

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

POSTMASTER ASSOCIATES, LTD.,

FHFC CASE NO.: 2005-010UC
APPLICATION NO. 2005-054C

Petitioner,

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to Notice, an informal administrative hearing was scheduled for this case in Tallahassee, Florida, before Florida Housing Finance Corporation's appointed Hearing Officer, David E. Ramba. At the time of hearing, the parties filed a Joint Proposed Recommended Order.

APPEARANCES

For Petitioner:

Gary J. Cohen, Esquire
Shutts & Bowen
201 S. Biscayne Blvd.
Suite 1508
Miami, FL 33131

For Respondent:

Wellington Meffert, General Counsel
Florida Housing Finance Corporation
227 N. Bronough Street, Ste 5000
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JOINT EXHIBITS

The following exhibits were admitted into evidence:

- Exh. 1: Exhibit 11 to Petitioner's Application (Developer Prior Experience chart)
- Exh. 2: NOPSE Scoring Summary Sheet (dated 4/14/2005)
- Exh. 3: Petitioner's Cure for Exhibit 11 to Petitioner's Application
- Exh. 4: NOAD filed against Petitioner's Application
- Exh. 5: Final Scoring Summary Sheet (dated 5/25/2005)
- Exh. 6: Temporary Certificate of Occupancy (Ward Tower)
- Exh. 7: Florida Building Code (Miami Dade Administrative) sec. 106.1.3
- Exh. 8: Page 6, 2005 Universal Application Instructions

WITNESSES

- There were no witnesses for either party.

STATEMENT OF THE ISSUE

The issue in this case is whether applicant has demonstrated sufficient prior development experience in the completion of at least two affordable rental housing developments.

PRELIMINARY STATEMENT

Petitioner applied for funding during the 2005 Universal Cycle, seeking an allocation of Low Income Housing Tax Credits ("Housing Credits"). Petitioner was notified by Florida Housing of its final scores on or about May 25, 2005. On June 9, 2005, Petitioner timely filed a Petition for an Informal Administrative Hearing under Sections 120.569 and 120.57, Florida Statutes, disputing the Florida Housing Finance Corporation's ("Florida Housing") final scoring of its 2005 Universal Cycle Application for the proposed Postmaster Apartments complex. After

review of the Petition, Florida Housing granted Petitioner an informal hearing in this matter. Petitioner sought a determination that the Petitioner had demonstrated sufficient prior developer experience. The Parties are agreed that Petitioner has done so.

FINDINGS OF FACT

1. The Petitioner is Postmaster Associates, Ltd. (“Postmaster”), a Florida limited partnership, whose address is: c/o MDHA Development Corporation, 7483 S.W. 24th Street, Suite 209, Miami, Florida 33155.

2. Respondent, Florida Housing Finance Corporation, (“Florida Housing”), is a public corporation under Chapter 420, Fla. Stat., to administer the financing and refinancing of projects which provide housing affordable to persons and families of low, moderate and middle income in Florida.

3. Petitioner has applied for an allocation of competitive 9% low-income housing tax credits under the Low Income Housing Tax Credit (“HC”) program administered by Florida Housing, as authorized by the U.S. Department of the Treasury. The HC program is set forth in Section 42 of the Internal Revenue Code of 1986, as amended, and it awards developers and investors a dollar for dollar reduction in income tax liability through the allocation of tax credits in exchange for construction of affordable rental housing units.

4. The 2005 Universal Cycle Application, which is applicable to applications for HC, is adopted as Form UA1016 (Rev. 02/05) by R. 67-48.004(1)(a), Fla. Admin. Code, consists of Parts I through V and instructions, some of which are not applicable to every Applicant. Some of the parts include “threshold” items. Failure to properly include a threshold item or satisfy a threshold requirement results in rejection of the application. Other parts allow applicants to earn

points; however, the failure to provide complete, consistent and accurate information as prescribed by the instructions may reduce the Applicant's overall score.

5. On or about February 16, 2005, Petitioner submitted to FLORIDA HOUSING an HC application in the Large County set-aside for the 2005 funding cycle. The application was submitted in an attempt to assist in the financing of the construction of a 55 unit apartment complex in Miami, Florida.

6. Under the HC program, the HC applications are scored by FLORIDA HOUSING. A finite amount of tax credits are allocated to applicants in certain geographic areas (large county, medium county and small county areas as defined by FLORIDA HOUSING) and pursuant to certain set-aside classifications. Only those applications receiving the highest scores are awarded tax credits. Petitioner's ability to finance its proposed project will be jeopardized if tax credits are not obtained; accordingly, Petitioner's substantial interests are affected by this proceeding.

7. In Petitioner's initial HC application submitted on or about February 16, 2005, Petitioner indicated (in Exhibit 11 submitted as part of its application) that MDHA Development Corporation possessed the requisite developer experience by submission of a "prior experience chart developer" which reflected three completed developments; Ward Tower under the affordable housing program of "MMRB and 4% tax credit", and Abacoa Town Center and Village at Abacoa Town Center developed under a local inclusionary zoning ordinance. (Exhibit "1")

8. The application was scored by FLORIDA HOUSING in accordance with the provisions of Rule 67-48.004, Fla. Admin. Code. By letter dated on or about March 17, 2005, FLORIDA HOUSING advised Petitioner that its preliminary score was 66 points, with no

proximity tie-breaker points awarded, and that Petitioner had failed to satisfy numerous threshold requirements.

9. As a result of Notices of Potential Scoring Errors (“NOPSE’s”) filed against Petitioner, FLORIDA HOUSING notified Petitioner on or about April 14, 2005 that its score remained the same, that its total proximity tie-breaker points remained the same, and that Petitioner had failed the threshold requirement of “Developer Prior Experience Chart” because “Inclusionary zoning is not considered to be an affordable housing program. Therefore, the Developer Prior Experience Chart provided in the Application does not reflect experience with a minimum of two affordable housing developments.” (Exhibit “2”)

10. On or about April 26, 2005, Petitioner submitted “cure” documentation to FLORIDA HOUSING resolving the various threshold items failed (site plan approval, site control, zoning and environmental safety). Petitioner also submitted cure documentation as to the “Developer Prior Experience Chart”, submitting, *inter alia*, a new “Developer Prior Experience Chart” reflecting an additional completed affordable housing development on such chart. As a result of its “cure” documentation, Petitioner’s “prior experience chart” reflected two completed affordable housing developments utilizing tax exempt bonds and 4% tax credits (Ward Tower and Longwood Vista). (Exhibit “3”)

11. On or about May 4, 2005 a Notice of Alleged Deficiency (“NOAD”) was filed against Petitioner’s cure documentation, alleging *inter alia*, that the Ward Tower transaction (which was contained in Petitioner’s original submission and re-submitted as part of its cure on a second Developer Prior Experience Chart) did not have a certificate of occupancy prior to the deadline for the submission of cures. (Exhibit “4”)

12. On or about May 25, 2005, FLORIDA HOUSING advised Petitioner that its total points remained at 66, that Petitioner's total proximity tie-breaker points were increased to 7.5, that Petitioner's other threshold failures (site plan approval, site control, zoning and environmental safety) had been satisfactorily cured. (Exhibit "5")

13. In the final scoring summary, FLORIDA HOUSING determined, *inter alia*, that (as evidenced in Item 6T of the scoring summary) Petitioner failed the threshold requirement of developer prior experience because a NOAD provided evidence that one of the developments (Ward Tower) had not received its Certificate of Occupancy. (Exhibit "5")

14. A temporary certificate of occupancy was issued for the Ward Tower development (a single building development) on April 7, 2005 (before the cure deadline of April 26, 2005). (Exhibit "6") Under the Florida Building Code applicable to Miami-Dade County, issuance of a temporary certificate of occupancy permits a developer to allow tenants to move into and occupy a building; that is, the building is effectively "completed" since occupancy is permitted.

15. Petitioner met the threshold requirement of developer experience by virtue of completing two affordable housing developments under the affordable housing program of tax exempt bonds and 4% tax credits, Ward Tower and Longwood Vista.

CONCLUSIONS OF LAW

1. Pursuant to Sections 120.569 and 120.57(2), Fla. Stat. and Rule 67-48.005, Fla. Admin. Code, the Hearing Officer has jurisdiction over the parties to this proceeding.

2. Pursuant to Sec. 420.507(22)(f), Fla. Stat., Florida Housing is authorized to institute a competitive application process, and has done so in accordance with R. 67-48.004, Fla. Admin. Code.

3. Florida Housing's application form and instructions are adopted as Form UA1016 (Rev. 2-05), Rule 67-48.004(1)(a), Fla. Admin. Code.

4. The Petitioner submitted an application for the 2005 Universal Application Cycle to Florida Housing in which it sought an allocation of tax credits under the Low-Income housing Tax Credit (HC) program in the 2005 Universal Cycle.

5. The Application requires, through the Instructions to Part II., Section B., Subsection 1.c., requires that Applicant's developer must demonstrate experience in the completion of at least two affordable rental housing developments by providing, "behind a tab labeled 'Exhibit 11,' a "Prior Experience Chart," (Exhibit "8") for a developer to demonstrate that it has the requisite experience in having completed two affordable housing developments.

6. The issue in this proceeding is whether the developer, MDHA Development Corporation had completed the Ward Tower Project. The temporary certificate of occupancy is the functional equivalent of the certificate of occupancy required by Exhibit 11. (Exhibit "7"),

6. Petitioner has complied with the instructions and provided evidence, through its "Prior Experience Chart," and in its "cure documentation," that the developer (MDHA Development Corporation) has the necessary and relevant developer experience and that the threshold requirement of developer experience has been met.

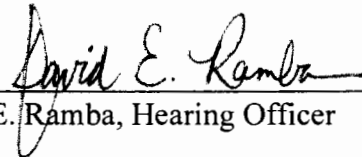
RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law stated above, it is hereby RECOMMENDED that Florida Housing enter a Final Order that:

1. Petitioner has satisfactorily demonstrated that its Developer has prior developer experience sufficient to satisfy, and thus has satisfied, the Application's threshold requirements of Part II., Section B., Subsection 1.c., of the 2005 Universal Application.

2. Petitioner's Application should be scored as having 66 total points and 7.50 proximity tie-breaker points, and having satisfied all threshold requirements.

Respectfully submitted this 2nd day of August, 2005.



David E. Ramba, Hearing Officer

Copies furnished to:

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