

SENDERS RECORD

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Greg Davenport Enterprises, Inc., d/b/a Container Grown,

Petitioner,

vs

A. W. Kelley's Gardens, Inc.,

And

SureTec Insurance Company,

Respondents

_____ /

DOAH CASE NOS.: 12-3637 and
12-3638
LB CASE NO.: 13-0007
FINAL ORDER
AGENCY CLERK # A83325

FILED
2013 JUN 24 PM 12 47
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.

I. BACKGROUND

On October 8, 2012, the Petitioner, Greg Davenport Enterprises, Inc., d/b/a Container Grown, a producer of agricultural products as defined by Section 604.15(9), Florida Statutes, timely filed two administrative claims pursuant to Section 604.21, Florida Statutes, to collect a combined total of \$8,075 (including the \$50 claim filing fee) for nursery plants 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 SureTec Insurance Company in the amount of \$100,000. On October 31, 2012, the Respondent

filed a timely Answer of Respondent, refuted the validity of the claims and requested a hearing. Therefore, the Department requested a hearing based on disputed issues of fact. Accordingly, the files were 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 October 30, 2012, Mr. Michael Cronin, Surety Claims Manager of the Co-Respondent, acknowledged receipt of the claim in a letter to the Department. The Co-Respondent did not contest the matter or request a hearing.

On November 13, 2012, DOAH issued separate Initial Orders for each claim, and assigned case numbers, 12-3637 and 12-3638. The Petitioner responded to the Initial Orders, and DOAH issued a Notice of Hearing on December 5, 2012, for a hearing to be held on January 15, 2013.

On December 5, 2012, DOAH issued an Order of Consolidation thereby consolidating the two cases. On January 11, 2013, DOAH issued an Order on Outstanding Motions and Ore Tenus Motion for Continuance. Consequently, the hearing scheduled for January 15, 2013, was cancelled and re-scheduled for February 19, 2013.

The hearing was held on February 19, 2013, and the ALJ entered his Recommended Order on March 26, 2013, to which neither party filed written exceptions with this department. A copy of the ALJ's Recommended Order is attached hereto as "Exhibit A."

The Record consists of all notices, pleadings, motions, intermediate rulings, evidence admitted and matters officially recognized, proposed findings, stipulations of the parties and the Recommended Order.

II. FINDINGS OF FACT

1. The Department adopts the ALJ's Finding of Facts as contained in the Recommended Order in toto, with the exception of the following technical correction which has no bearing or effect on the outcome of this case:

- Paragraph 4 of the Recommended Order lists the invoices at issue in this matter. The fourth listed invoice should bear the invoice number 1383 rather than 1303.

III. CONCLUSIONS OF LAW

2. The Department adopts the ALJ's Conclusions of Law as contained in the Recommended Order in toto.

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

ORDERED:

The ALJ's recommendation that the Respondent, A. W. Kelley's Gardens, Inc., pay Petitioner \$8,075 is hereby adopted. Full payment shall be made by Respondent to the Petitioner within fifteen (15) days after this Final Order is entered. In the event Respondent fails to pay Petitioner the total amount of \$8,075 within fifteen (15) days of the Final Order, SureTec Insurance Company, as surety for Respondent, is hereby ordered to provide payment under the conditions and provisions of the bond to **ADAM H. PUTNAM, COMMISSIONER OF AGRICULTURE**, 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.**

NOTICE OF RIGHT TO APPEAL

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, 5th 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.

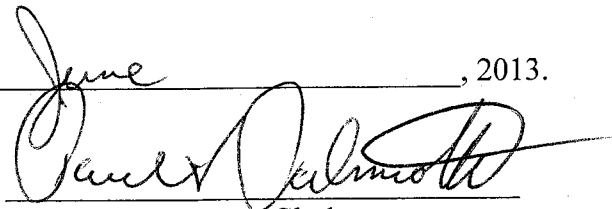
DONE AND ORDERED this 21st day of June, 2013.

ADAM H. PUTNAM
COMMISSIONER OF AGRICULTURE



Michael A. Joyner
Assistant Commissioner of Agriculture

Filed with Agency Clerk this 26th day of June, 2013.



Agency Clerk

COPIES FURNISHED TO:

Judge R. Bruce McKibben
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

(Certified Mail No. 7196 9008 9111 8678 5400)

Mr. Michael Cronin, Surety Claims Manager
SureTec Insurance Company
9737 Great Hills Trail
Austin, TX 78759
(Certified Mail No. 7196 9008 9111 8678 5448)

Mr. Kent O. Kelley, Registered Agent
A. W. Kelley's Gardens, Inc.
6901 Hendry Creek Drive
Ft. Myers, FL 33908
(Certified Mail No. 7196 9008 9111 8678 5455)

Tamara St. Hilaire, Attorney
Florida Department of Agriculture and Consumer Services
Mayo Building, M-12
Tallahassee, Florida 32399-0800

Chris Williams, Field Representative

Mr. Greg Davenport, President
Greg Davenport Enterprises, Inc.
613 Corbel Drive
Naples, FL 34110-1106
(Certified Mail No. 7196 9008 9111 8679 2354)