

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MARIA RODRIGUEZ,

Petitioner,

vs.

Case No. 13-2841

UNITY GROVES CORPORATION,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case on September 25, 2013, by video teleconference at sites in Miami and Tallahassee, Florida, before Administrative Law Judge Mary Li Creasy of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Maria Rodriguez  
13260 Southwest 256th Street  
Homestead, Florida 33032-6821

For Respondent: Louis Carricarte, pro se  
Unity Groves Corporation  
Suite 532  
8770 Sunset Drive  
Miami, Florida 33179

STATEMENT OF THE ISSUE

Whether Respondent, Unity Groves Corporation (Unity Groves), owes Petitioner, Maria Rodriguez, \$1,321.00 for peppers purchased from Petitioner in March 2013.

PRELIMINARY STATEMENT

In May 2013, Petitioner filed a Complaint against Unity Groves with the Department of Agriculture and Consumer Services (Department). The Complaint alleged that Unity Groves owed Petitioner \$1,321.00 for a variety of peppers delivered to Unity Groves in March 2013. The Department did not begin processing the Complaint until June 2013 when it received an Amended Complaint. The amount sought by Petitioner in the Amended Complaint is \$1,371.00, the remaining amount owed for the peppers purchased by Unity Groves on March 22 and 25, 2013, plus the \$50.00 filing fee for the Complaint.

The Department advised Unity Groves of the Amended Complaint through a letter and a Notice dated June 28, 2013. The letter and Notice were also sent to FCCI Insurance Company (FCCI), which is the surety on the bond filed by Unity Groves with the Department. Unity Groves filed its Answer to the Amended Complaint on July 24, 2013, in which it denied the validity of Petitioner's claims and raised disputed issues of material fact.

On July 26, 2013, the matter was referred to the Division of Administrative Hearings (DOAH) for further proceedings. At the final hearing, which took place as scheduled on September 25, 2013, Petitioner testified on her own behalf and presented the testimony of Susana Rodriguez and Yulizbeta Rodriguez (daughters of Petitioner). Another of Petitioner's daughters, Days

Rodriguez, served as a Spanish translator for her mother without objection. Petitioner's Exhibits 1 through 4 were received in evidence without objection. Louis Carricarte (Carricarte), owner and president of Unity Groves, testified on Unity Groves' behalf, and Respondent's Exhibits 1 through 4 were received in evidence without objection.

Neither party ordered a transcript, and no proposed recommended orders were submitted.

#### FINDINGS OF FACT

##### The Parties

1. Petitioner owns property in the Miami, Florida, area on which she grows a variety of peppers which she sells to agricultural retailers.

2. Unity Groves is a family-owned and operated agricultural dealer which purchases produce from growers and growing facilities and resells to vendors across the country.

3. During March and May 2013, Petitioner sold peppers on 14 separate dates to Unity Groves. Unity Groves then resold the peppers to retail vendors.

4. During the brief course of dealings between parties, Petitioner would either contact Unity Groves and indicate the type and quantity of peppers she had available to determine whether Unity Groves needed to fill an order for a vendor or she

would be contacted by an employee of Unity Groves to determine whether Petitioner had peppers available.

5. The price for Petitioner's peppers would be negotiated prior to, or at the time of, delivery of the peppers to Unity Groves. Petitioner primarily negotiated with the receiver for Unity Groves, Emilio (last name unknown), or another employee, Pete (last name unknown). On ten occasions, Petitioner received a receipt prepared by Unity Groves at the time of delivery indicating the quantity of half or full bushels of the particular types of peppers and the agreed upon rate per half or full bushel that she would be paid.

6. As demonstrated by the receipts and "Grower Payout" sheets submitted into evidence by both parties, the course of dealings between the parties supports Petitioner's testimony that in all but two instances, she in fact received payment in the amount indicated as the purchase price on the delivery receipts received from Unity Groves. Unity Groves' contention that the price indicated on the receipts was merely a desired "target price" is rejected because it is contrary to the greater weight of the evidence.

7. On the four occasions for which Petitioner received a receipt with no indication of price, Petitioner was paid in accordance with her agreement with a Unity Groves' employee,

Pete, which was reached in a telephone conversation prior to her delivery of the peppers to Unity Groves.

8. Petitioner did not submit formal invoices to Unity Groves because the receipts provided by Unity Groves at the time of delivery accurately reflected the quantities of peppers sold by type and price, and she received the indicated price for all transactions except for the two instances which are the subject of this dispute.

9. Petitioner was never informed that her products supplied to Unity Groves were deteriorating or that the quantity delivered was rejected because it was more than requested or needed.

10. The Grower Payout sheets reflect that Petitioner received one duplicate payment in the amount of \$130.00 for peppers delivered to Unity Groves on March 13, 2013.

The Dispute Giving Rise to This Proceeding

11. In March 2013, Petitioner received a telephone call from a Unity Groves' employee, Dennis (last name unknown), who requested a pallet of Hungarian Wax peppers and a pallet of Anaheim peppers. A pallet for Unity Groves is approximately 120 half bushel boxes of peppers.

12. Petitioner advised Dennis that she did not think she could fill such a large order and that her workers could not yet pick those peppers. Petitioner told Dennis she would call him back and let him know how much she had available after picking.

13. After the peppers were picked, Petitioner contacted Emilio and advised that she could deliver 78 half bushels of Hungarian Wax peppers and 84 half bushels of Anaheim peppers. Emilio confirmed with Dennis that, although Petitioner could not supply a pallet of each, Unity Groves still wanted those peppers. Petitioner delivered them to Unity Groves on March 22, 2013. Petitioner received receipt 4055 indicating delivery of the peppers and an agreed upon price of \$10.00 per half bushel for the Hungarian Wax peppers and \$12.00 per half bushel for the Anaheim peppers for a total price of \$1,788.00.

14. On March 25, 2013, Petitioner delivered the following to Unity Groves:

13 half bushels of Finger Hot peppers at \$8.00 per half bushel;

20 bushels of Long Hot at \$14.00 per bushel;

5 half bushels of Banana peppers at \$12.00 per half bushel;

10 half bushels of Anahie peppers at \$12 per half bushel.

Petitioner received receipt 4067 from Unity Groves, and the total price based upon the prices indicated on the receipt for this delivery was \$564.00.

15. When Petitioner went to Unity Groves on April 14, 2013, to pick up her check in payment for the March 22 and 25 deliveries, she was given check 11439 in the amount of \$1,031.00.

She was also provided a "Grower Payout" sheet number 3807 indicating the breakdown by pepper, quantity, and price paid by Unity Groves for receipt numbers 4055 and 4067.

16. Respondent immediately noticed that the prices paid for the large delivery of Hungarian Wax and Anaheim peppers was significantly lower than the agreed upon price as reflected on receipt 4055. Unity Groves also paid less for four out of five types of peppers on receipt 4067 for the March 25 delivery. The total difference between the total based upon the agreed upon receipt prices and the amount actually paid by Unity Groves was \$1,321.00.

17. When Petitioner realized the magnitude of the discrepancy, she and her daughter, Susana Rodriguez, went to discuss the issue with Carricarte. She inquired why she was paid \$3.00 per unit versus \$10.00 for the Hungarian Wax peppers and \$4.00 per unit versus \$12.00 for the Anaheim peppers (the prices reflected on receipt 4055).

18. Carricarte told Petitioner that she was paid the price he received from his customer. He did not believe that Dennis purchased such a large quantity of peppers and wanted to verify this with him. Emilio confirmed in the presence of Petitioner and her daughter that Unity Groves, through Dennis, had requested two pallets of peppers from Petitioner. Dennis was out of the country and Carricarte told Petitioner he would call her after

speaking with Dennis upon his return. Dennis was terminated by Unity Groves upon his return.

19. Petitioner met with Carricarte two additional times. Each time she had one of her daughters present and, at the third meeting, she brought a representative from the Department. During these meetings, Carricarte disputed that Unity Groves would order such an unusually large quantity of peppers and that the price reflected on the receipt was not an agreed upon price but rather the "target price" Unity Groves hoped to be able to secure for the grower.

20. Unity Groves never notified Petitioner that any of the peppers received on March 22 and 25, 2013, were defective or non-conforming, nor did it seek to revoke acceptance of the peppers or return the peppers to Petitioner.

#### CONCLUSIONS OF LAW

21. DOAH has jurisdiction over the parties to and subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 604.21(6), Florida Statutes (2013).<sup>1/</sup>

22. The Department is the state agency responsible for licensing dealers in agricultural products and responsible for investigating and taking action on complaints against such dealers. See §§ 604.15-.34, Fla. Stat.

23. A "dealer in agricultural products" is defined as a person engaged in the business of "purchasing, receiving, or



soliciting agricultural products from the producer . . . for resale." See § 604.15(2), Fla. Stat. Unity Groves is licensed as a dealer in agricultural products.

24. The definition of "agricultural products" includes "the natural products of the . . . farm, nursery, grove, orchard, vineyard, [and] garden . . . produced in the state . . ." See § 604.15(1), Fla. Stat. The Hungarian Wax and Anaheim peppers grown by Petitioner on her farm and sold to Unity Groves are agricultural products under that definition.

25. Petitioner is a "producer" for purposes of sections 604.15 through 604.34, Florida Statutes. See § 604.15(9), Fla. Stat. (defining "producer" as "any producer of agricultural products produced in the state").

26. Section 604.20(1) requires, as a condition of licensure, that each dealer in agricultural products provide a surety bond to the Department. That statute further provides that "[s]uch bond . . . shall be conditioned to secure the faithful accounting for and payment . . . to producers or their agents or representatives of the proceeds of all agricultural products handled or purchased by such dealer." See also Fla. Admin. Code R. 5H-1.001.

27. Any person damaged by a breach of the conditions of the bond provided by a licensed dealer in agricultural products may file a complaint with the department against the dealer and/or

the dealer's surety. The complaint must be filed within six months of the date that agricultural products were sold.

See § 604.21(1)(a), Fla. Stat.

28. Section 604.21(2) through (4) establishes the procedures through which the Department investigates complaints filed by a producer. Should there exist disputed issues of material fact, a hearing conducted pursuant to chapter 120, Florida Statutes, will be held. § 604.21(6), Fla. Stat.

29. The complainant in a proceeding initiated pursuant to section 604.21(1) has the burden of proving by a preponderance of the evidence the entitlement to the amounts sought to be recovered. See Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 788-789 (Fla. 1st DCA 1981). However, even though the complainant bears the ultimate burden of proving the truth of the claim, once the complainant has made a prima facie case of entitlement to recover, the dealer has the obligation to come forward with evidence to refute that entitlement. See id.

30. The preponderance of the evidence establishes Petitioner's entitlement to the amount claimed.

31. Although Unity Groves offered testimony regarding the usual course of dealing with its growers, no testimony was presented from Unity Groves' employees who were involved in the purchase of peppers from Petitioner to refute Petitioner's

testimony that the prices on the receipts were agreed upon prices.

32. Further, the documents offered by both parties and admitted without objection support the testimony of Petitioner that the receipts show the agreed upon prices and the prices actually paid by Unity Groves to Petitioner except for the March 22 and 25 deliveries.

33. The transactions between the parties in this case are generally governed by chapter 672, Florida Statutes, known as the "Uniform Commercial Code-Sales." See § 672.101, Fla. Stat.

34. Pursuant to section 672.607(1), "[t]he buyer must pay at the contract rate for any goods accepted."

35. Section 672.606(1) describes "[w]hat constitutes acceptance of goods." It provides as follows:

(1) Acceptance of goods occurs when the buyer:

(a) After a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that the buyer will take or retain them in spite of their nonconformity; or

(b) Fails to make an effective rejection (s. 672.602(1)), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) Does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by her or him.

36. According to section 672.602(1), a "[r]ejection of goods must be within a reasonable time after their delivery or tender," and "[i]t is ineffective unless the buyer seasonably notifies the seller."

37. "Acceptance of goods by the buyer precludes rejection of the goods accepted . . . ." § 672.607(2), Fla. Stat.

38. An acceptance, however, may be revoked under certain circumstances. "Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it." § 672.608(2), Fla. Stat. "A buyer who so revokes has the same rights and duties with regard to the goods involved as if she or he had rejected them." § 672.608(3), Fla. Stat.

39. "Where a tender has been accepted[,] [t]he buyer must within a reasonable time after he or she discovers or should have discovered any breach notify the seller of breach or be barred from any remedy." § 672.607(3)(a), Fla. Stat.

40. If such timely notification is given, then, and only then, may a buyer "deduct all or any part of the damages resulting from any breach of the contract [by the seller] from any part of the price still due [the seller] under the same contract." § 672.717, Fla. Stat.

41. The record evidence in the instant case establishes that Petitioner tendered to Unity Groves, and Unity Groves accepted, all of the peppers that were the subject of receipts 4055 and 4067 and that Unity Groves did not timely revoke its acceptance, nor timely notify Petitioner of any alleged nonconformity. Moreover, no showing has been made that the peppers tendered were in fact nonconforming.

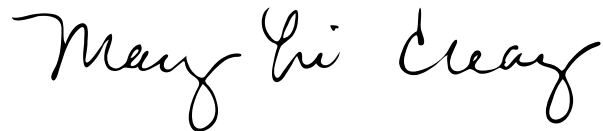
42. Under such circumstances, Unity Groves is obligated to pay Petitioner the full agreed-upon purchase price for the peppers at issue (or the difference between what was paid and the agreed upon price reflected on the receipts for a total of \$1,321.00).

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Agriculture and Consumer Services enter a final order (1) finding that Unity Groves is indebted to Petitioner in the amount of \$1,191.00 for the balance due for the peppers it purchased from Petitioner on March 22 and 25, 2013 (\$1,321.00, minus \$130.00 for the duplicate payment for the March 13 delivery); (2) directing Unity Groves to make payment to Petitioner in the amount of \$1,241.00 (\$1,191.00, plus \$50.00 for reimbursement of the filing fee Petitioner paid) within 15 days following the issuance of the order; and (3) announcing that, if Unity Groves fails to make timely payment

in full, the Department will seek recovery from FCCI, Unity Groves' surety.

DONE AND ENTERED this 10th day of October, 2013, in Tallahassee, Leon County, Florida.



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MARY LI CREASY  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 10th day of October, 2013.

ENDNOTE

<sup>1/</sup> Unless otherwise noted, citations to the Florida Statutes refer to the 2013 version.

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.