

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EDWARD L. MYRICK, d/b/a EDWARD)
L. MYRICK PRODUCE,)
)
Petitioner,)
)
vs.) Case Nos. 09-4306
) 09-4606
SUN-RICH AMERICA, INC., d/b/a)
ROYAL PALM PRODUCE, AND CAPITOL)
INSURANCE COMPANIES, AS SURETY,)
)
Respondents.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on October 26, 2009, by video teleconference with connecting sites in Lauderdale Lakes and Tallahassee, Florida, before Errol H. Powell, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Edward L. Myrick, Jr., Esquire
1255 West Atlantic Boulevard, Suite 314
Pompano Beach, Florida 30069

For Respondent: No Appearance

STATEMENT OF THE ISSUES

The issues for determination are whether Respondents are indebted to Petitioner in the amount of \$4,273.15 for agriculture products, plus a \$50.00 filing fee, totaling

\$4,323.15; and whether Respondents are indebted to Petitioner in the amount of \$551.00 for agriculture products, plus a \$50.00 filing fee, totaling \$601.00.

PRELIMINARY STATEMENT

Edward L. Myrick, d/b/a Edward L. Myrick Produce, hereinafter Myrick Produce, filed an Amended Claim before the Florida Department of Agriculture and Consumer Services, hereinafter Department, against Sun-Rich America, Inc., d/b/a Royal Palm Produce, hereinafter Royal Palm Produce, for indebtedness due to the failure of Royal Palm Produce to pay Myrick Produce for agriculture products sold to Royal Palm Produce. Royal Palm Produce filed a response admitting that the claim by Myrick Produce in the amount of \$4,273.15, was valid, but that it had made partial payment to Myrick Produce and was making periodic payments on the balance; and filed a response admitting that the claim by Myrick Produce in the amount of \$551.00, was valid, but that the indebtedness had been satisfied. However, Myrick Produce responded that no payments had been received and that the debts remained outstanding. On August 14 and 20, 2009, respectively, the Department referred these matters to the Division of Administrative Hearings.

At hearing, Myrick Produce presented the testimony of one witness and entered one composite exhibit (Petitioner's Composite Exhibit numbered 1) into evidence. No one

representing Royal Palm Produce appeared, no witnesses testified, and no exhibits were entered into evidence.

No transcript of the final hearing was ordered. Myrick Produce chose not to file a post-hearing submission.

FINDINGS OF FACT

1. No dispute exists that, at all times material hereto, Myrick Produce was a producer of agriculture products.

2. No dispute exists that, at all times material hereto, Royal Palm Produce was a dealer in agriculture products.

3. No dispute exists that, at all times material hereto, Royal Palm Produce purchased agriculture products from Myrick Produce.

4. Edward L. Myrick testified on behalf of Myrick Produce. He is the sole owner of Myrick Produce.

5. No one testified on behalf of Royal Palm Produce.

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6. Myrick Produce had an invoice and a corresponding signed bill of lading for each order of Florida produce that was sold to Royal Palm Produce by Myrick Produce. Each invoice provides, among other things, payment terms of 21 days.

7. The bill of lading for each order indicates, among other things, that the produce was received in good condition and that the quantity was verified.

8. Invoice No. 124814 dated January 15, 2009, reflects, among other things, 60 cartons of choice eggplant at a cost of \$381.00. Choice eggplant was at a cost of \$6.35 per carton.

9. Invoice No. 124994 dated January 21, 2009, reflects, among other things, 60 cartons of choice eggplant at a cost of \$381.00.

10. Invoice No. 125139 dated January 27, 2009, reflects, among other things, 27 cartons of choice eggplant at a cost of \$171.45.

11. Invoice No. 125263 dated January 30, 2009, reflects, among other things, 60 cartons of choice eggplant at a cost of \$381.00.

12. Invoice No. 125383 dated February 3, 2009, reflects, among other things, 60 cartons of choice eggplant at a cost of \$501.00. Choice eggplant increased from \$6.35 per carton to \$8.35 per carton.

13. Invoice No. 125618 dated February 10, 2009, reflects, among other things, 60 cartons of choice eggplant at a cost of \$501.00.

14. Invoice No. 126132 reflects, among other things, 60 cartons of choice eggplant at a cost of \$441.00. Choice eggplant decreased from \$8.35 per carton to \$7.35 per carton.

15. As to the date of the Invoice No. 126132, the invoice only reflects the month of February; however, the corresponding

Bill of Lading reflects the same invoice number, the same agriculture produce, and the date of February 19, 2009.

Consequently, an inference is drawn and a finding of fact is made that the date of the invoice is February 19, 2009.

16. Invoice No. 126570 dated March 3, without a year, reflects, among other things, two cartons of long hot pepper at a cost of \$48.70. Long hot pepper was \$24.35 per carton.

17. As to the date of Invoice No. 126570, the corresponding Bill of Lading reflects the same invoice number, the same agriculture produce, and a date of March 3, 2009. Consequently, an inference is drawn and a finding of fact is made that the date of the invoice is March 3, 2009.

18. Invoice No. 128289 reflects, among other things, 60 cartons of choice eggplant at a cost of \$501.00. Choice eggplant increased from \$7.35 per carton to \$8.35 per carton.

19. The corresponding Bill of Lading reflects a signature as the "Shipper," instead of the "Carrier"; whereas, the prior bill of lading reflects a signature as the "Shipper." Furthermore, the answer by Royal Palm Produce indicates that the claim by Myrick Produce is admitted and valid. Consequently, an inference is drawn and a finding of fact is made that the signature as the "Shipper" was a mistake and that the signature is the "Carrier."

20. Invoice No. 128378 reflects, among other things, 50 cartons of large cucumber at a cost of \$267.50; 50 cartons of select cucumber at a cost of \$317.50; and 60 cartons of choice eggplant at a cost of \$381.00. Large cucumber was at a cost of \$5.35 per carton. Select cucumber was at a cost of \$6.35 per carton. Choice eggplant decreased from \$7.35 per carton to \$6.35 per carton.

21. Myrick Produce's total claimed indebtedness for agriculture produce is \$4,273.15.

22. Royal Palm Produce admits that Myrick Produce's claim is valid.¹

23. However, Royal Palm Produce asserts that it has partially satisfied and is making payments toward the indebtedness.² No evidence was presented to support this assertion.

24. Royal Palm Produce has not satisfied any amount of the debt owed. Further, Royal Palm Produce is not making any payments on the debt owed.

25. Royal Palm Produce is indebted to Myrick Produce in the total amount of \$4,273.15.

26. Additionally, Myrick Produce is claiming \$50.00 for filing the Amended Claim with the Department.

27. No appearance was made by the casualty company, Capitol Insurance Companies.

28. Myrick Produce is not pursuing any claim against Royal Palm Produce in this case.

CONCLUSIONS OF LAW

29. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto, pursuant to Sections 120.569 and 604.21, Florida Statutes (2009), and Subsection 120.57(1), Florida Statutes (2009).

30. Dealers of agricultural products are licensed by the Department. § 604.17, Fla. Stat. (2008). Dealers must post a bond or other security as a precondition to licensure, ensuring payment to producers for all agricultural products purchased. §§ 604.19 and 604.20, Fla. Stat. (2008).

31. These proceedings are de novo. § 120.57(1)(k), Fla. Stat. (2009).

32. The standard of proof is preponderance of the evidence. § 120.57(1)(j), Fla. Stat. (2009).

33. The general rule is that "the burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal." Florida Department of Transportation v. J. W. C. Company, Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981). The burden of proof is upon Myrick Produce

to show by a preponderance of the evidence that it is entitled to the relief sought.

34. Myrick Produce has met its burden. The evidence demonstrates that Royal Palm Produce is indebted to Myrick Produce in the total amount of \$4,273.15 for agriculture produce and that Royal Palm Produce has not satisfied any of the debt.

35. Hence, Royal Palm Produce is obligated to pay the total indebtedness to Myrick Produce.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Florida Department of Agriculture and Consumer Services enter a final order in Case No. 09-4306 finding that Sun-Rich America, Inc., d/b/a Royal Palm Produce is indebted to Edward L. Myrick, d/b/a Edward L. Myrick Produce in the amount of \$4,273.15 and ordering the payment of same, plus a filing fee of \$50.00 for filing the Amended Claim; and in Case No. 09-4606 dismissing the Amended Claim.

DONE AND ENTERED this 16th day of November, 2009, in
Tallahassee, Leon County, Florida.

Errol H. Powell

ERROL H. POWELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of November, 2009.

ENDNOTES

^{1/} Stated in Royal Palm Produce's Answer.

^{2/} Ibid.

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.