

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SOUTHEASTERN TREES, LLC,

Petitioner,

vs.

Case No. 15-2531

GRANDVIEW LANDSCAPING SERVICES,
INC.; GUIGNARD COMPANY; AND SURE
TEC INSURANCE COMPANY, AS
SURETY,

Respondents.

_____ /

RECOMMENDED ORDER

A duly-noticed final hearing was held in this matter on September 15, 2015, via video teleconference in Tallahassee and Gainesville, Florida, before Suzanne Van Wyk, a designated Administrative Law Judge of the Division of Administrative Hearings (Division).

APPEARANCES

For Petitioner: Keith Lerner, pro se
Southeastern Trees, LLC
Suite 4
4881 Northwest 8th Avenue
Gainesville, Florida 32605

For Respondent, Grandview Landscaping Services, Inc.:

No appearance

For Respondent, Guignard Company^{1/}:

No appearance

For Respondent, Sure Tec Insurance Company:

No appearance

STATEMENT OF THE ISSUE

Whether Grandview Landscaping Services, Inc., is liable to Petitioner for the purchase of landscaping trees; and, if so, in what amount.

PRELIMINARY STATEMENT

On March 31, 2015, Petitioner filed a Complaint against Grandview Landscaping Services, Inc. (Grandview); and Sure Tec Insurance Company with the Florida Department of Agriculture and Consumer Services (Department), seeking payment for 27 Live Oak trees. The Department provided Notice of the Complaint to Grandview and Sure Tec Insurance Company. Respondent Grandview answered the Complaint on April 27, 2015, and complained that Grandview had to replace seven of the 27 trees due to health issues. On May 5, 2014, the Department referred the matter to the Division to schedule an evidentiary hearing. Neither Guignard Company nor Sure Tec Insurance Company responded nor did either of those parties appear in these proceedings.

The matter was initially scheduled for hearing on June 30, 2015, by video teleconference in Gainesville and Tallahassee, Florida. The final hearing was continued at the request of Respondent Grandview and rescheduled for September 15, 2015.

The final hearing commenced as rescheduled. Petitioner offered the testimony of Keith Lerner and David Lerner, its President and Vice President, respectively. Petitioner's exhibits 1 through 3 were admitted in evidence.

None of the Respondents appeared at the final hearing.

Petitioner did not order a transcript of the proceedings. Petitioner timely filed a Proposed Recommended Order on September 16, 2015, which has been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner, Southeastern Trees, LLC (Petitioner or Southeastern Trees), is a Florida Limited Liability Corporation located in Gainesville, Florida, engaged in the business of commercial tree farming. Keith Lerner is the President of Southeastern, and David Lerner is the Vice President.

2. Respondent, Grandview Landscaping Services, Inc. (Respondent or Grandview), is a Florida corporation headquartered in Ocala, Florida, engaged in commercial landscaping. Grandview is licensed by the Department as a dealer in nursery products, flowers, and sod.

3. In August 2015, John Sapp, Grandview's owner, visited Petitioner's tree farm and selected 27 live oak trees to purchase.

4. On December 11, 2014, Mr. Sapp returned to Southeastern Trees and took possession of the 27 live oak trees. Mr. Sapp used his own equipment to haul the trees.

5. Petitioner sent an invoice to Respondent on December 11, 2014, in the amount of \$5,724.00 for the 27 live oak trees. The invoice term was "net 30," allowing 30 days for Respondent to pay in full.

6. After 30 days had elapsed without payment, David Lerner contacted Mr. Sapp to request payment. Mr. Lerner also requested the location of the trees in order to place a lien thereon. According to Mr. Lerner, Mr. Sapp refused to divulge the location of the trees.

7. After 60 days had elapsed without payment, Keith Lerner contacted Mr. Sapp via telephone. According to Keith Lerner, he spoke with Mr. Sapp on March 1, 2015, who informed him the trees were beautiful and Mr. Sapp would "get him a check."

8. Keith Lerner attempted to reach Mr. Sapp via telephone again on March 10, 2015, and left messages with Grandview's office and on Mr. Sapp's personal mobile phone. Mr. Lerner did not receive a return call.

9. On March 25, 2015, Petitioner sent Respondent, via certified mail, a letter requesting payment of \$5,724.00 for the 27 live oak trees and "any interest available to us beyond the 30 days of credit that were extended to you." The letter was

delivered to both Grandview's business address and Mr. Sapp's home address.

10. The certified mail receipts were returned to Southeastern Trees, signed and dated March 26, 2015.

11. Petitioner filed a complaint with the Department on March 31, 2015, against Southeastern Trees. Petitioner paid a filing fee of \$50.00

12. As of the date of the hearing, Southeastern Trees had not responded to Petitioner's request for payment.

CONCLUSIONS OF LAW

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

14. The Department is the state agency responsible for licensing dealers in agricultural products, and investigating and taking action on complaints against such dealers. §§ 604.15 through 604.34, Fla. Stat. (2014).^{2/}

15. The definition of "agricultural products" includes the "natural products of the . . . farm [and] nursery . . . produced in the state[.]" § 604.15(1), Fla. Stat. The trees grown by Petitioner are "agricultural products" within the meaning of section 604.15(1).

16. The definition of a "dealer in agricultural products" includes any "corporation . . . engaged within this state in the

business of purchasing, receiving, or soliciting agricultural products from the producer . . . for resale or processing for sale[.]” § 604.15(1), Fla. Stat. Grandview is a dealer in agricultural products within the meaning of section 604.15(1).

17. Any business claiming to be damaged by any breach of the conditions of an agreement made with a dealer in agricultural products, may file a complaint with the Department against the dealer and against the surety company. See § 604.21(1)(a), Fla. Stat.

18. As the Petitioner, Southeastern 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; Fla. DACS July 20, 2009), aff’d IMG Citrus, Inc. v. Westchester Fire Ins. Co., 46 So. 3d 1014 (Fla. 4th DCA 2010).

19. Petitioner has satisfied its burden. As set forth in the Findings of Fact, Respondent Grandview owes Petitioner \$5,724.00 for 27 live oak trees.

20. Petitioner additionally seeks recovery of the filing fee paid to the Department for the complaint filed against Respondents on March 31, 2015. Petitioner paid a \$50 filing fee, which is specifically recoverable against Respondent. See § 604.21(1)(a) ("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.")

21. Petitioner further seeks interest on the debt owed by Respondent from the date the 30 day payment term expired. Nothing in the governing statute mentions costs, generally, or interest, particularly. Petitioner has cited no other authority for the undersigned to recommend payment of interest accrued on the debt. Section 55.03(1), Florida Statutes, "provides only that a 'judgment or decree' shall bear interest. Such does not include administrative orders." Bank of Cent. Fla. v. Dep't of Banking & Fin., 470 So. 2d 742, 746 (Fla. 1st DCA 1985). "Although administrative orders entered in adjudicatory proceedings are generally regarded as quasi-judicial in nature . . . administrative orders are generally regarded as not having the force or effect of a final judgment or decree of a court." Id. (citations omitted).

22. Inasmuch as the governing statute does not address an award of costs, the undersigned has no authority to recommend

reimbursement of Petitioner's cost incurred in mailing demand letters to Mr. Sapp via certified mail.^{3/}

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 Southeastern Trees, LLC, against Grandview Landscaping Services, Inc., in the amount of \$5,774.00.

DONE AND ENTERED this 8th day of October, 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 8th day of October, 2015.

ENDNOTES

^{1/} The record is unclear as to Guignard's party status in this matter. Sure Tec Insurance Company, rather than Guignard Company, was identified by the Department of Agriculture and Consumer Services (Department) as the applicable bond holder, served with a copy of Petitioner's claim, and copied on the Department's letter forwarding this case to the Division.

^{2/} Except as otherwise noted herein, references to the Florida Statutes are to the 2014 version in effect when Petitioner's claim was filed.

^{3/} Assuming Petitioner's costs were recoverable in this action, costs Petitioner incurred in mailing demand letters via certified mail do not appear to qualify as litigation costs, subject to taxation under the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions.

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.