

FILED

2009 JUN -8 A 10:50

DIVISION OF
ADMINISTRATIVE
HEARINGS

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Horizon Nursery of Florida, LC,

Petitioner,

vs

DOAH CASE NO. 08-5585
LB CASE NO.: 09-0021,
FINAL ORDER
AGENCY CLERK #A60922

DWL, Designing Women Landscaping, Inc., d/b/a
Designing Women Landscaping and Nursery

And

Nova Casualty Company,

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. On August 26, 2008, the Petitioner, Horizon Nursery of Florida, LC, a Licensed Dealer of agricultural products as defined by Section 604.15(2), Florida Statutes, timely filed an administrative claim pursuant to Section 604.21, Florida Statutes, to collect \$2,345 for nursery plants they sold to Respondent, a licensed dealer in agricultural products. Respondent's license for the time in question was supported by a surety bond required by Section 604.20, Florida Statutes, written by Nova Casualty Company in the amount of \$100,000. The Respondent's answer denied the claim as valid and admitted to an indebtedness of zero. A hearing was not requested by the Respondent, but was requested by the Department due to disputed issues of fact. Therefore, this matter was

referred to the Division of Administrative Hearings (DOAH) for an administrative hearing in accordance with the provisions of Section 120.57(1), Florida Statutes. On December 23, 2008, DOAH issued a NOTICE OF TELEPHONIC HEARING and a hearing in this cause was scheduled for December 29, 2008. On December 24, 2008, the Judge issued an AMENDED NOTICE OF TELEPHONIC FINAL HEARING and the hearing was re-scheduled for January 6, 2009. An administrative hearing with DOAH was held on January 6, 2009 and the Judge issued his RECOMMENDED ORDER on February 5, 2009, a copy of which is attached hereto as EXHIBIT A, to which neither party filed written exceptions with this Department.

Upon the consideration of the foregoing and being otherwise fully advised in the premises, it is

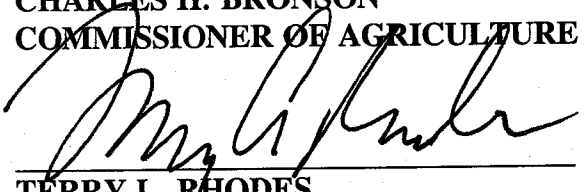
ORDERED:


1. The Judge's FINDINGS OF FACT are adopted as this agency's Findings of Fact.
2. The Judge's CONCLUSIONS OF LAW are adopted in toto as this agency's conclusions of Law.
3. For purposes of this Final Order consistent with the requirements of Sections 604.21(7) and (8), Florida Statutes, payment shall be made within fifteen (15) days after this Final Order is adopted. In the event Respondent fails to pay Petitioner \$2,345 within fifteen (15) days of the Final Order, Nova Casualty and Surety 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.

Any party to these proceedings adversely affected by this Final Order is entitled to seek review of this Final Order pursuant to Section 120.68, Florida Statutes (2002) and Rule 9.110, Florida Rules of Appellate Procedure (2003). Review proceedings must be instituted by filing a petition or notice of appeal with the Agency Clerk, 5th Floor, Mayo Building, Tallahassee, FL 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 of the date this Final Order was filed with the Agency Clerk.

DONE AND ORDERED this 5th day of June, 2009.

CHARLES H. BRONSON
COMMISSIONER OF AGRICULTURE

TERRY L. RHODES
Assistant Commissioner of Agriculture

Filed with Agency Clerk this 5th day of June, 2009.

Agency Clerk

COPIES FURNISHED TO:

Judge Errol H. Powell
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Mr. Joseph Shay
6275 West State Road 46
Sanford, FL 32771

Ms. Susan Hallett, Registered Agent
DWL, Designing Women Landscaping, Inc., d/b/a
Designing Women Landscaping and Nursery
6275 West State Road 46
Sanford, FL 32771

Mr. Tom Joyce
Nova Casualty Company
726 Exchange Street, Suite 1020
Buffalo, New York 14210

Mr. Christopher D. Smith, Managing Member
Horizon Nursery of Florida, LC
114 43rd Avenue, Southwest
Vero Beach, FL 32968

Mr. Bedford Wilder
General Counsel Staff
Mayo Building, M-11
Tallahassee, Florida 32399-0800

Messrs. Jim New and Brad Robson, Field Representatives