

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA FINE WINE AND SPIRITS,)
LLC, d/b/a TOTAL WINE AND MORE,)
)
Petitioner,)
)
vs.) Case Nos. 07-1858RU
)
DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF ALCOHOLIC BEVERAGES)
AND TOBACCO,)
)
Respondent,)
)
and)
)
ABC LIQUORS, INC., d/b/a ABC)
WINE AND SPIRITS,)
)
Intervenor.)
_____)

FINAL ORDER

By agreement of the parties, the case was submitted to Administrative Law Judge Bram D.E. Canter to be decided on the parties' Pre-Hearing Stipulation, Joint Exhibits, and Proposed Final Orders, without a formal evidentiary hearing.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue in this case is whether certain statements by officials of Respondent Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (ABT), constitute an unpromulgated rule that is invalid pursuant to Subsection 120.54(1)(a), Florida Statutes (2006).^{1/}

PRELIMINARY STATEMENT

On April 25, 2007, Petitioner Florida Fine Wine & Spirits, LLC, d/b/a Total Wine and More (TWM), filed a Petition Seeking an Administrative Determination of the Invalidity of an Agency Statement Defined as a Rule. In its Petition, TWM alleges that

ABT established a new policy to prohibit in-store servicing of distilled spirits, an activity that the agency did not previously prohibit. TWM contends that the new policy is evidenced by statements made by two ABT officials in two email messages sent to TWM and others in April 2007. TWM further contends that ABT's new policy meets the definition of a rule and violates Subsection 120.54(1), Florida Statutes, because ABT has not adopted the policy as a rule.

This case was consolidated with a related case (DOAH Case No. 07-1857RX) initiated by TWM's simultaneous filing of a Petition Seeking an Administrative Determination of the Invalidity of an Existing Rule. The existing rule challenged by TWM is Florida Administrative Code Rule 61A-1.010, entitled "Approved Advertising and Promotional Gifts." TWM was subsequently granted leave to amend its petition challenging the existing rule to include a challenge of ABT's 1997 repeal of Florida Administrative Code Rule 61A-4.058, entitled "Promotional Displays and Advertising."

The unopposed petition of ABC Liquors, Inc., d/b/a ABC Fine Wine & Spirits (ABC), to intervene in the consolidated cases was granted.

A final hearing was scheduled within 30 days as required by Subsection 120.56(1)(c), Florida Statutes, but it was continued by agreement of the parties. Thereafter, the parties waived the

final hearing in the consolidated cases and agreed to have the cases decided based on the parties' Pre-Hearing Stipulation, Joint Exhibits, and Proposed Final Orders. A separate Final Order is being issued for each of the cases.

The Parties' Joint Exhibits 1 through 49 were admitted into evidence. The Joint Exhibits include the transcripts of the depositions of Steven Hougland, ABT's director, and Renee Alsobrook, deputy general counsel of the Department of Business and Professional Regulation (DBPR). The parties filed Proposed Final Orders, which have been duly considered.

FINDINGS OF FACT

A. The Parties

1. Petitioner TWM is a licensed retail vendor of alcoholic beverages. It operates nine stores in Florida that sell alcoholic beverages, including distilled spirits, by the package.

2. Respondent ABT is the state agency authorized by Section 561.02, Florida Statutes, to regulate the alcoholic beverage industry, including manufacturers, distributors and vendors of alcoholic beverages within the State of Florida.

3. Intervenor ABC is a licensed retail vendor of alcoholic beverages, holding in excess of 100 licenses authorizing the sale of alcoholic beverages, including distilled spirits, by the package.

B. The Alleged Unpromulgated Rule

4. Florida has a three-tiered system of alcoholic beverage distribution. Manufacturers produce the product and sell to distributors, distributors sell the product at wholesale to licensed vendors, and vendors sell the product to the general public at retail. §§ 561.14(1)-(3), Fla. Stat.

5. The term "in-store servicing" refers generally to activities by distributors or manufacturers on the vendor's premises, such as placing stock on shelves, rotating stock, and affixing prices.

6. On April 4, 2007, Renee Alsobrook emailed a message to John Harris, a governmental consultant, which included the following statement:

In researching the coupon rule, I reviewed prior opinions I had provided and determined that this opinion provided to you in March, 2006, was wrong. I WAS WRONG. Section 561.424, F.S., clearly excludes in-store servicing of distilled spirits. Please communicate the position of ABT to your wholesalers and Trone.

7. On April 24, 2007, Stephen Hougland emailed the following message to Mr. Harris:

John, after considerable research and consultation, ABT's opinion is that FL law does not permit in-store servicing for spirits. I'd be glad to talk to you about the decision as I am sure you are concerned about the impact on your clients.

8. These two email messages were cited by TWM in its Petition as expressions of a new policy that has not been adopted as a rule and is, therefore, invalid and unenforceable. In the course of discovery, other written statements by ABT employees were found that were also made in April 2007, which TWM contends are expressions of the new policy.

9. In a letter dated April 9, 2007, from Lisa Comingore, assistant general counsel for DBPR, to Charles Bailes of ABC, Ms. Comingore states:

Wholesalers and manufacturers of distilled spirits are not authorized to provide in-store servicing by section 561.424, Florida Statutes and would be providing aid to retailers in the form of providing labor for the retailer. Such aid to the retailer could constitute a violation of section 561.42, Florida Statutes.

10. In a letter dated April 30, 2007, from Director Hougland to Mr. and Mrs. John Schaeffer of Great Spirits Liquor & Fine Wine, Director Hougland states:

Florida law allows in-store servicing of beer and malt beverages as well as vinous beverages, however, in-store servicing of distilled spirits is not authorized . . . Section 561.424(2), Florida Statutes, specifically excludes in-store servicing of distilled spirits.

Wholesalers and manufacturers of distilled spirits are not authorized to provide in-store servicing by section 561.424, Florida Statutes and would be providing aid to retailers in the form of providing labor for the retailer. Such aid to the retailer

could constitute a violation of section 561.42, Florida Statutes.

C. The Governing Statutes

11. The federal government and many states, including Florida, enacted "Tied House Evil" laws to prevent the "evils" that arose from relationships between vendors of alcoholic beverages and manufacturers and distributors which caused the vendors to be controlled by or "tied" to the distributors and manufacturers. Winn Dixie Stores, Inc., v. Schenck Co., 662 So. 2d 1021, 1023 (Fla. 5th DCA 1995); Musleh v. Fulton Distributing Co. of Florida, 254 So. 2d 815, 817 (Fla. 1st DCA 1971).

12. Florida's Tied House Evil law, set forth in Subsection 561.42(1), Florida Statutes, provides:

No licensed manufacturer or distributor of any of the beverages herein referred to shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the beverage laws; nor shall such licensed manufacturer or distributor assist any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. No licensed vendor shall accept, directly or indirectly, any gift or loan of money or property of any description or any rebates from any such licensed manufacturer or distributor; provided, however, that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for

liquors sold, made strictly in compliance with the provisions of this section.

13. ABT contends that Subsection 561.42(1), Florida Statutes, prohibits in-store servicing of alcoholic beverages by distributors or manufacturers because it constitutes a gift of "free labor" to the vendor. TWM does not dispute ABT's interpretation of Subsection 561.42(1), Florida Statutes, as prohibiting in-store servicing as a form of gift, but TWM contends that subsequent legislation resulted in the removal of the prohibition.

14. In 1975, Section 561.423, Florida Statutes, created an exception for in-store servicing of beer and malt beverages:

Nothing in s. 561.42 or any other provision of the Beverage Law shall prohibit a distributor of beer or malt beverages from providing in-store servicing of malt beverages. "In-store servicing" as used herein means quality control procedures which include, but are not limited to: rotation of malt beverages on the vendor's shelves, rotation and placing of malt beverages in vendor's coolers, proper stacking and maintenance of appearance and display of malt beverages on vendor's shelves, price stamping of malt beverages on vendor's licensed premises, and moving or resetting any product or display in order to display a distributor's own product when authorized by the vendor.

15. In 1977, Subsection 561.424(2), Florida Statutes, created an exception for in-store servicing of wine:

Nothing in s. 561.42 or any other provision of the Alcoholic Beverage Law shall prohibit

a distributor of wine from providing in-store servicing of wine sold by such distributor to a vendor. "In-store servicing" as used herein means: placing the wine on the vendor's shelves and maintaining the appearance and display of said wine on the vendor's shelves in the vendor's licensed premises; placing the wine not so shelved or displayed in a storage area designated by the vendor, which is located in the vendor's licensed premises; rotation of vinous beverages; and price stamping of vinous beverages in a vendor's licensed premises. This section shall not apply to distilled spirits. (Emphasis added)

16. No similar statute was created to expressly authorize in-store servicing of distilled spirits by distributors.

17. After the enactment of Section 561.423 and Subsection 561.424(2), Florida Statutes, there should have been little doubt that the Tied House Evil law was intended by the Legislature to prohibit in-store servicing of alcoholic beverages and that only by express exception was in-store servicing of beer and wine by distributors permitted.^{2/}

18. The only evidence in the record that tends to explain why distilled spirits were treated differently from beer and wine with regard to in-store servicing is a statement made by Charles Bailes of ABC in a letter to Ms. Alsobrook that, "Historically, in-store servicing of perishable products such as wine and beer have been allowed so as to maximize freshness and minimize the chances of consumers purchasing spoiled

merchandise." Mr. Bailes goes on to state that distilled spirits are not perishable.

D. Florida Administrative Code Rule 7A-4.058

19. The main cause of the current confusion about in-store servicing of distilled spirits can be traced to a rule adopted by ABT in 1985. The year before, Subsection 561.42(12), Florida Statutes, was amended to add the following directive:

The Division shall make reasonable rules governing promotional displays and advertising, which rules shall not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and advertising furnished vendors by distributors and manufacturers.

20. ABT responded by promulgating Florida Administrative Code Rule 7A-4.058, entitled "Promotional Displays and Advertising," effective January 2, 1985. The rule adopted certain federal regulations by reference:

(1) The Division adopts by reference the provisions of subpart D, Chapter 6, of Title 27, Code of Federal Regulations, regulations 6.81 through 6.101 inclusive.

(2) It shall be a violation of Section 561.42, F.S., for any vendor to accept or for any manufacturer or distributor to give a retailer promotional displays, advertising or other such items, services or assistance governed by the regulations adopted by subsection (1) when given in a manner not in strict conformity with the adopted regulations.

21. Subpart D was entitled "Exceptions" and established exceptions to the federal Tied House Evil law. It included exceptions clearly related to promotional displays and advertising, such as "Product Displays," "Inside Signs," "Retailer Advertising Specialties," "Consumer Advertising Specialties," and "Advertising Services." However, Subpart D also included exceptions on subjects that did not appear to involve promotional displays or advertising, such as "Educational Seminars" (for the employees of vendors), "Participation in Retailer Association Activities," "Joint Ventures," "Coil Cleaning Service," and "Stocking, Rotation and Pricing Services."

22. Section 6.99 of the federal regulations, entitled "Stocking, Rotation and Pricing Services," provided:

Industry members may, at a retail establishment, stock, rotate and affix the price to distilled spirits, wine, or malt beverages which they sell, provided products of other industry members are not altered or disturbed. The rearranging or resetting of all or part of a store or liquor department is not hereby authorized.

Because stocking, rotation, and pricing services are synonymous with in-store servicing, ABT's adoption of Section 6.99 by reference in Florida Administrative Code Rule 7A-4.058 authorized in-store servicing of distilled spirits by

distributors and manufacturers in Florida, in apparent conflict with the governing statutes.

23. The adoption by reference of Section 6.99 also conflicted with Section 561.423 and Subsection 561.424(2), Florida Statutes, because these statutes only authorized in-store servicing of beer and wine by distributors, but the federal regulation authorized in-store servicing by "industry members," a term that includes manufacturers.

24. Soon after the adoption of Florida Administrative Code Rule 7A-5.048, ABT's 1986 compliance guidelines included a statement that "27 CFR 6.99 and F.S.S. 561.424" authorize "manufacturers or distributors of distilled spirits or wine to stock, rotate and affix the price to their products at a licensed retailer's premises." ABT's 1988, 1993, and 1995 compliance guidelines contained the same statement.^{3/}

E. Promotional Displays and Advertising

25. The term "promotional displays and advertising" is not defined in Chapter 561, Florida Statutes, but insight into the Legislature's intended meaning for the term can be gleaned from the 1985 amendment of Subsection 561.42(12), Florida Statutes. Following the sentence that directs ABT to adopt rules regarding promotional displays and advertising, the 1985 amendment added "provided, however," followed by eight new paragraphs dealing

with specific situations involving promotional displays and advertising:

(a) If a manufacturer or distributor of malt beverage provides a vendor with expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like, such items shall be sold at a price not less than the actual cost to the industry member who initially purchased them, without limitation in total dollar value of such items sold to a vendor.

(b) Without limitation in total dollar value of such items provided to a vendor, a manufacturer or distributor of malt beverage may rent, loan without charge for an indefinite duration, or sell durable retailer advertising specialties such as clocks, pool table lights, and the like, which bear advertising matter.

(c) If a manufacturer or distributor of malt beverage provides a vendor with consumer advertising specialties such as ashtrays, T-shirts, bottle openers, shopping bags, and the like, such items shall be sold at a price not less than the actual cost to the industry member who initially purchased them, but may be sold without limitation in total value of such items sold to a vendor.

(d) A manufacturer or distributor of malt beverage may provide consumer advertising specialties described in paragraph (c) to consumers on any vendor's licensed premises.

(e) Coupons redeemable by vendors shall not be furnished by distributors of beer to consumers.

(f) Manufacturers or distributors of beer shall not conduct any sampling activities that include tasting of their product at a

vendor's premises licensed for off-premises sales only.

(g) Manufacturers and distributors of beer shall not engage in cooperative advertising with vendors.

(h) Distributors of beer may sell to vendors draft equipment and tapping accessories at a price not less than the cost to the industry member who initially purchased them, except there is no required charge, and a distributor may exchange any parts which are not compatible with a competitor's system and are necessary to dispense the distributor's brands. A distributor of beer may furnish to a vendor at no charge replacement parts of nominal intrinsic value, including, but not limited to, washers, gaskets, tail pieces, hoses, hose connections, clamps, plungers, and tap markers.

None of the examples in the statute suggest that in-store servicing of alcoholic beverages comes within the Legislature's intended meaning of promotional displays and advertising.

26. The common meanings of the words "stocking," "rotation," and "pricing" do not match up with the common meanings of the words "promotional displays" and "advertising." As noted above, there were other federal exceptions adopted by reference in Florida Administrative Code Rule 7A-4.058 that involved neither promotional displays nor advertising. ABT offered no explanation for the agency's indiscriminate adoption by reference of all the federal regulations in Subpart D, including those regulations that were not related to promotional

displays and advertising. ABT now acknowledges that the 1985 rule was "non-compliant" with statutory law.

27. TWM presented no evidence to show that stocking, rotation, and pricing are, as a matter of fact, forms of promotional displays or advertising. Instead, TWM argues that ABT's 1985 adoption by reference of Section 6.99 and ABT's subsequent representations that in-store servicing of distilled spirits was authorized in Florida, "determined" and "defined" in-store servicing as a promotional display or advertising.

28. ABT changed its position sometime after 1995. In 1997, ABT repealed Florida Administrative Code Rule 7A-4.058 (which had been renumbered 61A-4.058). Although ABT replaced that rule with a new rule that regulated promotional displays and advertising, the new rule did not adopt any federal regulations by reference and the subject of stocking, rotation, and pricing services was abandoned, along with some of the other subjects covered by the federal regulations previously adopted by reference.^{4/}

29. ABT's repeal of Florida Administrative Code Rule 61A-4.058 and its adoption of Florida Administrative Code Rule 61A-1.010 in 1977 was announced in public notices published in the Florida Administrative Weekly and through industry bulletins. Two public hearings were held on Florida Administrative Code Rule 61A-1.010, which were attended by

industry representatives. The rule prohibited any gift from distributors or manufacturers to vendors that was not specifically identified in the rule or specifically authorized by statute. In-store servicing of distilled spirits is not listed in the rule and, as discussed above, is not specifically authorized by statute.

30. In 1998, ABT issued an industry bulletin to industry representatives on the specific subject of in-store servicing. The bulletin notes that there is no statutory exception for in-store servicing of distilled spirits as there is for beer and wine and states that "Unauthorized services to a vendor would be considered a gift of financial assistance, unless the vendor paid for the services provided to them [sic]."

31. The 1998 bulletin concludes by stating that because of the "confusion about these in-store servicing provisions," no enforcement action would be taken against a vendor, distributor, or manufacturer for unauthorized services provided before the date of the bulletin.

32. After the 1997 repeal of Florida Administrative Code Rule 61A-4.058, the main cause of confusion on the subject of in-store servicing of distilled spirits had been removed. However, the 1998 bulletin and any other efforts ABT made to inform and educate the regulated industry about its change of position were not completely successful. In-store servicing of

distilled spirits by distributors continues to some extent today.^{5/}

33. ABT does not dispute that the prohibition of in-store servicing of distilled spirits has general statewide application and that rulemaking on the subject is not infeasible or impractical. ABT's position is that the prohibition of in-store servicing of distilled spirits does not require a rule because the prohibition is established by statute.

CONCLUSIONS OF LAW

34. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding pursuant to Subsection 120.56(4), Florida Statutes.

35. Subsection 120.56(4), Florida Statutes, provides in part that any person substantially affected by a rule or an agency statement may seek an administrative determination that the statement violates Subsection 120.54(1)(a), Florida Statutes. Standing was not a disputed issue in this case, and the parties' factual stipulations in the Joint Pre-hearing Stipulation are sufficient to establish TWM's standing to initiate these proceedings and ABC's standing to participate as a party.

36. TWM, as the petitioner, bears the burden of establishing by a preponderance of the evidence that the challenged agency statements meet the definition of a rule as

defined by Subsection 120.52(15), Florida Statutes.

§ 120.56(4)(b), Fla. Stat.; Agrico Chemical Co. v. Dept. of Environmental Regulation, 365 So. 2d 759, 763 (Fla. 1st DCA 1978).

37. Subsection 120.52(15), Florida Statutes, defines a rule as "each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency."

38. An agency statement that is the equivalent of a rule must be adopted according to the rulemaking procedures set forth in Section 120.54, Florida Statutes. § 120.54(1), Fla. Stat.

39. Subsection 120.52(8)(a), Florida Statutes, provides that it is an invalid exercise of delegated legislative authority for an agency to materially fail to follow applicable rulemaking procedures or requirements. TWM claims that the challenged agency statements are invalid exercises of delegated legislative authority because they meet the definition of a rule, but have not been adopted as a rule.

40. However, not every agency statement is a rule. An agency statement is a rule if it "purports in and of itself to create certain rights and adversely affect others" or serves "by its own effect to create rights, or to require compliance, or otherwise to have the direct and consistent effect of law." See Jenkins v. State, 855 So. 2d 1219, 1225 (Fla. 1st DCA 2003);

Balsam v. Department of Health and Rehabilitative Services, 452 So. 2d 976, 977-78 (Fla. 1st DCA 1984); State Department of Administration, Division of Personnel v. Harvey, 356 So. 2d 323, 325 (Fla. 1st DCA 1977).

41. The legal principle that an agency statement is not a rule unless, by its own effect, the statement creates rights, requires compliance, or otherwise has the effect of law, is equally applicable to statements that convey an agency's interpretation of the statutes it administers. An agency's interpretation of a statute must be adopted as a rule when the interpretation adds details that are not otherwise apparent from a reading of the statute. See Southwest Florida Water Management District v. Save the Manatee Club, Inc., 773 So. 2d 594, 599 (Fla. 1st DCA 2000)(use of the term "interpret" in Subsection 120.52(8), Florida Statutes, suggests that a rule will be more detailed than the applicable enabling statute). On the other hand, an agency interpretation that adds nothing to the statute is not a rule.

42. The statements made by ABT in April 2007 do not, of their own effect, establish the prohibition against in-store servicing of distilled spirits, nor do the statements add details regarding the prohibition. The statements only convey the prohibition that is established with reasonable clarity by

the governing statutes, specifically Subsection 561.42(1), Section 561.423 and Subsection 561.424(2), Florida Statutes.

43. Subsection 561.42(12), Florida Statutes, did not direct ABT to adopt all the federal exceptions to the federal Tied House Evil law. It only directed ABT to adopt rules governing promotional displays and advertising that were not in conflict or more stringent than the federal regulations on the same subject. ABT asserts that in-store servicing is not encompassed by the term "promotional displays and advertising" in Subsection 561.42(12), Florida Statutes. As the party with the burden of proof, TWM was required to demonstrate that ABT is wrong and, in fact, in-store servicing is a form of promotional display or advertising. TWM did not make this demonstration.

44. TWM is correct in asserting that evidence of past agency action that does not conform with the agency's current interpretation of a statute or evidence that an agency communicated a different interpretation of a statute in the past, is important and merits careful consideration. The historical evidence was carefully considered by the undersigned to determine whether the governing statutes are ambiguous. It is concluded that the governing statutes are not ambiguous. It is ABT's 1985 adoption by reference of federal regulations not related to promotional displays and advertising that is difficult to understand, not ABT's subsequent and current

interpretation of the governing statutes as prohibiting in-store servicing of distilled spirits.

45. TWM's argument that ABT's past actions control the statutory meaning of the term "promotional displays and advertising" is, in essence, an argument that because ABT called the Legislature's apple an orange, it became an orange, and it can never be treated as an apple again. However, an agency can correct its mistakes, including its past misinterpretations of statutory law. An agency has the right to change its mind for any reason, so long as its decision comports with Chapter 120, Florida Statutes. Agency for Health Care Administration v. Florida Coalition of Professional Laboratory Organizations, 718 So. 2d 869, 872 (Fla. 1st DCA 1998).

46. When an agency corrects a past misinterpretation of its governing statutes and applies a new interpretation that is consistent with and adds nothing to the statutory law, the agency can convey the correct interpretation in its agency statements to the public without the need to first adopt the statements by rule.

47. TWM failed to meet its burden to prove that the challenged agency statements constitute a rule required to be promulgated pursuant to the rulemaking requirements of Section 120.54, Florida Statutes.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that the statements of Respondent, Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, set forth as Exhibit A to the Petition, do not constitute an invalid exercise of delegated legislative authority.

DONE AND ORDERED this 20th day of July, 2007, in Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of July, 2007.

ENDNOTES

^{1/} Unless otherwise noted, all references to the Florida Statutes are to the 2006 codification.

^{2/} TWM asserts that ABT "admits" there is no statute which prohibits in-store servicing of distilled spirits, but, in context, ABT was merely acknowledging that no statute contains the words "in-store servicing of distilled spirits is prohibited."

^{3/} No ABT compliance guidelines produced after 1995 were entered into the record.

^{4/} TWM has challenged the 1997 repeal in the companion case as invalid because it claims ABT's explanation for the repeal was misleading in that the explanation suggested that all of the federal regulations adopted by reference in the Florida rule, including the authorization for stocking, rotation and pricing service, was being incorporated into the new ABT rule. However, the undersigned has concluded in the companion case that the repeal was not invalid.

^{5/} No evidence was presented to quantify the extent of the current practice of in-store servicing of distilled spirits.

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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.