

BEFORE THE FLORIDA CITRUS COMMISSION
AS AGENCY HEAD FOR
THE FLORIDA DEPARTMENT OF CITRUS

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DIVISION OF
ADMINISTRATIVE
HEARINGS

Re: Application for License As Citrus Fruit Dealer
for the 2012-2013 season of
East West Citrus Packers, LLC

TO: EAST WEST CITRUS PACKERS, LLC,
c/o Guillermo Vazquez
712 Gooch Road
Ft. Meade, FL 33841
E-mail: wmcitruslake@aol.com

**FINAL ORDER OF AGENCY ACTION OF THE
FLORIDA DEPARTMENT OF CITRUS DISAPPROVING
APPLICATION FOR LICENSE AS CITRUS FRUIT DEALER**

The Florida Department of Citrus ("Department") disapproves the Application of License as Citrus Fruit Dealer submitted by EAST WEST CITRUS PACKERS, LLC ("East West" or "Applicant"), and the Florida Citrus Commission ("Commission"), as agency head of the Department, makes the following findings of fact and conclusions of law.

I. PROCEDURAL BACKGROUND

1. On December 27, 2012, East West filed an Application for License as Citrus Fruit Dealer ("Application") with the Department pursuant to § 601.57, Fla. Stat.¹ East West's Application

¹ Section 601.57, Fla. Stat., governs the process for approving or disapproving Applications for Licenses for Citrus Fruit Dealers. The Department's rulemaking authority in § 601.57 is limited to authorization to establish rules to govern the "... procedure and guidelines for granting interim conditional staff approval for issuance of a conditional citrus fruit dealer's license ..." Section 601.57(7), Fla. Stat. Hence, the Department does not have the specific statutory authority to adopt, via rule, a scheme more specific than the procedures prescribed by § 601.57. However, in acting upon applications for licenses, the Department follows the licensing procedures established in § 120.60, Fla. Stat., which is a part of Florida's Administrative Procedures Act. See, fn. 3, *infra*.

seeks authority to operate as a licensed citrus fruit dealer during the citrus season which began on August 1, 2012 and ends on July 31, 2013.²

2. The Department invoked its authority to require a financial statement as contemplated in § 20-108.006(4), Fla. Admin. Code. The Applicant was unable or unwilling to provide an audited financial statement. After several attempts to deduce the nature of business of East West and to obtain the required reference letters, East West's Application was placed in inactive status on February 4, 2013 as the Applicant had not met any of the requirements of the application process. As a result of contact from Department of Agriculture, a second application was received from the applicant on March 8, 2013, adding broker to the Application. The application was deemed complete on March 11, 2013

3. Upon receipt of East West's Application, the Department examined East West's Application, and considered the information submitted therewith. Pursuant to § 601.57(1), Fla. Stat., the Department also considered the past history of Zumoval Citrus Packers, LLC ("Zumoval"), an entity related to East West, which held licenses during the 2008-2009 and 2009-2010 citrus seasons.

4. On February 14, 2013 a letter from W.C. Lee was received by the Department alleging Guillermo (William) Vazquez—the president and sole shareholder of Applicant—had purchased fruit and failed to make full payment for the fruit purchased.

5. Pursuant to § 120.60(3), Fla. Stat., on March 18, 2013, the Department notified East West that Department staff would be recommending to the Commission denial of East West's Application. The notice identified, with particularity, the grounds for the recommendation of denial, informed East West of the date, time and place (i.e. Wednesday, May 8, 2013 at 11:00 am at the Florida Department of Citrus, 605 E. Main Street, Bartow, FL) the Commission would consider East West's Application, advised East West that it may wish to hire a court reporter to record and transcribe the proceedings, and advised East West of the appellate procedure available to East West in

² Pursuant to § 601.55(2)(b), Fla. Stat., citrus seasons begin on August 1st of a year and end on July 31st of the following year. *See, also*, § 601.15(3)(d), Fla. Stat.

the event the Commission voted to disapprove East West's Application. The notice also advised East West that it was entitled to challenge the Department's recommendation of denial through the administrative process outlined in Chapter 120, Fla. Stat.

6. On March 18, 2013 an email was received by staff requesting a formal hearing with a Division of Administrative Hearings ("DOAH") administrative law judge pursuant to § 120.57, Fla. Stat.

7. The hearing was scheduled for May 30, 2013 in Lakeland, Florida before the Honorable William F. Quattlebaum. The Applicant failed to appear and the Administrative Law Judge dismissed the case, as the Applicant has the burden of establishing by a preponderance of the evidence, entitlement to the licensure sought in the proceeding.³ Because the Applicant failed to appear and presented no evidence at the hearing in support of its application, the Applicant failed to meet its burden of establishing entitlement to the licensure sought. A true and correct copy of the recommended order issued by Judge Quattlebaum is attached hereto as "Exhibit 1" to this Final Order and incorporated herein by reference.

8. On June 14, 2013, Department staff sent the members of the Commission (via e-mail) a copy of the staff recommendation of denial with support information. Department staff copied Mr. Guillermo Vazquez, the president and sole shareholder of East West, on the communication, and sent the notice of the staff's intent to recommend denial of the application via certified mail (and e-mail) on June 25, 2013. The notice stated with particularity the grounds and/or basis for the recommendation of denial of licensure which included:

- a. The Applicant, by its own admission, has operated and continues to operate without a citrus fruit dealer's license despite repeated attempts by the Department of Citrus and the Department of Agriculture and Consumer Services to notify the applicant that his continued operation is in violation of § 601.55, Fla. Stat.; and

³ Fla. Dep't of Transp. v. J.W.C., Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Dep't of HRS, 348 So. 2d 349 (Fla. 1st DCA 1977); and § 120.57(1) (j), Fla. Stat.

b. The Applicant has shown an utter disregard for the laws of the State of Florida and the laws that regulate the Florida Citrus Industry.

9. At a telephonic meeting held on Wednesday, July 17, 2013, duly noticed, the Commission conducted a public hearing on East West's Application.

10. Prior to considering East West's Application, the Commission's General Counsel, Edwin A. Scales, III, advised the Commission on the *quasi*-judicial nature of the proceeding. Mr. Scales also advised the Commission that, pursuant to § 601.57(2), Fla. Stat., the Commission had four options with regard to taking action on East West's Application:

- a. the Commission could approve the Application;
- b. the Commission could disapprove the Application;
- c. the Commission could approve the Application contingent upon the imposition of reasonable conditions, or
- d. The Commission could defer the vote to a subsequent date.

11. At the public hearing, the Department's In House General Counsel, William Roberts, provided testimony and documents to the Commission supporting the staff recommendation of disapproval of East West's Application.

12. Throughout the presentations of both Department staff, and East West, members of the Commission asked questions of all witnesses and presenters.

13. After all evidence and argument was presented, the Commission publicly deliberated the matter and, unanimously adopted a motion supporting the staff recommendation and disapproving East West's Application.

II. FINDINGS OF FACT

1. The Department adopts all of the Procedural Background outlined in section I, above, as findings of fact.

2. Guillermo Vazquez is the CEO and 100% owner of East West.

3. On February 12, 2013, Department staff received a phone call from W.C. Lee, a citrus fruit dealer, who stated Guillermo (William) Vazquez had purchased fruit from him (without a citrus fruit dealer's license) and had not made full payment for the purchased fruit.

4. On February 14, 2013, the Department received a letter from Mr. Lee regarding a sale of fruit and Mr. Vazquez having run the fruit through Delicious Citrus, a registered packing house, and notifying the Department that Mr. Vazquez had failed to make full payment on a transaction involving citrus fruit.

5. The information was forwarded to Florida Department of Agriculture and Consumer Services ("FDACS") who, in turn, forwarded the information to Ag Law Enforcement for investigation. Investigator Larry Payne, Ag Law Enforcement, opened a file related to the activities set out above and investigated the matter and prepared a final report. A true and correct copy of the report is attached to this final order as "Exhibit 2."

6. As a result of the investigation, Mr. Vazquez was arrested on two counts of purchasing citrus fruit without a license. A copy of the arrest report is attached hereto as "Exhibit 3."

7. East West operated as a citrus fruit dealer for the 2012-2013 citrus season without a citrus fruit dealer's license.

8. The Applicant continued to operate as a citrus fruit dealer, despite being notified by both the Department and FDACS that it was required to obtain licensure prior to operating as such.

III. CONCLUSIONS OF LAW

1. Section 601.57(2), Fla. Stat., reads, in its entirety, as follows:

"601.57 Examination of application; approval of dealers' licenses.—

(2) If the Florida Citrus Commission shall, by a majority vote, be *of the opinion that the applicant is qualified and entitled* to a license as a citrus fruit dealer, the commission shall approve the application; otherwise the application shall be disapproved. However, commission approval of any application may be contingent upon such reasonable conditions as may be endorsed thereon by the commission, or commission action on an application may, by majority vote, be deferred to a subsequent date." (Emphasis added).

2. Section 601.57(4), Fla. Stat., reads, in its entirety, as follows:

“601.57 Examination of application; approval of dealers’ licenses.—

(4) Grounds for the disapproval of the application include, but are not limited to:

(a) Any previous conduct of the applicant which would have been grounds for revocation or suspension of a license as hereinafter provided if the applicant had been licensed.

(b) Delinquent accounts of the applicant owing to and growing out of the ordinary course of business with producers and other persons or firms.

(c) Delinquent accounts of the applicant with any person or persons with whom applicant has dealt in its operations under a previous license.

(d) Failure of the applicant or its owners, partners, officers, or agents to comply with any valid order of the Department of Agriculture or the Department of Citrus relating to citrus fruit laws or rules.

(e) Applicant’s violation, or aiding or abetting in the violation, of any federal or Florida law or governmental agency rule or regulation governing or applicable to citrus fruit dealers.”

3. The Commission’s role in acting upon an application is to determine whether a particular applicant is “qualified and entitled to a license as a citrus fruit dealer.”

4. There are current delinquent accounts of the Applicant relating to persons with whom the Applicant has dealt during the 2012-2013 citrus season for which the Applicant had not obtained a citrus fruit dealer’s license.

5. Additionally, it is important to note that East West did not proffer any proposed conditions to the Commission.

6. East West is in violation of § 601.55, Fla. Stat., as by its own admission, it has operated as a citrus fruit dealer without first obtaining proper licensure.

7. This fact, combined with the concerns raised involving East West’s utter disregard for the laws of the State of Florida and the laws that regulate the Florida Citrus Industry, renders a conditional/contingent application inappropriate, and potentially unenforceable, for East West.

8. Against this factual and procedural backdrop, the Commission concurs with Department staff that reasonable conditions would not have assuaged the Commission’s legitimate concerns of the Applicant’s financial and compliance history.

IV. CONCLUSION

Based on the Findings of Fact and Conclusions of Law rendered above, East West's Application for a License Citrus Fruit Dealer in the 2012-13 citrus season is *disapproved*. Pursuant to § 601.58(3), Fla. Stat., once an application has been finally disapproved by the Commission, the application shall remain disapproved for the remainder of the subject shipping season. Nothing herein precludes East West from filing an Application for Citrus Fruit Dealer for the 2013-14 citrus season which begins August 1, 2013.

V. APPELLATE RIGHTS

This Final Order constitutes final agency action of the Florida Department of Citrus. Pursuant to § 120.68, Fla. Stat., a party who is adversely affected by final agency action is entitled to judicial review. Judicial review shall be sought in the Second District Court of Appeal (i.e. the appellate district where the agency maintains its headquarters). Any such proceedings shall be instituted by filing a Notice of Appeal or Petition for Review in accordance with the Florida Rules of Appellate Procedure, within thirty (30) days after the rendition of this Order.

DONE AND ORDERED this 17th day of July, 2013.



MARTIN J. McKENNA, CHAIR
FLORIDA CITRUS COMMISSION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order Of Agency Action Of The Florida Department Of Citrus Disapproving Application For License As Citrus Fruit Dealer was sent by e-mail and United States Mail to

EAST WEST CITRUS PACKERS, LLC,
c/o Guillermo Vazquez
712 Gooch Road
Ft. Meade, Florida 33841
e-mail: wmcitruslake@aol.com

Douglas R. Ackerman, Executive Director
Florida Department of Citrus
P.O. Box 9010
Bartow, Florida 33831

on this 18th day of July, 2013.



MARTIN J. McKENNA, CHAIR
FLORIDA CITRUS COMMISSION