

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

NANCY RODRIGUEZ LEBRON

Petitioner,

v.

FHFC Case No. 2013-035HHF

FLORIDA HOUSING FINANCE COPORATION

Respondent

RECOMMENDED ORDER DISMISSING PETITION

Pursuant to notice, on February 13, 2014, a motion hearing was held in this case in Tallahassee, Florida, before Florida Housing Finance Corporation's appointed Hearing Officer, Christopher McGuire.

APPEARANCES

For Petitioner:

Roberto Cruz (appearing telephonically)
Florida Bar No. 18436
310 S. Magnolia Ave
Sanford, Florida 32271
(407) 708-1020

For Respondent:

Matthew A. Sirmans
Florida Bar No. 0961973
Assistant General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
(850) 488-4197

STATEMENT OF THE CASE

This case comes before me on Respondent Florida Housing Finance Corporation's ("Florida Housing") Motion to Dismiss Second Amended Petition on the grounds that the

Petition filed by Petitioner Nancy Rodriguez Lebron (“Rodriguez”) failed to state a cause of action over which Florida Housing has jurisdiction.

BACKGROUND

On March 22, 2013 Rodriguez applied to Florida Housing for funding under the so-called Hardest Hit Fund, a Federal program administered by Florida Housing pursuant to Chapter 67-59, Florida Administrative Code. On October 24, 2013, Florida Housing notified Rodriguez that she was ineligible to participate in this program due to the failure to submit certain required documentation. On November 15, 2013, Rodriguez timely filed a petition challenging this determination.

On December 5, Florida Housing filed a Motion to Dismiss the petition for lack of subject matter jurisdiction. On December 23, Rodriguez filed a response to the Motion to Dismiss, but on December 27 filed an Amended Petition before any action was taken on the Motion. On January 10, 2014, Florida Housing filed a Motion to Dismiss the Amended Petition for lack of subject matter jurisdiction. Rodriguez did not respond to this Motion, but on January 17 filed a Second Amended Petition. On January 21, Florida Housing filed a Motion to Dismiss the Second Amended Petition, which Motion is the subject of this Order.

At the hearing Rodriguez agreed that the Amended Petition, which raised completely different issues than were in the original Petition, was intended to replace the original Petition, and that there was thus no need to rule on the original Motion to Dismiss. The Amended Petition and the Second Amended Petition raised very similar issues, as did the second and third Motions to Dismiss.

There were no disputed issues of fact raised in the Petitions. Counsel for Rodriguez argued that disputed issues of fact might actually exist, but there was no evidence or testimony that actually raised such issues. The hearing was recorded but no transcript was ordered.

CONCLUSIONS OF LAW

The Second Amended Petition alleges that Florida Housing's decision to deny funding to Rodriguez was incorrect for the sole reason that the decision was based upon an agency statement that constituted a rule that had not been adopted in accordance with the rulemaking procedures in Chapter 120, Florida Statutes. Even if Rodriguez's allegation has merit, however, neither Florida Housing nor I have the authority to evaluate or adjudicate such a challenge. Section 120.56, Florida Statutes, makes clear that any challenge to a rule, or a statement that constitutes an unadopted rule, must be filed with the Division of Administrative Hearings. The statute also makes clear that only an Administrative Law Judge from that Division has the authority to issue a final order determining the validity of the rule or statement.

Rodriguez has asked the agency to determine that its decision was based upon an unadopted rule that constitutes an invalid exercise of delegated legislative authority. As noted above, the agency does not have such authority. Rodriguez has also asked that I enjoin Florida Housing from relying on the unadopted rule, that I direct Florida Housing to take steps to remedy the situation, that I award reasonable attorney fees and costs, and that I grant other equitable relief. A Hearing Officer has only the powers granted to the agency by statute, and such powers do not include injunctive or equitable relief.

120.569(2)(c), Florida Statutes, requires an agency to dismiss a petition if it does not comply with the requirements of that section. I have determined that the Second Amended Petition must be dismissed for failure to state a cause of action over which Florida Housing has

jurisdiction. That same statute also requires that dismissal “shall, at least once, be without prejudice to petitioner’s filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured.”

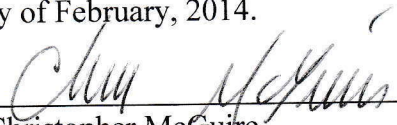
In order to determine whether or not the Second Amended Petition should be dismissed with prejudice or not, it is necessary to address the question of whether or not the original Petition may have stated a cause of action within the jurisdiction of Florida Housing. That Petition alleged only that Florida Housing’s actions violated the Florida Fair Housing Act, Sections 760.23, 760.25, and 760.35, Florida Statutes. For the reasons set forth in Florida Housing’s Motion to Dismiss Petition, I find that the authority to enforce the Florida Fair Housing Act rests solely with the Florida Commission on Human Relations. Had the matter been presented, I would have concluded that the original Petition did not state a cause of action over which Florida Housing has jurisdiction and should have been dismissed without prejudice.

Although in this case there were no prior dismissals of petitions, it is only because Rodriguez filed amended petitions in response to each motion to dismiss. In effect, Rodriguez has had the opportunity to file three petitions, none of which state a cause of action over which Florida Housing has jurisdiction. I find that it does appear conclusively from the face of each of the three petitions that the defect cannot be cured.

RECOMMENDATION

For these reasons, it is RECOMMENDED that a Final Order be entered dismissing the Second Amended Petition filed by Rodriguez with prejudice. It should be noted that entry of this Final Order does not prohibit Rodriguez from filing challenges, complaints, or petitions with any other agency that may have jurisdiction over the issues raised.

Respectfully submitted this 21st day of February, 2014.



Christopher McGuire
Hearing Officer for Florida Housing
Finance Corporation
2643 Lucerne Drive
Tallahassee, Florida 32303
cdmcguire@yahoo.com

Copies furnished to:

Roberto Cruz, Esq.
Advocacy Director
Legal Advocacy Center of Central Florida, Inc.
310 Magnolia Avenue
Sanford, Florida 32771-1915
robertoc@laccf.org

Matthew A. Sirmans, Esq.
Assistant General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Ste. 5000
Tallahassee, Florida 32301-1329
Matt.Sirmans@floridahousing.org