



**FINANCIAL SERVICES
COMMISSION**

CHARLIE CRIST
GOVERNOR

ALEX SINK
CHIEF FINANCIAL OFFICER

BILL MCCOLLUM
ATTORNEY GENERAL

CHARLES BRONSON
COMMISSIONER OF
AGRICULTURE

OFFICE OF INSURANCE REGULATION

KEVIN M. McCARTY
COMMISSIONER

March 24, 2009

Lewis F. Murphy, Esquire
C. Ryan Reetz, Esquire
Squire, Sanders & Dempsey L.L.P.
200 S. Biscayne Boulevard, Suite 4000
Miami, Florida 33131

RE: State Farm Florida Insurance Company
Petition for Administrative Hearing Involving Disputed Issues of Fact

Dear Mr. Murphy:

The Office of Insurance Regulation (hereinafter "Office") is in receipt of your Petition for Administrative Hearing Involving Disputed Issues of Fact. Upon review of the Petition, the Office has determined that the Petition does not comply with Section 120.569(2)(c), Florida Statutes, or Rule 28-106.201, Florida Administrative Code.

Rule 28-106.201(2), Florida Administrative Code, states in pertinent part that:

All petitions filed under these rules shall contain: (a) The name and address of each agency affected and each agency's file or identification number, if known; (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceedings; and an explanation of how the petitioner's substantial interests will be affected by the agency's determination; (c) A statement of when and how the petitioner received notice of the agency action; (d) A statement of all disputed issues of material fact; (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action; (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and (g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

Your Petition fails to set forth with sufficient particularity "all disputed issues of material fact" that affects State Farm Florida's "substantial interests" that would entitle it to an administrative proceeding. Rather, the Petition only reflects the company's displeasure with the terms of the Order.

• • •

S. MARC HERSKOVITZ • EXECUTIVE SENIOR ATTORNEY • LEGAL SERVICES OFFICE
200 EAST GAINES STREET • TALLAHASSEE, FLORIDA 32399-4206 • (850) 413-4122 • FAX (850) 922-2543

Affirmative Action / Equal Opportunity Employer

Lewis F. Murphy, Esquire
C. Ryan Reetz, Esquire
Letter of March 24, 2009
Page 2

As stated in the Petition, as well as the "Withdrawal Plan for State Farm Florida" (hereinafter referred to as "Withdrawal Plan"), the primary reason that the company is withdrawing is "to avoid an unacceptable danger of financial impairment or insolvency." However, nowhere in the Petition is there any explanation of how the Order granting the withdrawal of State Farm Florida will impact the danger of financial impairment or insolvency.

For example, in the Withdrawal Plan, it is noted that State Farm Florida's projected surplus will be \$597 million at year end 2008, \$376 million at year end 2009, \$56 million at year end 2010 and a large deficit surplus at year end 2011. Since the Order permits the company to withdraw at an accelerated pace, it would certainly appear that the company would actually save surplus. Although it was not abundantly clear in the Withdrawal Plan how these projections would be reversed as a result of the Withdrawal Plan, there is no indication of the financial impact of the Order. Therefore, we cannot truly determine the impact of the Order on the company's primary motivation for withdrawal and thus its "substantial interests."

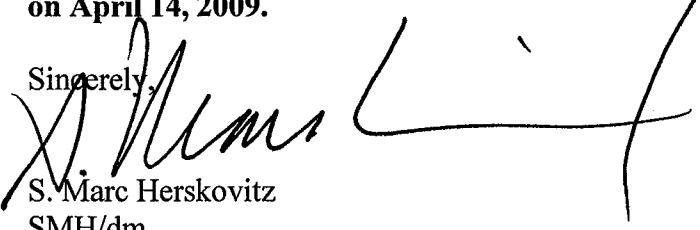
Also, the company appears to challenge Rule 69O-140.020, Florida Administrative Code. Such a challenge must, at a minimum, set forth the manner in which the company is "substantially affected." There is nothing in the Petition that explains how the application of the administrative rule impacts the company's interests and has resulted in an injury in fact which would entitle the company to an administrative proceeding. Thus, we are unable to determine how the company is "substantially affected" by Rule 69O-140.020, Florida Administrative Code.

To the extent the company asserts the administrative rule is unconstitutional, the constitutional issues raised in the Petition are not within the purview of the Office or the Division of Administrative Hearings. A party is not free to conjure up constitutional claims to avoid jurisdiction, or to confer jurisdiction where it does not exist. *See Junco v. State Board of Accountancy*, 390 So.2d 329 (Fla. 1980). Perhaps an explanation of how the application of the administrative rule, in the context of the Order, and the constitutional issues would be helpful.

Finally, the Office would appreciate an explanation of how the potential of an additional 470,000 policyholders placed into Citizens by State Farm agents in the first year of the company's Withdrawal Plan, with the balance the second year, would not be hazardous to the policyholders or the State.

Based on the foregoing, the Office hereby dismisses the Petition without prejudice to file an amended petition curing the defects cited above. In light of the request that the matter be heard as soon as practicable, Petitioner shall have twenty-one (21) days from the date of this letter to file an amended petition. **Based on the foregoing, the Office will not accept an amended petition filed after 5:00 p.m. on April 14, 2009.**

Sincerely,


S. Marc Herskovitz
SMH/dm