

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Certified Article Number

7196 9008 9111 7980 9410

SENDERS RECORD

H. P. Sod, Inc.,

Petitioner,

vs.

PSL Landscape Services, Inc.,

and

TD Bank, N.A.,

Respondents.

DOAH CASE NO.: 13-0101
LB CASE NO.: 13-0006,
FINAL ORDER
AGENCY CLERK# A83290

DIVISION OF
ADMINISTRATIVE
HEARINGS

2013 JUL 3 AM 11 45

FILED

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 December 5, 2012, the Petitioner, H. P. Sod, Inc., a producer of 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 \$4,531.16 (including the \$50 claim filing fee) for sod sold to Respondent, a licensed dealer in agricultural products. Respondent's license for the time in question was supported by a certificate of deposit as required by Section 604.20, Florida Statutes, issued by TD Bank, N.A., in the amount of \$5,000. On December 12, 2012, a notice of filing of an amended claim was mailed to the Respondent and Co-Respondent. The December 12, 2012, certified claim mailing to the Respondent's Registered Agent was received

on December 19, 2012. On January 4, 2013, the Respondent filed a timely Answer of Respondent and refuted the claim, stating the sod was not up to standard in quality. Therefore, the Florida Department of Agriculture and Consumer Services (the Department) requested a hearing based on disputed issues of fact. Accordingly, this case 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. The Co-Respondent did not respond to the claim, contest the matter, or request a hearing. DOAH issued a Notice of Hearing on January 22, 2013 for a hearing to be held on February 20, 2013. The hearing was held on that date, and the Administrative Law Judge (ALJ) entered his Recommended Order on March 8, 2013, a copy of which is attached hereto. The hearing was digitally recorded by the ALJ. Neither party filed written exceptions.

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 Recommended Order contains the following technical errors, none of which has any bearing or effect on the outcome of this case; however, they are noted here to maintain consistency throughout the record:

- Throughout the Recommended Order, the ALJ refers to Respondent's "agricultural bond." However, Respondent was issued a certificate of deposit from TD Bank, N.A., rather than a surety bond. References throughout the Recommended Order to a "bond," for example, as found in Paragraph 8 of the Recommended Order, should instead refer to the "certificate of deposit."

- The Agricultural Products Dealer Claim Form filed by Petitioner, referenced within the first paragraph of the Preliminary Statement to the Recommended Order, was dated November 27, 2012, not November 12, 2012.
- Ticket 36983, referenced in Paragraph 3 of the Recommended Order, was dated July 25, rather than July 23.
- Invoice 6615, referenced in Paragraph 4 of the Recommended Order, was for the amount of \$620.60, rather than \$620.20. In addition, the invoice total should have been \$4,481.16, rather than \$4,481.11.

2. Paragraph 10 of the Recommended Order details the ALJ's findings regarding the Petitioner's attorney's fees; however, attorney's fees are not permitted to be awarded as part of a claim against a bond or certificate of deposit. See Paragraph 5 in the Conclusions of Law section below.

3. Otherwise, the Commissioner of Agriculture adopts the findings of fact made by the ALJ in his Recommended Order, attached hereto.

III. CONCLUSIONS OF LAW

4. Pursuant to Section 120.57(1)(1), Florida Statutes, the Department "may reject or modify the conclusions of law over which it has substantive jurisdiction." Section 570.53(2) charges the Department with enforcement of Florida's Agricultural License and Bond Law found in Sections 604.15-604.34, Florida Statutes. Therefore, the Department has substantive jurisdiction over the Agricultural License and Bond Law.

5. The Department has no authority to award attorney's fees as part of a claim against a bond or certificate of deposit under Florida's Agricultural License and Bond Law.

Buds Sod LLC v. FYV, Inc., No. 09-1278, 2010 WL 3734066 (Fla. Dep't. of Agric. & Consumer Serv. Sept. 21, 2010). There are only two references to attorney's fees in the Agricultural License and Bond Law—neither of which is relevant to this proceeding.¹ This proceeding was initiated pursuant to Section 604.21(1)(a), Florida Statutes, which allows an entity to file a complaint against an agricultural products dealer's bond or certificate of deposit for that dealer's nonpayment of "all agricultural products defined in s. 604.15(1), as well as any additional charges necessary to effectuate the sale unless these additional charges are already included in the total delivered price." Section 604.15(1)'s definition does not include attorney's fees, nor are such fees "necessary to effectuate the sale" of the agricultural products at issue in this case.

6. Although the ALJ did not create a specific Conclusion of Law regarding attorney's fees, Paragraph 10 of the Recommended Order refers to the Petitioner's attorney's fees, and Paragraph 11 notes the total sum demanded by Petitioner as an amount that includes such attorney's fees. The Department takes exception to the ALJ's first RECOMMENDATION, which requires Respondent to pay Petitioner a sum that includes attorney's fees. The Department rejects the award of attorney's fees to the extent that these references in the Recommended Order constitute a Conclusion of Law.

7. Therefore, this Conclusion of Law hereby modifies the ALJ's RECOMMENDATION to remove the attorney's fees, as non-agricultural products, and to instead reflect that pursuant to Section 604.21(1)(a), Florida Statutes, the Respondent owes Petitioner \$4,531.16, which includes the \$50 claim filing fee, for the agricultural products sold.

¹ These references are found at Section 604.21(11), which concerns attorney's fees being awarded in a civil proceeding to enforce the Final Order, see Odessky v. Six L's Packing Co., 213 So. 2d 732, 734 (Fla. 1st DCA 1968), and at Section 604.60(3), which concerns actions brought pursuant to that specific section.

8. Otherwise, the Commissioner of Agriculture adopts the conclusions of law made by the ALJ in his Recommended Order, attached hereto.

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

ORDERED AND ADJUDGED:

1. That payment shall be made by the Respondent to the Petitioner in the amount of \$4,531.16 (including the \$50 claim filing fee) within fifteen (15) days after this Final Order is entered and that in the event Respondent fails to pay Petitioner in accordance with those terms, TD Bank, N.A., as Co-Respondent, is hereby ordered to provide payment under the conditions and provisions of the Assignment of Certificate of Deposit to **ADAM H. PUTNAM, COMMISSIONER OF AGRICULTURE, as Obligee on the Assignment of Certificate of Deposit. 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.

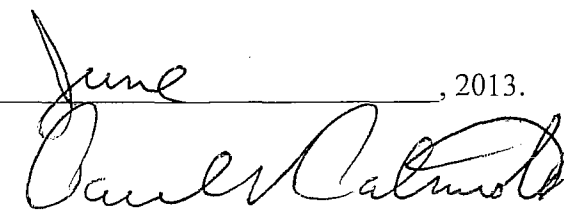
DONE AND ORDERED this ²⁷ day of June, 2013.

ADAM H. PUTNAM
COMMISSIONER OF AGRICULTURE



Michael A. Joyner
Assistant Commissioner of Agriculture

Filed with Agency Clerk this ²⁷ day of June, 2013.



Agency Clerk

COPIES FURNISHED TO:

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