

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

FIFTH AVENUE ESTATES, LTD.,

Petitioner,

v.

**FHFC CASE NO. 2002-025
Application No. 2002-022CS**

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

ORDER

An Informal Administrative Hearing pursuant to Sections 120.57(2), Florida Statutes, was held before the undersigned Hearing Officer, Chris H. Bentley, on September 18, 2002. Petitioner's PETITION FOR REVIEW OF DECISION INVOLVING DISPUTED ISSUES OF MATERIAL FACT complies with the requirement set forth in Uniform Rule 28-106.201, Florida Administrative Code, for the initiation of proceedings involving disputed issues of material fact. Uniform Rule 28-106.201(1), Florida Administrative Code, states that "the term 'petition' includes any document that requests an evidentiary proceeding and asserts the existence of a disputed issue of material fact." Further, the Petition in this cause meets the requirements set forth in Uniform Rule 28-106.205(2), Florida Administrative Code.

At the Informal Hearing, Joint Exhibits 1 through 8 were received into evidence pursuant to stipulation and agreement. Joint Exhibit 6 received into

evidence is entitled JOINT STIPULATION OF THE FACTS. Paragraph 29 of Joint Exhibit 6 sets out that the Respondent determined that the Petition did not raise disputed issues of material fact and granted Petitioner an Informal Hearing pursuant to 120.57(2), Florida Statutes, instead of a Formal Hearing pursuant to 120.57(1), Florida Statutes. Paragraph 29 in Joint Exhibit 6 then states “Petitioner objects to this determination and continues to maintain that Petitioner is entitled to a formal hearing before an Administrative Law Judge.”

It is clear from the Petition and Joint Exhibit 6 that Petitioner has not waived its right to a formal administrative proceeding pursuant to Section 120.57(1), Florida Statutes, and has continued to object to this matter being conducted as an informal proceeding pursuant to Section 120.57(2), Florida Statutes. While many of the facts material to this proceeding are not in dispute, as evidenced by the myriad of stipulated facts set out in the JOINT STIPULATION OF FACTS, there remain disputed issues of material fact that are in dispute. Most important of those is the allegation of fact set out in the last sentence of paragraph 9 of the PETITION FOR REVIEW OF DECISION INVOLVING DISPUTED ISSUES OF MATERIAL FACT. That allegation states “Moreover, the Corporation’s computerized on-line application form is programmed so that the resulting scrivener’s error on the ‘Total Set-Aside Commitment’ line of Subsection 3 *cannot* be manually corrected.” It is apparent from the record of this proceeding that the foregoing allegation of fact remains in dispute.

This disputed allegation of fact is potentially material to resolution of the ultimate issues in this case.

The material allegation of fact in dispute asserts that Respondent's computerized on-line application form is programmed such that an error made in filling out that form "cannot be manually corrected." The undisputed facts in this case do not establish whether an error made in filling out the computerized on-line application form can or cannot be manually corrected. Perhaps more importantly, the record is devoid of any evidence of what would constitute a "manual correction." This case might have one outcome under the law if the "manual correction" is related solely to whether or not one can, through the use of key strokes or a mouse or some other electronic means, correct a scrivener's error in filling out the computerized on-line application. This case might have another outcome under the law if "manual correction" means something else, such as getting a blank application form and manually filling it out with the correct information and filing it. Therefore, the disputed allegation of fact is potentially material to resolution of the ultimate issue.

Uniform Rule 28-106.305(2) states that if during the course of an informal "...proceeding a disputed issue of material fact arises, then, unless waived by all parties, the proceeding under this Part shall be terminated and a proceeding under..." Section 120.57(1), Florida Statutes, shall be conducted. Petitioner has not waived his right to a formal proceeding and, indeed, has continually demanded that right. A

disputed issue of material fact has arisen during the course of the informal proceeding.

THEREFORE, it is hereby ordered that this matter be transferred back to Respondent so it may be treated as a matter involving a disputed issue of material fact under Section 120.57(1), Florida Statutes.

Entered this 22nd day of October, 2002.



CHRIS H. BENTLEY
Hearing Officer for Florida Housing
Finance Corporation
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555

Copies furnished to:

Thomas J. Korge, Esq.
Korge & Korge
230 Palermo Avenue
Coral Gables, FL 33134

Wellington H. Meffert II
General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

All parties have the right to submit written arguments in response to a Recommended Order for consideration by the Board. Any written argument should be typed, double-spaced with margins no less than one (1) inch, in either Times New Roman 14-point or Courier New 12-point font, and may not exceed five (5) pages. Written arguments must be filed with Florida Housing's Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301-1329, no later than 5:00 p.m. on Monday, October 7, 2002. Submission by facsimile will not be accepted. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to Recommended Orders.