

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

ST. MARTINS PL, LTD.,

Petitioner,

v.

FHFC Case No.: 2012-034UC
Application No. 2011-069CH

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation (“Board”) for consideration and final agency action on December 7, 2012. The matter for consideration before this Board is a recommended order pursuant to Section 120.57(2), Florida Statutes, and Rule 67-48.005(5), Florida Administrative Code.

After a review of the record and otherwise being fully advised in these proceedings, this Board finds:

St. Martins PL, Ltd., (“Petitioner”) timely submitted an application in the 2011 Universal Cycle seeking an allocation of low income housing tax credits and HOME Program funding to help fund its proposed development. Petitioner was notified by Respondent, Florida Housing Finance Corporation (“Florida Housing”) of its final ranking on or about June 8, 2012.

Petitioner was not funded and another Application, No. 2011-064CH (“Amistad”) was funded instead, as Florida Housing deemed the St. Martins Application ineligible and funded Amistad to meet the HOME Program requirement to fund a Community Housing Development Organization (CHDO) Applicant. Florida Housing determined that the St. Martins Application was ineligible as an Affiliate of two other Applicant entities that were at the time the subject of an Administrative Complaint brought by Florida Housing alleging material misrepresentation during the 2011 Universal Cycle, and therefore ineligible as inconsistent with the purposes of the HOME Program, pursuant to Rule 67-48.004(13), Fla. Admin. Code.

Petitioner timely filed a Petition for Administrative Hearing under Sections 120.569 and 120.57(2), Florida Statutes, challenging Florida Housing’s final ranking of its 2011 Universal Cycle Application and the decision by Florida Housing to declare its Application ineligible for the reasons stated above.

Florida Housing reviewed the Petition pursuant to Section 120.569(2)(c), Florida Statutes, and determined that the Petition did not raise disputed issues of material fact. An informal hearing was held in this case on September 5, 2012, in Tallahassee, Florida, before Florida Housing’s designated Hearing Officer, Diane D. Tremor. Following the hearing, Petitioner and Respondent timely filed Proposed Recommended Orders.

After consideration of the evidence and arguments presented at hearing, and the Proposed Recommended Orders, the Hearing Officer issued a Recommended Order. A true and correct copy of the Recommended Order as filed on October 25, 2012 is attached hereto as "Exhibit A." The Hearing Officer recommended Florida Housing enter a Final Order finding that it erred in declaring the St. Martins Application ineligible and otherwise erred in funding the Amistad Application in its place, and finding that Petitioner is eligible for low income housing tax credits from the next available allocation.

On October 30, 2012 and pursuant to Rule 67-48.005(6), Fla. Admin. Code Petitioner timely filed Written Argument regarding the Recommended Order, asserting that the Recommended Order inadvertently omitted a recommendation regarding Petitioner's request for HOME Program funding. Florida Housing agrees with this Written Argument.

RULING ON THE RECOMMENDED ORDER

The Board finds that the findings of fact and the conclusions of law of the Recommended Order are reasonable and appropriate under the circumstances.

ORDER

In accordance with the foregoing, it is hereby found and ordered:

1. The findings of fact of the Recommended Order are adopted as Florida Housing's findings of fact and incorporated by reference as though fully set forth in this Order.

2. The conclusions of law of the Recommended Order are adopted as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Order.

3. Petitioner's Written Argument regarding the inclusion of HOME Program funding in the final recommendation of the Recommended Order is accepted and adopted by the Board.

Accordingly, it is found and **ORDERED** that Florida Housing's final ranking and disqualification of the Petitioner's Application were in error, and that Petitioner is eligible for low income housing tax credits from the next available allocation as well as an allocation of HOME Program funding. The Petition is **AFFIRMED**.

DONE and ORDERED this 7th day of December, 2012.



FLORIDA HOUSING FINANCE
CORPORATION

By: _____
Chair

Copies to:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN LUTHER KING, JR., BLVD., TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

ST. MARTINS PL, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

FHFC Case No. 2012-034UC
Application No. 2011-069CH

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice and Sections 120.569 and 120.57(2), Florida Statutes, the Florida Housing Finance Corporation, by its duly designated Hearing Officer, Diane D. Tremor, held an informal hearing in the above captioned proceeding in Tallahassee, Florida on September 5, 2012.

APPEARANCES

For Petitioner:

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For Respondent:

Hugh R. Brown
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STATEMENT OF THE ISSUES

There are no disputed issues of material fact. The issue for determination in this proceeding, as more particularly described below, is whether Florida Housing properly awarded funding to Application Number 2011-064CH (“Amistad”) instead of Petitioner’s Application Number 2011-069CH (“St. Martins Place”).

PRELIMINARY STATEMENT

At the informal hearing, the parties stipulated to the admission into evidence of Joint Exhibits 1 through 17. Respondent’s Exhibit 5 was also received into evidence. The parties entered into a Joint Stipulation of Facts and Exhibits. That document basically describes the application process and the circumstances regarding the scoring of Petitioner’s application and other applications with regard to the issues in dispute. The Joint Stipulation of Facts and Exhibits is attached to this Recommended Order as Attachment A, and the facts recited therein are incorporated in this Recommended Order.

Subsequent to the hearing, the parties timely submitted their Proposed Recommended Orders, which have been fully considered by the undersigned.

FINDINGS OF FACT

Based upon the undisputed facts and documents received into evidence at the hearing, the following relevant facts are found:

1. Florida Housing's 2011 Universal Application Instructions, adopted as a Rule pursuant to Rule 67-48.004(1), Florida Administrative Code, contain Ranking and Selection Criteria. The Application Instructions establish a series of Tie-Breakers to be used in the ranking of Applicants. As pertinent to the issues in this proceeding, the first Tie-Breaker is a leveraging analysis wherein Applicants are classified as Group A or Group B, with Group A Applicants receiving preference over Group B Applicants for funding. The second Tie-Breaker is the number of points awarded for an Applicant's Ability to Proceed. The maximum score available is 6.0, which reflects an Applicant demonstrating in its Application and Exhibits as initially submitted the existence of site plan or plat approval, appropriate zoning and the availability of electricity, water, sewer and roads. The third Tie-Breaker category involves the proximity of the proposed development to services needed by residents (such as transit services, grocery stores, public schools, medical facilities, senior centers, public parks, community centers and public libraries), and the distance of the proposed project from other Florida Housing-financed developments serving the same demographic group. The maximum Proximity Tie-Breaker Score available is 37.0 points. (Attachment A, Joint Exhibit 5)

2. The Petitioner, St. Martins Place, along with five other applicants, applied for funding as Homeless developments. Only three of those Applicants,

Petitioner, Amistad (Application No. 2011-064CH) and Sugar Mill Woods (Application No. 2011-134CH), ultimately met threshold requirements. All three of these Applicants received the maximum application score of 79 points. Petitioner and Amistad received the maximum 6.0 Ability to Proceed Tie-Breaker points, and Sugar Mill Woods received 5.5 Ability to Proceed Tie-Breaker points. Petitioner received 35.50 Proximity Tie-Breaker points and Amistad received 35.25 Proximity Tie Breaker Points out of an available 37.0 points. (Attachment A) Thus, Petitioner was the highest scoring Applicant in the Homeless development category. The initial “final” scoring summaries were released by Florida Housing on or about March 27, 2012.

3. On April 5, 2012, Florida Housing’s Director of Multifamily Programs, Kevin Tatreau, sent a letter to St. Martins Place extending it an invitation to credit underwriting, “with the understanding” that acceptance of the invitation was at St. Martins’ own risk. (Joint Exhibit 15) As instructed in the letter, St. Martins entered credit underwriting, and paid the credit underwriting fee of \$16,374.00, the preliminary recommendation letter fee of \$1,452.00, and the “Third Party Fee-Deposit” of \$15,0000 to the assigned credit underwriter on April 13, 2012. (Attachment A, Paragraph 13)

4. As noted above, Petitioner’s application met all of Florida Housing’s threshold application requirements, received the maximum application score of 79

points, the maximum “ability-to-proceed” tie-breaker score of 6.0 points, and a “proximity” tie-breaker score of 33.5 points out of a possible score of 37. The final rankings released on June 8, 2012, however, did not result in an award of tax credits to Petitioner. The June 8, 2012 final rankings identify Amistad as the Homeless Applicant to receive funding and ranked Petitioner’s Application as “ineligible.” This document reflects the same scorings of the Amistad Application and Petitioner’s Application as the initial “final” scoring on March 27, 2012, with Petitioner receiving the highest score by 0.25 points. (Joint Exhibit 1)

5. It is Florida Housing’s position that Petitioner, St. Martins Place, was deemed “ineligible” for funding because Petitioner is an affiliate of other entities against which an Administrative Complaint had been filed on the day before final rankings were determined. Moreover, Florida Housing takes the position that the lower-scoring Amistad was selected for funding, instead of Petitioner, because Amistad involved a Community Housing Development Organization (“CHDO”), and that Florida Housing was required to use at least 15% of its HOME allocation to fund a development involving a CHDO.

Ineligibility of Petitioner

6. On June 7, 2012, the day before the final ranking of all Applications, Florida Housing served an Administrative Complaint on certain persons and entities alleging fraud or material misrepresentation in preparing and submitting

four different Applications in the 2011 Universal Application Cycle. The Administrative Complaint did not name as Respondents either St. Martins PL, Ltd (the Applicant for St. Martins Place) or St. Martins Place Developers, LLC (the Developer for St. Martins Place). An Amended Administrative Complaint naming the same Respondents was served on June 26, 2012, and again, that Complaint did not name St. Martins PL, Ltd., or St. Martins Place Developers. (Attachment A) It is not disputed that Petitioner is an affiliate of one or more of the Respondents named in the Administrative Complaints.

7. On July 17, 2012, the Respondents named in the Amended Administrative Complaint filed a Request for Hearing, stating that they disputed material facts in twenty designated paragraphs of the Amended Administrative Complaint, and requesting a formal proceeding before the Division of Administrative Hearings. The proceeding remains pending before the Division of Administrative Hearings. (Attachment A)

8. There has been no suggestion in the instant proceeding that Petitioner itself was guilty of fraud or material misrepresentation in preparing and submitting its own Application in the 2011 Universal Application Cycle.

Amistad's CHDO Status

9. A co-developer of Amistad (Carrfour Supportive Housing, Inc.) was recertified as a CHDO by letter from Florida Housing dated June 17, 2011. The

certification contained in that letter expired May 31, 2012. (Joint Exhibit 13) That organization was recertified by Florida Housing by letter dated July 31, 2012, which notes that the certification will expire May 31, 2013. (Joint Exhibit 14) Thus, Amistad's application involved a certified CHDO as of the Application Deadline date of December 6, 2011, but not as of the date of the final ranking, June 8, 2012.

10. Florida Housing's Rule 67-48.014(2), Florida Administrative Code, provides that Florida Housing "shall utilize at least 15 percent of the HOME allocation for CHDOs pursuant to 24 CFR Part 92." (Joint Exhibit 7) The corresponding federal legislation at 24 CFR, Section 92.300(a)(1), provides that "the participating jurisdiction must reserve not less than 15 percent of the HOME allocation for investment only in housing to be developed, sponsored, or owned by community housing development organizations." (Respondent's Exhibit 5)

11. A Notice or guidance document relied upon by Florida Housing and published by the U. S. Department of Housing and Urban Development (HUD), which has the authority to deobligate funds awarded to a Participating Jurisdiction (such as Florida), states that the 15% CHDO reservation requirement is measured on a cumulative basis, and that "[c]onsequently, a PJ [Participating Jurisdiction] does not have to satisfy the 15% CHDO requirement with each grant year's funds, but can over-reserve in one year and under-reserve in another as long as the 15%

CHDO reservation requirement is satisfied over the total period of the requirement.” (Joint Exhibit 16, at page 7, paragraph 4) Another section of that document states that compliance with the CHDO reservation requirement is based on the PJ’s “cumulative reservation to CHDOs from program inception through its reservation deadline.” (Joint Exhibit 16, page 7, paragraph 2) “Program inception” means the year 1992, according to the Florida Housing Program Administrator responsible for the HOME program. (Joint Exhibit 11, pages 48-49)

12. From 1992 through 2011, Florida Housing was authorized by HUD to disburse \$397 million in HOME funds. During that period of time, Florida Housing had reserved over \$109 million, or 27.4% of its HOME authorization, for CHDOs, and had actually disbursed over \$107 million of the \$109 million reserved for CHDOs. (Joint Exhibit 17)

CONCLUSIONS OF LAW

Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Chapter 67-48, Florida Administrative Code, the Informal Hearing Officer has jurisdiction of the parties and the subject matter of this proceeding. Because Florida Housing determined that Petitioner was “ineligible” for funding and also because Florida Housing gave preference to Amistad on the basis that it was a CHDO, Petitioner’s substantial interests are affected and Petitioner has standing to challenge Florida

Housing's ranking decisions in this proceeding. Rule 67-48.005(5), Florida Administrative Code.

The first issue for determination in this proceeding is whether Florida Housing improperly declared Petitioner "ineligible" for funding on the basis that an Administrative Complaint had been filed against affiliates of Petitioner. If that issue is determined in Petitioner's favor, the issue is then whether Florida Housing improperly passed over the Petitioner, the highest scoring applicant, and awarded funding instead to a lower scoring applicant because it involved a CHDO.

Petitioner's Eligibility

Section 420.507(35), Florida Statutes, allows Florida Housing to preclude from further participation in any programs, for a period of up to two years, any applicant or affiliate of an applicant which has made a material misrepresentation or engaged in fraudulent actions in connection with any application. Rule 67-48.004(12), Florida Administrative Code, implements this statute and provides that if the Board determines that any Applicant or any Affiliate of an Applicant has engaged in fraudulent actions or has materially misrepresented information regarding any past or present Application or Development, the Applicant and any of the Applicant's Affiliates:

will be ineligible for funding or allocation in any program administered by the Corporation for a period of up to two (2) years, which will begin from the date the Board makes such determination. Such determination shall be either pursuant to a proceeding conducted

pursuant to Sections 120.569 and 120.57, F.S., or as a result of a finding by a court of competent jurisdiction.

That Rule allows such ineligibility to be imposed only after a determination is made “pursuant to” Chapter 120 proceedings or judicial proceedings. While administrative proceedings pursuant to Chapter 120, Florida Statutes, have been instituted against Affiliates of the Petitioner, they have not concluded and thus there has been no “determination” of any fraudulent actions or material misrepresentations on the part of any Applicant or any Affiliate of any Applicant. A declaration of “ineligibility” cannot occur until the administrative proceedings, currently pending before the Division of Administrative Hearings, have concluded. That is the clear intent of Florida Housing’s rule pertaining to ineligibility of Applicants, and it is consistent with principles of administrative procedures and due process considerations recognized in Chapter 120 of the Florida Statutes.

Florida Housing urges that it is authorized to declare Petitioner’s Application ineligible because of Rule 67-48.004(13)(a), Florida Administrative Code, which provides that Florida Housing shall reject an Application if “the Development is inconsistent with the purposes of the SAIL, HOME, or HC Program(s) or does not conform to the Application requirements specified in this rule chapter.” It then points to Section 420.5089(6), Florida Statutes, which provides that Florida Housing’s review committee must analyze certain factors, including, but not limited to: the project’s feasibility and long-term economic

viability and the demonstrated capacity of the proposed project's development team, as well as other factors determined and approved by Florida Housing's board of directors. Florida Housing argues that Petitioner has not been declared subject to the two-year "time-out" provisions of Florida Statutes, Section 420.507(35) and Rule 67-48.004(12), Florida Administrative Code, but has only been declared "ineligible" for funding within the 2011 Universal Cycle because its Development would be inconsistent with the purposes of the HOME Program under Rule 67-48.004(13), Florida Administrative Code. Florida Housing urges that the ability of Petitioner to successfully complete its proposed development is questionable **IF** its affiliates' administrative proceeding is resolved in Florida Housing's favor. Finally, Florida Housing points to Rule 67-48.0072, Florida Administrative Code, regarding Credit Underwriting procedures. That Rule requires the Credit Underwriter to consider the prior and recent performance history and financial capacity of the Applicant, Developer, any Financial Beneficiary of the Applicant or Developer and the General Contractor in connection with any other affordable housing development. Florida Housing asserts that recommending funding to a Development that may not be feasible for legal reasons and to an Applicant that is **potentially** subject to a two-year ineligibility period would be irresponsible and wasteful, "where other Applicants not laden with such circumstances could make more immediate use of the funds to meet Florida Housing's statutory goals."

Florida Housing argues that its declaration of Petitioner's "ineligibility" constituted a reasonable application of its rules and statutes when there are concurrent affiliate Applications awaiting the outcome of a proceeding brought against them for alleged misrepresentations in separate Applications.

Florida Housing's sole reliance upon Rule 67-48.004(13)(a), Florida Administrative Code, as the basis for declaring Petitioner "ineligible" for funding is neither reasonable nor justified. That rule, in pertinent part, allows Florida Housing to "reject" an Application only if the "Development" is inconsistent with the purposes of the HOME Program or does not conform to the "Application" requirements of Florida Housing's rules. Petitioner's affiliation with other entities or individuals who have merely been charged with allegations of fraud or misrepresentation in connection with their own Applications does not mean that Petitioner's Application or Development is inconsistent with the Home Program or is otherwise deficient with regard to rule requirements. In the first place, there has been no determination or other evidence in this record from which to conclude that any material misrepresentation or fraud occurred by any person or entity. Such issues are being heard in a separate proceeding in a different forum. Florida Housing has a separate rule (Rule 67-48.004(12)) which directly addresses fraud and material misrepresentation in applications, and that rule requires that a declaration of "ineligibility" occur only after administrative or judicial proceedings

have been concluded (not merely instituted). That specific rule controls over the more general rule regarding the rejection of applications based on “inconsistency” with Florida Housing’s Programs or nonconformance with application requirements. Ortiz v. Department of Health, Board of Medicine, 882 So.2d 402 (Fla. 4th DCA 2004). Since a more specific rule addresses the consequences of fraud and misrepresentation, it is inappropriate to apply the more general rule on “inconsistency” and nonconformance with application requirements. This is particularly true here where Petitioner’s Application was deemed to meet threshold requirements, received the maximum number of Application points, the maximum number of “Ability to Proceed” points, and was the highest scoring Applicant with regard to the “Proximity” tie-breaker. There is simply nothing in this record which demonstrates that Petitioner’s Development is inconsistent with the HOME Program or that its Application fails to meet Florida Housing’s rules. Moreover, there has been no determination that Petitioner’s affiliates are guilty of fraud or misrepresentation in their own Applications so as to permit a declaration of Petitioner’s ineligibility to participate in the 2011 Universal Cycle.

CHDO Considerations

Section 420.5089, Florida Statutes, specifically applies to Florida Housing’s HOME Program, and requires Florida Housing to make loans available “on the basis of the selection process established and described by corporation program

rules.” (Section 420.5089(2)) These rules include the selection and ranking process set forth in the Universal Application Instructions, which establishes a series of Tie-Breakers to be used in ranking Applicants. (Joint Exhibit 5) By specifying the ranking criteria by which Homeless Applicants would be considered, Florida Housing should not have imposed other criteria, such as CHDO status. The selection process established by Florida Housing for the 2011 Universal Cycle does not include CHDO status as a ranking or selection criterion. While Section 420.5089(6), Florida Statutes, does allow a consideration of “other factors determined and approved by the corporation’s board of directors,” there was no demonstration that any instruction was given by the Board to elevate Amistad based on its CHDO involvement. Indeed, the evidence demonstrates otherwise. (Joint Exhibit 10, page 49)

Florida Housing is bound by its clear rules regarding the selection and ranking process, as set forth in its Application Instructions. Applicants are entitled to rely upon and compete for funding on the basis of those clear rules which govern the competitive application process. Had Florida Housing disclosed its intent to give CHDO status a preference over higher-scored applicants, Petitioner would have had the option of establishing or locating a CHDO with whom to partner. Florida Housing did not disclose such an intent, and Petitioner was

entitled to rely upon the unambiguous selection and ranking criteria set forth in the Application Instructions.


Even if Florida Housing were constrained to apply the 15% CHDO requirement set forth in Rule 67-48.012(2), Florida Administrative Code, it has misinterpreted that rule. That rule is silent as to whether the 15% requirement is to be applied on an annual basis, a per Cycle basis or a cumulative basis beginning with the program inception year of 1992. However, the rule is patterned after and is dependent upon the federal regulations involving CHDOs. Its purpose is obviously meant to prevent any deobligation of federal funding. Thus, it is appropriate and reasonable for Florida Housing to interpret the 15% requirement in the same manner as its interpretation by HUD, the federal agency responsible for administering such funds. The evidence is clear that HUD interprets and imposes the 15% requirement on a cumulative basis since 1992. Since Florida Housing has far exceeded the 15% CHDO requirement since the year 1992, it was not required to apply it in the 2011 Universal Application Cycle to the exclusion of its promulgated scoring and ranking criteria. Should Florida Housing determine that it desires, as a policy matter, to meet the 15% CHDO goal in each and every Application Cycle in the future, it must notify Applicants of that policy through rulemaking prior to Application Deadline dates. A reading of Florida Housing's current rule on the subject does not reveal such an intent.

The undersigned has considered Petitioner's arguments with regard to its invitation to Credit Underwriting after final scores were sent to Applicants but before final rankings were generated, as well as Amistad's CHDO status as of the date of final rankings. It is concluded that these arguments, standing by themselves, do not support a finding that Florida Housing erred in its ranking of the Amistad Application. Rather, as explained above, the errors occurred in the declaration of Petitioner as "ineligible" and in the interpretation and application by Florida Housing of the 15% CHDO requirement.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law recited herein, it is RECOMMENDED that a Final Order be entered awarding Petitioner, St. Martins PL., Ltd., its requested tax credit funding from the next available allocation.

Respectfully submitted this 25th day of October, 2012.


DIANE D. TREMOR
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NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

In accordance with Rule 67-48.005(6), Florida Administrative Code, Applicants 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, excluding the caption and certificate of service. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, no later than 5:00 p.m. five (5) calendar days from the date of issuance of the Recommended Order. 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.

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PREHEARING STIPULATION

Petitioner, St. Martins PL, Ltd., (“Petitioner”), and Respondent, Florida Housing Finance Corporation (“Florida Housing”), by and through undersigned counsel, submit this Prehearing Stipulation for purposes of expediting the informal hearing scheduled for September 5, 2012, in Tallahassee, Florida, and agree to the findings of fact and to the admission of the exhibits described below.

THE PARTIES

Petitioner is St. Martins PL, Ltd. whose business address is 150 SE 2nd Avenue, Suite 1302, Miami, Florida 33131 and is in the business of providing affordable rental housing units in the State of Florida.

Florida Housing is a public corporation, with its address at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32310, organized to provide and promote the public welfare by administering the governmental function of financing and refinancing housing and related facilities in the State of Florida. Section 420.504, Fla. Stat.

Attachment A

STIPULATED FACTS

The Parties stipulate to the following Findings of Fact:

BACKGROUND

1. Florida Housing administers various affordable housing programs including the following:

(a) Housing Credit (HC) Program pursuant to Section 42 of the Internal Revenue Code and Section 420.5099, F.S., under which Florida Housing is designated as the Housing Credit agency for the state of Florida within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code, and Rule Chapter 67-48, F.A.C.; and

(b) HOME Investments Partnerships (HOME) Program pursuant to Section 420.5089, F.S., and Rule Chapter 67-48, F.A.C.

2. The 2011 Universal Cycle Application, through which affordable housing developers apply for funding under the above-described affordable housing programs administered by Florida Housing, together with Instructions and Forms, comprise the Universal Application Package or UA1016 (Rev. 2-11) adopted and incorporated by Rule 67-48.004(1)(a), F.A.C.

3. Because the demand for HC and HOME funding exceeds that which is available under the HC Program and HOME Program, respectively, qualified affordable housing developments must compete for this funding. To assess the relative merits of proposed developments, Florida Housing has established a competitive application process known as the Universal Cycle pursuant to Rule Chapter 67-48, F.A.C. Specifically, Florida Housing's application process for the 2011 Universal Cycle, as set forth in Rule 67-48.001-.005, F.A.C., involves the following:

- a. the publication and adoption by rule of a “Universal Application Package,” which applicants use to apply for funding under the HC and HOME Programs administered by Florida Housing;
- b. the completion and submission of applications by developers;
- c. Florida Housing’s preliminary scoring of applications (preliminary scoring summary);
- d. an initial round of challenges in which an applicant may take issue with Florida Housing’s scoring of another application by filing a Notice of Possible Scoring Error (“NOPSE”);
- e. Florida Housing’s consideration of the NOPSEs submitted, with notice (NOPSE scoring summary) to applicants of any resulting change in their preliminary scores;
- f. an opportunity for the applicant to submit additional materials to Florida Housing to “cure” any items for which the applicant was deemed to have failed to satisfy threshold or received less than the maximum score;
- g. a second round of challenges whereby an applicant may raise scoring issues arising from another applicant’s cure materials by filing a Notice of Alleged Deficiency (“NOAD”);
- h. Florida Housing’s consideration of the NOADs submitted, with notice (final scoring summary) to applicants of any resulting change in their scores;
- i. an opportunity for applicants to challenge, by informal or formal administrative proceedings, Florida Housing’s evaluation of any item in their own application for which the applicant was deemed to have failed to satisfy threshold or received less than the maximum score;
- j. final scores, ranking of applications, and award of funding to successful applicants, including those who successfully appeal the adverse scoring of their application; and
- k. an opportunity for applicants to challenge, by informal or formal administrative proceedings, Florida Housing’s final scoring and ranking of competing applications where such scoring and ranking resulted in a denial of Florida Housing funding to the challenging applicant.¹

¹ This proceeding is the subject of such a challenge.

4. At the completion of (a) through (j) of this process, a Final Score is assigned to each Application. Based on these Final Score, and a series of Tie Breakers, Applications are then ranked. Funds are awarded to applicants starting with applicable preferences and set asides and the highest scoring applicants, until the available funds are exhausted. Applicants compete for funds against other applicants in large part based upon tie-breaker points and limitations to the number of units to be funded in each county.

5. Applicants in the Universal Application Cycle are scored on the various components of their applications, such as development features and amenities, greater numbers of units set aside, resident programs, and local government support. The maximum score that can be assigned to a Universal Application is 79 points. Applicants must meet certain threshold requirements in order to be even potentially eligible to receive FHFC financing.

6. Florida Housing has established a series of Tie-Breakers to be used in ranking Applicants. The Tie-Breakers and the sequence in which they are employed are set forth in the Universal Application Instructions.

7. The first Tie-Breaker is a leveraging analysis, which divides Applicants into two groups, A and B, based on the total Corporation funding per set-aside unit sought by each Application. The Corporation funding amount sought is adjusted for Applicants meeting certain criteria. Generally, Applicants whose adjusted funding request amount per set-aside unit is in the lowest 80% of requests are classified as Group A, and Applicants whose funding request amount per set-aside is in the highest 20% are classified as Group B. Group A Applications receive preference over Group B Applications for funding.

8. The second Tie-Breaker is the number of points awarded to an Applicant for its Ability to Proceed. The maximum score available for Ability to Proceed is 6.0, which reflects an

Applicant demonstrating in its Application and Exhibits as initially submitted the existence of site plan approval (or plat approval) and appropriate zoning, and the availability of electricity, water, sewer, and roads.

9. The third Tie-Breaker is proximity to services needed by residents of the proposed development (such as transit services, grocery stores, public schools, medical facilities, senior centers, public parks, community centers, and public libraries); and distance from other Florida Housing-financed developments serving the same demographic group. The maximum Proximity Tie-Breaker Score available is 37.0 points.

St. Martins Place Application

10. St. Martins timely submitted its 2011 Universal Cycle application to FHFC by December 6, 2011. FHFC preliminarily reviewed and scored the 2011 Universal Application Cycle applications, including St. Martins. On or about January 19, 2012, FHFC notified all applicants of the preliminary threshold responsiveness, scoring, and tie-breaker score determinations on their applications. FHFC informed St. Martins that its application did not meet all of the required “threshold” responsiveness requirements; the threshold failure concerned identifying all of the Principals involved in the development. FHFC also informed St. Martins that its score would be 79 points, and that it would receive 6.0 “Ability to Proceed” tie-breaker points and 35.5 “Proximity” tie-breaker points.

11. Pursuant to Rule 67-48.004(6), Fla. Admin. Code, St. Martins provided additional documentation to FHFC to properly identify the Principals involved in the ownership and management structure of the Applicant, resolving the threshold failure issue.

12. On or about March 27, 2012, FHFC released “final” Universal Scoring Summaries for all applicants. FHFC’s final Universal Scoring Summary for St. Martins

rescinded the earlier-cited threshold failure relating to the identity of Principals. The final scoring summary maintained St. Martins' score of 79 points, 6.0 Ability to Proceed Tie-Breaker points, and 35.5 Proximity Tie-Breaker points.

13. On April 5, 2012, Kevin Tatreau, Florida Housing's Director of Multifamily Programs, sent a letter to St. Martins extending it an invitation to credit underwriting, "with the understanding" that acceptance of the invitation was at St. Martins' own risk. As instructed in the letter, St. Martins entered credit underwriting, and paid the credit underwriting fee of \$16,374.00, the preliminary recommendation letter fee of \$1,452.00, and the "Third Party Fee-Deposit" of \$15,000.00 to the assigned credit underwriter, First Housing Development Corporation, on April 13, 2012.

2011 Cycle Homeless Applicants

14. In the 2011 Universal Cycle, five applicants, including St. Martins, applied for funding as Homeless developments. Of those five applicants, three ultimately met all applicable threshold requirements. Those applicants were St. Martins Place, Amistad (2011-064CH), and Sugar Mill Woods (2011-134CH). All three received a score of 79 points. Neither St. Martins Place, Amistad, nor Sugar Mill Woods filed any challenges to their scores, Ability to Proceed Scores, or Proximity Tie-Breaker Scores, as reflected in their respective March 27, 2012 Scoring Summary Reports.

15. The two Homeless Applicants who did not meet all applicable threshold requirements, Lakeshore Oaks (2011-088C) and Osprey Apartments (2011-086CH), did not attempt to cure their threshold deficiencies (or any other deficiencies), and thus effectively withdrew their applications from consideration for funding.

16. Florida Housing has adopted by rule its Universal Application Instructions. The

Instructions include a section entitled Ranking and Selection Criteria for Applications Requesting Competitive HC. Both St. Martins and Amistad requested Competitive HC, as did the other three applicants for Homeless developments; in fact, Florida Housing required Applicants for Homeless developments to apply for both Competitive HC and HOME. At its meeting on June 8, 2012, the Board of Directors of Florida Housing approved “final rankings” for the invitation of applicants into credit underwriting, the next step in the Development funding process.

17. In applying the first Tie-breaker, Leveraging, to the three Homeless applicants meeting threshold, St. Martins Place, Amistad, and Sugar Mill Woods were all classified as Group A applicants, so all remained competitive and moved on to consideration of the next tie-breaker.

18. For the second tie-breaker, St. Martins Place and Amistad each received the maximum 6.0 Ability to Proceed Tie-Breaker points, and Sugar Mill Woods received 5.5 points. As their respective scores for the third Tie-Breaker, Proximity, St. Martins Place received a 35.5, and Amistad received a 35.25.

19. The final rankings released after Board action are printed on a document titled 2011 Universal Application Cycle Ranked Order, dated June 8, 2012, copy attached hereto as Exhibit “D.” The June 8 rankings, at page 2 of 8, identify as the Homeless development to receive funding Application 2011-064CH, Amistad. The final ranking identifies by “Y” (yes) and “N” (no) designations, that Amistad is an “eligible” applicant, that is was not withdrawn, and that it met threshold. The final ranking also shows Amistad’s score as 79 points, its Proximity points as 35.25, and its Ability to Proceed points as 6.

20. The final rankings list St. Martins Place in the “Ineligible Applications” section of

the Ranked Order list, on page 6 of 8. The list, again through Y and N designations, indicates that St. Martins Place is not eligible, was not withdrawn, and met threshold. It also shows St. Martins Place as having a Score of 79, a Proximity Tie-Breaker score of 35.5, and Ability to Proceed Tie-Breaker score of 6.0.

21. Florida Housing posted on its website a Final Ranking Scoring Summary Report for each applicant. For St. Martins Place, its Final Ranking Scoring Summary showed that it had a Score of 79.00, with 6.0 Ability of Proceed Tie-Breaker Points, and 35.5 Proximity Tie-Breaker Points. Florida Housing also posted a June 8, 2012, Scoring Summary Report for Amistad. This report confirmed that Amistad had a score of 79.00, 6.0 Ability to Proceed Tie-Breaker points, and 35.25 Proximity Tie-Breaker points.

Administrative Complaint Proceedings

22. On June 7, 2012, Florida Housing served an Administrative Complaint on certain persons and entities alleging fraud or material misrepresentation in preparing and submitting Applications in the 2011 Universal Application Cycle. Service was contested as to one of the Respondents, and that Respondent was subsequently re-served. The Administrative Complaint did not name as Respondents either St. Martins PL, Ltd. (the Applicant for St. Martins Place) or St. Martins Place Developers, LLC (the Developer for St. Martins Place).

23. The entities named as Respondents in the Administrative Complaint were the Applicant and Developer entities for Flagler Square, 2011-070C; Biscayne River Village II, 2011-076C; and Biscayne River Village I, 2011-077C. The individuals named as Respondents in the Administrative Complaint were Gonzalo DeRamon and Michael C. Cox.

24. On June 26, 2012, Florida Housing served an Amended Administrative Complaint on all Respondents. The Amended Administrative Complaint named the same Respondents as

the original Administrative Complaint, and did not name St. Martins PL, Ltd., or St. Martins Place Developers, LLC, as Respondents.

25. On July 17, 2012, the Respondents to the Amended Administrative Complaint filed a Request for Hearing, stating that they disputed material facts in twenty designated paragraphs of the Administrative Complaint, and requesting a formal proceeding at the Division of Administrative Hearings. As of the date of this Prehearing Stipulation, administrative proceedings have not been conducted on the Administrative Complaint or the Amended Administrative Complaint, and the case remains active.

Amistad Applicant CHDO

26. Carrfour Supportive Housing, Inc. (“Carrfour”), was designated as a “Co-Developer,” along with Pinnacle Housing Group, LLC, for Amistad Apartments, Application Number 2011-064CH. The Amistad Application did not disclose any formal structure or operating agreement for the two Co-Developers, and did not indicate that either Co-Developer served as the primary developer or managing partner of the Co-Developer arrangement.

27. The Amistad Application, at Exhibit 9, shows Carrfour as being the Sole Member of C4 Amistad, LLC, which is identified as a Co-General Partner of the Applicant entity, Amistad Apartments, Ltd. C4 Amistad, LLC has a 0.007% ownership interest in the Applicant entity. The other General Partner of the Applicant entity is PHG-Amistad, LLC, which is designated the “Managing General Partner,” and which has a 0.003% ownership interest in the Applicant. The majority ownership interest in the Applicant entity is Michael D. Wohl, with a 99.99% ownership interest, and who is identified as Initial Retiring Limited Partner.

28. Carrfour was recertified as a Community Housing Development Organization (“CHDO”) by letter from Florida Housing employee Heather Boyd to Stephanie Berman,

President/CEO of Carrfour dated June 17, 2011. The certification contained in that letter expired May 31, 2012.

29. The recertification of Carrfour as a CHDO is contained in a letter dated July 31, 2012, from Florida Housing employee Heather Boyd to Stephanie Berman, President/CEO of Carrfour. The certification contained in that letter will expire May 31, 2013.

OFFICIAL RECOGNITION OF RULES, STATUTES AND ORDERS

1. The parties request the Honorable Hearing Officer take official recognition (judicial notice) of Chapter 420, Part V, Florida Statutes, Chapter 24 CFR Part 92, Rule Chapter 67-48, Fla. Admin. Code, as well as the incorporated Universal Application Package or UA1016 (Rev. 2-11) which includes the forms and instructions.

2. The parties stipulate, subject to arguments on the grounds of relevance, to the official recognition of any Final Orders of the Florida Housing Finance Corporation and to any Rules promulgated by the Florida Housing Finance Corporation, including past and present versions of the Universal Cycle Application, Instructions, and any forms and exhibits attached thereto or incorporated by reference therein.

EXHIBITS

The parties offer the following joint exhibits into evidence and stipulate to their authenticity, admissibility and relevance in the instant proceedings, except as noted below:

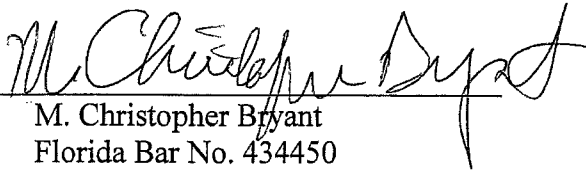
- J-1: 2011 Universal Cycle Final Rankings, dated June 8, 2012
- J-2: St. Martins PL, Application No. 2011-069CH, Final Ranking Scoring Summary, June 8, 2012
- J-3: Amistad Apartments, Application No. 2011-064CH, Final Ranking Scoring Summary, June 8, 2012


- J-4: Sugar Mill Woods, Application No. 2011-134CH, Final Ranking Scoring Summary, June 8, 2012
- J-5: Excerpt of 2011 Universal Application Instructions, Ranking and Selection Criteria, pages 109 – 114
- J-6: FHFC Rule 67-48.004(12) and (13), F.A.C.
- J-7: FHFC Rule 67-48.014(2), F.A.C.
- J-8: Section 420.507(35), Fla. Stat.
- J-9: Section 420.5089, Fla. Stat.
- J-10: Transcript of Deposition of Stephen P. Auger, taken August 14, 2012
- J-11: Transcript of Deposition of Nicole Gibson, taken August 16, 2012
- J-12: Excerpt of transcript of meeting of FHFC Board of Directors, June 8, 2012
- J-13: FHFC/Heather Boyd letter to Carrfour Supportive Housing, Inc., dated June 17, 2011
- J-14: FHFC/Heather Boyd letter to Carrfour Supportive Housing, Inc., dated July 31, 2012
- J-15: FHFC/Kevin Tatreau letter to St. Martins PL, Ltd., dated April 5, 2012
- J-16: U.S. Dept. of Housing and Urban Development Notice CPD 07-06, “Commitment, CHDO Reservation, and Expenditure Deadline Requirements for the HOME Program”
- J-17: U.S. Dept. of HUD “Status of HOME Grants; Florida,” dated 8/15/2012

Respondent offers the following additional exhibits:

- R-1: Application #2011-064CH (“Amistad”) – main body
- R-2: Exhibit 6 to Amistad Application
- R-3: Exhibit 9 and 9A to Amistad Application
- R-4: Exhibit 27 to Amistad Application (except)
- R-5: 24 CFR Part 92, Home Investments Partnerships Program.

Respectfully submitted this 5th day of September, 2012.

By: 
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