

**Certified Article Number**

7160 3901 9848 0737 4544

**SENDERS RECORD**

**STATE OF FLORIDA**

**DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**FILED**  
2008 SEP 30 A 11:50  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

A.D. ANDREWS NURSERY, INC.,  
  
Petitioner,  
  
vs.  
  
L.M.I. EAST, INCORPORATED, d/b/a  
L.M.I. LANDSCAPES, INC., and  
WESTERN SURETY COMPANY,  
AS SURETY,  
  
Respondents.

Case No. 08-0382

**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 after entry of a Recommended Order. The Commissioner of Agriculture, as head of the Department of Agriculture and Consumer Services, has jurisdiction over the parties and subject matter.

**I. BACKGROUND**

On December 6, 2007, petitioner, A.D. Andrews Nursery, Inc., a producer of agricultural products as defined by section 604.15(9), Florida Statutes, filed an amended claim under section 604.21, Florida Statutes, to collect \$4,260 (including a \$50 claim filing fee) for East Palatka Holly Trees it sold to L.M.I. Landscapes, Inc., a licensed dealer in agricultural products. Respondent's license for the period in question was supported by a bond required by section 604.20, Florida Statutes, written by the Western Surety Company. Respondent filed a timely answer denying the claim and requested a hearing. Accordingly, the Department requested an administrative hearing with the

Division of Administrative Hearings on January 22, 2008. A formal hearing was held on April 16, 2008 before the Honorable Ella Jane P. Davis. The Administrative Law Judge entered a Recommended Order on June 3, 2008.

On June 13, 2008, respondent filed written exceptions to the Recommended Order, setting forth four (4) exceptions. A transcript was not provided to the Department. The record consists of the Department's file in this matter. The Recommended Order is attached and incorporated herein.

## II. EXCEPTIONS

***Respondent's Exception No. 1:*** *There was no evidence or argument presented disputing the fact the Respondent received stressed and dying trees.*

This exception does not cite the Recommended Order but applies to the overall dispute of the claim. Whether respondent received stressed and dying trees is a factual issue. This exception must be rejected because the Department was not provided with the transcript of the hearing conducted before the Administrative Law Judge, and therefore may not reject or modify the Recommended Order's Findings of Fact. *See Crawley v. Dept. of Highway Safety and Motor Vehicles*, 616 So.2d 1061 (Fla. 1st DCA 1993) (agency had no basis for rejecting or modifying the hearing officer's findings of fact when it was not provided with a transcript).

***Respondent's Exception No. 2:*** *The Respondent's driver indicated in the signed and notarized statement submitted with the Answer of Respondent that the trees were dry when he picked them up and upon delivery.*

This exception does not cite the Recommended Order but applies to the overall dispute of the claim. Whether the respondent's driver indicated that the trees were dry is a

factual issue. This exception must be rejected, for reasons explained in the response to the first exception above.

*Respondent's Exception No. 3: Contrary to what was presented in the Recommended Order, Section 20 of the Findings of Facts was objected to during the hearing because no documentary evidence was presented to support the claim.*

Respondent's exception to a determination of fact made by the Administrative Law Judge must be rejected because the Department has no basis for rejecting or modifying the Recommended Order's Findings of Fact.

*Respondent's Exception No. 4: Further, Section 21 specifically indicates that evidence was presented without objection when it was clearly objected to during the hearing. The proposed rainfall evidence was only given to the Respondent two days prior to the hearing, and it could not be substantiated or investigated sufficiently prior to the hearing.*

This exception must be rejected because the Department has no basis for rejecting or modifying the Recommended Order's Findings of Fact.

### III. FINDINGS OF FACT

1. The Commissioner of Agriculture adopts the Findings of Fact set forth in the attached Recommended Order of the Administrative Law Judge.

### IV. CONCLUSIONS OF LAW

2. The Commissioner of Agriculture adopts the Conclusions of Law set forth in the Recommended Order.

3. The Commissioner accepts the conclusion of law that Petitioner met its burden of proof, that Respondent failed to meet its burden of proof, and that the claim should be granted. Accordingly, it is

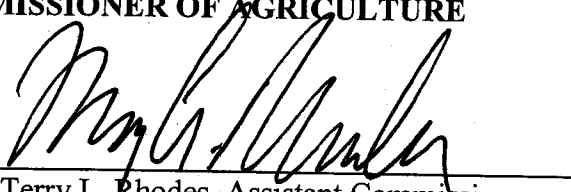
**ORDERED AND ADJUDGED:**

- A. Petitioner's amended claim is granted.
- B. The Commissioner of Agriculture adopts the recommendations of the Administrative Law Judge set forth in the Recommended Order, modified to reflect the \$50 claim filing fee as part of the sum award, for a total of \$4,260.00. Pursuant to section 604.(7), Florida Statutes, the Recommended Order is further modified to show that "[a]ny indebtedness set forth in a department order against a dealer shall be paid by the dealer within 15 days after such order becomes final."

**DONE AND ORDERED** this 29<sup>th</sup> day of September, 2008.

**CHARLES H. BRONSON  
COMMISSIONER OF AGRICULTURE**

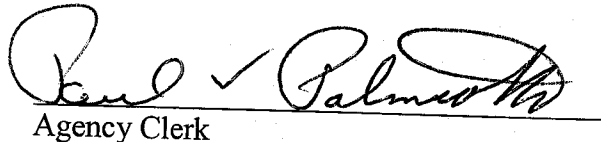
**BY:**

  
Terry L. Rhodes, Assistant Commissioner  
Florida Department of Agriculture and  
Consumer Services

**NOTICE OF RIGHT TO APPEAL**

Any party to these proceedings adversely affected by this Final Order is entitled to seek review of this order pursuant to section 120.68, Florida Statutes (2007), and Florida Rule of Appellate Procedure 9.110. Review proceedings must be initiated by filing a petition for review or notice of appeal with the Agency Clerk of the Florida Department of Agriculture, Room 509 Mayo Building, Tallahassee, Florida 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 from the date this Order was filed with the Agency Clerk.

Filed with the Agency Clerk this 29<sup>th</sup> day of Sept, 2008.

  
Agency Clerk

Copies furnished to:

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