

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DOUG LANCASTER FARMS, INC.,

Petitioner,

vs.

Case No. 20-3360

DOBSON'S WOODS AND WATER, INC., AND  
WESTERN SURETY COMPANY, AS SURETY,

Respondents.

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RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted via Zoom on November 2, 2020, before Administrative Law Judge Garnett W. Chisenhall of the Division of Administrative Hearings (“DOAH”).

APPEARANCES

For Petitioner: Kristopher Vanderlaan, Esquire  
Vanderlaan & Vanderlaan, P.A.  
507 Northeast 8th Avenue  
Ocala, Florida 34470

For Respondent: Larry K. Dobson, pro se  
Dobson’s Woods and Water, Inc.  
851 Maguire Road  
Ocoee, Florida 34761-2915

STATEMENT OF THE ISSUE

Whether Respondents (“Dobson’s” and “Western Surety”) should be required to pay an outstanding amount owed to Petitioner, Doug Lancaster Farms, Inc. (“Lancaster Farms”).

## PRELIMINARY STATEMENT

If any person or business entity claims to have been damaged by a breach of contract committed by a dealer<sup>1</sup> in agricultural products,<sup>2</sup> then that person or business entity can file a complaint against the dealer and its surety company with the Department of Agriculture and Consumer Services (“the Department”). § 604.21(1)(a), Fla. Stat. (2019).<sup>3</sup> “Such complaint shall be filed within 6 months from the date of sale in instances involving direct sales or from the date on which the agricultural product was received by the dealer in agricultural products, as agent, to be sold for the producer.” *Id.* If the Department determines that the facts alleged in the complaint justify further action, then the Department shall serve notice of the complaint on the dealer against whom the complaint was filed and the dealer’s surety company. § 604.21(2), Fla. Stat. At that point, the surety company becomes a party to the action. *Id.* Any party whose substantial interests are at stake in such a proceeding may request a formal administrative hearing before DOAH, and that hearing shall be conducted pursuant to chapter 120, Florida Statutes.

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<sup>1</sup> Section 604.15(2), Florida Statutes (2019), defines a “dealer in agricultural products” as “any person, partnership, corporation, or other business entity, whether itinerant or domiciled within this state, engaged within this state in the business of purchasing, receiving, or soliciting agricultural products from the producer or the producer’s agent or representative for resale or processing for sale; acting as an agent for such producer in the sale of agricultural products for the account of the producer on a net return basis; or acting as a negotiating broker between the producer or the producer’s agent or representative and the buyer.”

<sup>2</sup> Section 604.15(1), defines “agricultural products” as “the natural products of the farm, nursery, grove, orchard, vineyard, garden, and apiary (raw or manufactured); sod; horticulture; hay; livestock; milk and milk products; poultry and poultry products; the fruit of the saw palmetto (meaning the fruit of the *Serenoa repens*); limes (meaning the fruit *Citrus aurantifolia*, variety Persian, Tahiti, Bearss, or Florida Key limes); and any other nonexempt agricultural products produced in the state, except tobacco, sugarcane, tropical foliage, timber and timber byproducts, forest products as defined in s. 591.17 and citrus other than limes.”

<sup>3</sup> Unless stated otherwise, all statutory references shall be to the 2019 version of the Florida Statutes.

§ 604.21(6), Fla. Stat. After receiving a recommended order from DOAH, the Department issues a final order that is subject to review before a district court of appeal.

On October 29, 2019, Lancaster Farms filed a claim with the Department alleging that Dobson's had not paid \$53,245.00 for 269 agricultural products that had been furnished to Dobson's by Lancaster Farms. The aforementioned products included trees such as Live Oaks, Crape Myrtles, Elms, and Magnolias.

After receiving notice of this claim from the Department, Dobson's filed an Answer on December 15, 2019, asserting that the vast majority of the money owed to Lancaster Farms had been paid in November of 2019 or was going to be paid by December 31, 2019. Dobson's stated in its Answer that "[t]he only remaining unpaid invoice [of \$12,580.00] has not yet been funded by the owner. Note that our terms are 'NTO Terms' listed on the invoice. We provide the producer all Notice to Owner information and pay the invoice when funded by the owner."

The Department referred this matter to DOAH on July 27, 2020, and the undersigned scheduled a final hearing for September 20, 2020. On September 9, 2020, the undersigned granted a Motion to Continue filed by Lancaster Farms and rescheduled the final hearing for November 2, 2020.

The final hearing was convened as scheduled. Lancaster Farms presented testimony from Kelly Lancaster and Larry Dobson. Lancaster Farms did not move any exhibits into evidence. Dobson's presented testimony from Larry Dobson and did not move any exhibits into evidence.

Only Lancaster Farms filed a Proposed Recommended Order, and that pleading was considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

Based on the evidence adduced at the final hearing, the record as a whole, and matters subject to official recognition, the following Findings of Fact are made:

1. Oden Hardy was the general contractor for a project in Apopka, Florida, known as the Space Box project. Dobson's, a subcontractor on the Space Box project, contracted to purchase 269 trees (including Live Oaks, Crape Myrtles, Elms, and Magnolias) for \$53,245.00 from Lancaster Farms.

2. Dobson's supplied Lancaster Farms with all the information needed to file a "notice to owner" as authorized by section 713.06, Florida Statutes.

3. A truck from Dobson's picked up the trees and transported them to the site of the Space Box project. Upon arriving with the trees, Dobson's discovered that there was no means by which the trees could be watered at the site. Rather than attempting to jury rig some manner of watering system as requested by Oden Hardy, Dobson's transported the trees to its place of business, and the trees remain there.

4. The parties have stipulated that Dobson's has paid all of the invoices except for Invoice No. 5810, totaling \$12,580.00.

5. There is no dispute that the trees at issue are "agricultural products" within the meaning of section 604.15(1). There is also no dispute that Dobson's is a "dealer in agricultural products" within the meaning of section 604.15(2).

#### CONCLUSIONS OF LAW

6. DOAH has jurisdiction over the parties to this proceeding and the subject matter pursuant to sections 120.569, 120.57(1), and 604.21(6), Florida Statutes.

7. The Department is the state agency responsible for investigating and taking action on complaints against dealers in agricultural products. §§ 604.15 through 604.34, Fla. Stat.

8. 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 its surety company. § 604.21(1)(a), Fla. Stat.

9. As the petitioning party, Lancaster Farms bears the burden of proving the allegations in 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)(stating that “[t]he 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).

10. Lancaster Farms has satisfied its burden of demonstrating that Dobson’s still owes \$12,580.00 for Invoice No. 5810. Lancaster Farms is also entitled to recover the \$50.00 filing fee associated with the complaint filed on October 29, 2019, with the Department. § 604.21(1)(a), Fla. Stat. (providing that “[i]n the event the complainant is successful in proving that claim, the dealer in agricultural products shall reimburse the complainant for the \$50 filing fee as part of the settlement of the claim.”).

11. Dobson’s argues in response to the complaint that it provided the information Lancaster Farms needed to file a “notice to owner” as provided for in section 713.06. Furthermore, Dobson’s argues that Lancaster Farms will be paid once it collects on its lawsuit against Oden Hardy or the owner of the Space Box project.

12. A “notice to owner” under section 713.06, enables a subcontractor to seek payment from the owner of a project when payment is not received from the contractor:

The purpose of the “Notice to Owner” is to inform the owner that potential lienors who do not have a contract with the owner, may make [a] claim against the owner’s property to secure their unpaid debt created in improving that property. The notice allows the owner to be protected and effectively impound monies that ordinarily would go to the contractor. A Notice to Owner is a mandatory procedural requirement for a lienor not dealing directly with the owner in order to have a construction lien. A Notice to Owner need not be served by a lienor who is in privity with the owner, or with the owner’s agent.

Larry R. Leiby, *Florida Construction Law Manual* § 8.24 (2020-2021 ed.).  
*See Mirror and Shower Door Products, Inc. v. Seabridge, Inc.*, 621 So. 2d 486, 487 (Fla. 4th DCA 1993)(noting that “[t]he purpose of the notice to owner is to protect an owner from the possibility of paying his contractor monies which ought to go to a subcontractor who remains unpaid.”).

13. Dobson’s has not provided any authority to support its argument, and the undersigned’s independent research has not discovered any authorities limiting Lancaster Farms to seeking payment from the owner of the Space Box project. That research has also failed to discovery any authority requiring Lancaster Farms to file a “notice to owner” upon being provided with the necessary information.

#### 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 Doug Lancaster Farms, Inc., against Dobson’s Woods and Water, Inc., in the amount of \$12,630.00.

DONE AND ENTERED this 20th day of November, 2020, in Tallahassee,  
Leon County, Florida.

*Garnett Chisenhall*

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G. W. CHISENHALL  
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 November, 2020.

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.