

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MY OIL COMPANY, INC.,                    )  
  )  
      Petitioner,                            )  
  )  
vs.    )    Case No. 02-0469  
  )  
DEPARTMENT OF REVENUE,                 )  
  )  
      Respondent.                            )  
\_\_\_\_\_                                      )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on March 29, 2002, via video teleconference in Tallahassee and Fort Myers, Florida, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: E. Raymond Shope, II, Esquire  
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For Respondent: Robert F. Langford, Jr., Esquire  
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STATEMENT OF THE ISSUE

Whether the Department of Revenue's denial of Petitioner's application for a Florida fuel license should be upheld.

PRELIMINARY STATEMENT

On June 20, 2001, the Department of Revenue received a Florida Fuel Tax Application for a fuel license in the name of My Oil Company, Inc., the sole owner and operator of which was Maria Yzaguirre. On January 18, 2002, the Department issued a Notice of Intent to Deny the application. The stated basis for the denial was the application of Section 206.026(1)(a)9, Florida Statutes, which provides that a corporation may not hold a fuel license if an owner of any interest in the corporation, including an immediate family member of the owner, has been convicted of a felony. Maria Yzaguirre's husband, Armando Yzaguirre, had attested in a separate fuel license application, filed on behalf of his company, Yzaguirre Oil Company, Inc., that he had been convicted of a felony. Also on January 18, 2002, the Department denied Yzaguirre Oil Company's application because of Mr. Yzaguirre's admission of a felony conviction.

On January 28, 2002, My Oil Company timely filed a Petition for Administrative Hearing, requesting an evidentiary hearing to contest the Department's denial of its application. On February 7, 2002, the Department forwarded the matter to the Division of Administrative Hearings for assignment of an Administrative Law Judge. The final hearing was scheduled for March 29, 2002, and was held on that date.

At the hearing, the Department presented the testimony of Larry Gowen, supervisor of the Department's motor fuel registration unit; Maria Yzaguirre, the principal of My Oil Company; and Armando Yzaguirre, principal of Yzaguirre Oil Company. The Department's Exhibits A through J were offered and received into evidence. My Oil Company presented the testimony of Armando B. Yzaguirre, the son of the principal of Yzaguirre Oil Company, and stepson of Maria Yzaguirre. My Oil Company's Exhibits 1 through 11 were offered and received into evidence.

A Transcript of the final hearing was filed with the Division of Administrative Hearings on April 30, 2002. The parties' joint motion for extension of time to file proposed recommended orders was granted by an order entered on May 2, 2002. The parties timely filed their Proposed Recommended Orders on May 20, 2002.

#### FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. On or about May 22, 2001, Armando Yzaguirre submitted to the Department a completed Florida Fuel Tax Application, Form DR-156, seeking licensure as a private carrier and wholesaler on behalf of Yzaguirre Oil Company, Inc. ("Yzaguirre Oil"). The

application listed Mr. Yzaguirre as the president and sole stockholder of Yzaguirre Oil.

2. Form DR-156 requests information about the applicant business and its principals, including a list of 33 questions requiring a "yes" or "no" answer from the applicant. Question number 33 asks:

Have you or other owners, officers, directors, or stockholders with a controlling interest, been convicted of, or entered a plea of guilty or nolo contendere to, a felony committed against the laws of any state or the United States?

Mr. Yzaguirre's sworn answer to Question number 33 was "yes."

Mr. Yzaguirre provided the Department with no elucidation as to the circumstances of his admitted felony conviction.

3. On or about June 22, 2001, Maria Yzaguirre, the wife of Armando Yzaguirre, submitted to the Department a completed Florida Fuel Tax Application, Form DR-156, seeking licensure as a private carrier and wholesaler on behalf of My Oil Company, Inc. ("My Oil"). The application listed Mrs. Yzaguirre as the president and sole stockholder of My Oil.

4. On June 29, 2001, Mrs. Yzaguirre filed with the Department articles of incorporation for My Oil. On July 5, 2001, Mrs. Yzaguirre filed these articles of incorporation with the Secretary of State to obtain registration as a Florida domiciled corporation.

5. Aaron Hood, a revenue specialist in the Department's motor fuel registration unit, was assigned to process both the Yzaguirre Oil application and the My Oil application.

6. Mr. Hood conducted a standard background investigation of both applicants, securing investigative reports from the Federal Bureau of Investigation and the Florida Department of Law Enforcement on the criminal histories of Armando and Maria Yzaguirre.

7. The reports revealed that Maria Yzaguirre had no criminal record, either of arrest or conviction.

8. The reports revealed a lengthy list of arrests for Armando Yzaguirre. The reports included a 1980 arrest for felony arson of a structure in Collier County, and a 1990 arrest and conviction for marijuana possession in Texas. The reports were inconclusive as to whether the Collier County felony charge resulted in conviction, or whether the Texas conviction was a felony.

9. Having difficulty determining the precise nature of the felony to which Mr. Yzaguirre admitted in his application, Mr. Hood enlisted the aid of Pete Welch, a Department investigator.

10. On January 3, 2002, Mr. Welch reported to Mr. Hood that information received from the Clerk of the Circuit Court of

Collier County confirmed that Mr. Yzaguirre had been convicted by a jury of the 1980 felony charge. However, aside from Mr. Welch's e-mail report to Mr. Hood, the Department offered no evidence confirming this felony conviction.

11. Mr. Welch's investigation also obtained details of the Texas marijuana possession charge. In December 1990, Mr. Yzaguirre's plea of nolo contendere to a second-degree felony charge of possession of more than five but not more than 50 pounds of marijuana was accepted by the court. Mr. Yzaguirre's ten-year sentence was suspended in favor of eight years' probation and a \$5,000 fine.

12. No evidence was presented to show that Mr. Yzaguirre failed to comply with the terms of probation. Neither was evidence presented that Mr. Yzaguirre has been pardoned or that his civil rights have been restored. At the hearing, Mr. Yzaguirre indicated that he is taking steps to seek restoration of his civil rights.

13. In his review of the Yzaguirre Oil and My Oil applications, Mr. Hood discovered that the companies claimed many of the same assets. Each company listed the same two tanker trucks to be used in transporting fuel. Each company listed 211 New Market Road, East, in Immolakee as its principal business address. Each company claimed exactly \$1 million in accounts receivable.

14. The timing of the filings and the common assets led Mr. Hood to suspect that the later My Oil application was submitted under Maria Yzaguirre's name to evade the possible disqualification of the Yzaguirre Oil application because of Mr. Yzaguirre's felony convictions. In short, Mr. Hood suspected that My Oil was a "front" corporation over which Mr. Yzaguirre would exercise control.

15. The common assets also led Mr. Hood to suspect the truthfulness and accuracy of the financial affidavits filed by Maria Yzaguirre on behalf of My Oil. While it investigated the criminal history of Mr. Yzaguirre, the Department also investigated the extent of Mr. Yzaguirre's possible control over My Oil's business activities.

16. Armando B. Yzaguirre is the 25-year-old son of Armando Yzaguirre and the stepson of Maria Yzaguirre. Testimony at the hearing established that Armando B. Yzaguirre completed both license applications and was the driving force behind the creation of both Yzaguirre Oil and My Oil.

17. The elder Armando Yzaguirre's chief business is farming. His tomato and melon operation earns over \$1 million per year. To save money on transporting the large amounts of fuel needed for his farming operations, Mr. Yzaguirre purchased two sizable tanker trucks in 2001, a new Peterbilt with a

capacity of 9,200 gallons, and a 1998 Ford with a 2,500 gallon capacity.

18. If these trucks were used only for Mr. Yzaguirre's farm, they would sit idle much of the time. This idle capacity gave Armando B. Yzaguirre the idea of going into the fuel transport business, using his father's tankers to deliver fuel to other farms and businesses in the area.

19. Yzaguirre Oil was incorporated to operate as a fuel transport business. The business would be operated entirely by Armando B. Yzaguirre, who was the only member of the family licensed to drive the large tanker truck. The trucks were owned by and licensed to Yzaguirre Oil.

20. Armando B. Yzaguirre was going through a divorce at the time Yzaguirre Oil was established. He was concerned that his wife would have a claim to half of any business he owned, and wished to ensure that ownership of Yzaguirre Oil would remain in his family. Thus, Armando B. Yzaguirre placed all ownership of Yzaguirre Oil in the name of his father, though his father would have no connection with the operation of the company's business.

21. Subsequent to incorporating Yzaguirre Oil, Armando B. Yzaguirre discussed his prospective business with his stepmother, Maria Yzaguirre. Mrs. Yzaguirre was pleased that young Armando was establishing a business for himself. They



discussed the future of the six younger Yzaguirre children and ideas for businesses that could be established to eventually be taken over by the children.

22. Ultimately, the younger Armando and Maria Yzaguirre settled on the idea of a convenience store and filling station that could be established on part of a city block in Immolakee that the senior Mr. Yzaguirre already owned. This would be the type of business that the children could learn and work at while they were still in school, then take over after their graduation. This was the genesis of My Oil.

23. Mrs. Yzaguirre contacted a lawyer to draft articles of incorporation and later transferred \$100,000 from her personal money market account into a My Oil bank account to provide start-up money.

24. The younger Armando Yzaguirre filled out the fuel license application, using his earlier application for Yzaguirre Oil as a model. As with the earlier application, the younger Armando Yzaguirre kept his name off the corporate documents and the fuel license application to avoid any claim by his soon-to-be ex-wife to the company's assets. He anticipated that My Oil would lease the two tanker trucks from Yzaguirre Oil, and thus listed them on the application as assets of My Oil.

25. At the hearing, Mr. Yzaguirre conceded that he made mistakes on both applications. As noted above, he listed

\$1 million in accounts receivable for each of the companies. These were actually accounts receivable for his father's farming operation, and should not have been included as assets for either Yzaguirre Oil or My Oil.

26. Testimony from witnesses for both parties indicated that communications between the Yzaguirres and the Department were poor during the application review process. The Yzaguirres often telephoned Mr. Hood to learn the status of their applications, so often that Mr. Hood felt harassed. From their standpoint, the Yzaguirres could not understand why the applications were taking months to process, and felt that Mr. Hood was continually placing obstacles in their path and avoiding their queries.

27. As noted above, early in the review process, the Department began to suspect that My Oil was a front for Yzaguirre Oil. At the hearing, however, the Department was unable to establish that the Yzaguirres knew of the likely rejection of the Yzaguirre Oil application in the month before they filed the My Oil application. Due to illness, Mr. Hood was unable to testify at the hearing as to his conversations with the Yzaguirres.

28. For their part, the Yzaguirres adamantly denied any prior knowledge that the elder Mr. Yzaguirre's criminal record would disqualify his application. Armando B. Yzaguirre, who was

the Yzaguirres' point person in dealing with the Department, testified that no one at the Department made him aware that his father's criminal history was a problem until December 2001. The Yzaguirres also denied that the elder Mr. Yzaguirre would have any connection with the operation of My Oil.

29. The Department pointed to several alleged discrepancies in the My Oil application as grounds for its suspicion that the company was a "front" for Yzaguirre Oil. First, the My Oil application, filed June 20, 2001, lists a corporate asset of \$100,000 in cash on deposit at an unnamed bank, when in fact the cash was not deposited in a My Oil account at Florida Community Bank until September 10, 2001.

30. Second, the My Oil application lists the two tanker trucks as corporate assets as of the date of application, when in fact the trucks were titled in the name of Yzaguirre Oil and the anticipated lease arrangement had yet to be consummated.

31. Third, the My Oil application claimed the property at 211 New Market Road, East, as a corporate asset as of the date of application, when in fact the property was titled in the name of the elder Mr. Yzaguirre.

32. Fourth, the My Oil application listed \$1 million in accounts receivable as a corporate asset. As noted above, Armando B. Yzaguirre admitted at the hearing that these

receivables were from his father's farming operation and should not have been listed on the application as assets of My Oil.

33. Armando B. Yzaguirre plausibly explained that My Oil anticipated leasing the trucks, but that there was no reason to spend the money to finalize that arrangement until the fuel license was obtained and My Oil could actually commence operations. Similarly, Mrs. Yzaguirre clearly had on hand the \$100,000 in cash claimed as a My Oil asset, and the timing of her actual transfer of that money into a My Oil account would not alone constitute cause for suspicion, given that My Oil had yet to commence operations when the application was filed.

34. Armando B. Yzaguirre also convincingly explained that leasing the tanker trucks from his father's company would not give Yzaguirre Oil effective control over My Oil's business. The younger Mr. Yzaguirre contemplated that the lease agreement would be an arms-length arrangement between the two companies. If the companies could not arrive at a mutually satisfactory lease agreement, or if the lease agreement should later fall through, My Oil could lease trucks from another company and continue doing business.

35. However, no witness for My Oil offered a satisfactory explanation as to how the elder Mr. Yzaguirre's ownership of the real property would not give him some degree of control over My Oil's business. At the time of the hearing, title to the

property at 211 New Market Road, East, was in the name of Armando Yzaguirre. A warranty deed for at least a portion of the property, executed by the prior owners on July 16, 1998, was in the name of Armando Yzaguirre.

36. The Yzaguirres did not explain whether My Oil would purchase or lease the property from the elder Mr. Yzaguirre. The structure of the arrangement is critical to the issue of the elder Mr. Yzaguirre's control over My Oil. Substitutes for the tanker trucks could be obtained in short order with little or no disruption of My Oil's business. However, the physical location of the convenience store and filling station could not be changed so readily, and the elder Mr. Yzaguirre's position as owner of that property could give him great leverage over the operation of the business.

37. The Department also raised the issue of the undisclosed participation of Armando B. Yzaguirre in the business affairs of My Oil. The testimony of Maria Yzaguirre and of her stepson strongly indicated that the younger Mr. Yzaguirre would have substantial control over the business activities of My Oil. However, because Armando B. Yzaguirre's identity was not disclosed on My Oil's application, the Department had no opportunity to conduct a review of his background and character to determine whether he met the standard set by Section 206.026, Florida Statutes.

38. In summary, there was no direct evidence that the Yzaguirres deliberately attempted to deceive the Department or that My Oil was established as a front to obtain licensure for the presumptively ineligible Yzaguirre Oil. The evidence did establish that Armando Yzaguirre has been convicted of at least one felony, and that his ownership of the real property on which My Oil would conduct business could provide him with control of My Oil's business activities. The evidence further established that Armando B. Yzaguirre will have control over My Oil's business, and that the Department should have had the opportunity to conduct a background review to determine his fitness under Section 206.026, Florida Statutes.

39. In conclusion, the facts established at the hearing support the Department's denial of My Oil's application as filed, but also establish that such denial should be without prejudice to My Oil's ability to file a subsequent application curing the defects of its initial application.

#### CONCLUSIONS OF LAW

40. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes.

41. As the applicant for a fuel license, My Oil bears the burden of proving its entitlement to licensure. Department of

Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932, 934 (Fla. 1996); Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778, 787-788 (Fla. 1st DCA 1981).

42. Section 206.026, Florida Statutes, provides in relevant part:

(1) No corporation . . . shall hold a terminal supplier, importer, exporter, blender, carrier, terminal operator, or wholesaler license in this state if any one of the persons or entities specified in paragraph (a) has been determined by the department not to be of good moral character or has been convicted of any offense specified in paragraph (b):

(a)1. The licenseholder.

2. The sole proprietor of the licenseholder.

3. A corporate officer or director of the licenseholder.

4. A general or limited partner of the licenseholder.

5. A trustee of the licenseholder.

6. A member of an unincorporated association licenseholder.

7. A joint venturer of the licenseholder.

8. The owner of any equity interest in the licenseholder, whether as a common shareholder, general or limited partner, voting trustee, or trust beneficiary.

9. An owner of any interest in the license or licenseholder, including any immediate family member of the owner, or

holder of any debt, mortgage, contract, or concession from the licenseholder, who by virtue thereof is able to control the business of the licenseholder.

(b)1. A felony in this state.

2. Any felony in any other state which would be a felony if committed in this state under the laws of Florida.

3. Any felony under the laws of the United States.

(2)(a) If the applicant for a license as specified under subsection (1) or a licenseholder as specified in paragraph (1)(a) has received a full pardon or a restoration of civil rights with respect to the conviction specified in paragraph (1)(b), then the conviction shall not constitute an absolute bar to the issuance or renewal of a license or ground for the revocation or suspension of a license. . . .

43. In December 1990, Armando Yzaguirre entered a no contest plea to a second-degree felony charge of possession of more than five but not more than 50 pounds of marijuana in a Texas court. At the time of Mr. Yzaguirre's Texas conviction, Florida law listed cannabis as a Schedule I substance. Section 893.03(1)(c)4, Florida Statutes (1990). Absent licensure or other authorization, bringing cannabis into the state was a third-degree felony in 1990. Section 893.13(1)(d)2, Florida Statutes (1990). Possession of more than 20 grams of cannabis was a third-degree felony in 1990. Section 893.13(1)(f) and (g), Florida Statutes (1990). There can be little question that



Mr. Yzaguirre's felony in Texas would have constituted at least one felony under Florida law, and thus that Mr. Yzaguirre has been convicted of an offense specified in Section 206.026(1)(b), Florida Statutes.

44. Mr. Yzaguirre has not received a full pardon or restoration of civil rights, thus mooting any potential application of Section 206.026(2)(a), Florida Statutes, to this case.

45. Mr. Yzaguirre's ownership of the real property that would hold My Oil's principal place of business would give him the ability to control the business of the licenseholder. This conclusion might have been different had My Oil presented evidence of the business relationship under which it would operate the facility on Mr. Yzaguirre's property.

46. The extent of Armando B. Yzaguirre's involvement in My Oil was not disclosed to the Department. Testimony at the hearing established that the younger Mr. Yzaguirre would be the principal operator of My Oil for the foreseeable future. Due diligence under Section 206.026, Florida Statutes, requires the Department to conduct a background investigation of Armando B. Yzaguirre prior to the issuance of a fuel license to My Oil.

47. In conclusion, My Oil has failed to demonstrate its entitlement to a Florida fuel license on the merits of the application it filed on June 20, 2001.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Revenue enter a final order denying the application of My Oil Company, Inc. for a Florida fuel license, without prejudice to the ability of My Oil Company, Inc., to file a new application curing the defects addressed in this Recommended Order.

DONE AND ENTERED this 3rd day of July, 2002, in Tallahassee, Leon County, Florida.

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LAWRENCE P. STEVENSON  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 3rd day of July, 2002.

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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.