STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ORANGE BEND HARVESTING, INC.,

Petitioner,

vs. Case No. 15-2376

RIDGE ISLAND GROVES, INC., AND OLD REPUBLIC SURETY COMPANY, AS SURETY,

Respondents.
_____/

RECOMMENDED ORDER

A duly-noticed final hearing was held in this matter on June 18, 2015, in Wildwood, Florida, before Suzanne Van Wyk, a designated Administrative Law Judge of the Division of Administrative Hearings (Division).

APPEARANCES

For Petitioner Orange Bend Harvesting, Inc:

Cornelius Caldwell
Ruben Caldwell
Orange Bend Harvesting, Inc.
Post Office Box 490197
Leesburg, Florida 34749-0197

For Respondent Ridge Island Groves, Inc.:

Douglas A. Lockwood, Esquire
Straughn and Turner, P.A.
255 Magnolia Avenue, Southwest
Winter Haven, Florida 33880-2902

For Respondent Old Republic Surety Company:

No Appearance

STATEMENT OF THE ISSUE

Whether Respondent, Ridge Island Groves, Inc., is liable to Petitioner, Orange Bend Harvesting, Inc., on a contract to purchase citrus fruit, and, if so, the amount owed.

PRELIMINARY STATEMENT

On March 31, 2015, Petitioner filed a Complaint against Ridge Island Groves, Inc., and Old Republic Surety Company with the Florida Department of Agriculture and Consumer Services (Department) seeking payment under a fruit purchase contract. The Department provided Notice of the Complaint to Ridge Island Groves, Inc., and to Old Republic Surety Company. Respondent, Ridge Island Groves, Inc., answered the Complaint on April 23, 2015, denied the validity of the Complaint, and requested a hearing. The Department referred the matter to the Division of Administrative Hearings on April 27, 2015, for conduct of the requested hearing. Old Republic Surety Company did not respond to the Complaint and did not appear in these proceedings.

The matter was scheduled for hearing on June 18, 2015, in Wildwood, Florida, and commenced as scheduled. Petitioner offered the testimony of Ruben Caldwell, Cornelius Caldwell, and Jerry Mincey. Petitioner's Exhibits P1 through P6 were admitted in evidence. Respondent offered the testimony of Archie M.

Ritch. Respondent's Exhibits R1, R2, R4, and R6 through R8 were admitted in evidence.

The parties did not order a transcript of the proceedings. The parties timely filed Proposed Recommended Orders, pursuant to the undersigned's Order on Post-Hearing Submissions, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner, Orange Bend Harvesting, Inc. (Petitioner or Orange Bend), is a Florida for-profit corporation located in Leesburg, Florida, engaged in the business of citrus harvesting and management of citrus groves. Joyce D. Caldwell is the president and registered agent of Orange Bend.

2. Ruben Caldwell and Cornelius Caldwell are Ms. Caldwell's brothers and co-owners of the business. Ruben Caldwell is Orange Bend's harvesting manager.

3. Respondent, Ridge Island Groves, Inc. (Respondent or Ridge Island), is a Florida for-profit corporation headquartered in Haines City, Florida, engaged in the business of buying and packing fresh fruit for retail sale and gift-fruit shipping. Ridge Island is known in the industry as a "packing house."

4. Although Ridge Island produces some fruit juice for sample and sale at the packing house, Ridge Island is not a juice processing plant.

5. Respondent, Old Surety Insurance Company, holds the bond for Ridge Island, which has been assigned to the Department as security pursuant to section 601.61, Florida Statutes (2014).

6. Orange Bend and Ridge Island first transacted business in 2010, and Ridge Island purchased fruit from Orange Bend "off and on" from 2010 through 2014.

7. On October 17, 2014, Respondent entered into a contract with Petitioner to purchase fruit from five different citrus groves. The "Standard Fruit Contract" provided that Respondent would purchase from Petitioner the "entire crop of citrus fruit blooming in the year 2014 and merchantable at the time of picking on the grove blocks listed below . . . on the following terms."

8. More specifically, Respondent was entitled to purchase the following described citrus from Petitioner:

Variety	**Block**	**Approximate number of boxes**	**Price per unit**	**Moving Date**
Red Navels	Ronco	300+/-	$15 on tree	12/31/14
Red Navels	Sweet Blossom	1500+/-	$20 on tree	12/31/14
Navels	Powers	400+/-	$15 on tree	12/31/14
Navels	YMCA	400+/-	$15 on tree	12/31/15
Satsuma	Weatherspoon	400+/-	$12 on tree	01/31/15

Prior to entering into the contract, Mr. Ritch visited the named grove blocks with Ruben Caldwell, inspected the blocks, and

estimated the number of boxes to be picked from each block. The two men agreed on the price for each type of fruit.

9. Ridge Island paid Orange Bend $2,500 in deposit on the contract.

10. Pursuant to the contract, Orange Bend was responsible to "pick and haul" the fruit only from the Sweet Blossom grove. Respondent was responsible to pick and haul from the remaining groves.

11. In the industry, the "on tree" price for fruit does not include the harvester's cost to pick and haul. If the harvester is to be paid his or her pick-and-haul costs, the pick-and-haul price is separate from the "on tree" price.

12. Orange Bend and Ridge Island agreed on a pick-and-haul price of $3.25 per box.

13. Orange Bend picked the Sweet Blossom block on December 8, 2014, yielding 225 boxes of red navels, which Orange Bend delivered to Ridge Island. Orange Bend picked the Sweet Blossom block again on December 9, 2014, and delivered another 217 boxes to Ridge Island.

14. These first two deliveries "packed out" at nearly 100 percent, meaning there were few eliminations from the load.

15. Citrus intended for the fresh market must be visually appealing, as well as free from insects, disease, and other damage. Fruit that is discolored, diseased, or damaged is

eliminated from the packed fruit because it is unsuitable for the fresh fruit market.

16. Ridge Island paid Orange Bend the full contract price per box for the first two deliveries of red navels from the Sweet Blossom block.

17. Orange Bend picked the Sweet Blossom block again on December 26, 2014, yielding 447 boxes of red navels, which were delivered to Ridge Island.

18. This delivery packed out at around 50 percent. Mr. Ritch sold the eliminations to a juice processer in Peace River, Florida.[1/]

19. Ridge Island paid Orange Bend the pick-and-haul price of $3.25 per box for eliminations from Orange Bend's deliveries of red navels from the Sweet Blossom block.

20. Decisions regarding eliminations are made by the packing house. Generally, a harvester is unaware of the packing rate of fruit delivered.

21. Ruben Caldwell contacted Mr. Ritch via text message on January 1, 2015, and asked whether Ridge Island was ready for another shipment of red navels from Sweet Blossom. Mr. Caldwell indicated the growers were anxious to get the fruit off the tree.

22. Mr. Ritch responded, as follows:

> The last load of red navels packed out less than 50%. I tried degreening them but the greening fruit would not color. You can

> bring me another load but I just want you to know that the greening fruit will only return the cost of the pick and haul.

23. Orange Bend picked the Sweet Blossom block several times between January 5 and 14, 2015, delivering an additional 1,295 boxes of fruit to Ridge Island. Ridge Island paid Orange Bend the contract price for 679 boxes.

24. Orange Bend claims it is owed $16,820 from Ridge Island under the contract for red navels from the Sweet Blossom block.

25. Ridge Island picked the YMCA block on January 15, 2015. The pick yielded 216 boxes of navels, of which 169 were eliminations. Ridge Island paid Orange Bend $705 for 47 boxes at $15 per box.

26. Ridge Island picked the Powers block on November 15, 2014, and January 15, 2015. The picks yielded 284 boxes of navels, of which 119 were eliminations. Ridge Island paid Orange Bend $4,260 for 165 boxes at $15 per box.

27. Ridge Island picked the Ronco block in February 2015.[2/] Ridge Island picked 91 boxes, of which 62 boxes were eliminations, and paid the block owner, rather than Orange Bend, for 29 boxes at $15 per box.

28. No evidence was introduced regarding whether the Weatherspoon block was picked by either party or whether Ridge Island paid any amount to Orange Bend under the contract for satsumas from the Weatherspoon block.

29. Orange Bend maintains Ridge Island owes $27,540 for boxes of fruit picked by, or otherwise delivered to, Ridge Island, pursuant to the contract for fruit from the YMCA, Powers, and Ronco blocks.

30. Orange Bend contends that the "on the tree" price quoted in the contract obligated Ridge Island to purchase every piece of fruit on the trees in the specified blocks and to assume the cost of eliminations.

31. Ridge Island contends it was obligated to purchase only the fruit which was "merchantable at the time of picking," pursuant to the contract, and that the greening fruit was not merchantable.

32. Petitioner offered the testimony of Jerry Mincey, owner of Southern Citrus Growers, who has operated as a harvester, fruit buyer, grove manager, and intermediary in the Florida citrus industry at various times throughout the past 50 years. Mr. Mincey testified that when a packing house buys fruit "on the tree," the packing house assumes all costs, including eliminations, as well as pick and haul.

33. However, Mr. Mincey also testified that, while a buyer may make an offer to buy a crop "in bulk" (i.e., $x for the entire crop), the industry standard is "on the tree."

34. The undersigned fails to see the difference between "in bulk" and "on the tree" under Petitioner's interpretation.

If "on the tree" means the buyer is purchasing every piece of fruit produced on the trees in the specified block (blocks are just sections of groves), as Petitioner contends, the "in bulk" option would be rendered meaningless.

35. Further, Petitioner's interpretation is contrary to the plain language of the contract, which entitles Respondent to the "entire crop of citrus fruit blooming in the year 2014 and merchantable at the time of picking." If Respondent was obligated to purchase all fruit on the trees in the named blocks, the phrase "and merchantable" would be meaningless.

36. Having weighed all the testimony and evidence introduced, the undersigned finds the "on the tree" price in the subject contract means the buyer assumes the pick-and-haul costs. In the case at hand, Ridge Island purchased fruit in the Ronco, Powers, and YMCA blocks, absorbing its own costs to pick and haul the fruit. Ridge Island paid Orange Bend for Orange Bend's pick and haul costs for deliveries of fruit from the Sweet Blossom block.

37. Pursuant to the contract, Ridge Island contracted for merchantable fruit. The contract does not define the term "merchantable."

38. Citrus greening, or greening, is by all accounts a devastating disease caused by bacteria-infected insects. Trees affected with greening produce hard, knotty, fruit, which never

fully colors (i.e., remains green on the bottom, or bottom half, of the fruit).

39. Greening fruit is not fit for the purpose of fresh fruit packaging and gift shipping.

40. Petitioner challenged Respondent's contention that fruit from the Sweet Blossom block was infected with greening. Petitioner presented the testimony of Mr. Mincey on this point. Mr. Mincey testified that he inspected the Sweet Blossom block in early October and made an offer to buy the navels for $18 per box. Mr. Mincey was back in the block in early November and testified that, although the tangerines in that grove were infected with greening, he saw no problem with the navels, which were of good size and on which color was beginning to break.

41. On cross-examination however, Mr. Mincey admitted that, upon inspection, the red navel trees in the Sweet Blossom block did show some signs of greening. Further, Mr. Mincey testified that greening is a devastating disease that has infected almost every tree in Florida.

42. Greening does not manifest itself early in the ripening process. While the fruit may color at the top, it usually does not color all the way to the bottom. Thus, a color break on the fruit in early November is not proof that the trees were not affected by greening.

43. Despite the fact that some of the blocks were not picked by the moving date specified in the contract, neither party objected. In fact, Mr. Ritch testified that the fruit was late maturing throughout the region.

44. Neither party ever terminated the subject contract.

CONCLUSIONS OF LAW

45. The Division has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569, 120.57(1), and 604.21(6), Fla. Stat. (2015).

46. Chapter 601, Florida Statutes (2014), is known as the "Florida Citrus Code of 1949" (the Code).[3/]

47. The Code regulates, among other things, the activities of "citrus fruit dealers."

48. "Citrus fruit," as that term is used in the Code, is defined in section 601.03(7) as follows:

> 'Citrus fruit' means all varieties and regulated hybrids of citrus fruit and also means processed citrus products containing 20 percent or more citrus fruit or citrus fruit juice. The term does not, for purposes of this chapter, mean limes, lemons, marmalade, jellies, preserves, candies, or citrus hybrids for which specific standards have not been established by the department.

The navels and red navels referenced in the subject "Standard Fruit Contract" are "citrus fruits," as defined by the statute.

49. A "citrus fruit dealer" is defined in section 601.03(8), as follows:

> 'Citrus fruit dealer' means any consignor, commission merchant, consignment shipper, cash buyer, broker, association, cooperative association, express or gift fruit shipper, or person who in any manner makes or attempts to make money or other thing of value on citrus fruit in any manner whatsoever, other than of growing or producing citrus fruit. The term does not include retail establishments whose sales are direct to consumers and not for resale or persons or firms trading solely in citrus futures contracts on a regulated commodity exchange.

Respondent is a "citrus fruit dealer" as defined by the statute.

50. Pursuant to section 601.55(1), a "citrus fruit dealer" must be licensed by the Department of Citrus to transact business in this State. At all times material to the instant case, Respondent was licensed as required by section 601.55.

51. With certain exceptions not applicable to the instant case, "before the approval of a citrus fruit dealer's license, the applicant therefor must deliver to the Department of Agriculture and Consumer Services a good and sufficient cash bond, appropriate certificate of deposit, or a surety bond executed by the applicant as principal and by a surety company qualified to do business in this state as surety, in an amount as determined by the department." § 601.61(1), Fla. Stat.

52. "Said bond shall be to the Department of Agriculture [and Consumer Services], for the use and benefit of every producer and of every citrus fruit dealer with whom the dealer

deals in the purchase, handling, sale, and accounting of purchases and sales of citrus fruit." § 601.61(3), Fla. Stat.

53. Section 601.64 describes "unlawful acts" in which "citrus fruit dealers" may not engage "in connection with, any transaction relative to the purchase, handling, sale, and accounting of sales of citrus fruit." Among these "unlawful acts" is the failure to "make full payment promptly in respect of any such transaction in any such citrus fruit to the person with whom such transaction is had[.]"

54. "Any person may complain of any violation of any of the provisions of [the Code] by any citrus fruit dealer during any shipping season, by filing of a written compliant with the Department of Agriculture [and Consumer Services] at any time before May 1 of the year immediately after the end of such shipping season." § 601.66(1), Fla. Stat.

55. As the Petitioner, Orange Bend bears the burden of proving the allegations of its complaint by a preponderance of the evidence. See Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern & Co., 670 So. 2d 932, 934 (Fla. 1996) ("The general rule is that a party asserting the affirmative of an issue has the burden of presenting evidence as to that issue"); Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778, 788 (Fla. 1st DCA 1981); Vero Beach Land Co., LLC v. IMG Citrus, Inc., Case No. 08-5435 (Fla. DOAH Mar. 4, 2009; Dep't Agric. &

Consumer Serv. July 20, 2009), aff'd, IMG Citrus, Inc. v. Westchester Fire Ins. Co., 46 So. 3d 1014 (Fla. 4th DCA 2010).

56. There is no dispute that the subject contract is valid. The dispute is whether the term "merchantable" in the contract obligated Respondent to purchase all the fruit in the named blocks, thus obligating Respondent to pay Petitioner for all the fruit picked under the contract.

57. The contract does not define the term "merchantable."

58. Section 672.314, Florida Statutes, governs merchantability of goods under the Uniform Commercial Code. That section reads, in pertinent part, as follows:

> (1) Unless excluded or modified (s. 672.316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. . . .
>
> (2) Goods to be merchantable must be at least such as:
>
> (a) Pass without objection in the trade under the contract description; and
>
> (b) In the case of fungible goods, are of fair average quality within the description; and
>
> (c) Are fit for the ordinary purposes for which such goods are used[.]

59. Ruben Caldwell has been in the citrus fruit harvesting business for at least seven years and had transacted business with Mr. Ritch in prior years. Mr. Caldwell was aware that

Mr. Ritch was a fresh fruit packer, thus Respondent was contracting to purchase fruit fit for packing and gift-fruit shipping, rather than for juicing. Greening fruit, whether harvested by Petitioner's crew or Respondent's crew, was not passable without objection in the fresh fruit packing trade. Thus, Respondent was not obligated to purchase the eliminated fruit.

60. Petitioner failed to prove that Respondent owes Petitioner for boxes of fruit harvested by Petitioner, but rejected by Respondent as unfit for its intended purpose.

61. However, pursuant to the contract, Respondent was obligated to purchase from Petitioner merchantable fruit from the Ronco block. Respondent admitted that he harvested the fruit from that block, although well past the move date. Respondent did not terminate the contract. Respondent failed to pay Petitioner for the merchantable fruit from the Ronco block, 29 boxes at $15 per box, or $435.

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 approving the claim of Orange Bend Harvesting, Inc., against Ridge Island Groves, Inc., in the amount of $435.

DONE AND ENTERED this 20th day of August, 2015, in Tallahassee, Leon County, Florida.

SUZANNE VAN WYK
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, 2015.

ENDNOTES

[1/] It is a standard practice in the industry for a packing house to sell eliminations to a juice processing plant.

[2/] The delay in harvesting the Ronco block was due to the owner's unwillingness to cooperate with the harvesters.

[3/] Except as otherwise provided herein, all references to the Florida Statutes are to the 2014 version.

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.