

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CROWN HARVEST PRODUCE SALES,)
LLC,)
)
Petitioner,)
)
vs.) Case Nos. 09-4719
) 09-4720
AMERICAN GROWERS, INC.; AND)
LINCOLN GENERAL INSURANCE)
COMPANY,)
)
Respondents.)
_____)

RECOMMENDED ORDER

On May 4, 2010, the parties stipulated to the issuance of a recommended order by Administrative Law Judge Jeff B. Clark of the Division of Administrative Hearings. The Stipulation for Entry of Recommended Order was filed on May 4, 2010.

APPEARANCES

For Petitioner Crown Harvest Produce Sales, LLC:

Katy Koestner Esquivel, Esquire
Meuers Law Firm, P.L.
5395 Park Central Court
Naples, Florida 34109

For Respondent American Growers:

Glenn C. Thomason, Registered Agent
American Growers, Inc.
Post Office Box 1207
Loxahatchee, Florida 33470

For Respondent Lincoln General Insurance Company

No Appearance

STATEMENT OF THE ISSUE

The issue is whether the claims of \$98,935.20 and \$19,147.70, filed by Petitioner under the Agricultural Bond and License Law, are valid. §§ 604.15 - 604.34, Fla. Stat. (2008).

PRELIMINARY STATEMENT

By Amended Complaint served on July 9, 2009, Petitioner, Crown Harvest Produce Sales, LLC (Petitioner), alleged that Respondent, American Growers, Inc. (American Growers), owed \$19,147.70 for the sale of strawberries. By a second Amended Complaint served on July 9, 2009, Petitioner alleged that American Growers owed \$98,935.20 for the sale of strawberries. In both cases, the allegations were denied by American Growers in its responsive pleadings, which also requested a formal hearing.

On August 27, 2009, the matters were forwarded to the Division of Administrative Hearings and assigned DOAH Case Nos. 09-4719 and 09-4720, respectively.

On August 27, 2009, Initial Orders were sent to both parties requesting, inter alia, mutually convenient dates for the final hearing. Based on the unilateral responses, on September 28, 2009, an Order of Consolidation and a Notice of Hearing were issued, scheduling the final hearing in these consolidated cases for November 2 and 3, 2009, in Ft. Myers, Florida.

On February 12, 2010, this cause was continued and rescheduled for final hearing on May 6 and 7, 2010, after the approval of the withdrawal of American Growers' counsel.

On April 15, 2010, Petitioner's Unilateral Pre-Hearing Statement was filed as directed in the Supplemental Order of Pre-Hearing Instructions issued on February 12, 2010; American Growers did not file a response to the supplemental order.

On May 4, 2010, the parties filed a Stipulation for Entry of Recommended Order in lieu of the final hearing and waiving the parties' right to offer testimony and evidence. On May 5, 2010, the final hearing in this cause was cancelled.

All statutory references are to Florida Statutes (2008), unless otherwise noted.

FINDINGS OF FACT

1. At all material times, Petitioner has been a producer of agricultural products located in Plant City, Florida.

2. At all material times, American Growers has been a dealer in agricultural products.

3. Respondent Lincoln General Insurance Company, as surety, issued a bond to American Growers, as principal.

4. American Growers is licensed by the Department of Agriculture and Consumer Services ("DACS").

5. Between December 16, 2008, and February 4, 2009, Petitioner sold strawberries to American Growers, each sale being accompanied by a Passing and Bill of Lading.

6. Petitioner sent an Invoice for each shipment, and payment was due in full following receipt of the Invoice.

7. Partial payments have been made on some of the invoices, and as of the date of this Recommended Order, the amount that remains unpaid by American Growers to Petitioner is \$117,982.90, comprising:

Invoice No.	Invoice Date	Amount	Balance Due
103894	12/16/08	\$7,419.00	\$1,296.00
103952	12/22/08	\$18,370.80	\$1,944.00
103953	12/23/08	\$3,123.60	\$648.00
193955	12/26/08	\$8,164.80	\$1,728.00
103984	12/28/08	\$28,764.40	\$28,764.40
104076	12/31/08	\$17,236.80	\$17,236.80
104077	1/5/09	\$17,658.00	\$17,658.00
104189	1/5/09	\$1,320.90	\$1,320.90
104386	1/20/09	\$16,480.80	\$16,480.80
104517	1/29/09	\$17,449.20	\$17,449.20
104496	2/4/09	\$13,456.80	\$13,456.80
TOTAL			\$117,982.90

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.57(1) and 604.21(6), Fla. Stat. (2009).

9. Dealers of agricultural products are licensed by DACS. § 604.17, Fla. Stat.

10. Dealers must post a bond or other security as a pre-condition to licensure, insuring payment to producers for

all agricultural products purchased. §§ 604.19 and 604.20, Fla. Stat.

11. The strawberries in question are agricultural products. § 604.15(3), Fla. Stat.

12. Any person claiming to have been damaged by the breach of the conditions of a bond given by a licensed agricultural dealer, such as Petitioner, may file a complaint against the dealer and its surety. § 604.21, Fla. Stat.

RECOMMENDATION

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

RECOMMENDED that the Department of Agriculture and Consumer Services enter a final order requiring Respondent, American Growers, Inc., and/or its surety, Respondent, Lincoln General Insurance Company, to pay Petitioner, Crown Harvest Produce Sales, LLC, the total amount of \$117,982.90.

DONE AND ENTERED this 18th day of May, 2010, in Tallahassee, Leon County, Florida.



JEFF B. CLARK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of May, 2010.

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.