

STATE OF FLORIDA  
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Ricky A. Branch, III,

Petitioner,

vs

DOAH CASE NO. 09-0628  
LB CASE NO.: 09-0059,  
FINAL ORDER  
AGENCY CLERK #A63014

Wishnatzki, Inc., d/b/a Wishnatzki Farms,

And

Fidelity and Deposit Company of Maryland,

Respondents.

FILED  
2009 JUL 30 A 10:36  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

**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 October 21, 2008, the Petitioner, Ricky A. Branch, III, a producer of agricultural products as defined by Section 604.15(9), Florida Statutes, timely filed an administrative claim pursuant to Section 604.21, Florida Statutes, to collect \$31,296.18 for eggplants 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 Fidelity and Deposit Company of Maryland in the amount of \$100,000. On January 7, 2009, a Notice of Filing of an Amended Claim was mailed to Respondent and Co-Respondent. On January 27, 2009, the Respondent filed an ANSWER OF RESPONDENT with attachments wherein they denied the

claim as being valid, admitted no indebtedness and requested a hearing. 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. An administrative hearing was scheduled in this matter for April 17, 2009. Attached to the NOTICE OF HEARING was an ORDER OF PRE-HEARING INSTRUCTIONS with instructions for the parties to follow prior to and at the hearing. On March 30, 2009, the Respondent filed a MOTION TO CONTINUE FINAL HEARING. The Administrative Law Judge ("Judge") issued an ORDER GRANTING CONTINUANCE ("Order") on April 3, 2009. In the Judge's Order, he asked the parties to confer and advise him on the status of the matter among other things. An ORDER RE-SCHEDULING HEARING was issued on April 16, 2009 and a new hearing date was set for June 9, 2009. Prior to the hearing, on June 5, 2009, the Respondent filed a RESPONDENT'S MOTION TO DISMISS claiming their efforts to contact the Claimant have been futile. Additionally, Respondent asserts that Claimant failed to comply with the ORDER GRANTING CONTINUANCE, the ORDER RE-SCHEDULING HEARING and the ORDER OF PRE-HEARING INSTRUCTIONS issued by DOAH. For the aforesaid reasons, the Respondent feels the Claimant's claim should be denied and the claim dismissed with prejudice. On June 16, 2009, the Judge issued a RECOMMENDED ORDER OF DISMISSAL, 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

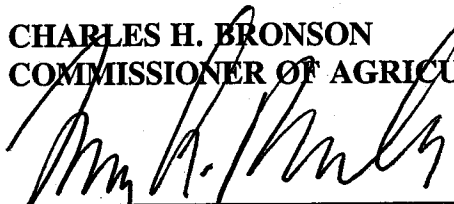
**ORDERED:**

Based on the fact that the Claimant failed to appear at the final hearing with DOAH on June 9, 2009 and failed to meet his burden of proof in presenting evidence in support of his claim, the Department adopts the Judge's RECOMMENDED ORDER OF DISMISSAL. The Department hereby dismisses the captioned claim and the file is closed without further action.

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, 5<sup>th</sup> 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.

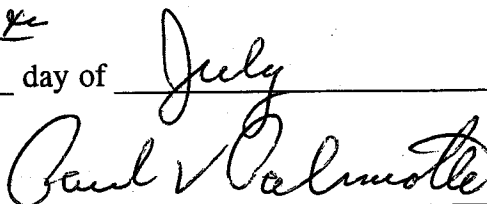
DONE AND ORDERED this <sup>29</sup>29 day of July, 2009.

CHARLES H. BRONSON  
COMMISSIONER OF AGRICULTURE



TERRY L. RHODES  
Assistant Commissioner of Agriculture

Filed with Agency Clerk this <sup>29</sup>29 day of July, 2009.



Agency Clerk

**COPIES FURNISHED TO:**

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Administrative Law Judge  
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(Claim No.: 6380046897)

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