

Mo

STATE OF FLORIDA
BUILDING COMMISSION

In the Matter of

ROLL-A-WAY PROTECTIVE
POOL FENCE OF CENTRAL FLORIDA,

Case #: DCA03-DEC-298

Petitioner.

_____ /

DECLARATORY STATEMENT

The foregoing proceeding came before the Florida Building Commission (the "Commission") by a petition from Paul S. Roth, of ROLL-A-WAY PROTECTIVE POOL FENCE OF CENTRAL FLORIDA (the "Petitioner"), which was received on October 28, 2003. Based upon the statements in the Petition and the materials subsequently submitted, it is hereby ORDERED:

Findings of Fact

1. The petition is filed pursuant to section 120.565, Florida Statutes, and must conform to the requirements of Rule 28-105.002, *Florida Administrative Code*.
2. The Petitioner is an installer of pool safety barriers intended for use in compliance with Section 424.2.17, Florida Building Code, Building Volume (2001 as amended June 30, 2003).
3. One product utilized by the Petitioner requires connection of the barrier to an exterior wall of a residence in such a manner that would require a tool to remove.
4. The Petitioner inquires whether statewide product approval is available to approve the

product as a structural component or a new and innovative product pursuant to Rule 9B-72, Florida Rules of Administrative Procedure.

Conclusions of Law

1. The Florida Building Commission has the specific statutory authority to interpret the provisions of Rule 9B-72, Florida Administrative Code, by entering a declaratory statement.

2. Rule 9B-72.060, F.A.C., allows for statewide approval of structural components and products comprising a building's envelope introduced as a result of new technology.

3. Rule Subsection 9B-72.010 reads as follows:

(28) Structural component means any part or assembly of a building or structure used or intended to support or shelter any use or occupancy, and which affects the safety of such building or structure or which supports any dead or designed live load and the removal of which part, material or assembly could cause, or be expected to cause, all or any portion to collapse or to fail, or both.

(29) Sub-category of product means a specific functionality:

(g) For structural components: truss plates, wood connectors, anchors, coolers-freezers, sheds, concrete admixtures, insulation forms, engineered lumber, material, plastics, wall, deck-roof, railing, or other . . .

4. The "other" sub-category is a catchall, similar in effect to the phrase "including but not limited to" and related expressions. Where such catchall provisions are utilized, a standard rule of statutory interpretation requires that the scope of the catchall be limited to items that are similar to those listed.

5. The definition of structural components set forth above does not encompass the product described in the Petition.

6. Additionally, the mesh safety pool barrier is not listed in the sub-category of products

for "structural components" in Rule 9B-72, and is not sufficiently similar to those specifically identified as to be included within the catchall "other" category.

6. The barrier identified by the Petitioner also fails to qualify as a portion of the building's envelope. Assigning common meaning to the phrases utilized in the rule, the pool barrier cannot be said to be a part of the building's envelope resulting from new technology.

Petitioner and all other interested parties are hereby advised of their right to seek judicial review of this Order in accordance with section 120.68(2)(a), Fla. Stat. (1999), and with Fla. R. App. P. 9.030(b)(1)(C) and 9.110(a). To initiate an appeal, a Notice of Appeal must be filed with Paula P. Ford, Clerk of the Commission, Sadowski Building, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, and with the appropriate District Court of Appeal not later than thirty (30) days after this Order is filed with the Clerk of the Commission. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee specified by section 35.22(3), Fla. Stat. (1999).

DONE AND ORDERED this 29 of January, 2004, in Coral Gables,
Miami-Dade County, State of Florida.

FILING AND ACKNOWLEDGEMENT
FILED, on this date, with the designated
Clerk, receipt of which is hereby
acknowledged.

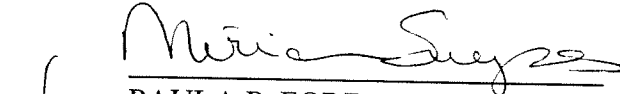
Maria S. Ford
Paula P. Ford
Commission Clerk

2/2/04
Date

Raul L. Rodriguez, AIA, Chair
Florida Building Commission
Department of Community Affairs
Sadowski Building
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent to the following by the method indicated on this 2nd day of Feb, 2004.


PAULA P. FORD
Commission Clerk

Via U.S. Mail:

Paul S. Roth
Roll-a-Way Protective Pool Fence
8635 Great Cove Drive
Orlando, Florida 32819-4134

Via Hand Delivery:

Mo Madani, Planning Manager
Codes and Standards Section
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100