

STATE OF FLORIDA  
FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

OTHER SIDE SOD COMPANY, LLC,

Petitioner,

vs.

DOAH CASE NO.: 14-2519

AMERICAN SOD COMPANY, INC,

LB CASE NO.: 14-0011

and

AGENCY CLERK NO.: A87721

AUTO-OWNERS INSURANCE COMPANY,

AMENDED CLAIM AMOUNT: \$4,428.95

Respondents

FILED  
OCT 15 PM 12 59  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

**FINAL ORDER**

THIS CAUSE, arising under the 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 March 14, 2014, the Petitioner, Other Side Sod Company, LLC, a producer of agricultural products as defined by Section 604.15(9), Florida Statutes, timely filed an administrative claim with the Florida Department of Agriculture and Consumer Services (Department) pursuant to Section 604.21, Florida Statutes, to collect \$4,428.92 (which includes the claim filing fee of \$50) for sod sold to Respondent, a licensed dealer in agricultural products. Respondent's license for the time in question was supported by a surety bond as required by

Section 604.20, Florida Statutes, written by Auto-Owners Insurance Company, in the amount of \$50,000. The Department sent Respondent the Notice of Filing of an Amended Claim via certified and regular mail on April 3, 2014. Respondent's registered agent received the notice on April 16, 2014. Co-Respondent acknowledged receipt of the claim on April 29, 2014, and did not contest the matter nor did they request a hearing. On May 8, 2014, Respondent filed a timely Answer of Respondent and denied the claim as valid. Therefore, 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. DOAH issued a Notice of Hearing by Video Teleconference on June 23, 2014, for a hearing to be held on July 28, 2014. The hearing was held on that date and the Administrative Law Judge (ALJ) entered his Recommended Order (RO) on August 20, 2014. No transcript was filed. There were no written exceptions filed by any of the involved parties. The record consists of all notices, exhibits, proposed findings and the RO.

## **II. FINDINGS OF FACT**

The RO 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:

1. Page 2, Findings of Fact, paragraph 2 states, "Respondent is a licensed 'dealer in agricultural products,' as defined by chapter 604, Florida Statutes." The Department notes that there is nothing in the record to support the ALJ's finding. The Respondent was a licensed dealer in agricultural products under Section 604.17, Florida Statutes, during the time of the sale. The

Respondent's license is currently expired. However, this fact has no bearing on the outcome of the case.

2. Page 3, Findings of Fact, paragraph 6 states, "The total amount owed by American Sod is \$4,378.92. Out of this total amount owed, the facts show that \$3,016.92 is attributed to American Sod's failure to pay for the sod and \$1,362 is for the pallets." The Department does not adopt the ALJ's finding, as the Petitioner is actually owed \$4,428.98. As a matter of law, the Petitioner may add to his claim amount the \$50 claim filing fee. Section 604.21.(1)(a), Florida Statutes, states in part that "...Before a complaint can be processed, the complainant must provide the Department with a \$50 filing fee. In the event the Complainant is successful in proving the claim, the dealer in agricultural products shall reimburse the complainant for the \$50 filing fee as part of the settlement of the claim."

### III. CONCLUSIONS OF LAW

3. Page 4, Conclusions of Law, paragraph 10 states, "American Sod is a licensed 'dealer in agricultural products' (Section 604.15) and is required to be licensed by the Department pursuant to Section 604.17." The Department notes that there is nothing in the record to support the ALJ's finding. The Respondent was a licensed dealer in agricultural products under Section 604.17, Florida Statutes, during the time of the sale. The Respondent's license is currently expired. However, this fact has no bearing on the outcome of the case.

4. Page 4, Conclusions of Law, paragraph 11 states, "Pallets charged to American Sod by Petitioner do not come within the definition of 'agricultural products' as defined in Section 604.15(1). "Consequently, the amount charged for pallets should be deducted from the amount owed by American Sod to Petitioner." The Department does not adopt the ALJ's

finding, and as a matter of law, the Petitioner's award should include the pallet charges. Section 604.21(1)(a), Florida Statutes, states in part, "...Such complaint shall include 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."

5. Page 4, Conclusions of Law, paragraph 12 states, "American Sod owes the Petitioner the sum of \$3,016.92 which is calculated by subtracting the amount owed for the pallets from the total bill, which contains costs for sod and pallets". The Department does not adopt the ALJ's finding. As a matter of law, the Petitioner's award should include the charges for the pallets totaling \$1,362 and the \$50 claim filing fee, thus modifying the amount owed to Petitioner by Respondent to \$4,428.98. Section 604.21(1)(a), Florida Statutes, states in part, "Such complaint shall include 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 604.21(1)(a), Florida Statutes, states in part, "...Before a complaint can be processed, the complainant must provide the Department with a \$50 filing fee. In the event the complainant is successful in proving the claim, the dealer in agricultural products shall reimburse the complainant for the \$50 filing fee as part of the settlement of the claim."

A copy of the ALJ's RO issued on August 20, 2014, is enclosed herewith.

Upon consideration of the foregoing, review of the record, and being otherwise fully advised in the premises,

**IT IS ORDERED AND ADJUDGED** that:

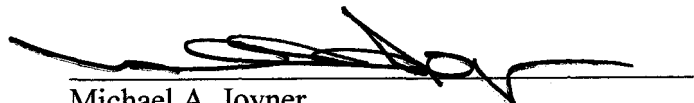
The ALJ's RO is modified to reflect that Respondent shall pay Petitioner, Other Side Sod Company, LLC, the amount of \$4,428.92 (which includes the \$50 claim filing fee) to be paid within fifteen (15) days from the date this order becomes final. In the event Respondent does not comply with this order within fifteen (15) days from the date it becomes final, Auto-Owners Insurance Company, as Co-Respondent, is hereby ordered to provide payment under the conditions and provisions of the bond, to **ADAM H. PUTNAM, COMMISSIONER OF AGRICULTURE, as Obligee on the bond. The Department will notify the surety company 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**, this 13<sup>th</sup> day of October, 2014.

ADAM H. PUTNAM  
COMMISSIONER OF AGRICULTURE



Michael A. Joyner  
Assistant Commissioner of Agriculture

Filed this 13<sup>th</sup> day of October, 2014.



Stephen M. Donelan  
Agency Clerk

Copies Furnished To:

Judge Thomas P. Crapps, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060

James J. Lawson, Registered Agent, American Sod Services, Inc., 2425 Lackland Avenue, Spring Hill, Florida 34608

James J. Lawson, Registered Agent, American Sod Services, Inc., 4377 Commercial Way, Spring Hill, Florida 34606

Joel Deriso, Manager, Other Side Sod Company, Inc., 3356 Southwest County Road 768, Arcadia, Florida 34269-7112

Pamela T. McLean, Senior Claim Representative Specialist, Auto-Owners Insurance Company, Ocala Branch Claims, Post Office Box 3200, Ocala, Florida 34478

Lasharonte D. Williams, Esquire, Florida Department of Agriculture and Consumer Services, Mayo Building, M-12, Tallahassee, Florida 32399-0800

Terry Moore and Mark Moritz, Financial Analysts



3356 SW CR 769  
 ARCADIA, FL 34269  
 PHONE# (863) 993-9122  
 FAX# (863) 993-9121

# Invoice

Date 11/8/2013 Invoice # 23630

**Bill To**

AMERICAN SOD SERVICES, INC.  
 15120 COUNTY LINE RD, SUITE 102  
 SPRINGHILL, FL 34610  
 B = S0.55; S7 Pallet

**Ship To**

72 BAHIA P/U IN FIELD - ANSON  
 JAMES - 352-340-7333

S.O. No.	P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
19176		3 WEEKS	DR	11/8/2013			
Quantity	Item Code	Description	Price Each	Amount			
28,800	BAHIA - ANSON	BAHIA SOD FOB 39705 SR 70 E MYAKKA CITY, FL 34251 (ANSON)	0.055	1,584.00			
72	PALLET DEPOSIT	PALLET DEPOSIT	7.00	504.00			
25	PALLET CREDIT	PALLET CREDIT	-7.00	-175.00			
		11/07/13 18/0 #8192					
		11/07/13 18/0 #8194					
		11/08/13 18/0 #8199					
		11/08/13 18/25 #8209					

WATER THE GRASS DAILY THE DRY SEASON IS HERE!!

**Total** \$1,913.00  
**Payments/Credits** \$-1,584.00  
**Balance Due** \$329.00

PHONE # 863-993-9122  
 OR 941-743-2088  
 FAX # 863-993-9121

Phone # 863-993-9122 Fax # 863-993-9121 debbie@othersdesod.com

*Pet's Composite Exhs 1*



3356 SW CR 769  
 ARCADIA, FL 34269  
 PHONE# (863) 993-9122  
 FAX# (863) 993-9121

# Invoice

Date 11/11/2013 Invoice # 23640

**Bill To**

AMERICAN SOD SERVICES, INC.  
 15120 COUNTY LINE RD, SUITE 102  
 SPRINGHILL, FL 34610  
 B = \$0.55; S7 Pallet

**Ship To**

18 BAHIA P/U IN FIELD - ANSON  
 JAMES - 352-340-7333

S.O. No.	P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
19192		3 WEEKS	DR	11/11/2013			

Quantity	Item Code	Description	Price Each	Amount
7,200	BAHIA - ANSON	BAHIA SOD FOB 39705 SR 70 E MYAKKA CITY, FL 34251 (ANSON)	0.055	396.00
18	PALLET DEPOSIT	PALLET DEPOSIT	7.00	126.00
		11/11/13 18/0 #8219		

WATER THE GRASS DAILY THE DRY SEASON IS HERE!!

<b>Total</b>	\$522.00
<b>Payments/Credits</b>	\$-396.00
<b>Balance Due</b>	\$126.00

PHONE # 863-993-9122  
 OR 941-743-2088  
 FAX # 863-993-9121

Phone # 863-993-9122 Fax # 863-993-9121 debbie@others.desod.com





3356 SW CR 769  
 ARCADIA, FL 34269  
 PHONE# (863) 993-9122  
 FAX# (863) 993-9121

# Invoice

Date 11/14/2013 Invoice # 23663

**Bill To**

AMERICAN SOD SERVICES, INC.  
 15120 COUNTY LINE RD, SUITE 102  
 SPRINGHILL, FL 34610  
 B = So.55; S7 Pallet

**Ship To**

38 BAHIA P/U IN FIELD - ANSON  
 JAMES - 352-340-7333

S.O. No.	P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
19215		3 WEEKS	DR	11/14/2013			

Quantity	Item Code	Description	Price Each	Amount
15,200	BAHIA - ANSON	BAHIA SOD FOB 39705 SR 70 E MYAKKA CITY, FL 34251 (ANSON)	0.055	836.00
38	PALLET DEPOSIT	PALLET DEPOSIT	7.00	266.00
		11/14/13 18/0 #8257		
		11/14/13 20/0 #8267		

WATER THE GRASS DAILY THE DRY SEASON IS HERE!!

<b>Total</b>	\$1,102.00
<b>Payments/Credits</b>	\$-836.00
<b>Balance Due</b>	\$266.00

PHONE # 863-993-9122  
 OR 941-743-2088  
 FAX # 863-993-9121

Phone # 863-993-9122 Fax # 863-993-9121 debbie@others.desod.com



3356 SW CR 769  
 ARCADIA, FL 34269  
 PHONE# (863) 993-9122  
 FAX# (863) 993-9121

# Invoice

Date 11/15/2013 Invoice # 23675

**Bill To**

AMERICAN SOD SERVICES, INC.  
 15120 COUNTY LINE RD, SUITE 102  
 SPRINGHILL, FL 34610  
 B = So.55; S7 Pallet

**Ship To**

18 BAHIA P/U IN FIELD - ANSON  
 JAMES - 352-340-7333

S.O. No.	P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
19235		3 WEEKS	DR	11/15/2013			

Quantity	Item Code	Description	Price Each	Amount
7,200	BAHIA - ANSON	BAHIA SOD FOB 39705 SR 70 E MYAKKA CITY, FL 34251 (ANSON)	0.065	468.00
18	PALLET DEPOSIT	PALLET DEPOSIT 11/15/13 18/0 #8277	7.00	126.00

WATER THE GRASS DAILY THE DRY SEASON IS HERE!!

<b>Total</b>	\$594.00
<b>Payments/Credits</b>	\$0.00
<b>Balance Due</b>	\$594.00

PHONE # 863-993-9122  
 OR 941-743-2088  
 FAX # 863-993-9121

Phone # 863-993-9122 Fax # 863-993-9121 debbie@others.desod.com



3356 SW CR 769  
 ARCADIA, FL 34269  
 PHONE# (863) 993-9122  
 FAX# (863) 993-9121

# Invoice

Date 11/17/2013 Invoice # 23684

**Bill To**

AMERICAN SOD SERVICES, INC.  
 15120 COUNTY LINE RD, SUITE 102  
 SPRINGHILL, FL 34610  
 B - 80.55; S7 Pallet

**Ship To**

18 BAHIA P/U IN FIELD - ANSON  
 JAMES - 352-340-7333

S.O. No.	P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
19246		3 WEEKS	DR	11/21/2013			

Quantity	Item Code	Description	Price Each	Amount
7,200	BAHIA - ANSON	BAHIA SOD FOB 39705 SR 70 E MYAKKA CITY, FL 34251 (ANSON)	0.065	468.00
18	PALLET DEPOSIT	PALLET DEPOSIT	7.00	126.00
		11/17/13 18/0 #8282		

WATER THE GRASS DAILY THE DRY SEASON IS HERE!!

<b>Total</b>	\$594.00
<b>Payments/Credits</b>	\$0.00
<b>Balance Due</b>	\$594.00

PHONE # 863-993-9122  
 OR 941-743-2088  
 FAX # 863-993-9121

Phone # 863-993-9122 Fax # 863-993-9121 debbie@othersidesod.com

*Pet.'s Composite Exh. 2*



3356 SW CR 769  
 ARCADIA, FL 34269  
 PHONE# (863) 993-9122  
 FAX# (863) 993-9121

# Invoice

Date 11/21/2013  
 Invoice # 23714

**Bill To**

AMERICAN SOD SERVICES, INC.  
 15120 COUNTY LINE RD, SUITE 102  
 SPRINGHILL, FL 34610  
 B = So.55; S7 Pallet

**Ship To**

20 BAHIA P/U IN FIELD - ANSON  
 JAMES - 352-340-7333

S.O. No.	P O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
19269		3 WEEKS	DR	11/21/2013			

Quantity	Item Code	Description	Price Each	Amount
8,000	BAHIA - ANSON	BAHIA SOD FOB 39705 SR 70 E MYAKKA CITY, FL 34251 (ANSON)	0.065	520.00
20	PALLET DEPOSIT	PALLET DEPOSIT 11/21/13 20/0 #8354	7.00	140.00

WATER THE GRASS DAILY THE DRY SEASON IS HERE!!

<b>Total</b>	\$660.00
<b>Payments/Credits</b>	\$0.00
<b>Balance Due</b>	\$660.00

PHONE # 863-993-9122  
 OR 941-743-2088  
 FAX # 863-993-9121

Phone # 863-993-9122 Fax # 863-993-9121 debbie@others.desod.com



3356 SW CR 769  
 ARCADIA, FL 34269  
 PHONE# (863) 993-9122  
 FAX# (863) 993-9121

# Invoice

Date 12/10/2013 Invoice # 23804

**Bill To**

AMERICAN SOD SERVICES, INC.  
 15120 COUNTY LINE RD, SUITE 102  
 SPRINGHILL, FL 34610  
 B = So.55; S7 Pallet

**Ship To**

20 BAHIA P/U IN FIELD - ANSON  
 JAMES - 352-340-7333

S.O. No.	P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
19358		3 WEEKS	DR	12/10/2013			
Quantity	Item Code	Description	Price Each	Amount			
8.000	BAHIA - ANSON	BAHIA SOD FOB 39705 SR 70 E MYAKKA CITY, FL 34251 (ANSON)	0.065	520.00			
20	PALLET DEPOSIT	PALLET DEPOSIT	7.00	140.00			
		12/10/13 20/0 #8448 SALES TAX	7.00%	36.40			

WATER THE GRASS DAILY THE DRY SEASON IS HERE!!

**Total** \$696.40  
**Payments/Credits** \$0.00  
**Balance Due** \$696.40

PHONE # 863-993-9122  
 OR 941-743-2088  
 FAX # 863-993-9121



3356 SW CR 769  
 ARCADIA, FL 34269  
 PHONE# (863) 993-9122  
 FAX# (863) 993-9121

# Invoice

Date                      Invoice #  
 12/10/2013                      23822

**Bill To**

AMERICAN SOD SERVICES, INC.  
 15120 COUNTY LINE RD, SUITE 102  
 SPRINGHILL, FL 34610  
 B = 80.55; S7 Pallet

**Ship To**

20 BAHIA P/U IN FIELD - ANSON  
 JAMES - 352-340-7333

S.O. No.	P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
19377		3 WEEKS	DR	12/10/2013			

Quantity	Item Code	Description	Price Each	Amount
8,000	BAHIA - ANSON	BAHIA SOD FOB 39705 SR 70 E MYAKKA CITY, FL 34251 (ANSON)	0.065	520.00T
20	PALLET DEPOSIT	PALLET DEPOSIT	7.00	140.00
20	PALLET CREDIT	PALLET CREDIT	-7.00	-140.00
		12/10/13 20/20 #8611 SALES TAX	7.00%	36.40

WATER THE GRASS DAILY THE DRY SEASON IS HERE!!

<b>Total</b>	\$556.40
<b>Payment's/Credits</b>	\$0.00
<b>Balance Due</b>	\$556.40

PHONE # 863-993-9122  
 OR 941-743-2088  
 FAX # 863-993-9121



3356 SW CR 769  
 ARCADIA, FL 34269  
 PHONE# (863) 993-9122  
 FAX# (863) 993-9121

# Invoice

Date 12/17/2013  
 Invoice # 23861

**Bill To**

AMERICAN SOD SERVICES, INC.  
 15120 COUNTY LINE RD, SUITE 102  
 SPRINGHILL, FL 34610  
 B = S0.55; S7 Pallet

**Ship To**

16 BAHIA P/U IN FIELD - ANSON  
 JAMES - 352-340-7333

S.O. No.	P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
19414		3 WEEKS	DR	12/17/2013			
Quantity	Item Code	Description	Price Each	Amount			
6,400	BAHIA - ANSON	BAHIA SOD FOB 39705 SR 70 E MYAKKA CITY, FL 34251 (ANSON)	0.065	416.00			
16	PALLET DEPOSIT	PALLET DEPOSIT	7.00	112.00			
		12/17/13 16/0 #8681 SALES TAX	7.00%	29.12			

WATER THE GRASS DAILY THE DRY SEASON IS HERE!!

**Total** \$557.12  
**Payments/Credits** \$0.00  
**Balance Due** \$557.12

PHONE # 863-993-9122  
 OR 941-743-2088  
 FAX # 863-993-9121