

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MY OIL COMPANY, INC.,)
)
 Petitioner,)
)
 vs.) Case No. 02-3527
)
 DEPARTMENT OF REVENUE,)
)
 Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on January 16, 2003, 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
1404 Goodlette Road, North
Naples, Florida 34102

For Respondent: R. Lynn Lovejoy, Esquire
Office of the Attorney General
The Capitol-Tax Section
Tallahassee, Florida 32399-1050

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 (the "Department") received a Florida Fuel Tax Application for a fuel license in the name of My Oil Company, Inc. ("My Oil"), the sole owner and operator of which was listed as 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 timely filed a Petition for Administrative Hearing, requesting an evidentiary hearing to contest the Department's denial of its application. The case was forwarded to the Division of Administrative Hearings and assigned DOAH Case No. 02-0469. The hearing was held on March 29, 2002. On July 3, 2002, the undersigned issued a Recommended Order upholding the Department's decision to deny

the license, but further recommending that such denial should be without prejudice to My Oil's ability to file a subsequent application curing the defects of its initial application. The Department's Final Order of September 5, 2002, adopted the Recommended Order in toto.

By application dated July 22, 2002, My Oil again applied for a fuel tax license as a carrier and wholesaler. This application listed Maria Yzaguirre as president of the corporation and Armando B. Yzaguirre, the son of Armando Yzaguirre, as vice-president of the corporation. On August 22, 2002, the Department denied the fuel tax license, again based upon the provisions of Section 206.026(1)(a)9., Florida Statutes, that authorizes the Department to deny licensure to any applicant whose immediate family member is a convicted felon who is in a position to control the applicant corporation.

By petition dated August 26, 2002, My Oil challenged the Department's denial of its application. On September 11, 2002, the Department forwarded the petition to the Division of Administrative Hearings for assignment of an Administrative Law Judge to conduct a formal administrative hearing. The hearing was initially scheduled for October 24, 2002, continued three times, and ultimately held on January 16, 2003.

At the hearing, the Department presented the testimony of Armando Yzaguirre; Lawrence J. Gowen, supervisor of the

Department's motor fuel registration unit; William P. Welch, a senior tax specialist with the Department; and David L. Skinner, the Department's fuel tax compliance coordinator and an expert in fuel tax licensing. The Department's Exhibits 1 through 9 were accepted into evidence. My Oil presented the testimony of Armando B. Yzaguirre. My Oil's Exhibits 1 through 3 were accepted into evidence. My Oil's Exhibit 1 duplicated the Department's Exhibit 6. My Oil's Exhibit 2 was the deposition testimony of Mr. Gowen. My Oil's Exhibit 3 was the Final Order in DOAH Case No. 02-0469.

A one-volume Transcript of the final hearing was filed with the Division of Administrative Hearings on February 20, 2003. The parties timely filed their Proposed Recommended Orders on March 24, 2003.

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 July 22, 2002, Armando B. 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 (the "2002 Application"). The application listed Maria Yzaguirre as the president and

chairman of the board of My Oil, and listed Armando B. Yzaguirre as the vice-president and chief executive officer of My Oil.

2. This was the second Florida Fuel Tax Application filed by My Oil. On or about June 22, 2001, Maria 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 (the "2001 Application"). The application listed Mrs. Yzaguirre as the president and sole stockholder of My Oil.

3. The Department's rejection of the 2001 Application was at issue in DOAH Case No. 02-0469. The rejection was based on the fact that Armando Yzaguirre, a convicted felon whose civil rights had not been restored and who was the father of Armando B. Yzaguirre and the husband of Maria Yzaguirre, appeared to be in a position to exert control over the business of My Oil.

4. Shortly before the 2001 Application was filed, Armando Yzaguirre had filed a Florida Fuel Tax Application for Yzaguirre Oil Company Inc. ("Yzaguirre Oil"). The application listed Armando Yzaguirre as the president and sole stockholder of Yzaguirre Oil. The coincidence of the applications, and the fact that they listed many of the same assets, led the Department to suspect that My Oil would operate as a "front" for

Yzaguirre Oil, which was presumptively ineligible for licensure because it was owned and operated by a convicted felon.

5. The relevant facts found in the Recommended Order for DOAH Case No. 02-0469 are as follows:

13. In his review of the Yzaguirre Oil and My Oil applications, [Aaron Hood, the Department's revenue specialist] 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.

* * *

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.

6. The relevant conclusions of law set forth in the Recommended Order for DOAH Case No. 02-0469 are as follows:

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.

7. The Recommended Order in DOAH Case No. 02-0469 recommended that My Oil's 2001 Application be denied, but without prejudice to My Oil's ability to file a subsequent application curing the defects of its 2001 Application.

8. In the 2002 Application, My Oil sought to cure those defects. First, the 2002 Application listed Armando B. Yzaguirre as a principal of My Oil, providing the Department an opportunity to conduct an investigation of his background and character. The Department's background check revealed no criminal convictions or other disqualifying factors related to Armando B. Yzaguirre.

9. The Department's background check also revealed no criminal convictions or other disqualifying factors related to Maria Yzaguirre.

10. The 2002 Application included an executed lease agreement, dated July 19, 2002, by which Armando Yzaguirre

granted to My Oil a five-year lease on the premises at 211 New Market Road, East, in Immokalee. The lease specifies that My Oil will pay rent of \$1,000 per month, and that the premises are to be used for the purpose of "a convenience store and retail gasoline sales to the general public, storage, and uses related to such use . . . and for no other purpose or purposes." The lease expressly states: "Landlord shall have no control over the use of the premises by the Tenant during the period of the lease."

11. The 2002 Application continued to list the two tanker trucks as assets of My Oil, though they remain titled to Yzaguirre Oil. Armando B. Yzaguirre testified that My Oil does have a written lease with Yzaguirre Oil for the use of the tanker trucks. Armando Yzaguirre confirmed the existence of a lease on the trucks. However, the lease was not included in the 2002 Application and was not produced at the hearing.

12. After receiving the 2002 Application, the Department contacted Armando B. Yzaguirre to request a current balance sheet for My Oil. The balance sheet submitted by Mr. Yzaguirre purported to show the assets and liabilities of My Oil as of July 22, 2002. The balance sheet indicated a negative total equity of \$5,904.43. It indicated a "credit card" debt of \$101,000 to Yzaguirre Farms, and other accounts payable of \$36,852.79 to Yzaguirre Farms.

13. At the hearing, the Department produced a canceled check from Armando Yzaguirre to My Oil in the amount of \$101,000, with the notation, "My Oil Operating & Payroll."

14. Armando Yzaguirre testified at the hearing that he has taken steps to have his civil rights restored, but that the process is not yet complete and his rights have not been restored.

15. On August 22, 2002, the Department issued its Notice of Intent to Deny the 2002 Application, which stated, in relevant part:

Your organization does not qualify for this license as there is a felony conviction of an owner of interest in the license and/or an immediate family member of the owner, as outlined in Chapter 206.026(1)(a)(9)&(b), Florida Statutes.

16. The Department based its denial on several factors. First, the family relationship between My Oil's principals and Armando Yzaguirre itself raised the potential for Armando Yzaguirre to control My Oil. In particular, the Department noted the fact that Armando B. Yzaguirre resides in a mobile home owned by his father, and located a few hundred feet away from Armando Yzaguirre's main residence on the family property.

17. Second, the balance sheet submitted by My Oil indicated a negative equity with large debts owed to Yzaguirre Farms, controlled by Armando Yzaguirre.

18. Third, the Department concluded that the lease on the premises at 211 New Market Road, East, would not prevent Armando Yzaguirre from exerting control over My Oil, by breaking the lease, raising the rent, selling the property, or ejecting My Oil from the premises.

19. Fourth, no proof was offered that My Oil had leased or purchased the tanker trucks from Yzaguirre Oil, meaning that My Oil's means of transporting fuel would be directly controlled by Armando Yzaguirre.

20. Fifth, the \$101,000 constituting the startup money for My Oil appears to have come directly from the bank account of Armando Yzaguirre.

21. Sixth, My Oil was administratively dissolved by the Department of State on October 4, 2002, for failure to file an annual report.

22. Finally, the Department stated that, regardless of the arms-length nature of any business dealings between My Oil and Armando Yzaguirre, My Oil would not be granted a license until Armando Yzaguirre's civil rights have been restored. The close family relationship coupled with the fact that Armando Yzaguirre is the source of My Oil's startup funds, its tanker trucks, and its business location, militate against granting My Oil a license so long as Armando Yzaguirre's civil rights have not been restored.

23. In response, My Oil insisted that its 2002 Application cured every specific deficiency noted in the 2001 Application. First, it listed Armando B. Yzaguirre as a principal so that his background and criminal history could be investigated, and the Department's investigation revealed no disqualifying offenses.

24. Armando B. Yzaguirre testified that the July 22, 2002, balance sheet submitted at the Department's request was not an accurate My Oil balance sheet. He stated that in setting up the computer program for My Oil's accounting, he attempted to shortcut the software's lengthy setup process for new businesses by simply copying an existing Yzaguirre Farms spreadsheet, then substituting the name "My Oil" for "Yzaguirre Farms." However, he quickly discovered that his "shortcut" would require him to delete manually every balance sheet entry for Yzaguirre Farms and re-enter the correct entries for My Oil. He abandoned this effort and began a My Oil spreadsheet from scratch, but he never deleted the partially converted Yzaguirre Farms spreadsheet from his computer.

25. Mr. Yzaguirre testified the Department's phone call to request a current balance sheet came to him on his cellular phone while he was working on his father's farm. He relayed the message to his secretary, who printed a My Oil balance sheet and faxed it to the Department. Mr. Yzaguirre stated that, until the Department rejected the 2002 Application, he did not realize

that his secretary had faxed a balance sheet generated by his aborted conversion of the Yzaguirre Farms spreadsheet, rather than the actual balance sheet for My Oil.

26. A copy of what Armando B. Yzaguirre claimed was the actual My Oil balance sheet as of July 31, 2002, was introduced at the hearing. This balance sheet indicates an opening equity of \$101,000, with \$92,078.02 in retained earnings and operating and payroll accounts totaling \$8,921.98.

27. The July 31, 2002, balance sheet is accepted as the actual balance sheet for My Oil. While this balance sheet refutes the Department's conclusion that My Oil is starting business with a negative balance sheet indicating over \$136,000 in debts to Yzaguirre Farms, it does not refute the evidence that the entire source of My Oil's cash accounts is \$101,000, provided in the form of a check from an account in the name of Armando Yzaguirre.

28. Armando B. Yzaguirre testified that the money came from a joint money market account in the name of Armando and Maria Yzaguirre, and that Maria was the source of the funds. This testimony is inconsistent with the fact that the check in question was signed by Armando Yzaguirre, and that his name alone appeared on the account name printed on the check. The elder Mr. Yzaguirre testified that he signed the check, but also testified that the account is in his name and that of his wife,

and that they both consider the \$101,000 to be her investment in My Oil. Neither of the Yzaguirres offered an explanation as to why Maria Yzaguirre's name did not appear on a check they claimed was drawn on a joint account.

29. The Department's concerns about Armando Yzaguirre, a convicted felon, being the source of My Oil's startup funding were reasonable. My Oil failed to offer evidence sufficient to allay those concerns. Despite My Oil's claims to the contrary, the \$101,000 check was plainly signed by Armando Yzaguirre and drawn from an account in his name. My Oil failed to explain the terms under which it accepted this startup funding from Armando Yzaguirre.

30. The Department's explanation of its rejection of the lease submitted by My Oil for the premises at 211 New Market Road, East, was not reasonable. The lease document is a standard, arms-length agreement between My Oil and Armando Yzaguirre. The Department offered no evidence to support its assertions that Armando Yzaguirre would break the terms of the lease, that My Oil would not exercise its legal rights should Mr. Yzaguirre violate the lease's provisions, or that the lease should be considered invalid because a contract between relatives is inherently suspect. The other concerns raised by the Department-- that Mr. Yzaguirre might raise the rent, sell the property, or evict My Oil-- are answered by the terms of the

lease itself and raise no issues beyond those that would arise in any lessor/lessee relationship.

31. As to the lease on the tanker trucks, both Armando B. and Armando Yzaguirre testified that My Oil did have a lease on the trucks, to take effect if and when My Oil receives a fuel tax license from the Department. Their testimony is credited as to the existence of the lease, though they offered no testimony specifying the terms of the lease.

32. The fact that My Oil was administratively dissolved for failure to file an annual report should have played no part in the Department's rejection of My Oil's application. Such dissolution is an administrative matter easily cured by the filing of the report. At most, the Department should have required My Oil to provide proof of reinstatement prior to issuance of any fuel tax license.

33. In summary, several of the particular concerns on which the Department based its decision were overstated. However, the Department's overarching concern that Armando Yzaguirre was in a position to control the business of My Oil was reasonable. Armando Yzaguirre was clearly the source of the \$101,000 in startup money for My Oil, and no evidence was offered to explain the terms under which this money was provided to My Oil. The lease arrangements for the premises and the tanker trucks may be unobjectionable in themselves, but when

coupled with the fact that My Oil is heavily indebted to Armando Yzaguirre, they raise entirely reasonable suspicions regarding My Oil's independence from Mr. Yzaguirre's control.

34. The Department's position that My Oil cannot be granted a license until Armando Yzaguirre's civil rights have been restored is supported by the evidence. Armando Yzaguirre is the source of My Oil's funds, its place of doing business, and its means of transporting fuel. My Oil failed to demonstrate that these facts do not give Armando Yzaguirre the ability to control its business.

CONCLUSIONS OF LAW

35. 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.

36. 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).

37. 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. . . .

38. As set forth in detail in the Recommended Order in DOAH Case No. 02-0469, Armando Yzaguirre was convicted in Texas of a crime that would be considered a felony in the State of Florida. Mr. Yzaguirre has not received a full pardon or restoration of civil rights, thus mooting any potential application of Subsection 206.026(2)(a), Florida Statutes, to this case.

39. Mr. Yzaguirre's provision of \$101,000 in startup money to My Oil without explanation of the terms under which the money was provided, coupled with his positions as the landlord of My Oil's place of business and the lessor of My Oil's tanker trucks, would give him the ability to control the business of the licenseholder.

40. In conclusion, My Oil has failed to demonstrate its entitlement to a Florida fuel license on the merits of the application it filed on July 22, 2002.

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 upon the restoration of Armando Yzaguirre's civil rights.

DONE AND ENTERED this 28th day of May, 2003, in Tallahassee, Leon County, Florida.

LAWRENCE P. STEVENSON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

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this 28th day of May, 2003.

COPIES FURNISHED:

J. Bruce Hoffmann, General Counsel
Department of Revenue
204 Carlton Building
Post Office Box 6668
Tallahassee, Florida 32314-6668

Robert F. Langford, Jr., Esquire
Office of the Attorney General
The Capitol-Tax Section
Plaza Level 01
Tallahassee, Florida 32399-1050

E. Raymond Shope, II, Esquire
1404 Goodlette Road, North
Naples, Florida 34102

R. Lynn Lovejoy, Esquire
Office of the Attorney General
The Capitol-Tax Section
Tallahassee, Florida 32399-1050

James Zingale, Executive Director
Department of Revenue
104 Carlton Building
Tallahassee, Florida 32399-0100

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.