

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

DP PARTNERS, LTD,

Petitioner,

DOAH Case No.: 14-1769

vs.

SUNNY FRESH CITRUS  
EXPORT AND SALES CO., LLC,

and

HARTFORD FIRE INSURANCE  
COMPANY, AS SURETY,

Respondents.

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**FINAL ORDER**

THIS CAUSE arising under the Florida Citrus Code, Sections 601.64 and 601.66, Florida Statutes, came before the Commissioner of the Florida Department of Agriculture and Consumer Services (“the Department”) for consideration and final agency action. The Commissioner of Agriculture and Consumer Services, as head of the Department, has jurisdiction over the subject matter and the parties.

**I. BACKGROUND**

On March 28, 2011, DP Partners, Ltd. (“DP Partners”) filed an Amended Complaint against Sunny Fresh Citrus Export and Sales Co., LLC (“Sunny Fresh”) and the Hartford Fire Insurance Company (“Surety”) with the Florida Department of Agriculture and Consumer Services seeking payment under two fruit purchase agreements totaling \$44,032.00. The Department provided notice of the Amended Complaint to both Sunny Fresh and Surety. In its

Answer, Sunny Fresh denied the validity of the complaint, asserted that there was no valid contract between it and DP Partners, and requested a hearing. The Department referred the matter to the Florida Division of Administrative Hearings (“DOAH”) on April 16, 2014 for formal hearing. Surety did not respond to the Amended Complaint nor did it appear in this proceeding.

The hearing was originally scheduled for June 19, 2014 by teleconference before Judge William Quattlebaum. However, this matter was subsequently transferred to Judge Suzanne Van Wyk (“ALJ”) and a live formal hearing was scheduled for August 27, 2014.

During the live formal hearing, DP Partners offered the testimony of Robert Marinaro, Daniel H. Phypers and Danille Phypers Daum. Sunny Fresh presented the testimony of Joseph Paladin. The parties stipulated to the introduction of Joint Exhibits 1 and 2 and DP Partners’ Exhibits 3 through 51 and 54 through 59. Sunny Fresh introduced Exhibits 1 through 5. At the end of the formal hearing, the ALJ requested that the parties submit the following additional exhibits: DP Partners’ Exhibit 57 and Sunny Fresh’s Exhibit 6 through 10.

Neither party ordered a transcript of the proceedings. Both timely filed proposed Recommended Orders pursuant to the ALJ’s Order on Post-Hearing Submissions. Both also sought an award of attorney’s fees pursuant to the fruit purchase contracts.

On October 30, 2014, the ALJ entered an order recommending the entry of Final Order approving the claim of DP Partners against Sunny Fresh in the amount of \$44,032.00. However, the ALJ also ruled that while the “plain language of the contracts provides for attorney’s fees at ‘both trial and appellate court levels,’ the parties have not cited any authority for an award of attorney’s fees in this administrative proceeding.” On November 14, 2014, DP Partners filed a

written exception to the Recommended Order. Neither Sunny Fresh nor Surety responded to the exception.

The Record consists of all notices, pleadings, supporting exhibits, stipulations of the parties and the Recommended Order. The Recommended is attached hereto and incorporated herein.

## **II. EXCEPTIONS TO THE RECOMMENDED ORDER**

DP Partners filed one exception to the Recommended Order. Sunny Fresh filed none. The Department's ruling in regard to the written exception filed by Sunny Fresh is as follows:

**Exception:** DP Partners takes exception to the ALJ's interpretation of the attorney's fee provision in the fruit purchase contracts. Particularly, the conclusion of law in Paragraph 47 on Page 17 of the Recommended Order states that although "the plain language of the contracts provides for attorney's fees at 'both trial and appellate court levels,' the parties have not cited any authority for an award of attorney's fees in this administrative proceeding." In opposing the ALJ's conclusion of law, DP Partners first argues that it is entitled to attorney's fees because the language "both trial and appellate court levels," encompasses all fact-finding proceedings to include administrative and judicial hearings. DP Partners further argues that ambiguous terms in a contract should be construed against the drafter. The attorney fee provision in the contract states in pertinent part that "in the event one party shall breach any terms ... of the contract, the other party shall bring action, suit, or proceeding to enforce the terms hereof, ... then and in that event, the prevailing party shall be entitled to reasonable attorney's fees on both trial and appellate court levels." DP Partners contends that administrative hearings "squarely falls under

the portion of the attorney's fees provision allowing for attorney's fees for any 'action, suit, or proceeding to enforce or recover damages.'”

**Ruling on Exception:** Section 601.61, Florida Statutes requires that all citrus dealers to be licensed by the Department first obtain a bond from a surety company qualified to do business in Florida. Further, Section 601.61(2), Florida Statutes states in pertinent part that

Such bond shall be in the form approved by the Department of Agriculture and shall be conditioned as provided in s. 601.66(9); fully comply with the terms and conditions of all contracts, verbal or written, made by the citrus fruit dealer with producers or with other citrus fruit dealers relative to the purchasing, handling, sale, and accounting of purchases and sales of citrus fruit; upon the dealer's accounting for the proceeds from, and paying for, any citrus fruit purchased or contracted for in accordance with the terms of the contracts with producers; and upon the dealer's accounting for any advance payments or deposits made, and delivering all citrus fruit contracted for, in accordance with the terms of the contracts with other citrus fruit dealers.

The Department does not interpret the above statute to include a claim for attorney's fees.<sup>1</sup>

In addition, DP Partners' exception relies on contractual interpretation and cites provisions of the contract as well as case law that govern principles of contract interpretation. Conclusions of law regarding contractual interpretation are outside of the substantive jurisdiction of the Department but may be the subject of circuit court litigation. As such, DP Partners' exception is overruled.

### **III. FINDINGS OF FACT**

1. The Commissioner of Agriculture adopts the Findings of Fact from the ALJ's Recommended Order except as modified or rejected.

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<sup>1</sup> Section 601.66(8), Florida Statutes provides for reasonable attorney's fees to the Department in the event the surety fails to comply with a demand for payment and the Department prevails in a subsequent enforcement action in Circuit Court.

2. Respondent, Sunny Fresh is a limited liability company whose address is 2101 15<sup>th</sup> Avenue, Vero Beach, Florida 32960. At the time of the transaction(s) involved, Sunny Fresh was a licensed citrus fruit dealer with a citrus fruit dealer's bond.

3. Co-respondent Surety, holds the bond for Sunny Fresh which has been assigned to the Department as security pursuant to the provisions of Section 601.61, Florida Statute. The conditions and provisions of the bond are to assure proper accounting and payment to producers or with other citrus fruit dealers for the purchase of citrus products by Sunny Fresh.

#### **IV. CONCLUSIONS OF LAW**

4. The Commissioner of Agriculture adopts the conclusions of law set forth in the attached Recommended Order.

#### **ORDERED AND ADJUDGED:**

1. Respondent, Sunny Fresh, is indebted to Claimant, DP Partners, in the amount of \$44,032.00.

2. Respondent, Sunny Fresh shall pay to Claimant, DP Partners, \$44,032.00 within thirty (30) days from the date of this Final Order. In the event Respondent Sunny Fresh does not comply with this Final Order within thirty (30) days, Surety, the Hartford Fire Insurance Company, as Co-respondent, is hereby ordered to provide payment under the conditions and provisions of the citrus dealer's bond no. 21BSBGH6607, to **ADAM H. PUTNAM, COMMISSIONER OF AGRICULTURE**. **Should responsibility of payment evolve to the Co-respondent, the Hartford Fire Insurance Company, it will be notified by the**

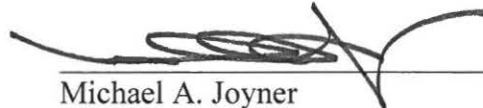
**Department. This Final Order is effective on the date filed with the Clerk of the Department.**

**NOTICE OF RIGHT TO APPEAL**

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 18<sup>th</sup> day of December, 2014.

ADAM H. PUTNAM  
COMMISSIONER OF AGRICULTURE



Michael A. Joyner  
Assistant Commissioner of Agriculture

Filed with Agency Clerk this 18<sup>th</sup> day of December, 2014.



Stephen M. Donelan  
Agency Clerk

**Copies furnished to:**

Judge Suzanne Van Wyk, Administrative Law Judge, The Division of Administrative Hearings  
The Desoto Building, 1230 Apalachee Parkway, Tallahassee, FL 32399

Bert J. Harris, Esq., Swaine, Harris, Sheehan, and McClure, P.A., 401 Dal Hall Blvd., Lake  
Placid, FL 33852

Arthur C. Fulmer, Esq., Fulmer and Fulmer, P.A., 1960 East Edgewood Drive, Lakeland, FL  
33813

Jean Marinaro, Sunny Fresh Citrus and Sales Co., LLC, 2101 15<sup>th</sup> Avenue, Vero Beach, FL  
32960

Matt Grimes, The Hartford Insurance Co., One Hartford Plaza, Hartford, CT 06155

Chris Green, Assistant Director, Division of Marketing and Development, the Mayo Building  
407 South Calhoun Street, Tallahassee, FL 32399