested and sold.

22. Mr. LaGrow's Complaint contends that Chapman owes him $13,853.00 for failing to harvest and sell the Valencia oranges in the 2004 season.

23. In Petitioner's Proposed Recommended Order, he seeks $9,586.50 in "damages."

CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding pursuant to Sections 120.569 and 120.57, Florida Statutes (2007).

25. At all times relevant to this proceeding, Mr. LaGrow was a "producer" pursuant to Subsection 601.03(29), Florida Statutes (2006),[1/] and Chapman was a "buyer" pursuant to Subsection 601.03(6), Florida Statutes.

26. The burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal. Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). As Petitioner, Mr. LaGrow bears the burden of demonstrating by a preponderance of the evidence that Chapman is indebted to him for the 2004 Valencia oranges that were not harvested. Petitioner has failed to meet his burden.

27. The preponderance of the evidence established that the Contract between Mr. LaGrow and Chapman did not obligate Chapman to harvest or arrange to harvest the fruit during the Contract period. Further, the evidence established that pursuant to the

Contract, LaGrow was at all times free to make arrangements for harvesting any of the citrus on his property, including the 2004 Valencia crop.

28. Assuming arguendo that the Contract required Chapman to harvest and sell all the citrus on the LaGrow property, Petitioner did not establish that the 2004 Valencia crop would have netted the price he claims Chapman owes him.

29. The undisputed evidence established that the citrus production from the LaGrow property was in a state of continuing decline during the Contract period as evidenced by the harvesting of only 316 boxes of Earlies and Mids in the 2003-2004 season. The undisputed evidence also established that there was a similar decline in the quantity of Valencia fruit available to be harvested in 2004 and that had it been harvested, it would have resulted in a negative balance owed.

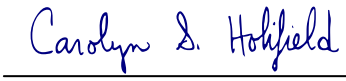
30. In summary, Chapman had no legal obligation to harvest the 2004 Valencia crop. Moreover, even if there were such an obligation to harvest, the quantity of fruit was insufficient to permit harvest, thus relieving Chapman of any obligation with respect to same and rendering performance by Chapman impossible.

RECOMMENDATION

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

RECOMMENDED that the Commissioner of Agriculture enter a final order dismissing Petitioner's Complaint.

DONE AND ENTERED this 7th day of November, 2007, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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this 7th day of November, 2007.

ENDNOTE

1/ All references are to 2006 Florida Statutes, unless otherwise indicated.

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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.