

STATE OF FLORIDA
BOARD OF ARCHITECTURE AND INTERIOR DESIGN

IN RE: PETITION FOR DECLARATORY STATEMENT BY
INTERIOR DESIGN ASSOCIATIONS FOUNDATION OF FLORIDA, INC.

By: *Brandon M. Nichols*

DS 2008-082

FINAL ORDER

THIS MATTER came before the Board of Architecture and Interior Design (Board) pursuant to Section 120.565, Florida Statutes (FS), at a duly-noticed public meeting on January 8, 2009, in Tallahassee, Florida, for a hearing on the Petition for Declaratory Statement filed by the Interior Design Associations Foundation of Florida, Inc. (IDAF), Dorothea Ramsey Felder (Felder), and Christopher B. Scully (Scully), hereinafter "Petitioners," on November 3, 2008. The notice of the petition appeared in the Florida Administrative Weekly on December 12, 2008, in Volume 34, Number 50. Janice Young was present on behalf of IDAF and represented by counsel, Fred R. Dudley, Esquire, at the hearing. The Board was represented by Mary Ellen Clark, Assistant Attorney General. Written comments were received from the Florida Retail Federation and John A. Rogers, Jr., Esquire, was present at the hearing. Having considered the petition and comments, the Board makes the following findings and conclusions:

FINDINGS OF FACT

1 IDAF is a Florida corporation authorized to transact business in the State of Florida. IDAF's membership is composed of interior designers licensed by the Board, as well as designers, decorators and dealers who are not licensed by the Board, who offer for sale and sell furnishings. IDAF's membership consists of approximately 5,500 persons working in Florida and a substantial number are either subject to or potentially subject to

the laws and rules of the Board

2. Felder is a Florida Resident, not licensed by the Board, and is the representative for several manufacturers on behalf of which she offers for sale and sells furnishings to dealers, architects, interior designers and "retail establishments" in Florida, for both residential and non-residential uses. Felder does not use the words "interior design" or "interior designer" in connection with her business and does not advertise or represent herself as an interior designer.

3. Scully is a Florida Resident, not licensed by the Board, and is an office furniture dealer who offers for sale and sells furnishings in Florida for both residential and non-residential uses. Scully does not use the words "interior design" or "interior designer" in connection with her business and does not advertise or represent himself as an interior designer.

4. Petitioners seek the Board's interpretation of Sections 481.203(8), 481.223(1), and 481.229(6), FS, determining whether any license issued pursuant to Chapter 481, FS, is required for the sale by Petitioners of "furnishings," whether or not offered for sale at "retail" or offered for sale by "retail establishments," and whether offered or sold for delivery based on a diagram reflecting the placement of the furnishings.

CONCLUSIONS OF LAW

5. The Board has jurisdiction over this matter pursuant to Section 120.565, FS.

6. Section 481.203(8), FS, provides: "Interior design" means designs, consultations, studies, drawings, specifications, and administration of design construction contracts relating to nonstructural interior elements of a building or structure. "Interior design" includes, but is not limited to, reflected ceiling plans, space planning, furnishings,

and the fabrication of nonstructural elements within and surrounding interior spaces of buildings "Interior design" specifically excludes the design of or the responsibility for architectural and engineering work, except for specification of fixtures and their location within interior spaces As used in this subsection, "architectural and engineering interior construction relating to the building systems" includes, but is not limited to, construction of structural, mechanical, plumbing, heating, air-conditioning, ventilating, electrical, or vertical transportation systems, or construction which materially affects lifesafety systems pertaining to firesafety protection such as fire-rated separations between interior spaces, fire-rated vertical shafts in multistory structures, fire-rated protection of structural elements, smoke evacuation and compartmentalization, emergency ingress or egress systems, and emergency alarm systems.

7 Section 481 203(12), FS, provides "Space planning" means the analysis, programming, or design of spatial requirements, including preliminary space layouts and final planning.

8. Section 481 203(15), FS, provides: "Interior decorator services" includes the selection or assistance in selection of surface materials, window treatments, wallcoverings, paint, floor coverings, surface-mounted lighting, surface-mounted fixtures, and loose furnishings not subject to regulation under applicable building codes

9 Section 481 223(1)(b), FS, provides that a person may not knowingly "[p]ractice interior design unless the person is a registered interior designer unless otherwise exempted herein; however, an interior designer who has been licensed by the board and who chooses to relinquish or not to renew his or her license may use the title "Interior Designer, Retired" but may not otherwise render any interior design services "

10 Section 481.223(1)(c), FS, provides that a person may not knowingly "[u]se the name or title "architect" or "registered architect," or "interior designer" or "registered interior designer," or words to that effect, when the person is not then the holder of a valid license issued pursuant to this part "

11. Section 481 229(6), FS, sets forth two of several exemptions from the provisions of Chapter 481, FS, identifying those requiring no licensure as follows

(a) A person who performs interior design services or interior decorator services for any residential application, provided that such person does not advertise as, or represent himself or herself as, an interior designer. For purposes of this paragraph, "residential applications" includes all types of residences, including, but not limited to, residence buildings, single-family homes, multifamily homes, townhouses, apartments, condominiums, and domestic outbuildings appurtenant to one-family or two-family residences. However, "residential applications" does not include common areas associated with instances of multiple-unit dwelling applications.


(b) An employee of a retail establishment providing "interior decorator services" on the premises of the retail establishment or in the furtherance of a retail sale or prospective retail sale, provided that such employee does not advertise as, or represent himself or herself as, an interior designer.

12. The Board answers the question in the negative stating that no license is required under Chapter 481, FS, for the sale by Petitioners of "furnishings," as defined below, whether or not offered for sale at "retail" or offered for sale by "retail establishments," or whether offered or sold for delivery based on a diagram reflecting the placement of the furnishings.

13. The Board defined "furnishings" to be furniture and other readily movable items of tangible personal property for residential and nonresidential use, with or without the preparation of diagrams or drawings reflecting the placement of such items, except for manufactured partitions, manufactured panels, or other manufactured spatial dividers that restrict the ingress, egress, or life safety of persons

DONE AND ORDERED this 21 day of January, 2009.

BOARD OF ARCHITECTURE AND INTERIOR DESIGN


Juanita Chastain, Executive Director
for Joyce Shore, Chair

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(D), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH THE DEPARTMENT=S CLERK OF AGENCY PROCEEDINGS, WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to Fred R. Dudley, Esquire, Attorney for Petitioners, 315 S Calhoun Street, Suite #600, Tallahassee, Florida 32301, and by interoffice mail to Mary Ellen Clark, Assistant Attorney General, Administrative Law Section, PL-01 The Capitol, Tallahassee, Florida 32399-1050, this 23rd day of January, 2009.



FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF ARCHITECTURE AND INTERIOR DESIGN

FILED
Department of Business and Professional Regulation

DEPUTY CLERK
CLERK *Brandon M. Nichols*
DATE 11-3-2008

IN RE PETITION FOR DECLARATORY STATEMENT BY

INTERIOR DESIGN ASSOCIATIONS FOUNDATION
OF FLORIDA, INC., DOROTHEA RAMSEY FELDER,
and CHRISTOPHER B. SCULLY,

DS 2008-082

Petitioners

PETITION FOR DECLARATORY STATEMENT
BEFORE FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL
REGULATION
BOARD OF ARCHITECTURE AND INTERIOR DESIGN

Petitioners, INTERIOR DESIGN ASSOCIATIONS FOUNDATION OF FLORIDA, INC., a Florida corporation (herein "IDAF"), DOROTHEA RAMEY FELDER, a natural person (herein "Felder"), and CHRISTOPHER B. SCULLY, a natural person (herein "Scully"), collectively referred to as "Petitioners," by and through their undersigned attorneys, hereby submit this Petition for Declaratory Statement to the Florida Department of Business and Professional Regulation, Board of Architecture and Interior Design (herein "Board"), pursuant to section 120.565, Florida Statutes, and in accordance with Rule 28-105.002, Florida Administrative Code. In particular, Petitioners seek a declaration by the Board determining whether any license is required under Chapter 481, Florida Statutes, for the sale by Petitioners of "furnishings" as defined herein, whether or not offered for sale at "retail" or offered for sale by "retail establishments," and whether offered or sold for delivery based on a diagram reflecting the placement of the furnishings.

IDENTIFICATION OF PETITIONERS AND PETITIONER'S ATTORNEYS

1. IDAF is a Florida corporation authorized to transact business in the State of Florida and having its principal place of business at 2106 St Johns Avenue, Jacksonville, Florida 32204

2 Felder is a Florida resident whose address, for purposes of this petition, is that of the undersigned counsel

3 Scully is a Florida resident whose address, for purposes of this petition, is that of the undersigned counsel

4 The attorneys for the Petitioners are identified with contact information at the end of this petition

PETITIONERS' SUBSTANTIAL INTERESTS

5. IDAF's membership is composed of interior designers licensed by the Board, as well as designers, decorators and dealers who are not licensed by the Board that offer for sale and sell furnishings (as defined herein) and consists of approximately 5,500 such persons working in Florida. A substantial number of IDAF's members are subject to the laws identified herein, or are potentially subject to such laws depending upon the Board's interpretation thereof

6 Felder, who is not licensed by the Board, is the representative for several manufacturers on behalf of which she offers for sale and sells furnishings (as defined herein) to dealers, architects, interior designers and "retail establishments" in Florida, for both residential and non-residential uses, and expects to continue so operating in the State of Florida. Felder does not use the words "interior design" or "interior designer" in connection with these operations, and does not advertise or represent herself as an interior designer

7 Scully, who is not licensed by the Board, is an office furniture dealer who offers for sale and sells furnishings (as defined herein) in Florida for both residential and non-residential

uses, and expects to continue so operating in the State of Florida. Scully does not use the words "interior design" or "interior designer" in connection with these operations, and does not advertise or represent himself as an interior designer

8 Feldei and Scully are economically dependent on their efforts to offer and sell furnishings (as defined herein) for such non-residential uses as office, medical, institutional, hospitality and other commercial purposes in this state. Their interests therefore would be affected by the position of this Board with regard to the licensure requirements, if any, for a continuation of these activities

9 Sully and some IDAF members make deliveries and placement of furnishings (as defined herein) in accordance with their purchasers' or customers' instructions, and have showrooms to display the furnishings offered for sale, delivery and placement within this state

10 IDAF members licensed by the Board as interior designers are economically dependent on providing interior design services to the public, as well as in not being subject to disciplinary actions by this Board for aiding and abetting unlicensed activities by those who are not so licensed

11 Many IDAF members who are not licensed by the Board are economically dependent on providing interior decorating services to the public, including the offering for sale and sale of furnishings (as defined herein), but are in doubt as to whether such activities in the future may subject them to disciplinary actions by the Board for unlicensed activities

12 Due to several possible different and potentially conflicting interpretations regarding the statutory licensing provisions and exemptions set forth in paragraphs 15, 16 and 17, Petitioners are in doubt as to the legal requirements of the Board with regard to their activities as

described above, the violation of which may cause Petitioners, their members or employees, to be prosecuted for unlicensed activities or for aiding and abetting unlicensed activities by others

13 The law does not define "furnishings," as used in the various statutes set forth in paragraphs 15, 16 and 16 below For purposes of this petition, however, Petitioners define "furnishings" to mean the following

Furniture and other readily movable items of tangible personal property for residential or non-residential use, with or without the preparation of diagrams or drawings reflecting the placement of such items, except for partitions, panels or other spatial dividers that restrict the ingress, egress or life safety of persons.

STATUTORY PROVISIONS ON WHICH
THE DECLARATORY STATEMENT IS SOUGHT

14 Petitioners request an interpretation of the statutes set forth in paragraphs 15, 16 and 17 as applied to their particular circumstances as described above

15. Section 481 203, Florida Statutes, entitled "Definitions," includes the follows subsections which might be applicable to this petition, as follows

(8) **"Interior design" means designs, consultations, studies, drawings, specifications, and administration of design construction contracts relating to nonstructural interior elements of a building or structure. "Interior design" includes, but is not limited to, reflected ceiling plans, space planning, furnishings, and the fabrication of nonstructural elements within and surrounding interior spaces of buildings. "Interior design" specifically excludes the design of or the responsibility for architectural and engineering work, except for specification of fixtures and their location within interior spaces. As used in this subsection, "architectural and engineering interior construction relating to the building systems" includes, but is not limited to, construction of structural, mechanical, plumbing, heating, air-conditioning, ventilating, electrical, or vertical transportation systems, or construction which materially affects **lifesafety systems** pertaining to **firesafety protection such as fire-rated separations between interior spaces**, fire-rated vertical shafts in multistory structures, fire-rated protection of structural elements, **smoke evacuation and compartmentalization**, **emergency ingress or egress systems**, and emergency alarm systems [Emphasis Added]**

(12) "Space planning" means the analysis, programming, or **design of spatial requirements, including preliminary space layouts** and final planning [Emphasis Added]

(15) "**Interior decorator services**" includes the selection or assistance in **selection of** surface materials, window treatments, wallcoverings, paint, floor coverings, surface-mounted lighting, surface-mounted fixtures, and loose **furnishings** not subject to regulation under applicable building codes [Emphasis Added]

This statute does not specifically provide that offering or providing interior **decorator** services, as defined in §481 203(15), are exempt from licensure. In addition, this statute uses the term "furnishings" twice without defining that term, in fact, that term is not defined in any part of Chapter 481 or by any rule adopted by the Board.

16 Section 481 223(1)(b) and (c), Florida Statutes, requires licensure for "Interior Design" activities, as follows:

481.223 Prohibitions; penalties; injunctive relief.—

(1) A person may not knowingly.

(b) Practice interior design unless the person is a registered interior designer **unless otherwise exempted** herein, however, an interior designer who has been licensed by the board and who chooses to relinquish or not to renew his or her license may use the title "Interior Designer, Retired" but may not otherwise render any interior design services [Emphasis Added]

(c) Use the name or title "architect" or "registered architect," or **use "interior designer," "registered interior designer," or words to that effect,** when the person is not then the holder of a valid license issued pursuant to this part " [Emphasis Added]

17 Section 481 229, Florida Statutes, entitled "Exceptions, exemptions from licensure," sets forth various exemptions from license by the Board, including subsection (6) thereof that applies to Interior Design licensure requirements, as follows:

(6) This part **shall not apply** to

(a) A person who performs **interior design services** or interior decorator services for any residential application, provided that such person does not advertise as, or represent himself or herself as, an interior designer. For purposes of this paragraph, "residential

applications" includes all types of residences, including, but not limited to, residence buildings, single-family homes, multifamily homes, townhouses, apartments, condominiums, and domestic outbuildings appurtenant to one-family or two-family residences. However, "residential applications" does not include common areas associated with instances of multiple-unit dwelling applications [Emphasis Added]

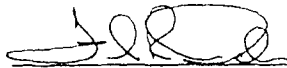
(b) An employee of a retail establishment providing **interior decorator services on the premises of the retail establishment or in the furtherance of a retail sale** or prospective retail sale, provided that such employee does not advertise as, or represent himself or herself as, an interior designer [Emphasis Added]

Section 481.229(6)(b) uses the terms "retail establishment" and "retail sale" without defining those terms, in fact, that term is not defined in any part of Chapter 481 or by any rule adopted by the Board.

CONCLUSION:

Petitioners hereby request the Board to issue a declaratory statement determining whether any license is required under Chapter 481, Florida Statutes, for the sale by Petitioners of "furnishings" as defined herein, whether or not offered for sale at "retail" or offered for sale by "retail establishments," and whether offered or sold for delivery based on a diagram reflecting the placement of the furnishings.


Dated this 17th day of November 2008



Fred R. Dudley, Esq., Florida Bar No 0111060
Lawrence E. Sellers, Esq., Florida Bar No 300241
Holland & Knight, Attorneys for Petitioners,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and a true and complete copy of the foregoing Petition for Declaratory Statement was serviced by HAND DELIVERY to Sarah Wachman, Agency Clerk, Florida Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399, and by U S Mail to Mary Ellen Clark, Assistant Attorney General, Board Counsel, Office of the Attorney General, The Capitol PLOI, Tallahassee, Florida 32399-1050, on this 14 day of November, 2008



Fred R. Dudley

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