

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

THOMAS E. DAVIS, INC.,

Petitioner,

vs.

Case No. 14-0200

D. L. SCOTTO AND COMPANY, INC.,
d/b/a TUXEDO FRUIT COMPANY AND
T. D. BANK, AS SURETY,

Respondents.

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held in Fort Pierce, Florida, on March 14, 2014, before the Division of Administrative Hearings by its designated Administrative Law Judge Linzie F. Bogan.

APPEARANCES

For Petitioner: Thomas E. Davis, pro se
Thomas E. Davis, Inc.
321 Davis Bros. Road
Frostproof, Florida 33843

For Respondent: John Scotto, pro se
Tuxedo Fruit Company
3487 South US 1
Fort Pierce, Florida 34982

For Respondent: Robert A. Goldman, Esquire
(No Appearance)

STATEMENT OF THE ISSUE

What is the amount owed by D. L. Scotto and Company, Inc., d/b/a Tuxedo Fruit Company, to Thomas E. Davis, Inc., for Valencia oranges purchased in January, April, and May 2013?

PRELIMINARY STATEMENT

Thomas E. Davis, Inc. (Petitioner) filed with the Department of Agriculture and Consumer Services a Grower Complaint against D. L. Scotto and Company, Inc., d/b/a Tuxedo Fruit Company (Respondent). The Grower Complaint, as amended, alleges that Respondent owes Petitioner \$75,451.50 for Valencia oranges sold by Petitioner to Respondent during the months of January, April, and May 2013. Respondent admits that it is indebted to Petitioner, but contends that the amount owed is less than what is claimed.

On January 14, 2014, this matter was referred to the Division of Administrative Hearings (DOAH) for a disputed fact hearing. As previously noted, the hearing was held on March 14, 2014.

At the hearing, Thomas E. Davis and Paula Byrd, his administrative assistant, testified on behalf of Petitioner. Mr. John Scotto was the only witness to testify on behalf of Respondent. Petitioner's Exhibits 1 through 4 were admitted into evidence. Respondent's Exhibits 1 through 3 were also admitted into evidence.

A Transcript of the disputed-fact hearing was filed with DOAH on March 27, 2014. Each party filed a Proposed Recommended Order, and the same have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. A "dealer in agricultural products" is defined as a person, partnership, corporation, or other business entity, "engaged within this state in the business of purchasing, receiving, or soliciting agricultural products from the producer . . . for resale or processing for sale" § 604.15(2), Fla. Stat. (2013).^{1/} Respondent is licensed as a dealer in agricultural products.

2. 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").

A. Contract #077

3. On January 25, 2013, Petitioner and Respondent entered into citrus fruit contract #077 wherein Respondent, for the price of \$9.50 per box, agreed to purchase 5,000 boxes of Valencia oranges from Petitioner's Cock Pen grove. Petitioner delivered, and Respondent accepted, 2,925 boxes of the promised oranges. To date, Respondent has only paid Petitioner for 1,962 (\$9.50 x 1,962 = \$18,639) boxes of oranges from the Cock Pen grove.

B. Contract #078

4. On January 25, 2013, Petitioner and Respondent entered into a second citrus fruit contract (#078) wherein Respondent, for the price of \$9.50 per box, agreed to purchase 4,500 boxes of Valencia oranges from Petitioner's Patrick grove. Petitioner delivered, and Respondent accepted, 2,988 boxes of the promised oranges. To date, Respondent has only paid Petitioner for 792 ($\$9.50 \times 792 = \$7,524$) boxes of oranges from the Patrick grove.

C. Contract #M012

5. On April 25, 2013, Petitioner and Respondent entered into a third citrus fruit contract (#M012) wherein Respondent, for the price of \$11.00 per box, agreed to purchase 1,200 boxes of Valencia oranges from Petitioner's Johnson grove and 1,500 boxes of Valencia oranges from Petitioner's Allegato grove. Petitioner delivered, and Respondent accepted, 1,161 boxes of the promised oranges from the Johnson grove and 1,296 boxes of oranges from the Allegato grove. To date, Respondent has not paid Petitioner for the oranges received from the Johnson and Allegato groves.

D. Contract #M013

6. On May 2, 2013, Petitioner and Respondent entered into a fourth citrus fruit contract (#M013) wherein Respondent, for the price of \$11.00 per box, agreed to purchase 1,500 boxes of Valencia oranges from Petitioner's Tommy Ann grove. Petitioner

delivered, and Respondent accepted, 1,674 boxes of the promised oranges from the Tommy Ann grove. To date, Respondent has not paid Petitioner for the oranges received from the Tommy Ann grove.

E. Respondent's defense

7. Each of the citrus fruit contracts at issue provides that the oranges "must be merchantable for fresh usage at the time of harvest and delivery." Respondent claims that significant quantities of the oranges that were received from Petitioner were not merchantable for fresh usage at the time of harvest and delivery.

8. In reviewing the documentary evidence presented by both parties, it is evident that Petitioner's oranges were harvested and delivered to Respondent during the months of January through May 2013. From this period forward to the date of the final hearing held herein, Respondent never informed Petitioner that there was an issue with the merchantability of the oranges. Instead, whenever Petitioner contacted Respondent about the status of payment for the oranges, Respondent repeatedly assured Petitioner that payment was forthcoming. Respondent's testimony regarding the alleged compromised merchantability of the oranges that he received from Petitioner is not credible.

CONCLUSIONS OF LAW

9. DOAH has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569, 120.57(1), and 604.21(6), Fla. Stat.

10. The Florida Department of Agriculture and Consumer Services is the state agency responsible for licensing dealers in agricultural products and investigating and taking action on complaints against such dealers. §§ 604.15-34, Fla. Stat.

11. The definition of "agricultural products" includes "the natural products of the . . . farm, nursery, grove, orchard, vineyard, [and] garden . . . produced in the State" § 604.15(1), Fla. Stat. The Valencia oranges grown by Petitioner in his grove and sold to Respondent are "agricultural products" within the meaning of section 604.15(1).

12. The complainant in a proceeding initiated pursuant to section 604.21(1) has the burden of proving by a preponderance of the evidence entitlement to the amounts sought to be recovered.

13. Petitioner has satisfied its burden of proof. Per the respective citrus fruit contracts, the total price for the delivered fruit is \$101,614.50 (5,913 boxes x \$9.50 = \$56,173.50 and 4,131 boxes x \$11.00 = \$45,441.00). In subtracting from the total price the partial payment that Respondent paid Petitioner for the fruit received from the Cock Pen and Patrick groves

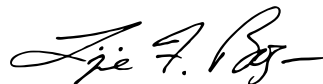
respectively (\$26,163), Respondent owes Petitioner \$75,451.50 for the oranges at issue.

14. Section 604.21(1)(a) provides in part that "[b]efore a complaint can be processed, the complainant must provide the department with a \$50.00 filing fee" that shall be reimbursed to the complainant "[i]n the event the complainant is successful in proving the claim" Having prevailed in this matter, Petitioner is entitled to recoup its filing fee from Respondent.

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 finding that D. L. Scotto and Company, Inc., d/b/a Tuxedo Fruit Company, is indebted to Thomas E. Davis, Inc., in the amount of \$75,501.50 (includes filing fee) for the balance due for the oranges it purchased from Petitioner on January 25, April 25, and May 2, 2013.

DONE AND ENTERED this 17th day of April, 2014, in Tallahassee, Leon County, Florida.



LINZIE F. BOGAN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of April, 2014.

ENDNOTE

^{1/} All subsequent references to Florida Statutes will be to 2013,
unless otherwise indicated.

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.