

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CHICAGO TITLE INSURANCE )  
COMPANY, FIDELITY NATIONAL )  
TITLE INSURANCE COMPANY, )  
SECURITY UNION TITLE INSURANCE )  
COMPANY, TICOR TITLE INSURANCE )  
COMPANY AND TICOR TITLE )  
INSURANCE COMPANY OF FLORIDA, )  
 )  
Petitioners, )  
 )  
vs. ) Case No. 06-5105RP  
 )  
OFFICE OF INSURANCE )  
REGULATION AND THE )  
FINANCIAL SERVICES COMMISSION, )  
 )  
Respondent. )  
\_\_\_\_\_ )

FINAL ORDER OF DISMISSAL

This case is before the undersigned on Respondent's Motion to Dismiss for Lack of Subject Matter Jurisdiction, filed June 7, 2007, and Petitioners' Consent to Dismissal of Proceeding Based on Representations Contained in Respondent's Motion to Dismiss for Lack of Jurisdiction. Also pending is Respondent's Motion for Reconsideration of the Order On Pending Motions Dated May 25, 2007, filed June 1, 2007. The matter was considered by Lisa Shearer Nelson, Administrative Law Judge.

APPEARANCES

For Petitioners: Joy M. Ryan, Esquire  
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For Respondent: S. Marc Herskovitz, Esquire  
Office of Insurance Regulation  
Department of Financial Services  
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STATEMENT OF THE ISSUE

Whether proposed Rule 690-186.013 is an invalid exercise of legislatively delegated authority as defined in Section 120.52(8), Florida Statutes.

PRELIMINARY STATEMENT

This case originated with the filing of a Petition to Determine Invalidity of Proposed Rule on December 15, 2006, challenging proposed Rule 690-186.013. The case was assigned to the undersigned on December 19, 2006, and that same day, the matter was scheduled for hearing January 18, 2007.

On January 10, 2007, the Respondent filed a Motion for Continuance, asserting that the Department intended to publish a Notice of Change with respect to the proposed rule, which could address Petitioners' objections in their entirety or change the scope of issues to be presented for hearing. Petitioners did not object to the motion and the case was rescheduled for hearing on May 7, 2007, in order to accommodate both the publication of any changes and the conduct of any hearings or workshops on those changes.

On March 9, 2007, Petitioners filed a Motion for Continuance, asserting that the Department had not published any Notice of Change, and requesting that the case be continued until after August 7, 2007. After a telephone conference call on the motion, the hearing scheduled for May 7, 2007, was canceled and the case was rescheduled for June 27, 2007.

On March 16, 2007, a Motion to Appear Pro Hac Vice was filed, asking that out-of-state counsel be permitted to appear along with local counsel on behalf of the Petitioners. On May 11, 2007, Petitioners filed a Motion for Relief on Account of Respondent's Failure to Satisfy Its Discovery Violations (Motion for Relief). No response was filed to either motion. The Motion for Relief alleged that the Department had failed to respond to Petitioners' Request for Production and had filed insufficient responses to interrogatories and requests for admissions. The motion requested that the matter be continued for at least 60 days following compliance with the discovery requests. The Motion for Relief was filed almost three months after receiving the incomplete responses to discovery. Accordingly, on May 25, 2007, an Order on Pending Motions was entered granting the Motion to Appear Pro Hac Vice; requiring compliance with Petitioners' discovery requests no later than June 4, 2007; and denying Petitioners' request for a continuance of the final hearing.

On June 1, 2007, the Department filed a Motion for Reconsideration of the Order on Pending Motions Dated May 25, 2007, asserting that due to a miscommunication in counsel's

office, he did not receive the Motion for Relief in time to file a response. Petitioners did not file a response to this motion, most likely because of the events detailed in the Findings of Facts and Conclusions of Law. On June 7, 2007, Respondent filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction, asserting that the Petition to Determine Validity of Proposed Rule was not timely filed.

On June 8, 2007, Petitioners filed a Consent to Dismissal of Proceedings Based on Representations Contained in Respondent's Motion to Dismiss for Lack of Subject Matter Jurisdiction (Consent to Dismissal). Both the Motion and the Consent to Dismissal have been considered in the preparation of this Final Order of Dismissal. Those matters contained in the Findings of Fact below are those matters for which there appears to be no dispute.

#### FINDINGS OF FACT

1. Pursuant to Section 20.121(3), Florida Statutes, the Financial Services Commission (the Commission) serves as the agency head for the Office of Insurance Regulation for the purpose of rulemaking.

2. On May 26, 2006, the Office of Insurance Regulation issued a Notice of Development of Rulemaking to amend existing Florida Administrative Code Rule 690-186.013. A workshop was held pursuant to this notice on June 15, 2006.

3. On August 15, 2006, the Commission approved for publication a notice of proposed rule amendments to Rule 690-186.013.

4. A Notice of Proposed Rulemaking was published in the Florida Administrative Weekly on October 6, 2006. A public hearing was held October 31, 2006.

5. On November 22, 2006, a second notice of hearing was published in the "Notices of Meetings, Workshops and Public Hearings" section of the Florida Administrative Weekly, advising of "an additional public hearing on the proposed amendments to Rule 690-186.013, Title Insurance Statistical Gathering, published on October 6, 2006, in Vol. 32, No. 40, of the F.A.W."

6. A public hearing was conducted as noticed December 5, 2006.

7. Petitioners filed their Petition to Determine Invalidity of Proposed Rule December 21, 2006.

8. On June 7, 2007, the Respondent filed its Motion to Dismiss for Lack of Subject Matter Jurisdiction. Included in its Motion are several statements relevant to the Petitioners' position regarding dismissal of these proceedings:

5. [The December 5, 2006, hearing] of course, was not the "final public hearing," was not noticed as a hearing at which any action would be taken and never intended to be the "final public hearing" as that term is used in Section 120.56(2)(a), Florida Statutes. In fact, the "final public hearing" would have been held before the FSC as the collegial body responsible for rulemaking for the Office.

6. When it is appropriate, the FSC will hold such a "final public hearing" prior to adoption of a proposed rule. As in every other instance in which the FSC intends to adopt a rule, notice will be provided in the Florida Administrative Weekly (sample attached as Exhibit E). In this instance, the final hearing has not yet been held, or even scheduled.

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11. Therefore, this case must be dismissed as the Petition to Determine Invalidity of Proposed Rule was untimely filed. The Petitioners may, if they desire, challenge the proposed rule after the final public hearing. Nevertheless, they may not maintain this action at this time.

9. Petitioners have responded to the Motion to Dismiss by consenting to dismissal of these proceedings, "in reliance on representations made by the State of Florida, Financial Services Commission/Office of Insurance Regulation (the Respondent) in paragraphs 5, 6, and 11 of Respondent's Motion to Dismiss for Lack of Subject Matter Jurisdiction (the Motion to Dismiss) filed on June 7, 2007, that no 'final public hearing' within the meaning of Section 120.54 . . . has been held . . . and that no 'final public hearing' shall be held unless Respondent has first provided to Petitioners proper notice and an opportunity to contest the validity of the Proposed Rule."

10. Petitioners assert, however, that the Petition should be dismissed without prejudice, and that should Respondent attempt to promulgate the Proposed Rule without first holding a "final public hearing" with proper notice, they reserve the right to reinstate this proceeding.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with Sections 120.569 and 120.57(1), Florida Statutes.

12. After review of the pleadings, it is determined that this proceeding shall be dismissed based on the consent of Petitioners in response to Respondent's Motion to Dismiss. The undersigned declines to make any ruling on the merits of Petitioners' Petition or Respondent's Motion to Dismiss given the consent of Petitioner to dismissal.

13. While Petitioners reserve the right to reinstate this proceeding under certain circumstances, they cite no authority for a dismissal of a rule challenge without prejudice.

Based on the following, it is

ORDERED:

1. Respondent's Motion for Reconsideration of the Order on Pending Motions Dated May 25, 2007, is denied as moot.

2. Respondent's Motion to Dismiss for Lack of Subject Matter Jurisdiction is denied as moot.

3. Petitioners' Petition to Determine Invalidity of Proposed Rule is dismissed based on Petitioners' consent to dismissal of the proceeding, which is construed as a withdrawal of their Petition to Determine Invalidity of Proposed Rule. The file of the Division of Administrative Hearings in the above-captioned case is hereby closed.

DONE AND ORDERED this 25th day of June, 2007, in  
Tallahassee, Leon County, Florida.

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LISA SHEARER NELSON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 25th day of June, 2007.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of appeal with the Clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.