

STATE OF FLORIDA
BUILDING COMMISSION

In the Matter of

International Hurricane Protection
Association,

Case #: DCA07-DEC-181

Petitioner.

_____ /

DECLARATORY STATEMENT

The foregoing proceeding came before the Florida Building Commission (the Commission) by a Petition from Mr. Joseph Belcher on behalf of the International Hurricane Protection Association (Petitioner) which was received on September 11, 2007. Based on the statements in the petition and the material subsequently submitted, it is hereby ORDERED:

Findings of Fact

1. The petition is filed pursuant to, and must conform to the requirements of Rule 28-105.002, Florida Administrative Code.
2. The Petitioner is an association that includes as members manufacturers of construction products that may be subject to approval by the Commission pursuant to Rule 9B-72, Florida Administrative Code; developers and contractors; other construction related organizations and governmental authorities having jurisdiction to enforce the Florida Building Code.
3. The petition generally concerns product approval from the Commission in the circumstance that a company produces shutter components in accordance with a proprietary design and provides those components to others who further refine the

components and assemble them for a specific application in accordance with that proprietary design; all such activities occurring subject to quality assurance by a single, Commission-approved, quality assurance entity.

4. The Petitioner inquires:

a. Whether the company producing the components can designate or form an association, such as the American Shutter Systems Association (ASSA), to apply for and obtain approval of a product or construction system which requires fabrication or assembly prior to installation by designated authorized user members, such as fabricators, assemblers, and installers? The Petitioner specifically identified inventory control measures whereby the association monitors members' activities and insures that the members utilize only components identified by the association in the application for product approval.

b. Whether a company producing components, such as Eastern Metals Supply, can act on behalf of designated authorized users, such as fabricators, assemblers, and installers, to apply for and obtain approval of a product or construction system which requires fabrication or assembly prior to installation and serve as the product approval holder for such designated authorized users provided that the company would provide a Quality Assurance Program at the site or sites at which the components are produced and each authorized user would participate in a Quality Control Program at the fabrication or assembly site(s) developed and administered by the manufacturer in conjunction with the manufacturer's Quality Assurance Entity?

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. Section 553.77(1)(f), Florida Statutes (2007), states:

Determine the types of products which may be approved by the commission for statewide use and shall provide for the evaluation and approval of such products, materials, devices, and method of construction for statewide use. The commission may prescribe by rule a schedule of reasonable fees to provide for evaluation and approval of products, materials, devices, and methods of construction.

2. Section 553.842, Florida Statutes (2007), provides that:

(6) The commission shall ensure that product manufacturers that obtain statewide product approval operate quality assurance programs for all approved products. The commission shall adopt by rule criteria for operation of the quality assurance programs.

...

(9) A building official may deny the local application of a product or method or system of construction which has received statewide approval, based upon a written report signed by the official that concludes the product application is inconsistent with the statewide approval and that states the reasons the application is inconsistent. Such denial is subject to the provisions of s. 553.77 governing appeal of the building official's interpretation of the code.

(10) Products, other than manufactured buildings, which are custom fabricated or assembled shall not require separate approval under this section provided the component parts have been approved for the fabricated or assembled product's use and the components meet the standards and requirements of the Florida Building Code which applies to the product's intended use.

3. Rule 9B-72.010(23), Florida Administrative Code, provides that state approvals are available for of a product or system of construction by the Commission for acceptance of a product on a state or regional basis consistent with an evaluation conducted pursuant to Rule 9B-72.070, F.A.C.

4. Rule 9B-72.070(3), Florida Administrative Code, provides

Products listed in Rule 9B-72.005, F.A.C., shall be manufactured under a quality assurance program audited by an approved quality assurance entity.

5. Rule 9B-72.090(1), Florida Administrative Code, specifically allows application for Commission approval of a product to be submitted by a “product manufacturer or owner of a proprietary system or method of construction, or its designee”.

6. The Rule does not define the term “manufacture.” Webster’s Ninth New Collegiate Dictionary defines the term as “to make into a product suitable for use.”

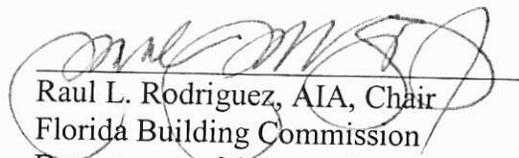
7. Applicable statutes and rules fail to create a system of approvals that are specific to any particular location of manufacturing activities, but are focused on the characteristics of the product for which approval is sought. Additionally, section 553.842(10), Florida Statutes (2007), envisions approval of products and systems of construction where the site of final assembly and the identity of those performing that work is unknown at the time of approval.

8. Based on the foregoing, product approval by the Commission is authorized in the circumstances recited in paragraphs 4(a) and (b) of the Findings of Fact herein, provided that the technical documentation submitted with the application for approval

indicates compliance with the Florida Building Code and the product is manufactured subject to a quality assurance program that is audited by a third-party quality assurance entity approved by the Commission for that purpose. The Company producing the components falls within the meaning of a product manufacturer and an owner of a proprietary system of construction. The Association described could be classified as either the owner of a proprietary system of construction or as the designee of such an owner. Either the Association or the Company producing the components are authorized by rule to apply for approval of the subject product even though the final steps of the manufacturing process are completed by others because the entire manufacturing process is completed pursuant to a quality assurance program as required.

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), Florida Statutes, and with Fla. R. App. 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, FL 32399-2100, and with the appropriate District Court of Appeal no later than thirty 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), Florida Statutes.

DONE AND ORDERED this 3 of January, 2008, in Coral Gables,
Miami-Dade County, State of Florida.


Raul L. Rodriguez, AIA, Chair
Florida Building Commission
Department of Community Affairs
Sadowski Building
2555 Shumard Oak Blvd.
Tallahassee, FL 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 7th day of January, 2008.


PAULA P. FORD
Commission Clerk

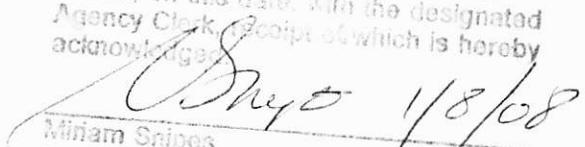
Via U.S. Mail

Joseph Belcher
JDB Code Services, Inc
41 Oak Village Boulevard
Homosassa, Florida 34446

Fred R. Dudley
Holland & Knight LLP
315 S. Calhoun Street, Suite 600
Tallahassee, FL 32301

Via Hand Delivery

Mo Madani, C.B.O. Manager
Codes and Standards Section
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100

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

Minam Snipes
Deputy Agency Clerk
Date 1/8/08