

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

APD Housing Partners 19, LP,  
A Florida limited partnership

Petitioner,

v.

FHFC 2009-069UC  
Application No. 2009-215C

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FLORIDA HOUSING  
FINANCE CORPORATION

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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**RECOMMENDED ORDER**

Pursuant to notice, an informal Administrative Hearing was held in this case in Tallahassee, Florida, on January 13, 2010, before Florida Housing Finance Corporation's appointed Hearing Officer, David E. Ramba.

**Appearances**

For Petitioner:

Michael P. Donaldson  
Carlton Fields, P.A.  
215 South Monroe Street, Suite 500  
Tallahassee, Florida 32301

For Respondent:

Robert J. Pierce  
Assistant General Counsel  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, FL 32301-1329

**PRELIMINARY STATEMENT**

Pursuant to notice and Sections 120.569 and 120.57(2), Fla. Stat., Florida Housing Finance Corporation ("Florida Housing"), by its duly designated Hearing Officer, David E.

Ramba, held an informal hearing in Tallahassee, Florida, in the above-styled case on January 13, 2010.

At the informal hearing the parties filed a Joint Stipulation of Facts and Exhibits (“Joint Stipulation”). Joint Exhibits 1 through 7 were stipulated into evidence, consisting of the following documents:

- Exhibit J-1 Joint Stipulation of Facts and Exhibits
- Exhibit J-2 Preliminary Scoring Summary 9/21/2009
- Exhibit J-3 NOPSE Scoring Summary 10/22/2009
- Exhibit J-4 Final Scoring Summary 12/2/2009
- Exhibit J-5 Equity Commitment dated August 17, 2009 from Alliant Capital, Ltd., submitted as Exhibit 56 to APD 19’s original application.
- Exhibit J-6 Equity Commitment dated August 17, 2009 from Alliant Capital, Ltd., submitted by APD 19 as a cure.
- Exhibit J-7 Excerpted pages from APD 19’s original Application showing the amount of Competitive HC (annual amount) requested at Part V.A.1.

Petitioner is referred to below as “Petitioner” or “APD 19” and Respondent is referred to as “Respondent” or “Florida Housing.”

**STATEMENT OF THE ISSUE**

The issue in this case is whether Petitioner met threshold requirements relating to its housing credit equity commitment as required by Part V.D.2. of the 2009 Universal Cycle Application Instructions.

There are no disputed issues of material fact.

**WITNESSES**

No witnesses were called by either party.

## FINDINGS OF FACT

Based upon the stipulated facts agreed to by the parties and exhibits received into evidence at the hearing, the following relevant facts are found:

1. APD 19 is a Florida limited partnership with its address at 1700 Seventh Avenue, Suite 2075, Seattle, Washington 98101-1394, and is in the business of providing affordable rental housing units.

2. Florida Housing is a public corporation, 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.

3. Florida Housing administer various affordable housing programs including the Housing Credit (HC) Program pursuant to Sections 420.507 and 420.5099, Fla. Stat., and Rule Chapter 67-48, Fla. Admin Code.

4. The 2009 Universal Cycle Application, through which affordable housing developers apply for funding under various affordable housing programs administered by Florida Housing is adopted as the Universal Application Package or UA1016 (Rev. 5-09) by Rule 67-48.004(1)(a), Fla. Admin. Code, respectively, and consists of Parts I through V with instructions.

5. Because the demand for an allocation of HC funding exceeds that which is available under the HC Program, 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 Universal Cycle pursuant to Rule 67-48, Fla. Admin. Code. Specifically, Florida Housing's application process for the 2009 Universal Cycle is set forth in Rule 67-48.001-.005, Fla. Admin. Code.

6. Florida Housing's scoring and evaluation process for applications is set forth in

67-48.004, Fla. Admin. Code. Under these Rules, the applications are preliminarily scored based on factors contained in the application package and Florida Housing's rules. After the preliminary scoring, Florida Housing issues preliminary score to all applicants.

7. Following release of the preliminary score, competitors can alert Florida Housing of an alleged scoring error concerning another application by filing a written Notice of Possible Scoring Error ("NOPSE"). After Florida Housing considers issues raised in a timely filed NOPSE, it notifies the affected applicant of its decision by issuing its NOPSE scoring summary.

8. Applicants then have an opportunity to submit "additional documentation, revised pages and such other information as the Applicant deems appropriate ('cures') to address the issues" raised by preliminary or NOPSE scoring. See Rule 67-48.004(6), Fla. Admin. Code. In omissions in their applications pointed out during preliminary scoring or raised by a competitor during the NOPSE process.

9. After affected applicants submit their "cure" documentation, competitors can file a Notice of Alleged Deficiency ("NOAD") challenging the sufficiency of an applicant's cure. Following Florida Housing's consideration of the cure materials and its review of NOADS, Florida Housing issues final scores for all applicants. Rule 67-48.005, Fla. Admin. Code, establishes a procedure through which an applicant can challenge the final scoring of its application. The Notice of Rights that accompanies an applicant's final score advises an adversely affected applicant of its right to appeal Florida Housing's scoring decision.

10. APD 19 timely submitted its application for financing in Florida Housing's 2009 Universal Cycle. Pursuant to Application No. 2009-215C (the "Application"), APD 19 applied for an allocation of Housing Credits in the annual amount of \$1,993,756 (Exhibit J-7) to help



finance the construction of a 196-unit affordable housing rental complex in Miami, Florida, name Civic Tower.

11. The Universal Application at Part V.(D), asks the applicant to provide information concerning non-corporate funding commitments.

12. In its original application, APD provided a letter from an entity named Alliant which reflected an equity commitment in the project as a source of funding.

13. In its preliminary scoring of the APD's Application (*Exhibit J-2*), Florida Housing identified certain deficiencies, including the following failures with respect to the HC equity commitment letter (*Exhibit J-5*):

2T	V	D	2	HC Equity	The Applicant submitted an equity commitment from RBC Capital Markets. However, the sum of the equity installment payments does not equal the total amount of equity reflected in the commitment. As a result, the commitment is not considered a source of financing.	Preliminary
3T	V	D	2	HC Equity	Per page 74 of the 2009 Universal Application Instructions, the percentage of credits being purchased must be equal to or less than the percentage of ownership interest held by the limited partner or member. The Applicant stated at Exhibit 9 of the Application that the limited partner's interest in the Applicant entity is 99.98%. However, the equity commitment at Exhibit 55A states the 99.99% of the HC allocation is being purchased. Because of this inconsistency, the HC equity cannot be considered a source of financing.	Preliminary

14. APD timely submitted a revised equity commitment letter dated August 17,2009, from Alliant Capital, Ltd. (*Exhibit J-6*) as its cure in response to the failures noted at Items #2T and 3T of the preliminary scoring summary.

15. Florida Housing scored APD's Application and issued its final scoring summary dated December 2, 2009, (*Exhibit J-4*) in which APD was awarded maximum total points, maximum ability to proceed tie-breaker points and maximum proximity tie-breaker measurement points. However, Florida Housing concluded that APD failed to meet threshold.

16. Specifically, the threshold failures indentified by Florida Housing in its scoring summary are as follows:

11T	V	D	2	HC Equity	The Applicant submitted an equity commitment from Alliant Capital, Ltd. However, the sum of the equity installment payments does not equal the total amount of equity reflected in the commitment. As a result, the commitment is not considered a source of financing.	NOPSE
12T	V	D	2	HC Equity	The Applicant attempted to cure Item 11T by providing an equity commitment from Alliant Capital; however, the total amount of equity listed on the fourth page of the commitment does not equal the sum of the stated equity payments in the commitment letter. Therefore, the commitment was not considered a source of financing.	
13T	V	B		Construction/Rehab. Analysis	The Applicant has a construction financing shortfall of \$11,697,229.	
14T	V	B		Permanent Analysis	The Applicant has a permanent financing shortfall of \$12,960,919.	

17. APD timely filed its Petition contesting Florida Housing's scoring of its Application whereupon Florida Housing noticed the matter for an informal hearing.

### CONCLUSIONS OF LAW

1. Pursuant to Sections 120.569 and 120.57(2), Fla. Stat., and Rule Chapter 67-48, Fla. Admin. Code, the Hearing Officer has jurisdiction of the parties and the subject matter of this proceeding.

2. As requested by the parties during the informal hearing, official recognition is taken of Respondent's rules, particularly Rule Chapters 67-21 and 67-48, Fla. Admin. Code, as well as the Universal Application Package or UA1016 (Rev. 3-08), which includes the forms and instructions.

3. The Universal Application Package, or UA1016 (Rev. 3-08), which includes both its forms and instructions, is adopted as a rule. *See*, Rule 67-48.004(1)(a), Fla. Admin. Code, and Section 120.55(1)(a)4., Fla. Stat. The forms and instructions are agency statements of general applicability that implement, interpret, or prescribe law or policy or describe the procedure or

practice requirements of Florida Housing and therefore meet the definition of a “rule” found in Section 120.52, Fla. Stat. As such, the instructions and forms are themselves rules.

4. As a threshold item, an applicant in the 2009 Universal Cycle is required to provide documentation of all “non-corporation” funding commitments pursuant to Part V.D. of the Application Instructions. If the applicant fails to provide adequate documentation for this threshold item or any other threshold requirement in the application or supplemental cure materials, Florida Housing’s rules mandate that the application be rejected.

5. In the instant case, APD 19 provided a housing credit equity commitment by providing a letter dated August 17, 2009 dated August 17, 2009 from Alliant Capital, Ltd. with their application (Exhibit J-5) which was rejected at preliminary scoring because the sum of the equity installments did not equal the total amount of equity reflected in the commitment.

6. As a cure, APD 19 provided a revised housing credit equity commitment letter to Florida Housing, also dated August 17, 2009, that suffered from the same deficiencies. (Exhibit J-6).

7. Florida Housing’s rejection of the cure letter (Exhibit J-6) for the reasons stated in Item #12T of the final scoring summary resulted in the additional threshold failures for construction and permanent financing shortfalls described in Item #’s 13T and 14T of the final scoring summary. (Exhibit J-4)

8. The parties do not dispute that the sum of the equity payments stated in the cure letter do not equal the total amount of equity stated on the letter, and in fact were \$298,000 less in equity payments than in total commitment.

9. Petitioner’s arguments that this was a scrivener’s error or that the commitment was “close enough” or to be further clarified during underwriting at a future date are not



sustained as Florida Housing could not make a determination from the original letter or the cure letter, wherein both had the same deficiencies, of what the correct commitment was from Alliant Capital. Any other interpretation would require Florida Housing to operate outside the plain meaning of their rules and procedures and reconcile conflicting amounts to surmise the intent of APD 19.

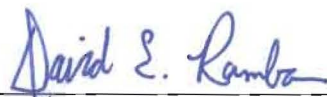
10. Florida Housing's scoring decision in the instant case is consistent with its rules, Application Instructions and prior agency determinations for similar threshold failures.

11. In the context of a competitive funding process wherein Florida Housing distributes millions of dollars of government funding, Florida Housing correctly determined that a \$298,000 inconsistency failed to meet the threshold requirements in APD 19's housing credit equity commitment letter and because of the failure of this item, left a construction and permanent financing threshold failure as well.

### RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law stated above, in is hereby RECOMMENDED that Florida Housing enter a Final Order affirming Florida Housing's scoring of Petitioner's application that APD 19 failed to meet the threshold requirements relating to its housing credit equity commitment letter, and denying the relief requested in the Petition.

Respectfully submitted this 4th day of February, 2010.



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David E. Ramba, Hearing Officer



Copies furnished to:

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