

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

AMERICAN FARMS, LLC, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 07-0373  
 )  
 SMALLWOOD DESIGN )  
 GROUP/SMALLWOOD LANDSCAPE, )  
 INC., AND HARTFORD FIRE )  
 INSURANCE COMPANY, AS SURETY, )  
 )  
 Respondents. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

On June 22, 2007, a formal administrative hearing in this case was held by video teleconference in Tallahassee and Tampa, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: H. Richard Bisbee, Esquire  
H. Richard Bisbee, P.A.  
1882 Capital Circle Northeast, Suite 206  
Tallahassee, Florida 32309

For Respondent: (No appearance)

STATEMENT OF THE ISSUE

The issue is whether Smallwood Design Group/Smallwood Landscape, Inc. (Respondent), and its surety, Hartford Fire Insurance Company, owe funds to American Farms, LLC, (Petitioner) for the sale of agricultural products.

PRELIMINARY STATEMENT

On or about November 29, 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 replied to the complaint asserting that "Smallwood Design Group/Smallwood Landscape Inc." had been sold and had not been in business since June 13, 2006. The dispute was forwarded by the DACS to the Division of Administrative Hearings, which scheduled the matter for hearing. The scheduled hearing was once continued and was conducted on June 22, 2007.

At the hearing, the Petitioner presented the live testimony of one witness and had Exhibits 1 through 4 admitted into evidence. The Respondent presented no testimony or exhibits.

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

FINDINGS OF FACT

1. At all times material to this case, the Petitioner was a licensed agricultural producer in the State of Florida.

2. At all times material to this case, the Respondent was a licensed agricultural dealer in the State of Florida.

3. From May 30 through October 27, 2006, the Respondent purchased agricultural products, specifically foliage plants, from the Petitioner.

4. All charges for the plants sold by the Petitioner to the Respondent were billed on invoices that were sent to the Respondent by the Petitioner. The quantities and prices of the delivered plants were clearly identified on the invoices.

5. The Respondent has failed to pay invoices totaling \$11,777.18 that were sent by the Petitioner to the Respondent.

6. There is no evidence that any of the charges were disputed by the Respondent at the time the sales were invoiced.

7. There is no evidence that any of the plants sold by the Petitioner to the Respondent were unsatisfactory in terms of price or quality.

8. As required by law, the Respondent had in place an Agricultural Products Dealer Bond dated December 9, 2005. The bond was executed by Joann Smallwood as "principal" for the Respondent. The bond was effective for one year and included the time period relevant to this proceeding.

9. In correspondence filed during the course of this proceeding, the Respondent asserted that Joann Smallwood sold the business to another owner during the time relevant to this proceeding.

10. The evidence established that at all times material to this case, Joann Smallwood acted as the owner/manager of the business. The plants sold by the Petitioner to the Respondent were picked up by trucks with Smallwood logos and signage.

11. There was no evidence that the Petitioner was ever advised during the time the Respondent was purchasing plants from the Petitioner that Joann Smallwood had sold the business or that the Respondent would not be liable for payment of products purchased from the Petitioner.

#### CONCLUSIONS OF LAW

12. 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>

13. 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.

\* \* \*

(9) "Producer" means any producer of agricultural products produced in the state.

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

15. 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.

16. 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.

17. 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 \$11,777.18 to the Petitioner for the agricultural products identified herein.

#### 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 \$11,777.18 to the Petitioner (plus the filing fee paid by the Petitioner to the DACS) and



establishing such other procedures as are necessary to provide for satisfaction of the debt.

DONE AND ENTERED this 3rd day of August, 2007, in Tallahassee, Leon County, Florida.

*William F. Quattlebaum*

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WILLIAM F. QUATTLEBAUM  
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Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 3rd day of August, 2007.

ENDNOTE

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

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.