

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SUN AND EARTH CITRUS, LLC,            )  
  )  
      Petitioner,                            )  
  )  
vs.    )     Case No. 12-1837  
  )  
FLORIDA DEPARTMENT OF CITRUS,        )  
  )  
      Respondent.                         )  
\_\_\_\_\_  
  )

RECOMMENDED ORDER

Pursuant to notice to all parties, the final hearing was conducted in this case on July 25, 2012, in Bartow, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Paulino Vazquez-Plasencia  
Sun and Earth Citrus, LLC  
9732 Southwest 133rd Place  
Miami, Florida 33186

For Respondent: Joseph P. Mawhinney, Esquire  
Reed and Mawhinney, P.L.  
1828 South Florida Avenue  
Lakeland, Florida 33803

STATEMENT OF THE ISSUE

The issue in this case is whether the licensure application filed by Petitioner, Sun and Earth Citrus, LLC ("Sun and Earth"), for licensure as a citrus fruit dealer should be denied or approved by the Florida Citrus Commission (the "Commission").

PRELIMINARY STATEMENT

Sun and Earth filed an application with Respondent, Florida Department of Citrus (the "Department"), on March 6, 2012. The Department reviewed the application and notified Sun and Earth by letter dated May 3, 2012, that it would recommend denial of the application to the Commission. Sun and Earth timely filed an administrative challenge to the Department's decision to recommend denial. At the final hearing held in this matter, Sun and Earth called two witnesses: Paulino Vazquez-Plasencia ("Vazquez"), owner of Sun and Earth; and Guillermo "William" Vazquez (referred to herein as William). Sun and Earth did not offer any exhibits into evidence. The Department called three witnesses: Vazquez; Kaye Parkins; and Alice Wiggins. Respondent offered seven exhibits into evidence, each of which was admitted.

The parties ordered a transcript of the final hearing; proposed recommended orders were due ten days after filing of the transcript at the Division of Administrative Hearings ("DOAH"). The transcript was filed at DOAH on August 1, 2012; Respondent submitted a proposed recommended order, and it was duly considered in the preparation of this Recommended Order. Sun and Earth did not submit a proposed recommended order.

## FINDINGS OF FACT

1. Sun and Earth is a Florida limited liability company formed for the purpose of buying and selling citrus products. Vazquez is the sole owner of Sun and Earth and serves as its president. The company was formed in January 2012.

2. Vazquez formed the company partly in response to a series of events concerning his brother, William. A discussion of those facts is pertinent to the underlying facts in this case: William operated businesses named Zumoval Citrus Packer and Zumoval Trucking and Cold Storage. William obtained a license to operate a packinghouse after seeing other dealers acting in a way he believed to be illegal. He renewed the license each year for two years, but when he attempted to renew the third year, his application was denied. At the Commission meeting where William's renewal application was considered, Vazquez appeared on William's behalf because William could not adequately articulate his position. The meeting did not go well for William; Vazquez had to calm William down and keep him from yelling at the commissioners during the meeting. The meeting date was January 18, 2012.

3. After the meeting at which William's license renewal was denied, Vazquez announced to Department employees that because his brother could not be licensed, Vazquez would seek his own license. Inasmuch as Vazquez had appeared on William's

behalf, and they were siblings, the Department had some concern that Vazquez's application was a subterfuge and simply an attempt to allow William to operate using Vazquez's license.

4. On March 2, 2012, Vazquez filed an application with the Department; it was received on March 6, 2012. The application, as filed, said the proposed business would include operation of a packinghouse, being a fruit broker, operating a roadside stand, and being a wholesaler. The application contained information about Sun and Earth, as well as its owner, Vazquez. An application fee of \$25.00 and a cashier's check in the amount of \$1,000.00 for a bond were included with the application.

5. Upon its initial review of the application, the Department noticed several errors and omissions. Ms. Wiggins, a license and regulation specialist for the Department, contacted Vazquez via telephone on March 6, 2012, to discuss her findings concerning the application content. She told Vazquez that a substantially larger bond was required for a license that included a packinghouse. She also noted that if the proposed roadside stand was purchasing fruit directly from a grower, then it must also have a bond. If the fruit was being purchased from a packinghouse, no bond would be required. Ms. Wiggins asked Vazquez to identify the packinghouse(s) from whom he intended to purchase fruit. The purpose of her request was to verify that

fruit was being purchased from a packinghouse, rather than from a grower.

6. Vazquez sent Ms. Wiggins an email the very next day confirming the telephone discussion. Vazquez, in response, asked that the packinghouse designation be removed from his application. He also stated that according to everything discussed during their telephone conversation, it was his contention that the application was complete. He then questioned why his brother's company--which had recently been denied renewal of its license--was pertinent to his application for a citrus dealer license. Vazquez asked when his application would be considered by the Commission.

7. Ms. Wiggins replied to the Vazquez email via an email dated March 8, 2012. The email noted that Ms. Wiggins had removed the packinghouse request from the application. It also addressed the need for different reference letters relating to Sun and Earth. Then the email set out five enumerated issues that still needed to be addressed, to wit:

- 1) An explanation as to how he operated Zumoval Citrus, LLC, without a wholesaler license from 2009 to 2011.
- 2) How Zumoval Citrus, LLC, continued doing business in 2011, when it became inactive in September 2010.

- 3) An explanation of his probation or parole from New York State relating to a conviction for stolen property.
- 4) A list of the packinghouses from which he would be purchasing fruit.
- 5) An address for the roadside stand.

8. Ms. Wiggins also advised Vazquez in her email that the Department could not grant a conditional approval of the application in that there were "unusual or questionable circumstances" surrounding the filing of the application. That is, the relationship between Vazquez and William caused some concern for the Department. Ms. Wiggins reminded Vazquez that the \$1,000.00 bond submitted with the application would not be sufficient if Sun and Earth planned to purchase fruit from growers. She then advised Vazquez that if he would submit all the missing information at least five days prior to the Commission meeting scheduled for March 21, 2012, the application would be presented for review.

9. Vazquez responded via email dated March 13, 2012. He provided responses to the five enumerated issues set forth in Ms. Wiggins' email as follows:

- 1) He explained that neither of his companies continued to do business after they were declared inactive in September

2010. He explained that he had another business entity that was operating, but neither of the questioned businesses was in operation.

- 2) Included in above response.
- 3) Vazquez had presented evidence of his conviction in the application; he did not believe anything further was required. He was upset that Ms. Wiggins apparently had information from his other prior transgressions (more on this below) and wanted to know what information she had seen.
- 4) Vazquez refused to provide names of the packinghouses with whom he planned to do business. He stated that the inquiry was outside of Ms. Wiggins' "scope of duties," and he did not have to comply with her request.
- 5) He asked that the roadside stand designation be removed from the application.

10. Vazquez's email then became somewhat belligerent and argumentative. He concluded with a demand that his application be presented to the Commission on March 21, 2012.

11. The reason Ms. Wiggins had asked Vazquez for a list of the packinghouses he planned to do business with was two-fold: First, Vazquez had indicated he planned to have a roadside stand. If the stand was going to get its fruit from a grower, then a larger bond would be required. If the fruit was to come from packinghouses, then there would be no bond requirement. Ms. Wiggins attempted to ascertain whether Vazquez was planning to obtain fruit from packinghouses. Second, due to Vazquez first indicating he would operate a packinghouse and then removing that designation, Ms. Wiggins wanted to make sure he was being honest and truthful in his responses. Citrus dealers by and large police themselves, so it is important that the Department know they can trust entities to which they issue licenses. By striking the roadside stand item from his application, Vazquez still did not alleviate the basis for Ms. Wiggins' questions about packinghouses.

12. The Department decided that because of the questionable and unusual circumstances surrounding Vazquez's application, it would not issue a conditional license. Rather, it would process the application and send it on to the Commission for review and approval or denial.



13. After further review, the Department ultimately decided that it would recommend denial of the Sun and Earth application when it was forwarded to the Commission. Vazquez was notified of the decision by way of a letter dated May 3, 2012, sent by certified mail, return receipt requested. The letter advised Vazquez that he could challenge the decision in an administrative hearing. Vazquez chose to do so, thereby staying any further action on the application until a final order could be issued in the instant proceeding.

14. The basis of the Department's decision was that the Sun and Earth application had misrepresented Vazquez's circumstances with respect to his work history, residence, and criminal background. Further, Vazquez had been reluctant to respond to requests for information after reasonable inquiry by the Department.

15. As to Vazquez's reported work history as set forth in the application, Vazquez had initially provided a work history summary in response to question 18. The response indicated employment from March 2007 until January 2011 with Associated Produce in Bronx, New York. In fact, Vazquez was incarcerated in New York for most of that time period. An amended response to question 18 was submitted; it did not list Associated Produce as a former employer. Vazquez explained the erroneous information thusly: The dates of employment were taken directly

from his resume. His resume was attached to the application only to show his employment duties, not as evidence of the dates he actually worked. It was simply a mistake, said Vazquez, not an attempt to mislead the Department. Vazquez's testimony in this regard was self-serving and not credible.

16. As to his history of residence in the state, the application said Vazquez had lived at the same address in Florida for the past five years. In truth, Vazquez was in prison in New York and did not move to Florida until 2009. Again, Vazquez said that was simply a mistake and was not meant to mislead the Department. Again, the testimony provided by Vazquez as to this issue was not credible.

17. The issues concerning Vazquez's criminal history are more complex. Question 10 in the application asks for information concerning investigations, charges, arrests or convictions "in the last 10 years." Vazquez provided information concerning an arrest in October 2010 for carrying a concealed weapon. He also provided the Order acquitting him of the charge. The arrest report references probation for a conviction of possession of stolen property in New York. The Department, during its background check of Vazquez, found that he was on parole. Vazquez was asked to clarify the probation versus parole discrepancy. He explained that between the arrest

and acquittal, his parole officer had submitted a violation of parole, but that was lifted after his acquittal.

18. The Department's concern about Vazquez's relationship with his brother was founded on the fact that Vazquez represented William before the Commission just prior to the filing of the Sun and Earth application. That representation preceded Vazquez's remark to a Department employee that if his brother could not have a license, he would seek one himself. The statement put the Department on notice that the brothers may be trying to circumvent William's loss of his license.

19. At final hearing, it was evident the brothers had no such intent. In fact, William was not cooperative with Vazquez's efforts to obtain a license that would, in effect, compete with William's business.

20. The Department also raised a concern about the letters of reference received in support of the Sun and Earth application. Normally, the Department would forward Letter of Reference forms to businesses, and they would be returned directly to the Department. In this case, Vazquez took the letters to business owners himself. There is nothing inherently improper about doing this, but it caused some concern to the Department in a case where red flags had already been raised.

21. Ms. Wiggins had never had an applicant refuse to answer questions during the application process. When Vazquez

raised his "scope of work" objections, Ms. Wiggins was taken aback. Vazquez, an admitted novice in the citrus business, basically told the Department how to do its job.

22. Faced with this very unique situation, Ms. Wiggins then asked her supervisor to become involved in the application review so that it would be done completely in accordance with Department rules. After the March 13, 2012, email from Vazquez, it was decided that the Department legal counsel should also be involved. The Department was justifiably concerned about the propriety of the Sun and Earth application. Citrus dealers are generally self-governing, and the Department began to have concerns that Vazquez could not be trusted. That, in and of itself, was sufficient basis for the recommendation of denial of Vazquez's application.

23. Vazquez admitted to being less than forthright with the Department on his application. He withheld information that he believed the Department could easily obtain on its own. He refused to answer questions that he did not believe were relevant. He would not cooperate with inquiries made into issues about his past. He disagreed that his affiliation with his brother's company was relevant, so he stonewalled all inquiries about that issue. All in all, Vazquez--the applicant for a license--refused to provide information and assistance to the entity which was reviewing his application. While he may

have had his personal reasons for his actions, what he did was not conducive to obtaining approval from the Department. Thus, his application was given a recommendation for denial.

#### CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.57 and 120.569, Florida Statutes (2012).<sup>1/</sup>

25. Petitioner has the burden of proof in this matter as it is asserting the affirmative of the issue, i.e., that its application as a citrus dealer should be approved. See Balino v. Dep't of HRS, 348 So. 2d 349 (Fla. 1st DCA 1977).

26. The Department's review of Sun and Earth's application was conducted in accordance with subsections 601.57(1), (4) and (5), Fla. Stat. Those statutory provisions require the Department to thoroughly examine the applicants, including, but not limited to, their financial history, their past and current history of industry-related activities, and their reputation in the industry. Little was known of Vazquez prior to the filing of his application under the name Sun and Earth. The Department, therefore, correctly investigated and examined all the information available to them concerning Vazquez.

27. Section 601.67(1) discusses the kinds of actions by a licensee which can be used by the Department to sanction the

license of a citrus dealer. The list of prohibited or suspect activities is also reasonably relied upon by the Department when determining whether to issue a license to an applicant.

Included in that list is fraud, misrepresentation or concealment of information. Vazquez's improper responses to Ms. Wiggins' requests for information clearly involved some misrepresentation or concealment of information.

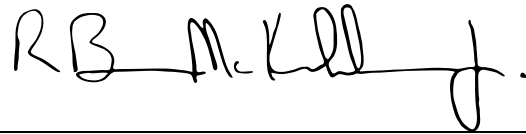
28. The Department's recommendation of denial of the Sun and Earth application was based on its legitimate concerns about Vazquez and his corporate entity. Sun and Earth did not meet its burden of proving that the Department's recommendation was improper.

29. It should be noted that Vazquez attempted at final hearing to introduce evidence as to possible conflicts of interest by Commission members, saying that the members should not be making a decision on his application because he would be competing with their own companies. That argument is premature; the issue in this proceeding is simply whether the Department's recommendation of denial to the Commission was justified. Once the Commission takes action on the licensure application, Vazquez's argument concerning their conflict of interest may be ripe for consideration.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by the Department of Citrus/Florida Citrus Commission, denying Sun and Earth's application.

DONE AND ENTERED this 30th day of August, 2012, in Tallahassee, Leon County, Florida.



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R. BRUCE MCKIBBEN  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of August, 2012.

ENDNOTE

<sup>1/</sup> Unless specifically stated otherwise herein, all references to Florida Statutes are to the 2012 codification.

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.