



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

In re the Matter of:

SCOTT PRIDGEN, BEACH
BROTHERS, LLC.

Case No.: 94566-08-FM

Petition for Declaratory Statement to the
Florida Department of Financial Services

ORDER DENYING PETITION FOR
DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement (hereinafter referred to as the "Petition") received March 5, 2008, by the Department of Financial Services (hereinafter referred to as the "Department"), from Scott Pridgen, Beach Brothers, LLC., (hereinafter referred to as "Petitioner"). Upon consideration thereof, it is determined that the Petition does not contain sufficient information upon which the Department can render a Declaratory Statement for the following reasons:

1. The provisions of Section 633.01(6) *Florida Statutes*, direct the Department to issue a Declaratory Statement relating to the Florida Fire Prevention Code and the Life Safety Code, when requested by a substantially affected person.

2. The Department promulgated Rule 69A-60.007(5), *Florida Administrative Code*, to implement Section 633.01(6), *Florida Statute*. The rule provides:

(5)(a) Section 633.01, F.S., provides that the State Fire Marshal may issue, and if requested in writing by a substantially affected person or by a local enforcing agency, i.e., an authority having jurisdiction, the State Fire Marshal shall issue declaratory statements to interpret the Florida Fire Prevention Code.

(b) To request an interpretation of the Florida Fire Prevention Code from the State Fire Marshal through a declaratory statement, a person who is not an authority having jurisdiction must proceed through the local appeal process and receive an adverse ruling from the local appeals board. A person does not become a substantially affected person until such person receives an adverse ruling after having completed the local appeal process because the local interpretation with which the person disagrees, if challenged, cannot be enforced until after having been upheld in the local appeal process.

(c) If the person who is not an authority having jurisdiction receives an adverse ruling after proceeding through the local appeal process, such person then becomes a substantially affected person within the meaning of Section 633.01, F.S., and may at that time petition for a declaratory statement from the State Fire Marshal.

(d) Any petition for declaratory statement that has been received by the State Fire Marshal from a person who is not an authority having jurisdiction and who has not proceeded through the local appeal process shall be dismissed, without prejudice to re-bring the petition after such person has received an adverse ruling through the local appeal process.

3. The Petition herein requests an interpretation of the Florida Fire Prevention Code. However, the Petition does not allege that Petitioner has exhausted all of his local appeal opportunities and, despite repeated requests, has not confirmed that the local appeal process has been exhausted.

4. In accordance with the Department's rule, the Petitioner is not a substantially affected person and the Petition must be dismissed, without prejudice to file a new Petition after the local appeal process has been exhausted.

THEREFORE, based on the foregoing, the Petition for Declaratory Statement filed in this matter is denied, without prejudice.

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to Rule 9.110, *Florida Rules of Appellate Procedure*, because pursuant to Section 120.565, *Florida Statutes*, a Declaratory Statement constitutes final agency action and is therefore subject to judicial review pursuant to Section 120.68, *Florida*

Statutes. Review proceedings must be instituted by filing a petition or notice of appeal with the General Counsel, acting as the agency clerk, at 612 Larson Building, Tallahassee, Florida, and a copy of the same with the appropriate district court of appeal, within thirty days of rendition of this Declaratory Statement.

ENTERED in the City of Tallahassee, Leon County, Florida, this ____ day of _____, 2008.

ERIC MILLER
Deputy Chief Financial Officer

Copies furnished to:

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