STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TONYA GLADNEY, d/b/a TONYA GLADNEY FARMS,	)	
Petitioner,	)	
vs.	)	Case No. 08-3379
G AND S MELONS, LLC, AND PLATTE RIVER INSURANCE COMPANY, AS SURETY,	)	
Respondents.	)	

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on October 28 and 29, 2008, in Lakeland, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ian Horn, Esquire
Post Office Box 691
Brandon, Florida 33509-0691

For Respondents: Lawrence H. Meuers, Esquire
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Meuers Law Firm, P.L.
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STATEMENT OF THE ISSUE

The issue in this case is whether Respondent is indebted to Petitioner relating to the lease of farmland, management of

farmland, and the sale of strawberries pursuant to various oral contracts.

PRELIMINARY STATEMENT

During the early summer of 2007, Petitioner, Tonya Gladney ("Gladney") approached Glen Grizzaffe ("Grizzaffe"), the owner of Respondent, G&S Melons, LLC ("G&S"), about the possible lease of farmland for Gladney's company, Tonya Gladney Farms ("TGF"). The parties reached an oral agreement, and TGF began farming operations, including the cultivation of strawberries (sometimes referred to herein as "berries"). Upon completion of the 2007-2008 farming season, TGF filed a claim with the Florida Department of Agriculture and Consumer Services, asserting G&S's alleged failure to pay TGF the amount due and owing under the oral contracts. The matter was referred to the Division of Administrative Hearings (DOAH) and assigned to the undersigned Administrative Law Judge.

The final hearing was scheduled for August 13, 2008. By mutual agreement of the parties, the hearing was re-scheduled for October 27, 2008, and then moved to October 28 and 29, 2008. At the final hearing, Petitioner called four witnesses: Tonya Gladney; Charles "Skeeter" Coleman, Gladney's son; Carol Lester; and Terry "T.J." Hale. Petitioner offered into evidence Exhibits 2, 3, 4, 6 and 10, each of which was admitted. Respondent presented the testimony of two witnesses: Glen

Grizzaffe and Ronald Nelson Young. Respondent offered six exhibits into evidence, each of which was admitted.

The parties advised the undersigned that a transcript of the final hearing would be ordered. They were given ten days from the date the transcript was filed at DOAH to submit proposed recommended orders. The Transcript was filed at DOAH on November 24, 2008. The parties thereafter filed a joint motion seeking additional time to file their proposed orders. The motion was granted, and the parties were allowed until February 13, 2009, to file the proposed orders. Each party timely submitted a Proposed Recommended Order, and they were given due consideration in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Tonya Gladney is an individual doing business as Tonya Gladney Farms, an entity dedicated to the business of farming in south central Florida. Gladney learned the farming business from her father. Gladney had been around strawberry farming her whole life and decided to engage in the business independently starting with the 2006-2007 growing season.

2. TGF is a fledgling operation and does not own all of the land, equipment, or resources necessary to actively operate and maintain a farm. That is, TGF found it necessary to lease land from various landowners and to use that land for farming

purposes. Further, TGF needed to rent certain farming equipment in order to prepare the leased lands for farming.

3. G&S Melons, LLC, is a Florida limited liability company whose managing member is John Glen Grizzaffe. G&S is a farming operation which has been in existence since 1999. Like Gladney, farming was in Grizzaffe's blood, and his family had been farming since the 1920's. G&S started out as a grower of watermelons, but has grown berries, melons, squash, cucumbers and other produce as well. In recent years, G&S purchased 25 acres of land to be used primarily for strawberry farming, and that area of its business has grown considerably. In 2006, when Grizzaffe and Gladney first started doing business, TGF was G&S's only strawberry producer.

4. G&S markets its produce to several grocery store chains, including SuperValue, Acme, Shaws, Jewel Foods, Food Lion, Sweet Bay, Albertsons and others. Grizzaffe's experience and business relationship with the various chains have allowed him to become a broker of goods produced by other farmers. As a broker, Grizzaffe has experience dealing with buyers and knows how to negotiate the best prices for products in his custody.

5. In 2007, G&S was subleasing some land from C.W. Stump who was leasing the land from its owner, Al Repita. The land, known as Lightfoot Road Farm ("Lightfoot") is located in Wimauma, Hillsborough County. Grizzaffe was paying $325 per

acre for the Lightfoot property, which was irrigated, but did not have overhead sprinklers. Grizzaffe held a year-to-year sublease on the property, primarily because Repita had the land up for sale. Grizzaffe expected to retain his lease for the next two or three years, but did not have any long-term expectations. The most credible evidence indicates that Lightfoot encompasses approximately 35 acres.

6. After initial discussions between the parties concerning Lightfoot, Gladney and Grizzaffe met at the farm to further discuss the possible sublease by TGF. Gladney indicated she wanted to grow strawberries and Grizzaffe agreed to sublease the land to her. The sublease agreement was not reduced to writing, nor are there any written terms or conditions associated with the sublease.[1]

7. Gladney was unclear as to her understanding of what the terms of the lease were supposed to be. She believed Lightfoot was between 20 and 25 acres in size and would be available for at least two to three years, maybe up to five years. Gladney's testimony was not clear as to what she believed the lease amount to be, but thought $200 to $225 per acre would be about right "if there was any charge." Gladney did not provide any rationale as to why she should not be charged for subleasing the land. Grizzaffe's testimony that he was subleasing Lightfoot to

TGF for $325 an acre--exactly what he was paying for it--is credible and makes the most sense in light of all the facts.

8. The size of Lightfoot was a major point of contention between the parties. Inasmuch as there was no written lease, the parties' understanding can only be gleaned from their testimony.

9. Gladney opined the land was 20 to 25 acres based on the fact that TGF had purchased enough plastic to cover 25 acres. Three rolls of plastic (2,400 square feet) would cover one acre and TGF had purchased 75 rolls. It takes 2,000 strawberry plants to cover one acre, and TGF purchased 50,000 plants. Mathematically, Gladney determined there was 25 acres of farmable land at Lightfoot.

10. Grizzaffe's opinion was based on the following evidence: Net acreage is based on 43,560 square feet-per-acre divided by the row center. Strawberries are planted at a distance of four feet between the center of each row, leaving only 10,890 net square feet for planting on the Lightfoot acreage. This equates to 29.8 row acres, plus space in between the rows at Lightfoot, the dirt between the beds, the ditches, and the roadways around the field. So, although there are 20-to-25 acres of ground actually planted, the total gross acreage is higher (in this case approximately 35 acres).

Farmland is generally leased by calculating the gross acreage, not merely the part of the land which can be farmed.[2]

11. Gladney advised Grizzaffe that between the Lightfoot farm and another farm she was working, G&S could expect between 50 and 60 acres of berries. Such calculations are incredibly important for the effective supply of berries to customers by the broker.

12. Inasmuch as Lightfoot had only drip irrigation available at the time of the subject sublease and because overhead irrigation was necessary to grow strawberries, it was understood between the parties that an overhead irrigation system would have to be installed.[3] A major dispute between the parties concerned who would be responsible for installing the overhead irrigation system. Inasmuch as Gladney believed the lease to be less than $225 per acre, it is doubtful she was leasing land with a sprinkler system. Sprinklered farmland usually rents for considerably more, i.e., in the neighborhood of $1,000 per acre.

13. Gladney maintains that Grizzaffe specifically promised to pay for any overhead irrigation system installed on Lightfoot. This made sense to Gladney, because she believed Grizzaffe was going to be able to extend his current lease to a five-year lease. It takes a few years farming a parcel to recoup the expense of an overhead irrigation system.

14. Grizzaffe, on the other hand, knew his lease, which was on a year-to-year basis, might only last two or three more years and that there was no promise of an extension. In fact, the farm is currently being offered for sale, meaning no long-term lease would be available to G&S. Grizzaffe told Gladney that she needed to install the overhead irrigation system in order to assure a quality product, but made no promise to pay for it.

15. While TGF was preparing the farm to plant strawberries for the upcoming season, an overhead sprinkler system was installed. The system was apparently paid for by Gladney, but she claims to have used money furnished by Grizzaffe. There are, however, no written receipts or cancelled checks that indicate a payment by G&S for the sprinkler system.

16. Certain bills or invoices addressing irrigation were generated by James Irrigation, Inc., the company hired to install the overhead system. The James Irrigation statements of account were addressed to Gladney. Other invoices concerning the irrigation system were issued by Gator Pipe and Supply and indicated they were shipped to "Gladney Farms." Gladney made at least one payment of $45,000 directly to James Irrigation as documented in the exhibits admitted at final hearing.

17. The total cost of the overhead irrigation system was approximately $62,000. There are no checks from G&S or

Grizzaffe to Gladney or TGF designated as payment for a sprinkler system, nor was there any credible testimony that Grizzaffe would pay for the Lightfoot sprinkler system.

18. When Gladney ceased operations on Lightfoot, she did not take the Rainbird sprinkler heads or pvc pipes with her. In fact, Gladney did not take up the plastic used in growing the strawberries, although that is common practice when leasing land from another producer. Gladney did not, therefore, assert an ownership interest in the sprinkler system. The tenor of the cessation of business between the parties at that time (each seemed angry at the other) may account for Gladney's failure to clean up the Lightfoot property and/or retrieve the sprinkler system. However, Grizzaffe does not assert ownership of the sprinkler system either. It apparently belongs to the owner of the land.

19. The next major point of contention between the parties was the price that G&S was charging TGF to act as intermediary between the grower (TGF) and the buyer (food store chains or others). Gladney contends that G&S agreed to handle and pre-cool all of TGF's berries at the flat rate of $1.00 per box. Gladney further contends that at least one other broker had accepted her berries at the same price. Grizzaffe counters that while his business would not be profitable giving a $1.00 flat rate, some brokers may be able to offer that to growers for ad

hoc purchases. However, for a regular arrangement wherein a grower is providing a broker most of its product, that would not be feasible.

20. Grizzaffe maintains the charge for TGF berries was the same charged to all other growers, i.e., 50 cents per box for pre-cooling the berries and 10 percent of the amount of the sale. G&S may charge a slightly higher pre-cool fee based on exceptional circumstances, but 50 cents is the norm. The purchase orders introduced into evidence by G&S include a brokerage fee of 10 percent and a pre-cool fee of 50 cents per box, comporting with his version of the oral contract.

21. Again, the agreement between the parties as to the charge for handling berries was not reduced to writing. The more credible evidence supports G&S's position.

22. TGF alleges that G&S misrepresented the amount it would sell TGF's product to buyers for and that G&S did not sell for the agreed-upon price. Gladney expected her berries to be sold at the USDA Market Price (to be discussed further below). Some purchase orders issued by G&S indicate that TGF berries were sold for several dollars under the USDA Market Price.

23. The USDA Market Price is calculated by USDA utilizing the daily sale of berries by all growers in an area. The average price range is printed in a USDA publication and made available to growers, brokers and buyers as a guideline for

negotiating prices in the future. The USDA publication apparently comes out almost daily, setting out the prices paid to local growers on the previous day or days. It is, therefore, a recap of what has been paid, not a projection of future prices to be paid.

24. There is also a less structured means of establishing the "market price." This method involves local growers talking to each other and determining what each had been paid for their product on any given day. Growers often discuss market price, but seldom distinguish between USDA Market Price and the common market price.

25. Gladney maintains that she spoke to Grizzaffe regularly and that he always assured her that her berries would be getting the market price or higher. She seems to believe that Grizzaffe was talking about the USDA Market Price. However, it is generally impossible for any broker to guarantee a price for a product; that is strictly a matter of supply and demand at any given point in time. However, Grizzaffe would benefit from charging the highest price he could get, because he was getting a percentage of the total sale.

26. It is clear from the evidence that TGF berries sometimes were sold at an amount several dollars less than the USDA Market Price. There are reasonable explanations for that fact. For example, if TGF berries were rejected by one buyer,

they would be sold as lower quality berries to another buyer who had need for that product. If there was a very high supply, but low demand, at the time the berries were harvested, a lower price may result. However, other than for those exceptions, G&S sold TGF berries for the same price that G&S sold other growers' berries; and due to his long-standing relationship with several chains, G&S often got the very best price in the area.

27. One other price issue (although not largely pertinent to the instant dispute) concerned pre-selling berries by establishing an "ad price" for the product. An ad price was essentially an agreed-upon price well in advance of the actual purchase. This was done in order to allow stores the opportunity to advertise the price of berries in the newspaper or other circulars because the store would know the price well enough in advance. For example, the broker and buyer may agree to a price of $14 per box for berries to be delivered on a date certain. When that date came, the market price might be $12 per box or $16 per box, but the buyer would only pay the ad price ($14 per box). So, some of the TGF berries may have been sold at below USDA Market Price because they were part of an ad price arrangement.

28. Gladney contends she was underpaid for supervising another farm for Grizzaffe. There is no documentation whatsoever as to the agreement between the parties. The farm

was approximately 25 acres, which would produce about 2,000 to 2,500 flats of berries to the acre (or 50,000 to 62,500 flats). Gladney maintains she was supposed to receive $.25 a flat for berries produced on that farm as her management fee. No accounting of berries produced on the farm was presented into evidence.

29. Gladney received a check for $10,000 from Grizzaffe to pay the management fee for the farm. Gladney said that $10,000 would be a "low amount" for her work, but did not substantiate that more was actually owed.

30. Gladney protested offsets from her earned fees that related to certain products and materials, specifically fuel and packing materials. However, the bills and receipts presented by Grizzaffe justify the materials based on the number of berries produced and packed by Gladney for sale by Grizzaffe. The offsets appear reasonable and consistent with normal farming practices. G&S accurately and appropriately billed TGF for materials, including pallets, eggshells (small cartons used to ship berries), and fuel. The charges for those materials are applied to and deducted from TGF's profits on the berries delivered to G&S.

31. The last primary point of contention between the parties is whether or not G&S loaned money to TGF and, if so, how much was loaned, the interest rate, and whether the loan was

repaid. Again, there is no written loan agreement between the parties.

32. According to Grizzaffe, G&S agreed to lend TGF up to $50,000 during the 2007-2008 growing season at a flat ten percent interest rate. The loan was offered in recognition of the fact that Gladney was just beginning her farming practice and would need some assistance on the front end. G&S expected to recoup its loan as TGF began delivering berries for sale. Gladney maintains that there was no loan to TGF or herself from Grizzaffe. Rather, she states that any checks for other than produce were G&S's payments for the promised irrigation system.

33. G&S issued a number of checks to Gladney identified as "farm advance" or "loan" or "payroll." These checks were issued prior to the first sale of TGF berries by G&S. That is, TGF was not yet entitled to a check from the sale of proceeds at the time the checks were issued. Grizzaffe says the purpose of the checks was to advance money to Gladney so that she would have the funds necessary to rent equipment to prepare the land for planting, to install the sprinkler system, to pay her workers, and to cover her farming costs before proceeds from sales starting coming in. The first check representing sale of TGF berries by G&S was issued to Gladney on February 7, 2008 (although TGF had started delivering berries in November 2007). It is clear that Grizzaffe was providing money to Gladney before

money had been earned. Whether it is called an advance or a loan, the net effect is the same.

34. The total amount loaned by Grizzaffe to Gladney was far in excess of the agreed-upon $50,000. As TGF experienced unforeseen start-up expenses, Grizzaffe would write a check to help them meet any shortfall. These checks, which Gladney characterized as payments for the irrigation system, far exceed the cost of that system. The most credible evidence is that Grizzaffe fronted money to Gladney in the amount of $203,717.00.

35. Further, G&S's charges to TGF exactly reflect a ten percent charge for certain checks, clearly evidencing the loan as described by Grizzaffe.

36. Platte River Insurance Company ("Platte River") is a foreign insurance company authorized to do business in Florida. Platt River bonded G&S as required under Section 604.20, Florida Statutes (2008).[4] Platte River did not make an appearance or file an answer to the Complaint filed by Petitioner in this matter.

CONCLUSIONS OF LAW

37. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Section 120.569 and Subsections 120.57(1), Florida Statutes.

38. Petitioner, who is asserting the affirmative of the issue in this case, has the burden of proof. Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349, 350 (Fla. 1st DCA 1977). The standard of proof is by a preponderance of the evidence. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

39. Strawberries are an "agricultural product" as defined in Subsection 604.15(1), Florida Statutes.

40. Gladney is a "producer" of agricultural products as defined in Subsection 604.15(9), Florida Statutes. In the present case, Gladney and TGF acted in the capacity of a producer when growing strawberries for sale.

41. Grizzaffe and G&S are "dealers in agricultural products" as defined in Subsection 604.15(2), Florida Statutes. Grizzaffe and G&S acted in the capacity of a dealer when negotiating for and selling Gladney/TGF's berries.

42. Florida-based dealers in agricultural products are required to obtain a license issued by the Department of Agriculture and Consumer Services (Department). § 604.17, Fla. Stat. One of the requirements for licensure is delivery to the Department 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. In this case, G&S possessed

a surety bond from Platte River, and Gladney is allowed to seek the proceeds of that bond for her claim.

43. The existence of oral contracts between Gladney and Grizzaffe is implied by the parties' request for (and acquiescence to) a formal administrative hearing. See, e.g., J.R. Sales, Inc. v. Earl Dicks, 521 So. 29 366, 369 (Fla. 1st DCA 1988). And inasmuch as both parties agree that oral contracts existed between them, the contracts would appear to satisfy the exception to the statute of frauds prohibiting oral contracts. § 672.201(3)(b), Fla. Stat.

44. However, in the present case there is no meeting of the minds as to the provisions of the various contracts. In the sublease, Gladney contends the contract called for Grizzaffe to lease 25 acres of land with an overhead sprinkler system to be paid for by Grizzaffe. Grizzaffe intended to lease 35 acres of land without an overhead sprinkler system. Gladney presumed $225 or less per acre in rent; Grizzaffe contends it was $325 per acre. That being the case, there is no valid oral contract as to the land. Likewise, the parties are in complete disagreement as to what price G&S would pay TGF for its product. Gladney presumed a $1.00 per box fee; Grizzaffe contends the fee was $.50 per box, plus a percentage of sales. Thus, the oral contract concerning sale and purchase of berries is not enforceable.

45. Although there is no enforceable contract, Gladney can still pursue her claim under a quantum meruit claim. See Harrison v. Pritchett, 682 So. 2d 650 (Fla. 1st DCA 1996). Under the theory of quantum meruit, TGF received a fair and reasonable price for the berries it produced. When repayment of loans to G&S was applied, TGF was paid in full for its products.

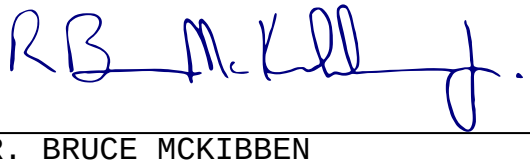
46. In short, Petitioner Tonya Gladney, d/b/a Tonya Gladney Farms, did not prove by a preponderance of the evidence that it is entitled to any further payment for the berries it produced for G&S.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered by the Department of Agriculture and Consumer Services dismissing the Petition of Tonya Gladney, d/b/a Tonya Gladney Farms.

DONE AND ENTERED this 23rd day of February, 2009, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of February, 2009.

ENDNOTES

1/ It is apparent that written contracts or agreements are not routinely used by growers and brokers in this area despite the substantial sums of money at issue.

2/ In fact, G&S leases a piece of farmland that includes a wooded area. It must pay the same amount for the wooded portion of the farm as it pays for the land actually used for farming.

3/ It is not absolutely necessary to have an overhead irrigation system to grow strawberries, but failure to do so creates a very large risk for loosing the crop. It is almost universal practice to have overhead sprinklers in strawberry fields.

4/ Unless otherwise stated herein, all references to Florida Statutes shall be to the 2008 version.

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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.