

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

HTG HERON ESTATES FAMILY, LLC,

Petitioner,

FHFC Case No.: 2018-018BP

vs.

DOAH Case No.: 18-2130BID

FLORIDA HOUSING FINANCE
CORPORATION AND OCEAN BREEZE
EAST APARTMENTS, LLC,

Respondents.

_____/

CHANNEL SIDE APARTMENTS, LTD,

Petitioner,

FHFC Case No.: 2018-024BP

vs.

DOAH Case No.: 18-2132BID

FLORIDA HOUSING FINANCE
CORPORATION AND OCEAN BREEZE
EAST APARTMENTS, LLC,

Respondents,

and

HTG HERON ESTATES FAMILY, LLC,

Intervenor.

_____ /

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation ("Board") for consideration and final agency action on July 27, 2018.

Petitioners HTG Heron Estates Family, LLC (“HTG Heron”); and Channel Side Apartments, LTD (“Channel Side”) and Intervenor Ocean Breeze East Apartments, LLC (“Ocean Breeze”) were Applicants under Request for Applications 2017-113, Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties (the “RFA”). The matter for consideration before this Board is a Recommended Order issued pursuant to §§120.57(1) and (3), Fla. Stat. and the Exceptions to the Recommended Order.

On October 6, 2017, Florida Housing Finance Corporation (“Florida Housing”) issued the RFA, which solicited applications to compete for an allocation of low income housing credit funding. On March 16, 2018, Florida Housing posted notice of its intended decision to award funding to one applicant from each of the six counties, and one additional applicant from Broward County. Respondent Ocean Breeze was selected for funding from Palm Beach County. Petitioners HTG Heron and Channel Side were deemed eligible for funding, but through the process outlined in the RFA they were ranked lower than Ocean Breeze and were not selected for funding. Petitioners timely filed their notices of intent to protest followed by formal written protests. Ocean Breeze also filed a formal written protest.

The protests were referred to the Division of Administrative Hearings (“DOAH”). A formal hearing took place on May 21, 2018, in Tallahassee, Florida,

before Administrative Law Judge Hetal Desai (the “ALJ”). Prior to this hearing, the ALJ determined that Ocean Breeze had standing as a named party, severed the protest initiated by Ocean Breeze from the remaining consolidated cases, and relinquished jurisdiction of Ocean Breeze’s petition to Florida Housing. Florida Housing entered a Final Order on July 20, 2018 dismissing Ocean Breeze’s petition.

At hearing, HTG Heron and Channel Side argued that Ocean Breeze’s application should be deemed ineligible for failure to demonstrate site control. Channel Side and Ocean Breeze argued that HTG Heron’s application should be deemed ineligible for failure to provide a correct address of the proposed development site. Ocean Breeze argued that Channel Side’s application should be deemed ineligible for failure to demonstrate site control. Florida Housing maintained its initial position that all parties’ applications were properly deemed eligible. After the hearing, all parties timely filed Proposed Recommended Orders.

After consideration of the oral and documentary evidence presented at hearing, and the entire record in the proceeding, the ALJ issued a Recommended Order on June 29, 2018. A true and correct copy of the Recommended Order is attached hereto as “Exhibit A.” The ALJ determined that Petitioners had failed to meet their burden to establish that Florida Housing’s initial determination was contrary to the terms of the RFA or was clearly erroneous, and recommended that

Florida Housing award funding to Ocean Breeze and dismiss the formal written protests of HTG Heron and Channel Side.

Florida Housing filed two Exceptions to the Recommended Order. No other party filed Exceptions, and no other party filed any response to Florida Housing's Exceptions.

Florida Housing's First Exception

Florida Housing takes Exception to Findings of Fact 26 and 48, in which the ALJ made findings concerning what would happen if an applicant selected for funding failed to garner a positive recommendation through the credit underwriting process. Florida Housing correctly points out that there is no competent substantial evidence to support these findings, and that these findings are in direct conflict with the plain and unambiguous language of the RFA. Florida Housing's First Exception is accepted, and Findings of Fact 26 and 48 in the Recommended Order are rejected and not adopted in this Final Order.

Florida Housing's Second Exception

Florida Housing takes Exception to Conclusion of Law 89, which states that "The RFA specifically provides a remedy for reassigning the funding award to the applicant next in line." This conclusion is in direct conflict with the express language of the RFA, which provides that any returned allocation "will be distributed as approved by the Board." Florida Housing has substantive jurisdiction

over this conclusion because it is clearly based on a provision in the RFA. Florida Housing's Second Exception is accepted, and Conclusion of Law 89 in the Recommended Order is rejected and not adopted in this Final Order.

Ruling on the Recommended Order

Except for Findings of Fact 26 and 48, the Findings of Fact set out in the Recommended Order are supported by competent substantial evidence.

Except for Conclusion of Law 89, the Conclusions of Law of the Recommended Order are reasonable and supported by competent substantial evidence.

In accordance with the foregoing, it is hereby **ORDERED**:

The Findings of Fact of the Recommended Order, except for Findings of Fact 26 and 48, are adopted as Florida Housing's Findings of Fact and incorporated by reference as though fully set forth in this Order. The Conclusions of Law in the Recommended Order, except for Conclusion of Law 89, are adopted as Florida Housing's Conclusions of Law and incorporated by reference as though fully set forth in this Order.

The Recommendation of the Recommended Order is adopted.

Florida Housing's scoring and ranking of RFA 2017-113 is **AFFIRMED** and the relief requested in the Petitions is **DENIED**.

DONE and ORDERED this 27th day of July, 2018.

FLORIDA HOUSING FINANCE
CORPORATION



By: _____

Chair

Copies to:

Hugh R. Brown, General Counsel
Hugh.Brown@floridahousing.org

Betty Zachem, Assistant General Counsel
Betty.Zachem@floridahousing.org

Maureen M. Daughton, Esq.
mdaughton@mmd-lawfirm.com

Michael P. Donaldson, Esq.
mdonaldson@carltonfields.com

M. Christopher Bryant, Esquire
cbryant@ohfc.com

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, 2000 DRAYTON DRIVE, TALLAHASSEE, FLORIDA 32399-0950, 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.