

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

STURON, INC., )  
)  
Petitioner, )  
)  
vs. ) Case No. 06-4890  
)  
GARDEN WORLD OF HOLIDAY, INC., )  
d/b/a GARDEN WORLD, AND PLATTE )  
RIVER INSURANCE COMPANY, AS )  
SURETY, )  
)  
Respondents. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

On June 7, 2007, a formal administrative hearing in this case was held by video teleconference in Tallahassee and Fort Myers, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Michael S. Perse, Esquire  
Kluger, Peretz, Kaplan & Berlin, P.L.  
Miami Center, Seventeenth Floor  
201 South Biscayne Boulevard  
Miami, Florida 33131

For Respondent Garden World of Holiday, Inc., d/b/a Garden World:

Kendall T. Jones, Esquire  
Paloci & Jones, Chartered  
5560 Bee Ridge Road, Suite D-7  
Sarasota, Florida 34233

For Respondent Platte River Insurance Company:

(No appearance)

STATEMENT OF THE ISSUE

The issue is whether Garden World of Holiday, Inc., d/b/a Garden World (Respondent), and its surety, Platte River Insurance Company, owe funds to Sturon, Inc. (Petitioner), for the sale of agricultural products.

PRELIMINARY STATEMENT

On or about October 31, 2006, the Petitioner filed a complaint with the Florida Department of Agriculture and Consumer Services (DACs) against the Respondent related to the Respondent's alleged non-payment for plant materials purchased from the Petitioner. The Respondent denied the allegations and requested a formal administrative hearing. The complaint and request were forwarded to the Division of Administrative Hearings, which scheduled the matter for hearing. The scheduled hearing was continued several times for a variety of reasons and, eventually, was conducted on June 7, 2007.

At the hearing, the Petitioner presented the live testimony of one witness, the deposition testimony of two witnesses, and had Exhibits 1, 2, and 5 admitted into evidence. The Respondent presented no testimony or exhibits. Although the Respondent had pre-filed proposed exhibits prior to the hearing, none were offered or admitted during the hearing.

No transcript of the hearing was filed. The Petitioner filed a Proposed Recommended Order.

FINDINGS OF FACT

1. The Petitioner was a producer of agricultural products, specifically tropical foliage materials.

2. The Respondent was a dealer of agricultural products and was apparently involved in a large project that required obtaining substantial quantities of tropical foliage plant product.

3. In July 2006, the Respondent contacted the Petitioner and inquired as to the availability of tropical foliage plant product. The Petitioner and the Respondent had not previously done business together.

4. At the beginning of the sales transactions, the Respondent sought, and the Petitioner granted, a line of credit for the plant material purchases.

5. Beginning on July 28, 2006, and continuing through September 22, 2006, the Respondent purchased and took delivery of tropical foliage plant product from the Petitioner.

6. All materials sold by the Petitioner to the Respondent were in response to telephone orders placed by the Respondent. There is no evidence that the Petitioner charged for any plant materials that were not ordered by the Respondent.

7. All charges for all plants sold by the Petitioner to the Respondent were billed on invoices that were sent by the Petitioner to the Respondent within one day of each delivery. The quantities and prices of the plants were clearly set forth on the invoices.

8. The evidence establishes that the Respondent received the invoices and was aware of the prices being charged by the Petitioner.

9. The Respondent has asserted that there were conversations about the prices being charged by the Petitioner, but there was no evidence presented that there was any agreement between the parties under which the Petitioner agreed to reduce the prices being invoiced. Despite the alleged price concern, the Respondent continued to order plant materials from the Petitioner.

10. Based on a review of the invoices, the total cost of the plant materials sold by the Petitioner to the Respondent was \$164,362.67. The Respondent has paid a total of \$66,968.69 to the Petitioner. The total unpaid amount is \$97,393.98.

11. The Petitioner routinely grew various types of foliage product. When the Petitioner's own supplies were insufficient, or the material requested was not of a type grown by the Petitioner, the Petitioner located and obtained plant materials from other producers for purposes of resale to dealers. The

prices of plants obtained from other producers for resale included a "markup" for locating and obtaining the materials for purchase by a dealer.

12. In supplying the plant materials requested by the Respondent in this case, the Petitioner sold from its own inventory and obtained materials from other producers for resale to the Respondent.

13. There was no evidence that the markup was unreasonable or was not common practice in the industry.

14. There is no evidence that the Respondent attempted to locate and obtain plant materials from other suppliers rather than from the Petitioner because of dissatisfaction with the Petitioner's prices.

15. At the hearing, counsel for the Respondent asserted that the Respondent's refusal to pay was related to "price gouging" by the Petitioner. There is no evidence that the Petitioner engaged in "price gouging."

16. There was no evidence that the Respondent could not have located and obtained the plant materials from the same sources from which the Petitioner obtained the materials it did not produce.

17. Although prior to the hearing, the Respondent asserted that some plant materials were not of appropriate quality; there

was no evidence presented at the hearing of any quality problems that were not immediately resolved at the time of delivery.

18. At one time, the Respondent asserted that the entity for which the Respondent was purchasing and installing plant materials was tax exempt and that the amount owed should have been accordingly reduced, but there was no evidence offered in support of the assertion and no reduction has been set forth in this Recommended Order.

19. The Respondent presented no evidence to establish any legitimate reason to avoid payment of the \$97,393.98 owed to the Petitioner.

#### CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2006).<sup>1</sup>

21. Section 604.15, Florida Statutes, sets forth relevant definitions as follows:

(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.

22. As the terms are statutorily defined, the Petitioner is a "producer" of agricultural products, and the Respondent is a "dealer" of agricultural products.

23. Florida-based dealers in agricultural products are required to obtain a license issued by the DACS. § 604.17, Fla. Stat. One of the requirements for licensure is delivery to the DACS of a surety bond or a certificate of deposit intended to secure payment for agricultural products sold to dealers by producers. § 604.20(1), Fla. Stat.

24. In material part, Section 604.21, Florida Statutes, provides as follows:

604.21 Complaint; investigation; hearing.--

(1)(a) Any person, partnership, corporation, or other business entity claiming to be damaged by any breach of the conditions of a bond or certificate of deposit assignment or agreement given by a dealer in agricultural products as hereinbefore provided may enter complaint thereof against the dealer and against the surety company, if any, to the department, which complaint shall be a written statement

of the facts constituting the complaint. Such complaint shall include all agricultural products defined in s. 604.15(1), as well as any additional charges necessary to effectuate the sale unless these additional charges are already included in the total delivered price. . . .

\* \* \*

(g) The surety company or financial institution shall be responsible for payment of properly established complaints filed against a dealer, notwithstanding the dealer's filing of a bankruptcy proceeding.

\* \* \*

(2) Upon the filing of such complaint in the manner herein provided, the department shall investigate the matters complained of; whereupon, if, in the opinion of the department, the facts contained in the complaint warrant such action, the department shall serve notice of the filing of complaint to the dealer against whom the complaint has been filed at the last address of record. Such notice shall be accompanied by a true copy of the complaint. A copy of such notice and complaint shall also be served to the surety company, if any, that provided the bond for the dealer, which surety company shall become party to the action. Such notice of the complaint shall inform the dealer of a reasonable time within which to answer the complaint by advising the department in writing that the allegations in the complaint are admitted or denied or that the complaint has been satisfied. Such notice shall also inform the dealer and the surety company or financial institution of a right to a hearing on the complaint, if requested.

\* \* \*



(6) Any party whose substantial interest is affected by a proceeding pursuant to this section shall be granted a hearing upon request as provided by chapter 120. Such hearing shall be conducted pursuant to chapter 120. The final order of the department, when issued pursuant to the recommended order of an administrative law judge, shall be final and effective on the date filed with the department's agency clerk. Any party to these proceedings adversely affected by the final order is entitled to seek review of the final order pursuant to s. 120.68 and the Florida Rules of Appellate Procedure. Should a complaint forwarded by the department to the Division of Administrative Hearings be settled prior to a hearing pursuant to chapter 120, the department shall issue a notice closing the complaint file upon receipt of the administrative law judge's order closing the complaint file, and the matter before the department shall be closed accordingly.

(7) Any indebtedness set forth in a departmental order against a dealer shall be paid by the dealer within 15 days after such order becomes final.

(8) Upon the failure by a dealer to comply with an order of the department directing payment, the department shall, in instances involving bonds, call upon the surety company to pay over to the department out of the bond posted by the surety company for such dealer or, in instances involving certificates of deposit, call upon the financial institution issuing such certificate to pay over to the department out of the certificate under the conditions of the assignment or agreement, the amount called for in the order of the department, not exceeding the amount of the bond or the principal of the certificate of deposit. . . .

\* \* \*

(11) Upon the failure of a surety company to comply with a demand for payment of the proceeds on a bond for a dealer in agricultural products, a complainant who is entitled to such proceeds, in total or in part, may, within a reasonable time, file in the circuit court a petition or complaint setting forth the administrative proceeding before the department and ask for final order of the court directing the surety company to pay the bond proceeds to the department for distribution to the complainants. If in such suit the complainant is successful and the court affirms the demand of the department for payment, the complainant shall be awarded all court costs incurred therein and also a reasonable attorney's fee to be fixed and collected as part of the costs of the suit. In lieu of such suit, the department may enforce its final agency action in the manner provided in s. 120.69.

25. The Petitioner has the burden of establishing by a preponderance of the evidence entitlement to the relief sought. Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (1st DCA 1977). In this case, the preponderance of the evidence establishes that the Respondent owes a total of \$97,393.98 to the Petitioner for agricultural products identified herein.

26. The Respondent's Answer to the Petitioner's Complaint identifies Platte River Insurance Company as the surety for the Respondent. Accordingly, it is presumed that a bond exists which complies with the dealer licensing requirement, although no evidence related directly to the bond was admitted during the hearing.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Agriculture and Consumer Services enter a final order directing that the Respondent pay the total of \$97,393.98, to the Petitioner, and providing for such other procedures as are appropriate to provide for satisfaction of the debt.

DONE AND ENTERED this 9th day of July, 2007, in Tallahassee, Leon County, Florida.

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WILLIAM F. QUATTLEBAUM  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 9th day of July, 2007.

ENDNOTE

1/ Unless otherwise stated, all references to Florida Statutes are to Florida Statutes (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.