

Section VII

Notices of Petitions and Dispositions Regarding Declaratory Statements

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

NOTICE IS HEREBY GIVEN THAT the Division of Florida Condominiums, Timeshares, and Mobile Homes, Department of Business and Professional Regulation, State of Florida, has received the petition for declaratory statement from Terry Black, Petitioner/Unit Owner, In Re: Harbour Pointe Condominium Association, Inc., Docket No.: 2010014717. The petition seeks the agency's opinion as to the applicability of (none stated) as it applies to the petitioner.

Whether the board of directors of Harbour Pointe Condominium Association, Inc. followed parliamentary procedure and its bylaws on two issues.

A copy of the Petition for Declaratory Statement may be obtained by contacting: Division Clerk, Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, 1940 North Monroe Street, Tallahassee, Florida 32399-2217.

Please refer all comments to: Janis Sue Richardson, Chief Assistant General Counsel, Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, 1940 North Monroe Street, Tallahassee, Florida 32399-2202.

NOTICE IS HEREBY GIVEN THAT the Division of Florida Condominiums, Timeshares, and Mobile Homes, Department of Business and Professional Regulation, State of Florida, has received the petition for declaratory statement from Valarie Purpura, Petitioner/Unit Owner, In Re: Camden C Condominium Association, Inc., Docket No.: 201014720. The petition seeks the agency's opinion as to the applicability of Section 718.110(13), Florida Statutes, as it applies to the petitioner.

Whether Section 718.110(13), Florida Statutes, applies to owners who do not consent to a 2004 amendment to the Declaration of Camden C Condominium restricting rental of units.

A copy of the Petition for Declaratory Statement may be obtained by contacting: Division Clerk, Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, 1940 North Monroe Street, Tallahassee, Florida 32399-2217.

Please refer all comments to: Janis Sue Richardson, Chief Assistant General Counsel, Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, 1940 North Monroe Street, Tallahassee, Florida 32399-2202.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

DEPARTMENT OF FINANCIAL SERVICES

NOTICE IS HEREBY GIVEN THAT the Department of Financial Services, Division of State Fire Marshal has issued an order disposing of the petition for declaratory statement filed by Eric A. Neilinger on March 15, 2010. The following is a summary of the agency's disposition of the petition:

The Petition was withdrawn by the Petitioner on March 30, 2010.

Please refer all comments to: Lesley Mendelson, Assistant General Counsel, 200 East Gaines Street, Tallahassee, Florida 32399-0340, (850)413-3604 or (850)413-4238, Fax: (850)922-1235 or (850)488-0697.

FINANCIAL SERVICES COMMISSION

NOTICE IS HEREBY GIVEN THAT the Financial Services Commission, Office of Insurance Regulation has issued an order disposing of the petition for declaratory statement filed by Carlos Lidsky, Esquire, Lidsky, Vaccaro, Montes & Martinez, P.A., on behalf of Mayte Delgado on December 15, 2009. The following is a summary of the agency's disposition of the petition:

Upon consideration thereof and being fully advised in the premises, the Commissioner finds as follows: 1. The OFFICE has jurisdiction over the subject matter and the parties to this matter. 2. U.S. Security Insurance Company (hereinafter referred to as "U.S. SECURITY") is a licensed property and casualty insurer authorized to engage in the business of insurance in this State by virtue of a subsisting Certificate of Authority issued by the OFFICE. 3. Summarized, the Petition alleges the following facts: (a) PETITIONER purchased a private passenger automobile insurance policy from U.S. SECURITY who agreed to finance the policy premium consisting of a down payment and installments. The paperwork lists the agent for the policy as ALL INSURANCE SERVICE,

INC. and the premium finance company as APPCO PREMIUM FINANCE; (b) PETITIONER asserts that she was quoted a price of \$673, but was ultimately charged \$1925, for an additional premium of \$1252. A notice assessing PETITIONER was sent by U.S. SECURITY pursuant to Section 627.7282, Florida Statutes, on February 10, 2000. According to PETITIONER, she was sent a notice of cancellation the following day, February 11, 2000; (c) PETITIONER asserts that U.S. SECURITY cancelled the policy on March 29, 2000 and that U.S. SECURITY refunded the unearned premium to APPCO PREMIUM FINANCE on April 4, 2000. 3. From these alleged facts, PETITIONER makes the following claims: (a) U.S. SECURITY did not, but should have according to PETITIONER, included interest on the unearned premium refund; (b) U.S. SECURITY did not, but should have according to PETITIONER, refund the entire unearned premium of \$186.00. Instead, PETITIONER asserts that U.S. SECURITY only refunded the premium less the agent's unearned commission for a total of \$158.10, representing the "net" unearned premium refund as opposed to the "gross" unearned premium refund of \$186.00; (c) U.S. SECURITY did not, but should have according to PETITIONER, make the unearned premium refund payable to PETITIONER rather than the premium finance company; and (d) U.S. SECURITY should have and failed to, according to PETITIONER, return the unearned premium within forty-five (45) days of cancellation of the policy. 4. The assertions by PETITIONER are part of class action litigation presently pending in Dade County, Florida, as reflected by a copy of the First Amended Complaint attached to the Petition for Declaratory Statement. This lawsuit has been stayed by Order dated May 7, 2008, issued by the Honorable Ronald M. Friedman, Circuit Court Judge. 5. The Order issued by Judge Friedman has stayed the action "pending Plaintiff's contact with the Office of Insurance Regulation, formerly the Department of Insurance in the State of Florida." Clearly, the Petition for Declaratory Statement filed by PETITIONER is an attempt to remove the stay issued by Judge Friedman. 6. In the Petition for Declaratory Statement, PETITIONER essentially requests that the OFFICE mind its own business: Petitioner contends that this Honorable Commission (sic) lacks the statutory authority to meddle in her unearned premium refund claim. Although this Honorable Commission (sic) has jurisdiction over insurance premium "rates" which Petitioner may be charged by her insurer, it does not have jurisdiction to determine whether U.S. SECURITY properly made the unearned premium refunds after it cancelled Petitioner's policy and those of putative class members. (Petition at page 5). 7. PETITIONER is incorrect. The OFFICE has jurisdiction to determine whether U.S. SECURITY properly made unearned premium refunds following cancellation of the policy in the proper set of circumstances. However, the manner in which the Petition is presented is not the proper set of circumstances. 8. The questions presented in this context are not appropriate for

the agency to answer even if it was so inclined in accordance with the provisions of Section 120.565, Florida Statutes. The purpose of a declaratory statement is to address the applicability of a statutory provision or order or rule of an agency in particular circumstances. *Chiles v. Department of State, Division of Elections*, 711 So.2d 151 (Fla. 1st DCA 1998). The purpose is not to have an agency involve itself on one side or the other in pending litigation. As the Court noted in *Novick v. Department of Health, Board of Medicine*, 837 So.2d 1237, 1240 (Fla. 5th DCA 2002): ".....a declaratory statement is not an appropriate remedy where there is pending litigation...." 9. This principle is well-established as noted by the Court in *Suntide Condominium Association, Inc. v. Division of Florida Land Sales*, 504 So.2d 1343, 1345 (Fla. 1st DCA 1987). We do not view the declaratory statement provision as conferring upon an agency the obligation either to give advice as to the jurisdiction of a court to determine matters then pending before the court, or to issue opinions or decisions settling doubts or questions as to the outcome of controversies then pending in a court. We do view it as an abuse of authority for an agency to either permit the use of the declaratory statement process by one party to a controversy as a vehicle for obstructing an opposing party's pursuit of a judicial remedy, or as a means of obtaining, or attempting to obtain, administrative preemption over legal issues then pending in a court proceeding involving the same parties. This principle was reaffirmed in *Padilla v. Liberty Mutual Insurance Company*, 832 So.2d 916 (Fla. 1st DCA 2002), a declaratory statement sought by the same attorney that is representing this PETITIONER. Therefore, the declaratory statement sought by PETITIONER in this instance is not appropriate for issuance by the OFFICE. ACCORDINGLY, it is hereby ORDERED, that the Petition for Declaratory Statement is DISMISSED.

A copy of the Order Disposing of the Petition for Declaratory Statement may be obtained by contacting: S. Marc Herskovitz, Esquire Office of Insurance Regulation, Division of Legal Services, 612 Larson Building, Tallahassee, Florida 32399-4206.

Please refer all comments to: S. Marc Herskovitz, Esquire, Office of Insurance Regulation, Division of Legal Services, 612 Larson Building, Tallahassee, Florida 32399-4206.

Section VIII Notices of Petitions and Dispositions Regarding the Validity of Rules

Notice of Petition for Administrative Determination has been filed with the Division of Administrative Hearings on the following rules:

NONE
