

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

NORTH STAR ASSOCIATES, LLC, A)
FLORIDA LIMITED LIABILITY)
COMPANY AND PHILIP J. STODDARD,)
AS MANAGING MEMBER,)
) Case No. 11-2433RU
Petitioner,)
)
vs.)
)
DEPARTMENT OF FINANCIAL)
SERVICES,)
)
Respondent.)
_____)

SUMMARY FINAL ORDER

An administrative hearing was conducted in this case on June 21, 2011, in Tallahassee, Florida, before James H. Peterson, III, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Philip J. Stoddard
North Star Associates, LLC
258 Laguna Court
St. Augustine, Florida 32086

For Respondent: Richard T. Donelan, Jr., Esquire
Paul C. Stadler, Jr., Esquire
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-4247

STATEMENT OF THE ISSUE

Whether the Department of Financial Services' (Department or Respondent) statement that registrations as a claimant's representative under section 717.1400, Florida Statutes,^{1/} are licenses subject to section 120.60(1), Florida Statutes, is an unadopted rule that may be challenged by Petitioner under section 120.56(4).

PRELIMINARY STATEMENT

At the hearing, it was established that there were no genuine issues of material fact, and that it was appropriate to enter an order granting the Department's pending Motion to Dismiss and for Summary Judgment (Department's Motion) as a matter of law. The ruling on the Department's Motion was announced at the hearing, subject to being reduced to writing as set forth below. In addition, Petitioner's Motion for Discovery Sanctions was denied, and the Department withdrew its pending request for attorney's fees pursuant to section 120.569(2).

ORDER GRANTING DEPARTMENT'S MOTION

Upon consideration of Respondent's Motion, Petitioner's response thereto, and the parties' arguments, it is Ordered that Respondent's Motion is GRANTED on the following grounds:

1. In order to have standing to bring an action challenging an agency statement as an unadopted rule, the person bringing the action must be "substantially affected" by the

agency statement. To demonstrate that he is or will be "substantially affected" by the alleged unadopted rule, Petitioner "must establish both that application of the [alleged] rule will result in a 'real and sufficiently immediately injury in fact' and that the alleged interest is arguably within the zone of interest to be protected or regulated." See, e.g., Fla. Bd. of Med. v. Fla. Acad. of Cosmetic Surgery, Inc., 808 So. 2d 243, 250 (Fla. 1st DCA 2002) (discussing standing requirements for challenge to a rule or proposed rule).

At the administrative hearing, Petitioner conceded that he had already successfully registered as a claimant's representative with the Department, and that, under current law, no further registration is required. Therefore, Petitioner has no standing to bring the above-styled rule challenge because the alleged rule will not result in a real or immediate injury to Petitioner and Petitioner is not otherwise within the zone of interest to be protected or regulated.

2. Even if Petitioner had standing to bring this action, it is found, as a matter of law, that the registration at issue is a license within the meaning of the definition set forth in section 120.52(10), which states:

"License" means a franchise, permit, certification, registration, charter, or similar form of authorization required by

law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

In other words, the challenged statement simply reiterates the statutory definition of the term "license." As stated by the First District Court of Appeal in State Bd. of Admin. v.

Huberty, 46 So. 3d 1144, 1147 (Fla. 1st DCA 2010):

As we said in St. Francis Hospital, Inc. v. Dep't of HRS, 553 So. 2d 1351, 1354 (Fla. 1st DCA 1989):

[A]n agency interpretation of a statute which simply reiterates the legislature's statutory mandate and does not place upon the statute an interpretation that is not readily apparent from its literal reading, nor in and of itself purport to create certain rights, or require compliance, or to otherwise have the direct and consistent effect of the law, is not an unpromulgated rule, and actions based upon such an interpretation are permissible without requiring an agency to go through rulemaking.

3. The registration at issue does not qualify for the exception to the definition of a license because:

a. The registration is not required primarily for "revenue purposes" as that term is used in the exception to the definition of license. Petitioner argues that his "registration is primarily for revenue because, by law, [R]espondent pays locator fees directly to the locator by direct deposit into the

locator's bank account." In support of his argument, Petitioner urges a broad definition of "revenue purposes" by using a definition of the term "revenue" in Black's Law Dictionary, 1319 (6th ed. 1990), which, in the first paragraph of the definition, defines revenue as "[t]he gross receipts of a business, individual, government, or other reporting entity." Petitioner fails to recite, however, the next paragraph in that definition, which states:

As applied to the income of a government, a broad and general term, including all public moneys which the state collects and receives, from whatever source and in whatever manner.

Id. Further, Petitioner did not to point out the definition of "revenue law or measure" found in the same edition of Black's Law Dictionary, which states:

Any law which provides for the assessment and collection of a tax to defray the expenses of the government. Such legislation is commonly referred to under the general term "revenue measures" or "revenue bills," and those measures include all laws by which the government provides means for meeting its expenditures.

Id. Moreover, as pointed out by the Department, "Florida courts have associated the phrase 'revenue purposes' with taxes." See Department's Explanation as to Why No Agreement was Reached on the Stipulation filed June 16, 2011, p. 7, (citing Tamiami Trail

Tours, Inc. v. City of Orlando, 120 So. 2d 170, 172 (Fla. 1960)); Sandstrom v. City of Ft. Lauderdale 133 So. 2d 755, 757 (Fla. 2d DCA 1961). Consistent with those cases and the other definitions of revenue set from above that were not recited by Petitioner, as well as the plain meaning of the statute, it is found that "revenue purposes" as used in the exception to the definition of a license means those types of licenses or registrations, for example, automobile registrations, which are issued on a ministerial basis and primarily raise revenue for the government.

b. In addition, issuance of the license is not merely a ministerial act. That is because the Department has the statutory discretion in both the registration process as well as on an ongoing basis to place either a registrant or applicant for registration on probation and subject to conditions the Department may specify, including permanent restrictions or conditions on the issuance or maintenance of the registration. See § 717.1322, Fla. Stat.

4. In sum, the Department's statement that registrations as a claimant's representative under section 717.1400 are licenses subject to section 120.60(1), is not an unadopted rule, but is rather reflective of the provisions in the statutory definition of "license" found in section 120.52(10). Petitioner

does not have standing to challenge that statement under section 120.56(4).

THEREFORE, consistent with the forgoing, it is further ORDERED that the petition initiating this case is hereby DISMISSED.

DONE AND ENTERED this 1st day of July, 2011, in Tallahassee, Leon County, Florida.



JAMES H. PETERSON, III
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of July, 2011.

ENDNOTE

^{1/} All references to the Florida Statutes are to the 2010 versions.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Summary 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 proceeding are commenced by filing one copy of a Notice of Administrative Appeal with the agency clerk of the Division of Administrative Hearings and a second 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 Administrative Appeal must be filed within 30 days of rendition of the order to be reviewed.