

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

OTHER SIDE SOD COMPANY, LLC,

Petitioner,

vs.

Case No. 14-2519

AMERICAN SOD SERVICES, INC., AND  
AUTO-OWNERS INSURANCE COMPANY,  
AS SURETY,

Respondents.

\_\_\_\_\_ /

RECOMMENDED ORDER

On July 28, 2014, Thomas P. Crapps, a duly-designated Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted a final hearing in this case by video teleconference at sites in Tallahassee and Tampa, Florida.

APPEARANCES

For Petitioner Other Side Sod Company, LLC:

Joel Deriso, pro se  
3356 Southwest County Road 769  
Arcadia, Florida 34269-7112

For Respondent American Sod Services, Inc:

No Appearance

For Respondent Auto-Owners Insurance Company:

No Appearance

STATEMENT OF THE ISSUE

Whether the Petitioner established that it is entitled to compensation pursuant to sections 604.15 through 604.34, Florida Statutes (2013).<sup>1/</sup>

PRELIMINARY STATEMENT

On May 28, 2014, the Florida Department of Agriculture and Consumer Services (Department) transmitted to DOAH a claim filed by Petitioner, Other Side Sod Company, LLC (Petitioner), against the Respondent, American Sod Services, Inc. (American Sod), pursuant to chapter 604. The Petitioner's claim was set for final hearing on July 28, 2014, and was conducted as scheduled.

At the final hearing, the Petitioner presented the testimony of Joel Deriso and entered into evidence Composite Exhibits 1 and 2. The Respondents failed to appear at the final hearing.

No transcript was filed. The Petitioner timely filed a proposed recommended order. American Sod did not file a proposed recommended order.

FINDINGS OF FACT

1. The Petitioner grows and sells grass sod in the State of Florida, thus, meeting the statutory definition of a "producer of agricultural products."<sup>2/</sup>

2. Respondent is a licensed "dealer in agricultural products," as defined by chapter 604, Florida Statutes.<sup>3/</sup>

3. Sometime in November 2013, the Petitioner and American Sod entered into a verbal contract, where the Petitioner would furnish bahia grass sod for Respondent.

4. The initial invoices for deliveries to American Sod on November 7, 8, 11 and 14, 2013, show that the Petitioner charged American Sod \$0.055 for each sod square delivered. However, the price increased to \$0.065 for each sod square on November 15, 17, 21, December 10, and 17, 2013, based on the agreement of the parties that the price would increase if American Sod failed to timely pay the invoices. Here, it is not disputed that American Sod failed to timely pay the Petitioner for its sod.

5. The invoices and testimony show that the Petitioner charged American Sod for sod, as well as for deposits on the wooden pallets used for delivery of the sod.

6. 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 \$1,362.00 is for the pallets.

#### CONCLUSIONS OF LAW

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

8. The Department is the state agency responsible for licensing dealers in agricultural products and investigating and

taking action on complaints against dealers. §§ 604.15 through 604.34, Fla. Stat.

9. The bahia grass sod produced by the Petitioner and sold to American Sod meets the definition of an "agricultural product."<sup>4/</sup>

10. 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. American Sod had to provide the Department evidence of a surety bond or certificate of deposit in accordance with section 604.20 and Florida Administrative Code Rules 5H-1.001 and 5H-1.004. American Sod is properly and sufficiently bonded by Respondent, Auto-Owners Insurance Company, as surety, for the sum of \$50,000.00.

11. 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.

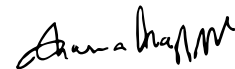
12. American Sod owes the Petitioner the sum of \$3,016.92 which is calculated by subtracting the amount owed for the pallets from the total bill, which contains costs for sod and pallets.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent, American Sod Services, Inc., pay the Petitioner, Other Side Sod Company, LLC, the sum of \$3,016.92.

It is further RECOMMENDED that if American Sod fails to timely pay the Petitioner, as ordered, that the Respondent, Auto-Owners Insurance Company, as surety, be ordered to pay the Department of Agriculture and Consumer Services as required by section 604.21, Florida Statutes, and the Department reimburse the Petitioner as set out in section 604.21, Florida Statutes.

DONE AND ENTERED this 20th day of August, 2014, in Tallahassee, Leon County, Florida.



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THOMAS P. CRAPPS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 20th day of August, 2014.

ENDNOTES

<sup>1/</sup> All references to Florida Statutes shall be for the 2013 version, unless otherwise designated as a different year.

<sup>2/</sup> Section 604.15(9) defines "producer" as "any producer of agricultural products produced in the state." The term "agricultural products," as defined by section 604.15(1), includes sod.

<sup>3/</sup> Section 604.15(2) defines a "dealer in agricultural products," in pertinent part, as "any 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."

<sup>4/</sup> Section 604.15 provides:

Dealers in agricultural products;  
definitions.--For the purpose of ss. 604.15-  
604.34, the following words and terms, when  
used, shall be construed to mean:

(1) "Agricultural products" means the natural products of the farm, nursery, grove, orchard, vineyard, garden, and apiary (raw or manufactured); sod; horticulture; hay; livestock; milk and milk products; poultry and poultry products; the fruit of the saw palmetto (meaning the fruit of the *Serenoa repens*); limes (meaning the fruit *Citrus aurantifolia*, variety Persian, Tahiti, Bearss, or Florida Key limes); and any other nonexempt agricultural products produced in the state, except tobacco, sugarcane, tropical foliage, timber and timber byproducts, forest products as defined in s. 591.17, and citrus other than limes.

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.