

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

WORKFORCE HOUSING
VENTURES, INC.

Petitioner,

FHFC Case No.: 2017-051BID

RFA No.: 2017-105

Application No.: 2017-259H

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

ORDER DISMISSING PETITION

1. On June 16, 2017, at 11:15 a.m., Florida Housing Finance Corporation (“Florida Housing”) published on its website the Board Approved Preliminary Awards/Notice of Intended Decision for RFA 2017-105 (“Notice of Intended Decision”), with the posting time and date noted.

2. The Notice of Intended Decision included the following:

Any unsuccessful Applicant may file a notice of protest and a formal written protest in accordance with Section 120.57(3), Fla. Stat., Rule Chapter 28-110, F.A.C., and Rule 67-60.009, F.A.C. Failure to file a protest within the time prescribed in Section 120.57(3), shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.

3. On June 20, 2017, Florida Housing received a notice of protest from Workforce Housing Ventures, Inc. (“Workforce” or “Petitioner”).

4. On July 3, 2017, Workforce filed its Formal Written Protest and Petition for Administrative Hearing.

5. Rule 67-60.009(2), Florida Administrative Code, states:

Applicants not selected for funding under any competitive solicitation issued pursuant to this rule chapter may only protest the results of the competitive solicitation process pursuant to the procedures set forth in Section 120.57(3), F.S., and Chapter 28-110, F.A.C.

6. Section 120.57(3)(b), Florida Statutes, sets forth the procedures to be followed regarding any challenge to Florida Housing's proposed action to fund or not fund applicants under RFA 2017-105. It states:

Any person who is adversely affected by the agency decision or intended decision shall file with the agency a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision. . . . **The formal written protest shall be filed within 10 days after the date the notice of protest is filed. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this chapter.** [emphasis added]

7. Notices of protest regarding RFA 2017-105 were required to be filed with the Corporation Clerk no later than 11:15 a.m. on June 21, 2017, 72 hours after posting of the notice (excluding weekends).

8. Workforce timely filed its notice of protest on June 20, 2017.

9. Ten days after the date of filing of Workforce's notice of protest is June 30, 2017.

10. Workforce filed its Formal Written Protest and Petition for Administrative Hearing (the “Petition”) on July 3, 2017.

11. On July 6, 2017, Florida Housing issued an Order to Show Cause to Workforce as to why the Corporation should not dismiss the Petition filed by Workforce as untimely.

12. On July 17, 2017, Workforce timely filed Petitioner’s Response to Order to Show Cause (“Response”).

13. In its Response, Workforce acknowledges that it failed to timely file the Petition, but states that such failure was not the result of delay but rather “due to the unprecedented, unexpected and sudden fact of how Florida Housing calculated a rule formula differently than all other previous RFA cycles which greatly affected the sorting order for awards.” *See Response ¶2.*

14. Additionally, Workforce states that:

[Workforce’s] development team not having enough time to review all materials due to this unprecedented, unexpected, sudden and subjective nature of this interpretation and did not have enough information from Florida Housing to file, and, therefore should not result in the dismissal of this Petition.

See Response ¶5.

15. Workforce further argues for Florida Housing to “refrain from dismissing” the Petition because the 10 days given by Section 120.57(3), Florida Statutes, was “unreasonable for this particular case.” *See Response ¶¶ 6 and last*

unnumbered paragraph. Workforce contends that it had just 10 days to understand the same set of facts that took Florida Housing 56 days to process Applications¹.

See Response ¶8.

16. The doctrine of equitable tolling² was developed to permit the filing of a lawsuit, under certain circumstances, that would otherwise be barred by a limitations period. *See Machules v. Dep't of Admin*, 539 So2d 1132, 1133 (Fla. 1988). In *Machules*, the Florida Supreme Court stated that “[g]enerally, the tolling doctrine has been applied when the plaintiff has been misled or lulled into inaction, has in some extraordinary way been prevented from asserting his rights, or has timely asserted his rights mistakenly in the wrong forum.”

17. Workforce has not asserted that it has been misled or lulled into inaction, that it was prevented from asserting its rights in an extraordinary way, or that it timely asserted its rights in the wrong forum. Therefore, the doctrine of equitable tolling does not apply here.

18. Section 120.569(2)(c), Florida Statutes, states: “Dismissal of a petition shall, at least once, be without prejudice to petitioner’s filing a timely

¹ In light of Workforce’s assertion that it had just 10 days to understand the facts and process, it is important to note that members of the Review Committee met at a publicly noticed meeting on June 6, 2017 to present the scores, carry out the funding selection process, and make recommendations to Florida Housing’s Board of Directors regarding RFA 2017-105. Additionally, the Board announced its decision to adopt the Review Committee’s recommendations on June 16, 2017. Therefore, Workforce’s complaint about having 10 days to under the process is misguided.

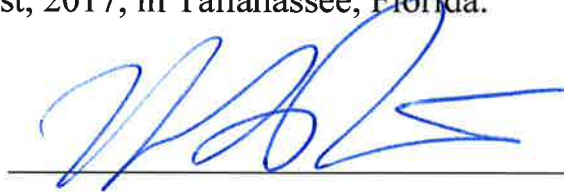
² While Workforce does not allege that the doctrine of equitable tolling applies to the instant case, it is nonetheless helpful to review the doctrine to determine the appropriate disposition for this matter.

amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured.”

19. In this case, Workforce failed to timely file a formal petition in accordance with Section 120.57(3)(b), Florida Statutes, and Florida Housing has determined that this defect cannot be cured through any amendment to the Petition.

IT IS THEREFORE ORDERED: The Petition is DISMISSED with prejudice.

Done this 1 day of August, 2017, in Tallahassee, Florida.




Harold L. Price
Executive Director
Florida Housing Finance Corporation
227 North Bronough Street, Ste. 5000
Tallahassee, Florida 32301-1329
(850) 488-4197

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 2nd day of August, 2017, by electronic mail to:

Patrick P. Sullivan, Esq.
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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.569, 120.57, AND 120.68, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.