

STATE OF FLORIDA  
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

FILED

2009 JUL 21 A 10:32

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

VERO BEACH LAND COMPANY, LLC,

Petitioner,

vs.

DOAH Case No. 08-5435

IMG CITRUS, INC., and  
WESTCHESTER FIRE INSURANCE  
COMPANY, as surety,

Respondents.

**FINAL ORDER**

THIS CAUSE, arising under the Florida Citrus Code of 1949, Chapter 601, 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 July 14, 2008, Petitioner timely filed an Amended Grower Complaint under section 601.64 and 601.66, Florida Statutes (the Florida Citrus Code) claiming Respondent, a licensed citrus fruit dealer, breached a purchase agreement between the parties and caused damages of \$63,318.50. Respondent's license for the period in question was supported by a bond written by the Westchester Fire Insurance Company. Respondent filed a timely answer denying the claim. The Department forwarded the matter to the Division of Administrative Hearings to conduct formal proceedings in accordance with section 601.66, Florida Statutes.

A formal hearing was held on January 26, 2009 before the Honorable J. D. Parrish. Judge Parrish entered a Recommended Order on March 4, 2009.

On March 19, 2009, Respondent's counsel served Respondent's Exceptions to the Recommended Order setting forth ten (10) exceptions. A court reporter recorded the final hearing and the transcript was provided to the Department by Respondent. The Recommended Order is attached and incorporated herein. After a review of the complete record, including the Respondent's exceptions, the Commissioner of Agriculture makes the following findings:

## II. EXCEPTIONS

1. *Respondent's Exception No. 1:* The Commissioner of Agriculture finds that the Recommended Order's Finding of Fact, Paragraph 2, is supported by competent substantial evidence. Respondent's Exception No. 1 is rejected.

2. *Respondent's Exception No. 2:* The Commissioner of Agriculture finds that the Recommended Order's Finding of Fact, Paragraph 4, is supported by competent substantial evidence. Respondent's Exception No. 2 is rejected.

3. *Respondent's Exception No. 3:* The Commissioner of Agriculture finds that the Recommended Order's Finding of Fact, Paragraph 19, is supported by competent substantial evidence. Respondent's Exception No. 3 is rejected.

4. *Respondent's Exception No. 4:* The Commissioner of Agriculture finds that the Recommended Order's Finding of Fact, Paragraph 21, is supported by competent substantial evidence. Respondent's Exception No. 4 is rejected.

5. *Respondent's Exception No. 5:* The Commissioner of Agriculture finds that the Recommended Order's Finding of Fact, Paragraph 22, is supported by competent substantial evidence. Respondent's Exception No. 5 is rejected.

6. *Respondent's Exception No. 6:* The Commissioner of Agriculture finds that the Recommended Order's Finding of Fact, Paragraph 23, is supported by competent substantial evidence. Respondent's Exception No. 6 is rejected.

7. *Respondent's Exception No. 7:* The Commissioner of Agriculture finds that the Recommended Order's Finding of Fact, Paragraph 24, is supported by competent substantial evidence. Respondent's Exception No. 7 is rejected.

8. *Respondent's Exception No. 8:* The Commissioner of Agriculture accepts the Recommended Order's Conclusion of Law, Paragraph 40. Respondent's Exception No. 8 is rejected.

9. *Respondent's Exception No. 9:* The Commissioner of Agriculture accepts the Recommended Order's Conclusion of Law, Paragraph 40. Respondent's Exception No. 9 is rejected.

10. *Respondent's Exception No. 10:* The Commissioner of Agriculture accepts the Recommended Order's Conclusion of Law, Paragraph 41. Respondent's Exception No. 10 is rejected.

### III. FINDINGS OF FACT

11. The Commissioner of Agriculture adopts the findings of fact set forth in the Recommended Order.

IV. CONCLUSIONS OF LAW

12. The Commissioner of Agriculture adopts the conclusions of law set forth in the Recommended Order. Accordingly, it is

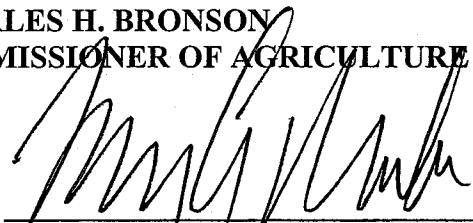
**ORDERED AND ADJUDGED:**

A. The Administrative Law Judge's recommendation that the Respondent IMG Citrus, Inc. pay Petitioner \$51,021.87 is hereby adopted. Consistent with the requirements of section 601.66, Florida Statutes, the recommendation is modified to include that payment shall be made within fifteen (15) days after the effective date of this Final Order. In the event Respondent fails to pay Petitioner \$51,021.87 within fifteen (15) days of the Final Order, Westchester Fire Insurance Company, as Surety for Respondent, is hereby ordered to provide payment under the conditions and provisions of the Bond to **CHARLES H. BRONSON, COMMISSIONER OF AGRICULTURE AND CONSUMER SERVICES**, as Obligee on the Bond. The Department will notify the Surety in the event it (the Surety) is required to pay. This Order is final and effective on the date filed with the Agency Clerk of the Department.

DONE AND ORDERED this 20<sup>th</sup> 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 20<sup>th</sup> day of July, 2009.

  
\_\_\_\_\_  
Agency Clerk

Copies furnished to:

Lemarcus E. Hornbuckle  
Vero Beach Land Company, LLC  
6160 1st Street Southwest  
Vero Beach, Florida 32968

Jennifer S. Eden, Esq.  
Latham, Shuker, Eden & Beaudine, LLP  
390 North Orange Avenue, Suite 600  
Orlando, Florida 32801  
Attorney for Respondents

Robert B. Collins, Director, ACE  
Routing WA10A  
436 Walnut Street  
Philadelphia, Pennsylvania 19106

Honorable J. D. Parrish  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32301-3060

Richard D. Tritschler, General Counsel  
Department of Agriculture and Consumer Services  
407 South Calhoun Street, Ste. 520  
Tallahassee, Florida 32399-0800