

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

HARMON SOD, LLC., )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 08-6019  
 )  
 T AND J SOD SERVICE, INC., AND )  
 GREAT AMERICAN INSURANCE )  
 COMPANY, AS SURETY, )  
 )  
 Respondents. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted on February 4, 2009, in Fort Pierce, Florida, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: John F. Wuchte , pro se  
Patty Stanton, pro se  
Harmon Sod Company, LLC  
Post Office Box 1178  
Fort Pierce, Florida 34954

For Respondent T and J Sod Service, Inc.:

Jose A. Gonzalez, pro se  
T and J Sod Service, Inc.  
5414 North US Highway 1  
Fort Pierce, Florida 34956

For Respondent Great American Insurance Company:

No appearance

## STATEMENT OF THE ISSUES

Whether Respondent T and J Sod Service, Inc. (T and J Sod) is indebted to Petitioner for agricultural products (the sale of sod represented by Trip Tickets 11902 and 11917), and, if so, the amount of the indebtedness. Whether Respondent Great American Insurance Company is liable to Petitioner for any unpaid indebtedness owed Petitioner by T and J Sod.

## PRELIMINARY STATEMENT

Petitioner, Harmon Sod, LCC (Harmon Sod), has sold sod to T and J Sod since 2004. By "Agricultural Products Claim Form" dated September 25, 2008, and received by the Florida Department of Agriculture and Consumer Services (the Department) on October 6, 2008, Harmon Sod claimed that T and J Sod had not paid for sod Harmon Sod sold to T and J Sod in the amount of \$4,243.27. Respondent, Great American Insurance Company (Great American), was identified as T and J Sod's surety. T and J Sod timely denied the claim, the matter was referred to DOAH, and this proceeding followed.

At the final hearing, Petitioner presented the testimony of Ronald Wuchte, Tommy Wuchte, Lisa Kidd, and Patty Stanton. Each of Petitioner's witnesses is employed by Harmon Sod. Petitioner offered six sequentially-numbered Exhibits, each of which was admitted into evidence. T and J Sod presented the testimony of

Jose Gonzalez, the owner of T and J Sod, and offered one Exhibit, which was accepted into evidence.

Prior to the formal hearing, T and J Sod paid to Harmon Sod an amount that it considered to be payment in full. The only issue remaining at the formal hearing was whether T and J Sod purchased the sod represented by Trip Ticket 11902 and Trip Ticket 11917.

All statutory references are to Florida Statutes (2008).

No transcript of the proceedings has been filed. T and J Sod filed a post-hearing submittal, in the form of a letter, which has been considered by the undersigned in the preparation of this Recommended Order. Neither Harmon Sod nor Great American Insurance Company filed a post-hearing submittal.

#### FINDINGS OF FACT

1. At all times relevant to this proceeding, Harmon Sod was a producer of agricultural products within the meaning of Subsection 604.15(9), Florida Statutes.<sup>1</sup> Sod is an agricultural product within the meaning of Subsection 604.15(1), Florida Statutes.<sup>2</sup>

2. At all times relevant to this proceeding, T and J Sod was a "dealer in agricultural products" within the meaning of Subsection 604.15(2), Florida Statutes.<sup>3</sup>

3. At all times relevant to this proceeding, T and J Sod was licensed as a dealer in agricultural products by the Department.

4. At all times relevant to this proceeding, Great American Insurance Company served as surety for T and J Sod.

5. At all times relevant to this proceeding, T and J Sod was a customer of Harmon Sod. T and J Sod purchased sod from Harmon Sod and thereafter resold and installed the sod to T and J Sod's customers.

6. Harmon Sod sold to its customers sod on wooden pallets. An integral part of each transaction involved the pallet. If a customer did not give Harmon Sod an empty pallet when it purchased a pallet of sod, Harmon Sod charged the customer for the sod and an additional \$5.00 for the pallet.

7. There was a dispute whether T and J Sod purchased the sod represented by Trip Ticket 19902 or by Trip Ticket 11917. Mr. Gonzalez testified that his driver did not sign for the sod on either Trip Ticket and that he did not receive the pallets of sod represented by either Trip Ticket.

8. As to Trip Ticket 11902, the greater weight of the credible evidence established that on Friday, April 25, 2008, Harmon Sod had six extra pallets of Bahia sod. Tommy Wuchte wanted to sell the sod so it would not sit on the pallets over the weekend. Tommy Wuchte testified, credibly, that he called

Mr. Gonzalez and asked if could use the sod. Mr. Gonzalez agreed to purchase the six pallets of sod. Tommy Wuchte thereafter delivered the six pallets of sod to T and J Sod and signed his name on the Trip Ticket 11902. As to Trip Ticket 11902, T and J Sod is indebted to Harmon Sod in the amount of \$148.50 plus tax in the amount of \$9.65 (at the rate of 6.5 percent) for six pallets of sod and \$30.00 for six pallets at \$5.00 per pallet, for a total of \$188.15.

9. As to Trip Ticket 1197, the greater weight of the evidence established that on Tuesday, April 29, 2008, Mr. Gonzalez called Tommy Wuchte and told him that he was sending a contract driver to pick up 18 pallets of Bahia sod. Mr. Gonzalez told Tommy Wuchte that he had fired his regular driver. On April 29, 2008, a contract driver came to the sod farm where Harmon Sod was cutting sod, and told Ronald Wuchte that he was picking up the 18 pallets of sod for T and J Sod. Ronald Wuchte loaded the 18 pallets of sod on the driver's truck and had the driver sign Trip Ticket 1197. As to Trip Ticket 1197, T and J Sod is indebted to Harmon Sod in the amount of \$445.50 plus tax in the amount of \$28.96 (at the rate of 6.5 percent) for the 18 pallets of sod and \$90.00 for 18 empty pallets at \$5.00 per pallet, for a total of \$564.46.

10. Harmon Sod had to pay a \$50.00 filing fee to file this claim, for which it is entitled to reimbursement from T and J Sod pursuant to Subsection 604.21(1)(a), Florida Statutes.

11. T and J Sod is indebted to Harmon Sod in the total amount of \$802.61.<sup>4</sup>

#### CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this case pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

13. Petitioner, who is asserting the affirmative of the issues in this case, has the burden of proving by a preponderance of the evidence that Respondents are indebted to it in the amounts claimed. See Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349, 350 (Fla. 1st DCA 1977); and Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

14. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," Black's Law Dictionary 1201 (7th ed. 1999), or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 289 n.1 (Fla. 2000)(relying on American Tobacco Co. v. State, 697 So. 2d 1249, 1254 (Fla. 4th DCA 1997) quoting Bourjaily v. United States, 483 U.S. 171, 175 (1987)).

15. Harmon Sod established by the requisite standard that T and J Sod is indebted to it in the amount of \$802.61.

16. Section 604.21, Florida Statutes, pertains to complaints by producers of agricultural products against dealers of agricultural products and their surety. Subsections 604.21(1), (7), and (8), Florida Statutes, provide, in relevant part, as follows:

(1) . . . Before a complaint can be processed, the complainant must provide the department with a \$50 filing fee. In the event the complainant is successful in proving the claim, the dealer in agricultural products shall reimburse the complainant for the \$50 filing fee as part of the settlement of the claim.

\* \* \*

(7) Any indebtedness set forth in a departmental order against a dealer shall be paid by the dealer within 15 days after such order becomes final.

(8) Upon the failure by a dealer to comply with an order of the department directing payment, the department shall, in instances involving bonds, call upon the surety company to pay over to the department out of the bond posted by the surety company for such dealer or . . . the amount called for in the order of the department, not exceeding the amount of the bond . . .

. . .

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department enter a final order adopting the Findings of Fact and Conclusions of Law contained in this Recommended Order. Pursuant to Subsection 604.21(7), Florida Statutes, T and J Sod should be ordered to pay to Harmon Sod the sum of \$802.61 within 15 days of the entry of the Final Order. Pursuant to Subsection 604.21(8), Florida Statutes, Great American Insurance Company, as surety, should be ordered to pay to Harmon Sod the sum of \$802.61 should T and J Sod fails to timely make that payment.

DONE AND ENTERED this 5th day of March, 2009, in Tallahassee, Leon County, Florida.



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CLAUDE B. ARRINGTON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 5th day of March, 2009.



ENDNOTES

<sup>1/</sup> Subsection 604.15(9), Florida Statutes, defines the term "producer" to mean "any grower of agricultural products produced in the state."

<sup>2/</sup> Subsection 604.15(1), Florida Statutes, explicitly includes sod in its definition of the term "an agricultural product."

<sup>3/</sup> Subsection 604.15(2), Florida Statutes, defines the term "dealer in agricultural products", in relevant part, to include ". . . any person, partnership, corporation, or other business entity . . . engaged within this state in the business of purchasing, receiving, or soliciting agricultural products from the producer or the producer's agent or representative for resale. . . ."

<sup>4/</sup> Harmon Sod did not seek interest on the indebtedness.

COPIES FURNISHED:

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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.