

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

IMG CITRUS, INC.,

Petitioner,

vs.

SUNNY FRESH CITRUS
EXPORT AND SALES CO., LLC,

and

HARTFORD INSURANCE
COMPANY, AS SURETY,

Respondents.

DOAH Case No.: 14-3092

A 89582

FILED
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DEPARTMENT OF
AGRICULTURE
AND CONSUMER
SERVICES

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

This case commenced when IMG Citrus, Inc. (hereinafter “IMG”) filed with the Department a citrus bond complaint against Sunny Fresh Citrus Co., LLC (hereinafter “Sunny Fresh”) and the Hartford Insurance Company (hereinafter “Surety”) for the sum of \$41,179.50. IMG’s complaint was postmarked April 30, 2014 but was not received by the Department until May 1, 2014. IMG later amended its complaint to reflect a claim of \$40,075.65. Sunny Fresh

filed its answer with the Department and argued that IMG's complaint was untimely because it was not filed with the Department before May 1st pursuant to Section 601.66(1), Florida Statute. The Department referred the case to the Division of Administrative Hearings (hereinafter "DOAH") for formal hearing.

At the hearing, Sunny Fresh maintained that IMG's claim should be dismissed due to untimely filing. IMG contended that it relied, to its detriment, on representations made by a Department employee. IMG presented the testimony of Mr. Matt Kastensmidt who testified that he was told by an unidentified Department employee that the Department will accept a complaint as timely filed if it is postmarked before May 1st. No one from the Department testified. The parties do not dispute that IMG is owed \$40,075.65.

After hearing testimony by both parties, the ALJ found that IMG's claim was untimely filed with the Department, and on October 28, 2014, the ALJ entered an order recommending the entry of Final Order dismissing IMG's claim against Sunny Fresh. The ALJ's decision was based on a plain reading of Section 601.66(1), Florida Statutes, which provides that "any person may complain of a violation of this chapter by any citrus dealer during any shipping season by filing a written complaint with the Department of Agriculture at any time before May 1st of the year immediately after the end of such shipping season." The ALJ further noted that IMG "failed to present persuasive evidence that it was misled or lulled into inaction, or was in some way prevented from timely asserting its rights by the Department." On November 12, 2014, IMG filed a written exception to the Recommended Order which included a statement by a Department employee which read, "In the past Citrus Grower and/or Dealer Complaint forms

that have been post marked prior to May 1st have been considered as filed timely by this office.” Neither Sunny Fresh nor Surety responded.

After receiving IMG’s exception, the Department remanded this case back to DOAH to explore all issues of estoppel. On December 15, 2014, the ALJ declined the Department’s remand.

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

II. EXCEPTIONS TO THE RECOMMENDED ORDER

IMG filed one exception to the Recommended Order. Sunny Fresh filed none. The Department’s ruling in regard to the written exception is as follows:

Exception: IMG takes exception to the Recommended Order’s conclusion of law that its complaint was untimely filed. IMG argues that its complaint was postmarked before May 1st and the Department accepted it as timely filed. IMG relies solely on the aforementioned statement provided by a Department employee.

Ruling on Exception: Section 601.66(1), Florida Statutes, requires that a citrus bond complaint be filed with the Department at any time before May 1st of the year immediately after the end of such shipping season. The statute does not indicate that the postmarked date of the claim could also serve as the date the claim is filed with the Department.¹ Sunny Fresh has maintained from the outset that IMG’s complaint was untimely, and IMG had sufficient notice of

¹ Unlike § 604.21, F.S., which deals with agricultural dealer’s license bond claims, § 601.66, F.S., does not allow the shipping date of the complaint to also constitute the date of filing with the Department.

this defense.² An Answer to IMG's complaint was timely filed and served by Sunny Fresh. Nevertheless, IMG failed to present sufficient evidence at the hearing that it relied, to its detriment, on any statements given by a Department employee. Therefore, IMG's exception is overruled.

III. FINDINGS OF FACT

1. The Commissioner of Agriculture adopts the Findings of Fact set forth in the attached Recommended Order.

IV. CONCLUSIONS OF LAW

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

ORDERED AND ADJUDGED:

That Petitioner, IMG's Amended Complaint is dismissed as untimely.

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,

² Sunny Fresh's Answer to IMG's complaint, filed July 2, 2014, states in relevant part that "complainant attested to complaint on 30th of April 2014, but does not comply with Section 601.66, that states: Any person may complain of any violation, 'by filing a written' complaint with the Department of Agriculture and Consumer Services at any time prior to May 1 of the year immediately following the end of such shipping season... there is no record that it was properly and timely filed with DofA&CS."

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 28th day of January, 2015.

ADAM H. PUTNAM
COMMISSIONER OF AGRICULTURE



Michael A. Joyner
Assistant Commissioner of Agriculture

Filed with Agency Clerk this 28th day of January, 2014.



Stephen M. Donelan
Agency Clerk

Copies furnished to:

Judge Darren Schwartz, Administrative Law Judge, The Division of Administrative Hearings
The Desoto Building, 1230 Apalachee Parkway, Tallahassee, FL 32399

Matt Kastensmidt, IMG Citrus, Inc., 2600 45th Street, Vero Beach, FL 32967

Kelly Marinaro, Sunny Fresh Citrus and Sales Co., LLC, 2101 15th Avenue, Vero Beach, FL
32960

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