

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

VILA AND SON NURSERY CORP.,            )  
  )  
      Petitioner,                            )  
  )  
vs.    )     Case No. 11-3995  
  )  
VILA AND SON LANDSCAPING CORP.        )  
AND WESTFIELD INSURANCE                )  
COMPANY, AS SURETY,                    )  
  )  
      Respondents.                        )  
\_\_\_\_\_  
  )

RECOMMENDED ORDER OF DISMISSAL

This case came before Administrative Law Judge John G. Van Laningham for final hearing by video teleconference on September 14, 2011, at sites in Tallahassee and Miami, Florida.

APPEARANCES

For Petitioner: No appearance

For Respondent Vila and Son Landscaping Corp.:

No appearance<sup>1</sup>

For Respondent Westfield Insurance Company:

Robert E Morris, Esquire  
Morris Law Firm  
245 East Washington Street  
Monticello, Florida 32344

David A. Kotnik, Esquire  
Westfield Insurance Company  
One Park Circle  
Post Office Box 5001  
Westfield Center, Ohio 44251

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent Vila and Son Landscaping Corp. owes Petitioner a sum of money for shipments of plants and trees.

PRELIMINARY STATEMENT

On July 6, 2011, Petitioner Vila and Son Nursery Corp. filed a claim with the Department of Agriculture and Consumer Services (the "Department") in which it alleged that Respondent Vila and Son Landscaping Corp., as purchaser, had failed to pay for plants and trees as agreed. Respondent Westfield Insurance Company was named as the purchaser's surety. By letter dated August 5, 2011, the Department forwarded the matter to the Division of Administrative Hearings.

The final hearing took place on September 14, 2011, as scheduled. Petitioner failed to appear, despite having been duly notified of the proceeding.

FINDINGS OF FACT

Because no evidence was presented at the hearing, no finding of fact can be made.

CONCLUSIONS OF LAW

1. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

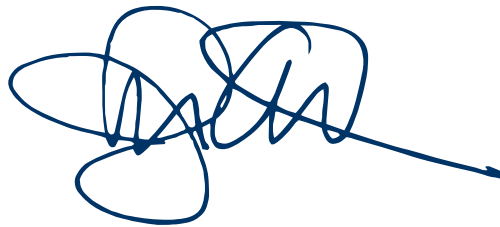
2. Petitioner Vila and Son Nursery Corp. bore the burden of proving the allegations in its complaint against Vila and Son Landscaping Corp. by a preponderance of the evidence. See Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981); Florida Dep't of HRS v. Career Serv. Comm'n, 289 So. 2d 412, 415 (Fla. 4th DCA 1974); § 120.57(1)(j), Fla. Stat.

3. Petitioner failed to carry its burden.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department enter a final order dismissing this proceeding for the failure of Petitioner to establish the allegations of the complaint.

DONE AND ENTERED this 15th day of September, 2011, in Tallahassee, Leon County, Florida.



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JOHN G. VAN LANINGHAM  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 15th day of September, 2011.

ENDNOTE

<sup>1/</sup> Jeremy R. Firth, Esquire, has represented this Respondent in other administrative proceedings and, apparently because of that, was furnished notice of the final hearing in this case. Mr. Firth never made an appearance on behalf of Vila and Son Landscaping Corp. in this case, however, and thus—after clarifying that he was not an attorney of record—did not participate further in the final hearing.

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.