

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

FILED

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DIVISION OF
ADMINISTRATIVE
HEARINGS

TONYA GLADNEY, d/b/a
Tonya Gladney Farms

Petitioner,
vs.

DOAH Case No. 08-3379

G & S MELONS, LLC, and
PLATTE RIVER 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 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 June 9, 2008, Petitioner filed an Amended Complaint under Florida's Agricultural License and Bond Law claiming Respondent, a licensed dealer in agricultural products, breached oral agreements between the parties and caused damages of \$214,262.19. Respondent's license for the period in question was supported by a bond written by the Platte River Insurance Company. Respondent filed an answer denying the claim. The Department forwarded the matter to the Division of Administrative Hearings to conduct formal proceedings.

A formal hearing was held on October 28 and 29, 2008 before Administrative Law Judge R. Bruce McKibben. Judge McKibben entered a Recommended Order on February 23, 2009.

On March 10, 2009, Petitioner's counsel filed Petitioner's Exceptions to the Recommended Order. Respondent's counsel filed a Response in Opposition to Petitioner's Exceptions to the Recommended Order. A court reporter recorded the final hearing and the transcript was provided to the Department. The Recommended Order is attached and incorporated herein.

II. EXCEPTIONS

1. *Petitioner's Exception Nos. 1-3: The Sprinkler System.* The Recommended Order's Findings of Fact, as they relate to the dispute over payment of the installation of the sprinkler system, and specifically Paragraphs 14 and 17 (the only paragraphs cited by Petitioner in this group of exceptions), are supported by competent substantial evidence. Petitioner's Exceptions Nos. 1-3 are rejected.

2. *Petitioner's Exception Nos. 4-5: Ownership of the Sprinkler System.* The Recommended Order's Finding of Fact, Paragraph 18, is supported by competent substantial evidence. Petitioner's Exceptions Nos. 4-5 are rejected. It is noted, however, that this Final Order makes no determination of property rights in the sprinkler system.

3. *Petitioner's Exception Nos. 6-7: The Pre-Cooling Charges.* The Recommended Order's Finding of Fact, Paragraph 21, is supported by competent substantial evidence. Petitioner's Exceptions Nos. 6-7 are rejected.

4. *Petitioner's Exception Nos. 8-11: The Price Dispute.* The Recommended Order's Findings of Fact, as they relate to the pricing dispute over the berries, and

specifically Paragraph 25 (the only paragraph cited by Petitioner in this group of exceptions), are supported by competent substantial evidence. Petitioner's Exceptions Nos. 8-11 are rejected.

5. *Petitioner's Exception Nos. 12-14: The Materials Question.* The Recommended Order's Finding of Fact, Paragraph 30, is supported by competent substantial evidence. Petitioner's Exceptions Nos. 12-14 are rejected.

6. *Petitioner's Exception Nos. 15-18: The Usury Issue.* Although classified as exceptions to issues of law, this group of exceptions is addressed to and cites the Recommended Order's Findings of Fact, Paragraphs 31-35. The Recommended Order's Findings of Fact, Paragraphs 31-35, are supported by competent substantial evidence. Petitioner's Exceptions Nos. 15-18 are rejected.

7. *Petitioner's Exception Nos. 19-22: The Receipt Issue.* Although classified as exceptions to issues of law, this group of exceptions appears to be addressed to and cites the Recommended Order's Findings of Fact, Paragraphs 20-21. The Recommended Order's Findings of Fact, Paragraphs 20-21, are supported by competent substantial evidence. Petitioner's Exceptions Nos. 19-22 are rejected.

8. *Petitioner's Exception Nos. 23-28: The Burden of Proof Issue.* The Recommended Order's Conclusions of Law, Paragraphs 38 and 46 are accepted. Petitioner's Exceptions Nos. 23-28 are rejected.

9. *Petitioner's Exception No. 29-41: Matters of Procedure.* After a review of the proceedings before the Administrative Law Judge, the Petitioner's Exceptions Nos. 29-41 are rejected.

III. FINDINGS OF FACT

10. The findings of fact set forth in the Recommended Order are adopted *in toto*.

IV. CONCLUSIONS OF LAW

11. The conclusions of law set forth in the Recommended Order are adopted *in toto*.

12. The conclusion of law that Petitioner did not meet her burden of proof and that the claim should be dismissed is accepted. Accordingly, it is


ORDERED AND ADJUDGED:

A. The Commissioner of Agriculture adopts *in toto* the recommendations of the Administrative Law Judge set forth in his Recommended Order.

B. Petitioner's amended claim is dismissed.

DONE AND ORDERED this 23rd day of July, 2009.

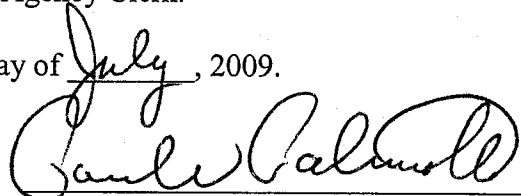
**CHARLES H. BRONSON
COMMISSIONER OF AGRICULTURE**

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, 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 23rd day of July, 2009.



Agency Clerk

Copies furnished to:

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