FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-2997

ENRIQUE FELDMAN AND
FELDMAN ARCHITECTURE,

Appellant,

v.

FLORIDA DEPARTMENT OF
BUSINESS & PROFESSIONAL
REGULATION,

Appellee.

On appeal from the Florida Department of Business and Professional Regulation.
G. Steven Jernigan, Board Chair.

December 12, 2022

PER CURIAM.

AFFIRMED.

LEWIS and BILBREY, JJ., concur; MAKAR, J., concurs specially with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

MAKAR, J., concurring specially.

Enrique Feldman is a Venezuelan architect with thirty-five years of experience, but he is not licensed to practice architecture within the State of Florida. This case involves his use of the word "architect" in some commercial webpages, which led to disciplinary action against him by Florida's architectural board. He appeals the adverse ruling that his use of the word "architect" amounted to unlicensed practice of architecture.

Feldman does not dispute that he used the title "architect" in various websites and that he does not have a state license to practice architecture in Florida. He claims, however, that he is entitled to provide architectural services—and thereby truthfully advertise that he is an "architect"—under section 481.229(1)(b), Florida Statutes, which states that:

> (1) No person shall be required to qualify as an architect in order to make plans and specifications for, or supervise the erection, enlargement, or alteration of: . . . (b) Any one-family or two-family residence building, townhouse, or domestic outbuilding appurtenant to any one-family or two-family residence, regardless of cost[.]

§ 481.229(1)(b), Fla. Stat. (2022). The Board of Architecture correctly denied this claim. Subsection (1) clearly states that the listed services in (a)-(c) of that subsection do not require the service provider to be qualified as an architect. As such, anyone—whether an architect or non-architect—is permitted to "make plans and specifications for, or supervise the erection, enlargement, or alteration" of the types of listed structures. Feldman may provide such services. But doing so doesn't transform him, as the service provider, into an architect; to the contrary, the subsection merely

carves out a subset of specified services that don't require a qualified architect. As such, his statutory interpretation claim falls short.

He also asserts a free speech claim, raised for the first time on appeal; he can do so because an agency cannot adjudicate such a claim in the first instance. The problem is that Feldman links his free speech claim to his erroneous interpretation of subsection 481.229(1)(b). Because providers of exempted services under the statute are not magically transformed into architects, they have no right—constitutional or otherwise—to use the title "architect" as an offshoot or derivative right of this statute.

Feldman does not independently argue on appeal that he has a free speech right to include his *actual* architectural licensure in Venezuela in his commercial websites in Florida. It is factually true that he is a licensed Venezuelan architect, a feature of his extensive professional background that assuredly would be of value to Florida consumers of the types of services he is allowed to perform under subsection 481.229(1)(b). *See Peel v. Att'y Registration & Disciplinary Comm'n of Ill.*, 496 U.S. 91, 108 (1990) ("[D]isclosure of truthful, relevant information is more likely to make a positive contribution to decisionmaking than is concealment of such information."). The limited use of this type of factual information with appropriate disclaimers might well be within his constitutional right of commercial free speech. *See Ibanez v. Fla. Dep't of Bus. & Pro. Regul.*, 512 U.S. 136, 142 (1994) (finding that an attorney may lawfully refer to her CPA and CFP credentials and that the state agency's sanction against such use is unconstitutional). Because this type of claim has not been presented and an insufficient administrative record is presented, it is for another day. *See Great House of Wine, Inc. v. Dep't of Bus. & Prof'l Reg.*, 752 So. 2d 728, 730 (Fla. 3d DCA 2000).

Diane S. Perera and Norberto J. Leal, Diane S. Perera, P.A., Miami, for Appellant.

Ashley Moody, Attorney General; Charles J. F. Schreiber, Jr., Senior Assistant Attorney General; Henry C. Whitaker, Solicitor

General; Daniel W. Bell, Chief Deputy Solicitor General; Evan Ezray, Deputy Solicitor General; and David M. Costello, Assistant Solicitor General; Tallahassee, for Appellee.