

**STATE OF FLORIDA  
FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**THOMAS E. DAVIS, INC.,**

Petitioner,

vs.

**D. L. SCOTTO & CO., INC., D/B/A  
TUXEDO FRUIT COMPANY,**

Respondent,

and

**TD BANK, N.A.,**

Co-Respondent

CLB CASE NO. 0108  
AGENCY CLERK NO. A87550  
AMOUNT OF CLAIM: \$75,451.50

DIVISION OF  
ADMINISTRATIVE HEARINGS

2018 NOV -2 PM 1:30

FILED

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**FINAL ORDER**

THIS CAUSE, arising under the Florida Citrus Code, Chapter 601, Florida Statutes, came before the Commissioner of Agriculture of the State of Florida for consideration and final agency action.

**I. PRELIMINARY STATEMENT**

On November 8, 2013, the Petitioner, THOMAS E. DAVIS, INC. ("Petitioner"), timely filed with the Florida Department of Agriculture and Consumer Services ("Department") a grower's claim/complaint based on four contracts (Citrus Fruit Contracts #077, #078, #M012 and #M013) with Respondent, D. L. SCOTTO & CO., INC. ("Respondent"), and pursuant to Section 601.64 and 601.66, Florida Statutes, of the Florida Citrus Code. Respondent was licensed as a

citrus fruit dealer for the 2012-2013 grow season. As part of the application process for licensure, Respondent had assigned to the Department certificates of deposit in the combined amount of \$22,000, per Section 601.61, Florida Statutes. The certificates of deposit were issued by Co-Respondent, T.D. Bank, N.A. ("Co-Respondent").

On December 5, 2013, Respondent and Co-Respondent were sent, via certified mail, a Notice of Filing of an Amended Grower Complaint. On December 30, 2013, Respondent filed an Answer of Respondent stating only that, "[t]he actual value of the product needs to be determined." Based on the dispute raised as to the value of the product that was the subject of Petitioner's claim, this matter was referred to the Division of Administrative Hearings (DOAH) for a hearing to decide this disputed issue of fact in accordance with the provisions of Section 120.57(1), Florida Statutes. Co-Respondent did not contest the matter, nor did they request a hearing.

On March 14, 2014, a hearing was held to decide the contract disputes. The Administrative Law Judge (ALJ) found in favor of complainant and a Recommended Order was issued on April 17, 2014. Written exceptions were not filed by any of the involved parties.

The proceedings in this matter were stayed due to Respondent filing bankruptcy in the Southern District of Florida on June 5, 2014. The bankruptcy case closed as of December 4, 2017, and the certificates of deposit pledged to the Department are now available for disbursement.

The Record consists of all notices, pleadings, filings, exhibits, matters officially recognized, proposed findings and the Recommended Order. The Department has made a review of the complete record in this matter.

## II. FINDINGS OF FACT

1. The Department adopts the ALJ's findings of fact in paragraphs 3, 4, 5, 6, 7 and 8 of the Recommended Order.

2. With regard to paragraph 1 of the Recommended Order, the Department rejects the ALJ's finding of fact. Paragraph 1 of the Recommended Order is based on a misunderstanding of which claim program is at issue in this matter. The Department administers two agricultural bond claim programs, one related to licensed dealers in agricultural products (Sections 604.15-604.30, Florida Statutes) and the other under the Florida Citrus Code (Chapter 602, Florida Statutes). The definition of "agricultural products" in Section 604.15, Florida Statutes (2012), specifically excludes citrus other than limes.

3. Petitioner's claim in this matter was a claim made against Respondent as a licensed citrus fruit dealer pursuant to the Florida Citrus Code. See Complaint Form and Amendment filed with DOAH as part of the record. The ALJ mistakenly refers to the agricultural-product-dealer's program instead of the program administered under the Florida Citrus Code. As such, the reference to the definition in Section 604.15(2) is misplaced and the finding that "Respondent is licensed as a dealer in agricultural products" is not based upon competent substantial evidence. It is undisputed in the record and the hearing transcript that the matter at issue was a dispute over contracts for Valencia oranges. Both parties agree that the contracts were for Respondent to pay for oranges from Petitioner's groves which Respondent would pick and then market with the hopes of making a profit. See Transcript of Hearing p. 13, ll. 5-15; p.14, ll. 11-16; p.18, l. 21 through p.19, l. 5; p.20, l. 4 through p. 21, l. 15; p.23, ll. 2-23; Plaintiff's Exhibits 1-3; Respondent's Exhibits 1-3; and Respondent's Proposed Recommended

Order. As such, the Department rejects the ALJ's finding of fact in paragraph 1 and substitutes its own finding that Respondent was, at the times relevant to this proceeding, licensed as a "citrus fruit dealer" as defined in Section 601.03(8), Florida Statutes (2012).

4. For the same reasons outlined supra in paragraphs 2 and 3, the Department also rejects the ALJ's finding in paragraph 2 of the Recommended Order and substitutes it with its own finding that Petitioner was, at the times relevant to this proceeding, a "producer" as defined in Section 601.03(33), Florida Statutes (2012). The finding that Petitioner was a producer under Sections 604.15-604.30, Florida Statutes, was not based on competent substantial evidence as all parties agreed that the contracts at issue were for oranges, which are specifically excluded from the definition of "agricultural products" found in Section 604.15(1), Florida Statutes. See Transcript of Hearing p. 13, ll. 5-7; p.14, ll. 11-16; p.18, l. 21 through p.19, l. 5; p.20, l. 4 through p. 21, l. 15; Plaintiff's Exhibits 1-3; Respondent's Exhibits 1-3; and Respondent's Proposed Recommended Order.

### **III. CONCLUSIONS OF LAW**

5. The Department has substantive jurisdiction over both Sections 604.15-604.30, Florida Statutes, and the portions of the Florida Citrus Code relevant to this action.

6. With regard to paragraph 9 of the Recommended Order, the Department adopts the conclusions of law stated therein with one modification. The Department rejects the citation to Section 604.21, Florida Statutes, and replaces it with a reference to Section 601.66, Florida Statutes, as this is a claim brought under the Florida Citrus Code as explained in supra paragraphs 2 and 3.

7. With regard to paragraph 10 of the Recommended Order, the Department rejects

the conclusion of law and substitutes its own conclusion as follows: The Florida Department of Agriculture and Consumer Services is the state agency responsible for administering claims made against citrus fruit dealers. Sections 601.60 and 601.66, Florida Statutes (2012). See supra paragraphs 2 and 3.

8. With regard to paragraph 11 of the Recommended Order, the Department rejects the conclusion of law and substitutes its own conclusion as follows: The Valencia oranges grown by petitioner in his grove and sold to Respondent are citrus fruit within the meaning of section 601.03(7), Florida Statutes. See supra paragraphs 2 and 3.

9. With regard to paragraph 12 of the Recommended Order, the Department rejects the conclusion of law and substitutes its own conclusion as follows: The complainant in a proceeding initiated pursuant to section 601.66, Florida Statutes, has the burden of proving by a preponderance of the evidence entitlement to the amounts sought to be recovered. See supra paragraphs 2 and 3.

10. The Department adopts paragraph 13 of the Recommended Order in full.

11. The Department rejects paragraph 14 of the Recommended Order in full. See supra paragraphs 2 and 3. The Florida Citrus Code, unlike Section 604.21, Florida Statutes, does not provide for a reimbursed filing fee.

12. With regard to each conclusion of law rejected or modified by the Department, as described supra, the Department finds that its substituted conclusion of law is as or more reasonable than that which was rejected or modified.

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

(A) The ALJ's recommendation, as modified herein, that Respondent, D. L. SCOTTO & CO., INC., D/B/A TUXEDO FRUIT COMPANY, pay Petitioner, THOMAS E. DAVIS, INC., the amount of \$75,451.50 is hereby adopted.

(B) D. L. SCOTTO & CO., INC., D/B/A TUXEDO FRUIT COMPANY shall make full payment within fifteen (15) days after this Final Order is adopted. In the event Respondent, D. L. SCOTTO & CO., INC., D/B/A TUXEDO FRUIT COMPANY, fails to pay Petitioner, THOMAS E. DAVIS, INC., the amount of \$75,451.50, within fifteen (15) days of the Final Order, TD BANK, N.A., as Co-Respondent, is hereby ordered to provide payment under the conditions and provisions of the assignment of certificates of deposit, to **ADAM H. PUTNAM, COMMISSIONER OF AGRICULTURE**, as Obligee on the assignment of certificate of deposit. **The Department will notify the financial institution in the event it is required to pay.** This order is final and effective on the date filed with the Agency Clerk of the Department.

#### NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Final Order is entitled to seek judicial review of this Final Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedure. Judicial review proceedings must be instituted by filing a Notice of Appeal with the Department's Agency Clerk, 407 South Calhoun Street, Suite 509, Tallahassee, Florida, 32399-0800, within thirty (30) days of rendition of this order. A copy of the Notice of Appeal must be filed with the Clerk of the appropriate District Court of Appeal accompanied by any filing fees prescribed by law.

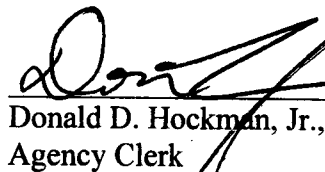
**DONE AND ORDERED** at Tallahassee, Leon County, Florida, this 25<sup>th</sup> day of October, 2018.

ADAM H. PUTNAM  
COMMISSIONER OF AGRICULTURE



D. Alan Edwards  
Assistant Commissioner of Agriculture

Filed this 30<sup>th</sup> day of October, 2018.



Donald D. Hockman, Jr.,  
Agency Clerk

Copies Furnished to:

- ✓ Linzie F. Bogan, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060
- John A. Scotto, Registered Agent, D. L. Scotto & Co., Inc., d/b/a Tuxedo Fruit Company, 3487 South US 1, Fort Pierce, Florida 34982
- John A. Scotto, Registered Agent, D. L. Scotto & Co., Inc., d/b/a Tuxedo Fruit Company, Post Office Box 1017, Fort Pierce, Florida 34950
- TD Bank, N.A., 2211 Okeechobee Road, Fort Pierce, Florida 34950
- Robert A. Goldman, Esquire, Fox, Wackeen, Dungey, Beard, Bush, Goldman, Kilbride, Waters and McCluskey, LLP, 34 73 Southeast Willoughby Boulevard, Stuart, Florida 34994

Justin Lefko, 302 S. Second Street, Fort Pierce, Florida 34950

Alice Wiggins, Florida Department of Citrus, Post Office Box 9010, Bartow, Florida 33831-9010

Jim Ellis, Office of Citrus License and Bond