

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

CATHOLIC CHARITIES OF THE
DIOCESE OF PALM BEACH, INC.,

Petitioner,

v.

FHFC CASE NO.: 2002-0036
App No.: 2002-701H

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, on September 13, 2002, an informal administrative hearing was held in this case in Tallahassee, Florida, before for Florida Housing Finance Corporation's appointed Hearing Officer, David E. Ramba.

APPEARANCES

The representatives for the parties at the hearing are as follows:

For Petitioner:

J. Patrick Fitzgerald, Esquire
Roberto J. Diaz, Esquire
110 Merrick Way, Suite 3-B
Coral Gables, FL 33134

For Respondent:

Hugh R. Brown, Assistant General Counsel
Florida Housing Finance Corporation
227 N. Bronough Street, Ste. 5000
Tallahassee, Florida 32301-1329

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JOINT EXHIBITS

1. Prehearing Stipulation.
2. 2002 Home Rental Application Summary dated July 22, 2002.
3. Catholic Charities' HOME Rental application, submitted April 15, 2002 (excluding exhibits except as noted below).
4. Exhibit 8 to Catholic Charities' original application.
5. Revised Exhibit 8 to Catholic Charities' application, submitted during the cure period.
6. Exhibit 41 to Catholic Charities' original application.
7. Exhibit 42 to Catholic Charities' original application.
8. Exhibit 46 to Catholic Charities' original application.
9. Revised Exhibit 46 to Catholic Charities' application, submitted during the cure period.
10. Exhibit 48 to Catholic Charities' original application.
11. Revised Exhibit 48 to Catholic Charities' application, submitted during the cure period.
12. Exhibit 20 to Catholic Charities' application.
13. Revised Exhibit 20 to Catholic Charities' application, submitted during the cure period.

Petitioner desired to submit additional materials at hearing to amend their application, which were not accepted as they were not within the four corners of the application.

PRELIMINARY STATEMENT

On or before April 15, 2002, Petitioner submitted an application to Florida Housing for HOME Rental funds in the 2002 HOME Rental Cycle. On July 22, 2002,

Florida Housing notified Petitioner of the results of the scoring of Petitioner's application and provided Petitioner with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes. On August 13, 2002, Petitioner filed its Election of Rights. On August 13, 2002, Petitioner timely filed its Petition for an informal hearing. An informal hearing was conducted pursuant to Sections 120.569 and 120.57(2), Florida Statutes. There are no disputed issues of material fact.

STATEMENT OF THE ISSUE

The issue in this case is whether Florida Housing Finance Corporation ("Florida Housing") erred when it scored Petitioner's application for HOME Rental funding in the 2002 Universal Cycle program. Specifically, the issue is whether Florida Housing properly rejected Petitioner's application for failure to meet threshold requirements regarding deficiencies in the Petitioner's Articles of Incorporation, the disqualification of two (2) sources of funding and a resulting shortfall of financing sources, and a site control deficiency.

FINDINGS OF FACT

1. Petitioner, Catholic Charities of the Diocese of Palm Beach, Inc. ("Catholic Charities") is a Florida not-for-profit corporation with its principal place of business at Pastoral Center, 9995 North Military Trail, Palm Beach Gardens, Florida 33410-9650.
2. Florida Housing is a public corporation organized under Chapter 420, Florida Statutes, to provide and promote the public welfare by administering the governmental function of financing and refinancing houses and related facilities in Florida in order to

provide decent, safe and sanitary housing to persons and families of low, moderate and middle income.

3. On or before April 15, 2002, Catholic Charities submitted an Application to Florida Housing Finance Corporation (“Florida Housing”) for the award of funds from the Home Investments Partnerships Program (“HOME”) for the development of affordable rental housing in the 2002 Universal Cycle. Catholic Charities sought funding from FHFC to assist in the development of a housing project known as Villa Seton, and to be located in St. Lucie County, Florida.

4. Florida Housing receives its funds for the HOME program from an allocation from the HOME federal grant administered by the U.S. Department of Housing & Urban Development (HUD).

5. Pursuant to statutory mandate, Florida Housing has established by rule a competitive application process to evaluate, score and competitively rank all applicants. (See Section 420.5089 (2), Florida Statutes and Rule Chapter 67.48 F.A.C.) Awards for the Home Investment Partnership program are included in a single application process (the “Universal Cycle”) governed by Rule Chapter 67-48, Florida Administrative Code.

6. After Catholic Charities submitted its 2002 HOME Application, on or before April 15, 2002, Florida Housing’s staff commenced scoring the Application pursuant to Part V, Chapter 420, Florida Statutes, and Rule Chapter 67-48, Florida Administrative Code. Florida Housing completed the preliminary scoring process on May 13, 2002.

7. After performing preliminary scoring, Florida Housing's staff notified Catholic Charities of the results.

8. Any applicant could question the scoring of Catholic Charities' Application if it believed Florida Housing had made a scoring error, within ten calendar days after the date the applicant received the preliminary scores by filing a Notice of Possible Scoring Error ("NOPSE").

9. Florida Housing reviewed each NOPSE that was timely received. On June 10, 2002, Florida Housing sent Catholic Charities any NOPSE relating to its Application submitted by other applicants, Florida Housing's position on any NOPSE, and the effect the NOPSEs may have had on the applicant's score.

10. Catholic Charities could submit additional documentation, revised forms, and other information that it deemed appropriate to address any curable issue raised in any NOPSE, Florida Housing's position on each NOPSE and preliminary scoring. These documents, revised forms and other information were known as "cures" and were due on or before June 26, 2002 (the "cure period").

11. After Catholic Charities submitted its cures, all applicants had an opportunity to review Catholic Charities' cures. Any applicant could submit to Florida Housing a Notice of Alleged Deficiencies ("NOAD") to challenge Catholic Charities' cures.

12. Following this process, Florida Housing on July 22, 2002, sent Pre-Appeal Scores and a Notice of Rights to Catholic Charities, informing Catholic Charities that it

could contest Florida Housing's actions in accordance with the provisions of sections 120.569 and 120.57, Florida Statutes.

13. The Pre-Appeal scoring summary provided to Catholic Charities indicates that Florida Housing rejected the application for failure to meet threshold grounds regarding five (5) items, including: deficiencies in the Petitioner's Articles of Incorporation, the disqualification of two (2) sources of funding and a resulting shortfall of financing sources, and a site control deficiency.

14. As part of the HOME Rental application process, Catholic Charities submitted as Exhibit 8 to the application (Exhibit 4 in these proceedings) its Articles of Incorporation. The submitted Articles of Incorporation do not include a statement that one of the purposes of Catholic Charities is to foster low-income housing.

15. During the cure period, Catholic Charities submitted a Revised Exhibit 8 (Exhibit 5 in these proceedings), which included an Affidavit signed by the president of Catholic Charities stating that one of its purposes is to foster low-income housing, as well as the Bylaws of Catholic Charities. No amended or revised Articles of Incorporation were submitted.

16. Catholic Charities submitted with its original application Exhibit 46 (Exhibit 8 in these proceedings), which included a letter dated March 20, 2002, from the Kresge Foundation acknowledging receipt of Catholic Charities grant application. The letter contains no commitments to fund or evidence of an ability to fund the Catholic Charities' project.

17. During the cure period, Catholic Charities submitted a Revised Exhibit 46 (Exhibit 9 in these proceedings), which included a document from the Kresge Foundation titled "President's Statement and Year in Review." While this document includes audited financial statements of the Kresge Foundation, these audited financial statements are valid only through December 31, 2000.

18. Also included in Revised Exhibit 46 (Exhibit 9 in these proceedings) is a letter dated March 25, 2002, from the Florida Community Loan Fund. This letter states that it is a commitment to provide a pre-development bridge loan in the amount of \$500,000, and includes options to extend the offer for the loan until as late as June 25, 2002. Also, the term of acceptance may be extended further upon the payment of \$500, but no evidence of whether this fee was paid is included in Exhibit 46. The letter is not signed by the Applicant.

19. Exhibit 48 to Catholic Charities' application (Exhibit 10 in these proceedings) includes a letter dated March 28, 2002, from The Urban Group, Inc., to the U.S. Department of Housing and Urban Development (HUD). This letter requests an amendment to the Capital Advance authority, and requests that additional funds be provided to the Diocese of Palm Beach to finance the Villa Seton development. The letter contains no firm commitment to provide additional funding to Catholic Charities.

20. During the cure period, Catholic Charities submitted a Revised Exhibit 48 (Exhibit 11 in these proceedings), which included a letter and a memorandum dated June 21, 2002, both from HUD are regarding potential funding (in the form of a Capital Advance Grant) for the Catholic Charities/Villa Seton development in the amount of

\$3,734,500. The letter indicates that issuance of a firm commitment to provide these funds is conditional upon the aforementioned grant from the Kresge Foundation and upon the receipt of a waiver of the requirements of 24 CFR 891.100(d) from HUD headquarters.

21. The memorandum included with Revised Exhibit 48 (Exhibit 11 in these proceedings) constitutes the request of the regional HUD office for approval of the aforementioned waiver and approval of additional funds to be provided to Catholic Charities. The memorandum also includes a signature section designated as “Acceptance and Acknowledgement”, with a signature line for Catholic Charities. The document is not signed by Catholic Charities.

22. The disqualification of the above financing sources creates a Permanent Financing shortfall of \$1,168,689 in the Catholic Charities application.

23. Exhibit 20 to the Catholic Charities application (Exhibit 12 in these proceedings) includes a Special Warranty Deed dated February 26, 1992, and conveying ownership of the parcel on which the Catholic Charities/Villa Seton project is to be built to the Bishop of the Diocese of Palm Beach (“Bishop”).

24. During the cure period, Catholic Charities submitted a Revised Exhibit 20 (Exhibit 13 in these proceedings) which included a letter dated June 10, 2002, from J. Patrick Fitzgerald (counsel for Petitioner in this matter), advising Catholic Charities that under the legal doctrine of “corporation sole”, the current Bishop, as the successor to the Bishop named in the Special Warranty Deed described above, was also the sole corporate member of Catholic Charities.

CONCLUSIONS OF LAW

1. Pursuant to Sections 120.569 and 120.57(2), Florida Statutes and Rule 67-47, Florida Administrative Code, the Hearing Officer has jurisdiction over the parties to this proceeding.

2. Although Catholic Charities meets some of the requirements of a non-profit entity under Rule 67-48.002(83), Florida Administrative Code, they cannot be designated as such for the purposes of the HOME Rental application, as their Articles of Incorporation contain no statement that their purpose is to foster low-income housing.

3. The letter submitted by Catholic Charities in Exhibit 46 to the application (Exhibit 8 in these proceedings) does not constitute a firm commitment for financing.

4. The material submitted by Catholic Charities in Revised Exhibit 46 (Exhibit 9 in these proceedings) does not meet the above definitions and requirements. The information provided by the Kresge Foundation does include audited financial statements that may demonstrate an ability to fund, but these statements are more than fifteen (15) months old as measured from the application deadline of April 15, 2002.

5. The second letter provided with Revised Exhibit 46 to the Catholic Charities application cannot be considered a firm commitment under the adopted instructions. The instructions require all firm commitments to be signed by all parties, including acceptance by the Applicant. This letter does not contain such signatures or acceptance by Catholic Charities. Additionally, the letter provides for an extension of the

offer to at least December 31, 2002 upon the payment of \$500, but no evidence of such a payment is included in the exhibit.

6. The request for additional HUD funding, as set forth in the documents submitted with Exhibit 48 and Revised Exhibit 48 (Exhibits 10 and 11 in these proceedings, respectively) do not constitute a firm commitment. The additional funding is conditioned upon the disqualified Kresge Foundation grant, which itself is not a firm commitment, and the revised exhibit contains documents that were not signed by the Applicant, Catholic Charities.

7. The \$1,168,689 shortfall created by the disqualification of the above financing sources causes the Catholic Charities application to fail to meet threshold requirements.

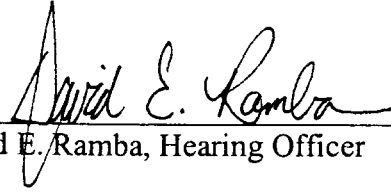
8. The documentation submitted by Catholic Charities in Exhibit 20 and Revised Exhibit 20 to the application (Exhibits 12 and 13 in these proceedings, respectively) do not meet the requirements for demonstrating site control, as the deed provided is not in the name of the applicant.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby
RECOMMENDED:

The Florida Housing Finance Corporation enter a Final Order affirming the rejection of Petitioner's application and denying the relief requested in the Petition.

DATED this 23rd day of September, 2002 in Tallahassee, Florida.

A handwritten signature in black ink, appearing to read "David E. Ramba", is written over a horizontal line.

David E. Ramba, Hearing Officer

Copies furnished:

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