

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

American Farms, LLC,

Petitioner,

vs.

Case No. 07-0373

SMALLWOOD DESIGN
GROUP/SMALLWOOD LANDSCAPE,
INC., AND HARTFORD FIRE INSURANCE
COMPANY, AS SURETY,

Respondents.

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 November 29, 2006, Petitioner, American Farms, LLC, a producer of agricultural products as defined by Section 604.15(2), Florida Statutes, timely filed an administrative complaint pursuant to Section 604.21, Florida Statutes, to collect \$11,827.18 for foliage plants they sold to Respondent, a licensed dealer in agricultural products. The Department notified Petitioner of errors on the complaint and Petitioner filed an amended complaint the same day, November 29, 2006. Respondent's license for the time in question was supported by a bond required by Section 604.20, Florida Statutes, written by Hartford Fire Insurance Company (Hartford) in the amount of \$100,000. On December 19, 2006, a Notice of Filing an Amended Complaint (Claim) in the amount of \$11,827.18 was mailed to Respondent and Co-Respondent. On January 8, 2007, the Respondent filed a Response to

Amended Claim which denied the claim as being valid. Therefore, this matter was referred to the Division of Administrative Hearings (DOAH) for an administrative hearing in accordance with Florida's Administrative Procedure Act, Section 120.57(1), Florida Statutes. An administrative hearing was scheduled in this matter for April 12, 2007. Petitioner moved for and received an unopposed Motion for Continuance on April 6, 2007. Co-Respondent, Hartford, filed a Notice of Appearance and Request for Service on April 10, 2007. Petitioner filed a Request to Produce Documents on April 9, 2007. After agreement between the parties, final hearing was rescheduled for June 22, 2007 via video teleconference. Petitioner filed a Motion to Compel Discovery on June 8, 2007 and Pre-Hearing Stipulations on June 15, 2007. The final hearing was held on June 22, 2007. Petitioner filed a Proposed Recommended Order on June 25, 2007. Respondent did not file a Proposed Recommended Order. The Administrative Law Judge (Judge) issued his Recommended Order on August 3, 2007 in which he recommended that the Department enter a final order directing the Respondent to pay \$11,827.18 to the Petitioner and "establishing such other procedures as are necessary to provide satisfaction of the debt." A copy of the Judge's August 3, 2007 Recommended Order is attached hereto as Exhibit A, to which neither party filed written exceptions with this Department.

Section 604.21(1)(c) provides "[w]hen multiple claims exist by a producer, a producer's agent, or representative, or a dealer and the combined adjudicated amounts exceed the total amount of any bond... sales occurring more than 120 or more days after the oldest sale stated in any complaint filed by the same producer, producer's agent or representative, or dealer shall not be considered for payment from the proceeds of the bond... in the event that the surety company... is called on to make payment." Section 604.21(7), Florida Statutes, provides that "[a]ny indebtedness set forth in a departmental order against a dealer shall be paid by the dealer

within 15 days after such order becomes final.” Section 604.21(8), Florida Statutes, requires that upon failure of a dealer to comply with an order that directs payment the Department shall call upon the surety company to pay over to the Department out of the posted bond the amount called for in the order of the Department.

In addition, Section 604.21(1)(e), Florida Statutes, provides that “payment from a bond or certificate of deposit to a dealer shall occur only after all claims of producers or producers’ agents or representatives have been paid in full...” Finally, Section 604.21(9), Florida Statutes, provides that “[p]ayments from a surety company... shall be paid first to the producer or the producer’s agent or representative in the amount of the producer’s claims in full if such proceeds are sufficient for such purpose and, if not, then in pro rata shares to such producer or producer’s agent or representative. If additional proceeds exist in the hands of the department after all claims of a producer and a producer’s agent or representative have been paid in full, the balance of such proceeds shall be paid to claimants who are licensed dealers in agricultural producers, either in whole or in pro rata portion...” Therefore, the Department should enter a Final Order that requires the Respondent to pay the Petitioner the adjudged indebtedness of \$11,827.18 and, should Respondent fail to pay the adjudged amount in 15 days, then the amount should be paid by the Co-Respondent to the Department for distribution in accordance with the Florida Statutes.

The record consists of this Department’s file in this matter.

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

ORDERED:

1. The Judge’s Findings of Fact are adopted as this agency’s Findings of Facts.
2. The Judge’s Conclusions of Law are adopted as this agency’s Conclusions of Law

3. The Judge's Recommendation is modified to reflect that the Co-Respondent, Hartford Fire Insurance Company, has agreed to a settlement agreement with the Department whereby Hartford Fire Insurance Company paid Department the full amount (\$100,000) of the bond which is to be distributed to satisfy all claims during the bonded period against Respondent in exchange for an assignment and release of all claims against Hartford Fire Insurance Company. A copy of the Assignment and Release Agreement is attached hereto as Exhibit B.

4. The Judge's Recommended Order is further modified to reflect that the Department will distribute the bond amount in accordance with Sections 604.21(1)(e) and (9), Florida Statutes, under which the Department may be forced to pay only producer-related claims against Respondent and its surety if producer-related claims exceed the bond amount.

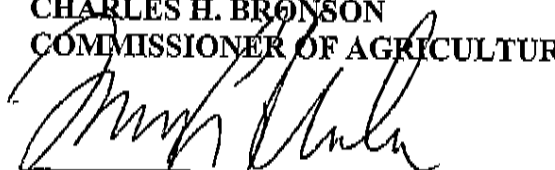
5. The Judge's Recommended Order is further modified to reflect that the total amount claimed by all claimants against Respondent's bond exceeds the bond amount. Therefore, as required by Section 604.21(1)(c), Florida Statutes, any sales claimed by Petitioner occurring more than 120 days after the oldest sale stated in Petitioner's complaint cannot be considered. According to the exhibits filed by Petitioner, \$3,667.72 of the sales claimed under the complaint occurred more than 120 days after the first sale listed. Accordingly, the amount adjudged against Respondent in favor of Petitioner is adjusted to \$8,159.46. 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 Order was filed with the Agency Clerk.

DONE AND ORDERED this 7th day of November, 2007.

CHARLES H. BRONSON
COMMISSIONER OF AGRICULTURE



TERRY L. RHODES
Assistant Commissioner of
Agriculture

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



Agency Clerk (for Paul Palmisano)

COPIES FURNISHED:

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