

**Certified Article Number**

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**SENDERS RECORD**

**STATE OF FLORIDA  
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**FILED**  
2010 SEP 22 A 11:43  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

**Buds Sod LLC,**

**Petitioner,**

**vs**

**DOAH CASE NO. 09-1278  
LB CASE NO.: 10-0089,  
FINAL ORDER  
AGENCY CLERK #A69338**

**FYV, Inc., d/b/a Miami Tropical Nursery, Inc.,**

**And**

**Fidelity and Deposit Company of Maryland,**

**Respondents.**

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**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 January 15, 2009, the Petitioner, Buds Sod LLC, a producer of Florida 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 \$59,423.93 for sod 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. Respondent filed an ANSWER OF RESPONDENT on March 2, 2009, wherein they denied the claim as valid, noted that the amount of claim has to be determined 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. On March 30, 2009, DOAH issued a NOTICE OF HEARING and a hearing in this cause was scheduled for May 20, 2009. For myriad reasons, the hearing was cancelled and re-scheduled numerous times, with the final hearing taking place on July 7, 2010. Prior to the July 7, 2010 hearing, several pertinent documents were filed by the parties in this claim. In an undated document, the Petitioner's counsel filed a MOTION FOR ENTRY OF FINAL JUDGMENT (Motion) with DOAH on March 8, 2010. The Motion suggested that the Petitioner and Respondent met on November 4, 2009 to reconcile the accounts and to reach an agreed on amount that the Respondent owes the Petitioner. Attached to the Motion was a hand written note signed by both parties dated November 4, 2009, wherein the parties agreed that the Respondent owes the Petitioner \$17,168.09. Further, the balance would be paid in approximately two (2) months. In response to the Petitioner's Motion, the Respondent, through their counsel filed a RESPONDENT'S RESPONSE TO MOTION FOR ENTRY OF FINAL JUDGMENT (Response) on March 4, 2010. In the response, Respondent's counsel stated among other things, that "there is no proper agricultural claim supporting any entry of any judgment in this case for \$17,168.09...." Additionally the Respondent's counsel requested that the Motion be denied and Respondent be granted its attorney's fees and expenses in having to file a response. On March 8, 2010, DOAH issued an ORDER DENYING MOTION FOR ENTRY OF FINAL JUDGMENT AND REQUEST FOR ATTORNEY'S FEES based on a

March 5, 2010 telephonic hearing on the Motion and Response with the parties. Both the Motion and Respondent's request for attorney's fees were denied. On March 8, 2010, the Administrative Law Judge (ALJ) issued an ORDER REQUIRING STATUS REPORT and advised that parties submit a joint status report no later than March 11, 2010. The Respondent's attorney filed a RESPONDENT'S SUPPLEMENTAL STATUS REPORT on March 15, 2010 and stated that the parties have resolved their differences and agreed that a final payment of \$5,488.81 would be made, but only when ACCI releases its payment to the Respondent. ACCI is a customer of the Respondent who owes money to them on account. On June 16, 2010, the Respondent's attorney filed a RESPONDENT'S NOTICE OF EX PARTE COMMUNICATIONS BY PETITIONER (Notice). Attached to the Notice was an unsigned letter from the Petitioner's principal dated May 12, 2010. Of importance, the Petitioner's principal stated in her letter that if the claim was paid prior to the hearing, she would accept \$15,488.51 pending a \$10,000 transfer to settle the claim. Conversely, if the Respondent did not pay the aforesaid amount prior to the hearing, she wanted a total of \$17,168.09 to cover her lawyer fees. The Department has no authority to award attorney fees under the purview of Sections 604.15-604.34, Florida Statutes. Therefore, the difference of the \$15,488.51 and \$17,168.09 totaling \$1,679.58 would be considered as attorney fees according to the Petitioner's principal's letter of May 12, 2010. Also, attached to the Notice was a STATUS REPORT from the Petitioner's attorney dated May 18, 2010 stating that a \$10,000 payment has been tendered by the Respondent to the Petitioner. Further, the Respondent owes the Petitioner \$5,488.81 within the oral agreement of the parties without assistance of counsel. On June 29, 2010, the Petitioner's attorney filed another STATUS REPORT which affirmed the Respondent owes the Petitioner \$5,488.81 within the oral agreement between the

parties. The STATUS REPORT also noted that upon final payment per the oral agreement, this matter would be dismissed. On August 9, 2010, the ALJ issued her RECOMMENDED ORDER and recommended that the Department enter a Final Order approving Petitioner's claim against the Respondent for \$7,168.09. All parties were allowed fifteen (15) days from the date of the RECOMMENDED ORDER to file written exceptions with the Department. On August 23, 2010, the Respondent filed a letter with attachments with the Department, wherein she noted that on the STATUS REPORT dated June 29, 2010 which was filed by the Petitioner's attorney, the amount agreed on by the Petitioner and the Respondent was \$5,488 [\$5,488.81], not \$7,168.09 as recommended in the RECOMMENDED ORDER. The Respondent intended her response to be exceptions to the RECOMMENDED ORDER, however, as provided by Section 120.57(1)(k), Florida Statutes)...,"but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exceptions, or that does not include appropriate and specific citations to the record." The Respondent failed to submit a transcript of the hearing, and therefore, did not comply with Section 120.57(1)(k), Florida Statutes.

In the ALJ's CONCLUSIONS OF LAW, paragraph twelve (12), the Department takes exception to the ALJ's conclusion that the Respondent owes the sum of \$7,168.09 for agricultural products sold to the Respondent by Petitioner. For reasons cited above, the non-agricultural charges for alleged attorney fees totaling \$1,679.28 are hereby deducted from the unpaid invoices leaving a balance due Petitioner from the Respondent of \$5,488.81.

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

**ORDERED:**

1. The ALJ's **FINDINGS OF FACT** are adopted in toto as this agency's Findings of Fact.

2. Except as modified herein the ALJ's **CONCLUSIONS OF LAW** are adopted as this agency's Conclusions of Law.

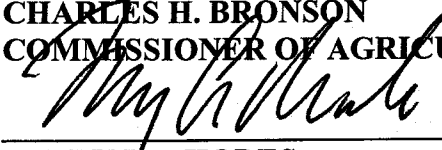
3. As qualified herein, the ALJ's **RECOMMENDATION** is hereby modified to reflect that the Respondent, FYV, Inc., d/b/a Miami Tropical Nursery, Inc., pay Petitioner \$5,488.81 for purpose of mailing this Order consistent with the requirements of Sections 604.21(7) and (8), Florida Statutes. The ALJ's recommendation is modified to include that payments shall be made within fifteen (15) days after this Final Order is adopted. In the event Respondent fails to pay Petitioner \$5,488.81 within fifteen (15) days of the Final Order, Fidelity and Deposit Company of Maryland, 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, 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 21<sup>st</sup> day of September, 2010.

**CHARLES H. BRONSON**  
**COMMISSIONER OF AGRICULTURE**

  
**TERRY L. RHODES**  
Assistant Commissioner of Agriculture

Filed with Agency Clerk this 21<sup>st</sup> day of September, 2010.

  
Agency Clerk

**COPIES FURNISHED TO:**

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