

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FLORIDA HOUSING FINANCE
CORPORATION,

Petitioner,

FHFC Case No. 2017-029GA

v.

PINNACLE HOUSING GROUP, LLC,
PHG BUILDERS, LLC, FELIX
BRAVERMAN, DAVID O. DEUTCH,
MITCHELL M. FRIEDMAN, MICHAEL
D. WOHL, AND LOUIS WOLFSON, III,

Respondents.

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FLORIDA HOUSING
FINANCE CORPORATION

**RESPONDENTS' RESPONSE TO ADMINISTRATIVE COMPLAINT AND
REQUEST FOR FORMAL ADMINISTRATIVE HEARING PURSUANT TO
SECTIONS 120.569 AND 120.57, FLORIDA STATUTES**

Respondents, Pinnacle Housing Group, LLC, PHG Builders, LLC, Felix Braverman, David O. Deutch, Mitchell M. Friedman, Michael D. Wohl, and Louis Wolfson, III, respond to the May 1, 2017, Administrative Complaint filed by Florida Housing Finance Corporation ("Florida Housing"), and request a Formal Administrative Hearing pursuant to Sections 120.569 and 120.57, Florida Statutes. As set forth below, Respondents dispute the facts cited as a basis for the proposed sanctions sought to be imposed through the Administrative Complaint and Respondents deny that there are sufficient facts to support the imposition of any sanctions or penalties against Respondents by Florida Housing under the cited statutory and rule provisions.

Respondents request the opportunity to present evidence and arguments before an independent Administrative Law Judge from the Division of Administrative Hearings in accordance with sections 120.569 and 120.57, Florida Statutes.

Background

1. On May 1, 2017, Respondents were served with the Administrative Complaint issued by Petitioner, Florida Housing. The Administrative Complaint alleges violations of various administrative rules and seeks to preclude Respondents, along with any “Affiliates,” from participation in any program administered by Florida Housing for a period of two years from the date of issuance of a Final Order.

2. Florida Housing administers affordable housing programs including the Low Income Housing Tax Credit (“LIHTC”) Program pursuant to §42 of the Internal Revenue Code and §420.5099, Florida Statutes. Florida Housing is the designated LIHTC agency for the state of Florida. Florida Housing’s address is 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301. Florida Housing’s file number for the instant matter is FHFC Case No. 2017-029GA.

3. Respondent, Pinnacle Housing Group, LLC, (“PHG”) is a limited liability company authorized to conduct business in Florida, which engages in the development of affordable housing with funding provided through programs administered by Florida Housing.

4. Respondent, PHG Builders, LLC (“PHG Builders”), is a limited liability company authorized to conduct business in Florida. PHG Builders is a licensed general contractor that builds affordable housing developments with funding provided through programs administered by Florida Housing.

5. Respondents, Felix Braverman, David O. Deutch, Mitchell M. Friedman, Michael D. Wohl and Louis Wolfson, III are individuals who have financial interests in and development roles with entities seeking funding through programs administered by Florida Housing.

6. For purposes of this proceeding, all above-named Respondents are represented by J. Stephen Menton and Tana D. Storey of Rutledge Ecenia, P.A., 119 South Monroe Street, Suite

202, Tallahassee, Florida 32301, telephone number (850) 681-6788. Copies of all pleadings and other documents should be served via email to smenton@rutledge-ecenia.com; tana@rutledge-ecenia.com; arosenthal@carltonfields.com and ncarlos@carltonfields.com.

7. If the penalties sought to be imposed by the Administrative Complaint are adopted in a Final Order, Respondents would be substantially impacted in the pursuit of their livelihood.

8. Respondents dispute the allegations and conclusions in the Administrative Complaint, including, but not limited to, the following:

- a. The Administrative Complaint's allegation that the Developer Fees and General Contractor Fees exceeded the authorized percentage of the Development Costs pursuant to Florida Housing's Rules. Respondents assert the amount of Developer Fees and General Contract Fees did not exceed the maximum percentage of the total development costs set forth in Rule 67-48.0072(16), Florida Administrative Code.¹ In addition, Respondents contend there is no factual or legal basis for Florida Housing to aggregate payments made to DAXC, LLC ("DAXC"), a subcontractor of PHG Builders, which had a valid business purpose and performed valuable services. At all pertinent times, Florida Housing's rules did not provide for or require aggregation of payments to subcontractors who share corporate ownership and/or control with the developer and/or general contractor.

¹ Florida Housing's reference in paragraph 17 of the Administrative Complaint to Rule 67-48.004(16) is erroneous. There was and is no Rule 67-48.004(16), Florida Administrative Code.

- b. Respondents did not unlawfully “inflate” the amount of funds obtained from Florida Housing in excess of the amount necessary to complete the Developments.
- c. DAXC was not created to obtain excess Federal funds to which PHG would not have otherwise been entitled.
- d. Florida Housing’s reliance on the Deferred Prosecution Agreement (“DPA”), attached as Exhibit A to the Administrative Complaint, which is an agreement between DAXC and the United States of America is misplaced and its characterization of the DPA is inaccurate. Florida Housing misconstrues the purpose, intent and result of the DPA which cannot serve as a basis for sanctions against Respondents. The DPA is of no precedential value in this administrative proceeding.
- e. Respondents did not contravene any existing Florida Rules or statutes in effect during the operative time period.
- f. Respondents have not (i) made any material misrepresentation; (ii) engaged in fraudulent actions in connection with any application for a Florida Housing program; or (iii) contravened the requirements of Section 420.507(35), Florida Statutes, Rule 67-48.004, Florida Administrative Code, and Rule 67-48.0072, Florida Administrative Code, as alleged by Florida Housing. Respondents deny that they submitted any costs for payment to Florida Housing programs in excess of that authorized by rule.

9. The Administrative Complaint issued by Florida Housing is premised, in part, upon unpromulgated, non-rule policy, regarding subcontractual arrangements with entities that

share principals and/or ownership with the Developer and/or General Contractor. Florida Housing is precluded from applying the unadopted policies to Respondents because those policies have not been properly adopted through the rulemaking process in Chapter 120, Florida Statutes. See Section 120.57(1)(e), Fla. Stat.

10. Respondents reserve the right to amend this Request for Formal Administrative Hearing to assert any additional disputed issues of material fact that may be revealed through discovery and/or hearing preparation.

WHEREFORE, Respondents request that the Administrative Complaint be referred to an Administrative Law Judge at the Division of Administrative Hearings for the conduct of a formal administrative hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes and for the entry of Recommended and Final Orders dismissing the Administrative Complaint.

Respectfully submitted this 22nd day of May, 2017

By: /s/ J. Stephen Menton
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery to Kate Flemming, Corporation Clerk of the Florida Housing Finance Corporation, and a copy has been furnished by electronic correspondence to: Hugh Brown, Esq., General Counsel, 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301 (Hugh.Brown@floridahousing.org), this 22nd day of May, 2017.

/s/ J. Stephen Menton

Attorney