

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HUNTSMAN TREE SUPPLIER, INC.,

Petitioner,

vs.

Case No. 16-0064

GREENWAY NURSERY, INC., AND AUTO
OWNERS INSURANCE COMPANY, AS
SURETY,

Respondents.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on March 9, 2016, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge of the Division of Administrative Hearings ("Division"), in Lake City, Florida.

APPEARANCES

For Petitioner: Michelle Huntsman, pro se
Huntsman Tree Supplier, Inc.
13823 29th Road
Lake City, Florida 32024

For Respondent, Greenway Nursery, Inc.:

Brian D. Love, pro se
Greenway Nursery, Inc.
12091 Southeast 30th Street
Morrison, Florida 32668

For Respondent, Auto-Owners Insurance Company

Brett Little, Esquire
Brett Little, P.A.
5216 Southwest 91st Terrace
Gainesville, Florida 32608

STATEMENT OF THE ISSUES

Whether Respondent, Greenway Nursery, Inc. ("Greenway"), is liable to Petitioner, Huntsman Tree Supplier, Inc. ("Huntsman"), for the purchase of landscaping trees, and, if so, in what amount.

PRELIMINARY STATEMENT

On September 11, 2015, Huntsman filed an Agricultural Products Dealer Claim Form ("Complaint") against Greenway and its insurer, Auto-Owners Insurance Company, with the Florida Department of Agriculture and Consumer Services ("Department"), seeking payment for an assortment of landscaping trees. By letter dated October 21, 2015, the Department provided notice of the Complaint to Greenway and its insurer. On or about November 10, 2015, Greenway answered the Complaint, admitting liability for some, but not all of the trees. On January 4, 2016, the Department referred the matter to the Division for the assignment of an Administrative Law Judge and the conduct of a formal evidentiary hearing.

The case was scheduled for hearing on March 9, 2016, on which date the hearing was convened and completed.

At the hearing, Huntsman presented the testimony of Michelle Huntsman, one of its owners. Huntsman offered no exhibits at the hearing, but Ms. Huntsman affirmed the validity of the two billing documents submitted with the Complaint. No objection was offered to the authenticity of these documents or to their consideration in the writing of this Recommended Order. Greenway presented the testimony of its principal, Brian D. Love. Greenway's Exhibits 1 and 2 were admitted into evidence. Auto-Owners Insurance Company presented no witnesses and offered no exhibits into evidence.

No transcript of the final hearing was ordered. On March 17, 2016, Huntsman timely filed a letter summarizing its position. No other post-hearing documents were filed.

Unless otherwise stated, all statutory references are to the 2015 edition of the Florida Statutes.

FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing, and the entire record in this proceeding, the following Findings of Fact are made:

1. Huntsman is a Florida corporation for profit, located in Lake City, and engaged in the business of commercial tree farming. Its owners are James and Michelle Huntsman. Mr. Huntsman is the president of the company and Ms. Huntsman is the secretary.

2. Greenway is a Florida corporation for profit, located in Morriston, and engaged in the business of commercial nursery and landscaping. Its owner and president is Brian D. Love.

3. At issue in this proceeding are two deliveries of trees from Huntsman to Greenway, one on March 12, 2015, and one on June 23, 2015. The invoice for the March 12 delivery indicates that it was billed to Greenway. It is for 12 East Palatka holly trees, 65 gallons each. The trees are billed at the rate of \$240 each, for a total bill of \$2,880. The invoice indicates that Greenway took delivery of the trees by customer pick-up.

4. The invoice for the June 23 delivery also states that it was billed to Greenway. The invoice includes one ligustrum, eight feet in height, for \$200; one 2.5-inch DBH^{1/} slash pine for \$130; two 4-inch live oaks with a height of 14 to 16 feet for \$250 each; and one cypress for \$240. The total amount of the invoice is \$1,070. Again, the invoice indicates that Greenway took delivery by picking up the trees.

5. All of the trees in both invoices were destined for a landscaping project at Adena Golf and Country Club in Ocala ("Adena"). Both parties were involved in planting trees in different areas of the Adena property.

6. The parties' course of dealing until June 2015, was not completely explained at the hearing. It was clear that Huntsman would directly bill Greenway for the trees and that Greenway

would take delivery of the trees by pick-up. It was unclear whether Huntsman expected to receive payment directly from Adena or whether Greenway would pay Huntsman for the trees from payments Greenway received from Adena. In any event, Greenway accepted the billings and took delivery of the trees in each instance, thus accepting ultimate responsibility for payment to Huntsman.

7. In its answer to the Complaint, and again at the final hearing, Greenway admitted liability for the \$2,880 stated in the March 12 invoice. Mr. Love agreed to pay Huntsman that amount within 15 days of entry of the final order in this case.

8. However, Greenway denied liability for the \$1,070 stated in the June 23 invoice. Mr. Love stated that his company was not liable for these trees because they were not part of his project with Adena. He stated that he installed these trees to replace trees on the Adena property that had died, but that the dead trees had not been the responsibility of his company.

9. Ms. Huntsman denied that the dead trees had been installed in the area of the Adena property where her company was working. She testified that Adena's representative told her that she should seek payment from Greenway because the June 23 tree delivery constituted "warranty work." Greenway had planted trees on the Adena property that had died, and Adena considered

Greenway the warrantor of those trees and therefore liable for their replacement.

10. Based on all of the testimony, it appears that Huntsman found itself in the middle of a dispute between Greenway and Adena as to whether Greenway had warranted the trees that died, and became aware of the dispute only after it had billed and delivered the trees to Greenway in accordance with the parties usual course of dealing. The evidence was insufficient to establish that Huntsman had any responsibility for, or prior knowledge of, the dead trees.

11. It will be left to one or the other of these parties to take up the issue of payment with Adena. Fundamental fairness dictates that this burden should fall to Greenway. Greenway had the warranty dispute with Adena that caused this controversy. Greenway accepted the bill of lading and the invoice for the June 23 shipment, and took delivery of the trees in accordance with the parties usual course of business. As the innocent supplier of the trees, Huntsman should be made whole.

CONCLUSIONS OF LAW

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

13. 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.

14. The definition of "agricultural products" includes the "natural products of the farm, nursery, grove, orchard, vineyard, garden and apiary . . . produced in the state[.]" § 604.15(1), Fla. Stat. The trees grown by Huntsman are "agricultural products" within the meaning of section 604.15(1).

15. The definition of a "dealer in agricultural products" includes 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[.]" § 604.15(1), Fla. Stat. Greenway is a dealer in agricultural products within the meaning of section 604.15(1).

16. 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. § 604.21(1)(a), Fla. Stat.

17. As the Petitioner, Huntsman bears the burden to prove the allegations of its complaint by a preponderance of the evidence. 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).

18. Huntsman has satisfied its burden. As set forth in the Findings of Fact, Respondent Greenway owes Huntsman \$2,880 for the March 12, 2015, delivery of trees and \$1,070 for the June 23, 2015, delivery of trees, for a total of \$3,950.

19. Huntsman is also entitled to recover the \$50 filing fee paid to the Department for the complaint filed against Respondents on September 11, 2015. § 604.21(1)(a), Fla. Stat. ("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.")

20. Huntsman is entitled to recover a total of \$4,000 from Greenway.

RECOMMENDATION

Based on the foregoing, it is, therefore,

RECOMMENDED that the Department of Agriculture and Consumer Services enter a final order approving the claim of Huntsman Tree Supplier, Inc., against Greenway Nursery, Inc., in the amount of \$4,000.

DONE AND ENTERED this 12th day of April, 2016, in
Tallahassee, Leon County, Florida.

Lawrence P. Stevenson

LAWRENCE P. STEVENSON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of April, 2016.

ENDNOTE

^{1/} DBH is short for diameter at breast height, a standard method
of tree measurement.

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.