

FLORIDA HOUSING FINANCE CORPORATION

GARDENIA GARDEN, INC.,
A Florida Not For Profit Corporation,

Petitioner,

v.

Case No. 2010-D160C

FLORIDA HOUSING
FINANCE CORPORATION,

Respondent.

PETITION FOR FORMAL ADMINISTRATIVE HEARING

Petitioner Gardenia Garden, Inc. files this petition pursuant to sections 120.569 and 120.51(1), Florida Statutes, and rule 28-106.201, Florida Administrative Code, for a formal administrative hearing to contest the decision by Respondent Florida Housing Finance Corporation to not fund Petitioner's competitive loan application seeking HOME Program funds in the 2009 Universal Application Cycle.

Agency Affected

1. The agency affected by this proceeding is the Florida Housing Finance Corporation ("Florida Housing"), 227 N. Bronough Street, Suite 500, Tallahassee, Florida 32301-1329. The agency's telephone number is 850.488.4197. The agency identifies the application in issue by Registration No. 2009-183H.

Petitioner and Petitioner's Representative

2. The Petitioner is Gardenia Garden, Inc., a not for profit corporation organized and existing under Chapter 617, Florida Statutes, which has its principal offices at 1727 NE 8th Avenue, Gainesville, Florida 32641. Gardenia Garden is fully qualified as a 501(c)(3) non-profit entity. Gardenia Garden is small business party for purposes of section 57.111, Florida Statutes.

3. Gardenia Garden's local representative is Timothy G. Schoenwalder of Blank & Meenan, P.A., 204 South Monroe Street, Tallahassee, Florida 32301. Counsel's phone number is 850.681.6710.

Background Information

4. Florida Housing is a public corporation organized and existing under Chapter 420, Florida Statutes. Florida Housing is the governmental entity that bears statutory responsibility for administering the "HOME Investment Partnership Program" in Florida (the "HOME Program"), codified as section 420.5089, Florida Statutes.

5. Florida Housing's principal duty under the HOME Program is its obligation to distribute funds it has received from the U.S. Department of Housing and Urban Development ("HUD").

6. Florida Housing has adopted rules pertaining to the HOME Program in Rule Chapter 67-48, Florida Administrative Code. This rule chapter includes provisions that apply to Community Housing Development Organizations, also known as “CHDO(s).” HUD has described the term “CHDO” to mean a “private, nonprofit, community-based organization that has obtained or intends to obtain staff with the capacity to develop affordable housing for the community it serves, and meets the definition at 24 CFR 92.2.”

7. Florida Housing adopted Rule 67-48.014(2) which applies to CHDOs and provides in pertinent part:

The Corporation shall utilize at least 15 percent of the HOME allocation for CHDOs pursuant to 24 CFR Part 92.

8. Due in part to Florida Housing’s express duty to “utilize at least 15 percent of the HOME allocation for CHDOs pursuant to 24 CFR Part 92,” Gardenia Garden became pre-designated as a CHDO in order to be eligible to apply for HOME Program loans. By letter dated March 4, 2009 to Gardenia Garden, Florida Housing acknowledged in pertinent part the following:

Congratulations! Gardenia Garden, Inc. has been pre-designated as a CHDO by Florida Housing Finance Corporation through May 27, 2010. Your service area for the State of Florida CHDO has been stated as Gainesville, Florida.

If your application is funded, Gardenia Garden, Inc. will be officially designated as a CHDO with the execution of a CHDO Agreement between FHFC and Gardenia Garden, Inc.

9. Each year, Florida Housing prepares a report that is intended to confirm for HUD that Florida Housing is administering its duties in respect to CHDOs, consistent with the requirements under 24 CFR Part 92. Florida Housing's report is included within the State of Florida Annual Action Plan for July 1, 2009 – June 30, 2010 ("2009 Action Plan"), which Florida Housing and three other state agencies submitted to HUD.

10. In the 2009 Action Plan, Florida Housing affirmed the following facts in its portion of that report to HUD:

A minimum of 15 percent of the 2009 HOME allocation, or \$3,359,306, will be reserved for developments that are sponsored by qualified

CHDO applicants. Florida Housing has historically exceeded the 15% CHDO requirement between rental and homeownership activities. In the event insufficient applications meeting threshold are received to allocate this amount to rental developments, the remaining unallocated funds (including CHDO reservation amount) may be shifted to homeownership activities. The same applies to homeownership developments, so the remaining unallocated funds may be shifted to rental activities. In the event that more than 15% of the multifamily portion of the allocation is requested by applications meeting threshold submitted by qualifying CHDOs, up to 25% of the multifamily allocation will be used to fund CHDOs prior to funding non-CHDOs.

[No page citation is provided because this part of the report is not paginated.]

11. On or about August 19, 2009, Gardenia Garden submitted its competitive application to Florida Housing to obtain a low interest loan for rental housing funded through the HOME Program.

12. On February 26, 2010, Florida Housing released its rankings for the 2009 Universal Application Cycle. Florida Housing determined that Gardenia Garden's application was eligible for funding, but declined to fund the application. It is Gardenia Garden's understanding that Florida Housing declined to fund any loan applications submitted by a designated or pre-designated CHDO in respect to the HOME Program.

13. Florida Housing's decision to not fund Gardenia Garden's application will harm Gardenia Garden's substantial interests, in ways which include but are not limited to: Gardenia Garden will suffer financial harm from its inability to timely and affordably renovate 100 apartments dedicated for rental to low income housing residents, and from the likely cancellation of loan commitments which Gardenia Garden's received from its lender and the City of Gainesville.

Ultimate Facts and Law

14. Florida Housing's decision to not fund Gardenia Garden's eligible application for a loan under the HOME Program is arbitrary and capricious; it violates the agency's rules and the agency's duties under the

HOME Program; it contravenes the federal objectives for CHDOs set forth in Title 24, section 92.300 CFR *et seq.*; and it contravenes Florida Housing's express representations to HUD regarding Florida Housing's use of HUD monies for CHDOs in the HOME Program for 2009-2010.

Disputed Issues of Material Fact and Law

15. Disputed issues of material fact and law include:
 - a. whether Florida Housing acted arbitrarily and capriciously when it decided not to fund Gardenia Garden's application, which has been found to be eligible for funding;
 - b. whether Florida Housing acted arbitrarily and capriciously when it decided not to fund Gardenia Garden's application, despite Florida Housing's acknowledgment in the 2009 Annual Plan of its obligation to eligible CHDOs that seek to provide low income rental housing;
 - c. whether Florida Housing acted in violation of its own rules, including Rule 67-48.014(2), when it decided not to fund Gardenia Garden's application; and
 - d. whether Florida Housing acted in violation of its duties to HUD, in contravention of Title 24, section 92.300 CFR *et*

seq., when Florida Housing decided not to fund Gardenia Garden's application.

Ultimate Facts and Law

16. The ultimate facts and law are that Gardenia Garden will suffer a significant and adverse financial impact as a result of Florida Housing's decision to not fund Gardenia Garden's application for a loan under the HOME Program, and that by refusing to fund Gardenia Garden's application, Florida Housing has acted arbitrarily and capriciously; has acted in violation of its own rules, federal rules and its program duties to HUD; and has contravened its express commitment to HUD to fund CHDOs in Florida for 2009-2010.

Rules and Statutes

17. Rules and statutes entitling Gardenia Garden to the relief requested below are sections 120.569 and 120.57, Florida Statutes; Part V of Chapter 420, Florida Statutes; Rule Chapter 67-48, Florida Administrative Code, including rule 67.48.014; Rule 28-106.201; and Title 24, section 92.300 CFR *et seq.* Gardenia Gardens has identified the significance of these statutes and rules to this proceeding throughout this petition.

Relief Requested

WHEREFORE, Gardenia Garden respectfully requests:

A. That Florida Housing forward this petition to the Division of Administrative Hearings for the assignment of an Administrative Law Judge who will then conduct a *de novo* formal administrative proceeding pursuant to §§120.569 and 120.57(1), Fla. Stat.;

B. That each disputed issue of fact, each disputed issue of law, and each disputed combined issue of fact and law recited above be resolved in Gardenia Garden's favor;

C. That a recommended order and a final order be issued determining that Gardenia Garden's loan application for HOME Program funds is funded;

D. That an order granting an award of reasonable attorney fees and costs be issued under section 57.111, Florida Statutes, in favor of Gardenia Garden; and

E. That Gardenia Garden be afforded all additional relief deemed appropriate.

Date: March 22, 2010

Respectfully submitted,

BLANK & MEENAN, P.A.

By:



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and a true copy of this Petition For Formal Administrative Hearing have been delivered by hand to the Agency Clerk, Florida Housing Finance Corporation, 227 N. Bronough Street, Tallahassee, Florida 32301, and a copy has been provided by hand to Wellington J. Meffert, II, General Counsel, Florida Housing Finance Corporation, 227 N. Bronough Street, Tallahassee, Florida 32301, on this 22nd day of March 2010.



Timothy G. Schoenwalder