

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EMMITT KING, JR., d/b/a KAD
HARVESTING AND HAULING, LLC,

Petitioner,

vs.

Case No. 16-6841

DELICIOUS CITRUS PACKING, LLC,
AND PLATTE RIVER INSURANCE
COMPANY, AS SURETY,

Respondents.

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RECOMMENDED ORDER

On February 13, 2017, Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted the final hearing by videoconference in Port Saint Lucie and Tallahassee, Florida.

APPEARANCES

For Petitioner: Dwight Johnathan Rhodeback, Esquire
Rooney & Rooney, P.A.
1517 20th Street
Vero Beach, Florida 32960

For Respondent Delicious Citrus Packing, LLC:

Douglas A. Lockwood, Esquire
Straughn & Turner, P.A.
255 Magnolia Avenue Southwest
Post Office Box 2295
Winter Haven, Florida 33880

For Respondent Platte River Insurance Company:

no appearance

STATEMENT OF THE ISSUES

The issues are whether Respondent Delicious Citrus Packing, LLC (Respondent), as a citrus fruit dealer, has failed to pay Petitioner for citrus fruit, as required by section 601.64(4), Florida Statutes; and, if so, the amount that Respondent owes Petitioner.

PRELIMINARY STATEMENT

By Complaint Form filed September 30, 2016, Petitioner alleged that Respondent owes it \$54,367 for citrus fruit that Petitioner sold Respondent during the 2015-16 season. By response filed November 14, 2016, Respondent denied the claim as invalid.

At the hearing, Petitioner called two witnesses and offered into evidence eight exhibits: Petitioner Exhibits 1-8. Respondent called three witnesses and offered into evidence no exhibits. All exhibits were admitted into evidence.

Neither party ordered a transcript. Petitioner filed a proposed recommended order on February 24, 2017.

FINDINGS OF FACT

1. Respondent holds a Citrus Fruit Dealer's License number 252, effective August 31, 2015, for the 2015-16 season. The surety is Respondent Platte River Insurance Company.

2. During the 2015-16 season, Petitioner picked citrus fruit from the groves of various third parties and transported

the fruit to Respondent, which cleaned, waxed, and graded the fruit prior to selling it to various retailers, primarily, it seems, in South Florida.

3. During the 2014-15 season, Petitioner and Respondent entered into contracts covering their respective rights and obligations in connection with transactions identical to those set forth in the preceding paragraph. An example is a contract dated April 10, 2015, signed by Petitioner and Respondent, specifying that Petitioner would purchase from a named third party from a named portion of a grove approximately 2000 citrus fruit for a delivered price of \$16 per box with payment due upon delivery. The contract provides that Petitioner makes no allowance for fruit not meeting Respondent's specifications because Respondent had examined and preapproved the fruit on the tree.

4. The parties did not document their agreement during the 2015-16 season, but the conditions were identical, although the price per box decreased, as set forth below. As was their practice during the preceding season, prior to the purchase and delivery by Petitioner, representatives of both companies visited the grove with the fruit still on the tree, and Respondent's representative approved the fruit, so, again, the agreement permitted no allowances for nonconforming fruit.

5. Petitioner produced trip tickets documenting the delivery of 791 boxes of citrus fruit--all oranges--from September 25, 2015, through October 24, 2015. At this point, representatives of Petitioner and Respondent met to discuss the price of the fruit. Respondent complained that the fruit was too expensive based on what it could charge its purchasers, so Petitioner went back to the grove owners and negotiated a reduction in price.

6. On November 2, 2015, Petitioner agreed to reduce its price from an undisclosed price per box to \$15.50 per box, so as to reduce the outstanding balance for the 7791 boxes already delivered to \$120,760.50. At that time, Respondent paid \$85,250.50, leaving a balance due of \$35,510.

7. The parties promptly resumed their business dealings. A trip ticket dated November 2, 2015, documented the delivery of 550 boxes, for which the agreed-upon price was the \$15.50 that the parties had set for the previous deliveries. However, even this price proved too high for Respondent, so the next two trip tickets, dated November 3 and 4, 2015, for a total of 1072 boxes, were priced at \$13.50 per box.

8. At some point, Respondent made two payments totaling \$8811, and Respondent processed other fruit for Petitioner, earning a total credit of \$2486 to be applied to the outstanding

balance. These transactions reduced the balance to \$47,210, which is the amount that Respondent presently owes Petitioner.

9. The finding in the preceding paragraph reduced Petitioner's claim by \$7157. As shown on the invoice dated April 6, 2016, received into evidence as Petitioner Exhibit 5, this balance was carried forward from the 2014-15 season. As explained in the Conclusions of Law, this case is limited to the 2015-16 season due to the timing of the filing of the Complaint.

10. The findings in the preceding paragraphs discredit the testimony of Respondent's witnesses as to bad fruit that could not be sold. First, Respondent bore the risk of fruit that could not be sold for any reason, including spoilage. Second, Respondent did not assert this complaint when it negotiated a new purchase price on November 2, 2015. Third, Respondent did not object to the series of invoices that Petitioner submitted to Respondent, culminating in the April 6 invoice. Fourth, the testimony of Respondent's owner was vague and confusing, but twice seemed to confirm the indebtedness.

CONCLUSIONS OF LAW

11. DOAH has jurisdiction. §§ 120.569, 120.57(1), and 601.65, Fla. Stat. (2016). Petitioner has the burden of proving the material allegations by a preponderance of the evidence. Dep't of Transp. v. J.W.C. Co. Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); § 120.57(1)(j).

12. Section 601.64(4) provides that it is unlawful for a citrus fruit dealer "to fail or refuse truly and correctly to account and make full payment promptly in respect of any such transaction in any such citrus fruit to the person with whom such transaction is had, or to fail or refuse on such account to make full payment of such amounts as may be due thereon."

13. Section 601.66(1) provides that any person may complain of a citrus fruit dealer's violation of any provision of chapter 601 by filing a complaint with the Department of Agriculture and Consumer Services by May 1 of the year immediately after the end of the "shipping season."

Section 601.03(36) defines the "shipping season" as August 1 through July 31 of the following year. This means that the deadline for a complaint for the 2014-15 shipping season is May 1, 2016, and the deadline for a complaint for the 2015-16 shipping season is May 1, 2017. Because Petitioner's complaint was filed on September 30, 2016, it was untimely as to any alleged violations during the 2014-15 shipping season: this case thus does not involve the \$7157 allegedly due from the 2014-15 shipping season.

14. However, Petitioner has proved that, for the 2015-16 shipping season, Respondent has violated section 601.64(4) by failing to pay \$47,210 to Petitioner for citrus fruit that Petitioner sold to Respondent.

RECOMMENDATION

It is

RECOMMENDED that the Department of Agriculture and Consumer Services enter a final order determining that Respondent has violated section 601.64(4) by failing to pay Petitioner the sum of \$47,210 for citrus fruit that Petitioner sold to Respondent during the 2015-16 shipping season and fixing a reasonable time within which Respondent shall pay such sum to Petitioner.

DONE AND ENTERED this 6th day of March, 2017, in Tallahassee, Leon County, Florida.



ROBERT E. MEALE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of March, 2017.

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.