

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

HTG VILLAGE VIEW, LLC,

Petitioner,

FHFC Case No.: 2018-017BP

vs.

DOAH Case No.: 18-2156BID

FLORIDA HOUSING FINANCE
CORPORATION and MARQUIS
PARTNERS, LTD,

Respondents.

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation (“Board”) for consideration and final agency action on September 14, 2018. Petitioner HTG Village View, LLC (“HTG Village View”) and Respondent Marquis Partners, Ltd. (“Marquis Partners”), 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

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HOUSING FINANCE CORPORATION

Thomas R. Lamoreaux DATE: 9/17/18

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 Marquis Partners was selected for funding as one of the two applicants in Broward County. Petitioner HTG Village View was deemed eligible for funding, but through the process outlined in the RFA it was ranked lower than Marquis Partners and was not selected for funding. Petitioner timely filed its notice of intent to protest followed by a formal written protest.

The protest was referred to the Division of Administrative Hearings (“DOAH”). A formal hearing took place on June 1, 2018, in Tallahassee, Florida, before Administrative Law Judge Yolonda Y. Green (the “ALJ”).

At hearing, HTG Village View argued that Marquis Partners’ application should be deemed ineligible for failure to properly disclose all of the Principals of the Applicant. Based on information discovered during the course of litigation, Florida Housing changed its initial position that Marquis Partners was deemed eligible, and took the position at hearing that Marquis Partners should have been found ineligible for failure to disclose all Principals. Marquis Partners argued that HTG Village View did not have standing to contest the funding award to Marquis Partners because HTG Village View did not have site control at the date the formal written protest was filed. 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 July 27, 2018. A true and correct copy of the Recommended Order is attached hereto as “Exhibit A.” The ALJ determined that Petitioner met its 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 determine that Marquis Partners was ineligible for funding and award funding to HTG Village View instead.

Florida Housing and HTG Village View jointly filed one Exception to the Recommended Order. Marquis Partners filed seven Exceptions. Marquis Partners filed a Response to the joint Exception, and Florida Housing and HTG Village View jointly filed Responses to Marquis Partners’ Exceptions.

Florida Housing’s and HTG Village View’s Joint First Exception

Florida Housing and HTG Village View take Exception to Finding of Fact 48, in which the ALJ made the following finding:

48. Florida Housing evaluates omissions from the Principal Disclosure Form based on whether the inclusion of the incorrect information negatively impacts other applicants.

All parties appear to agree that this finding is, at least, grammatically incorrect, as it is clearly not possible to evaluate an “omission” based upon whether such omission includes certain information. Florida Housing and HTG Village View

recommend that the entire finding be rejected, while Marquis Partners suggests that it be substantially rewritten to reference a “minor irregularity” analysis. Based upon the evidence at hearing, Florida Housing evaluates omissions from the Principal Disclosure Form differently than it does inclusions of incorrect information in that form, and it is impossible to tell from the ALJ’s statement which type of evaluation she is referring to. Because Finding of Fact 48 is ambiguous, because the finding as written is not supported by competent substantial evidence, and because the finding as written is not relevant to the ultimate outcome of this case, HTG Village View and Florida Housing’s joint First Exception is accepted, and Finding of Fact 48 is rejected and is not adopted in this Final Order.

Marquis Partners’ Exceptions

Exception 1

Marquis Partners takes exception to Findings of Fact 39, 40, and 50. Specifically, Marquis Partners takes exception to the statement in Finding of Fact 39 that “the applicant was required to disclose the type of Principal, name of the Principal and organization [sic] structure of that Principal at each disclosure level;” to the statement in Finding of Fact 40 that “[t]he second Principal disclosure level required Marquis Partners to provide the type of Principal being associated with the corresponding first-level Principal entity and the name of the Principal;” and to the statement in Finding of Fact 50 that “Mr. Wolfe was not properly disclosed at the

second principal disclosure level as required. The RFA required that applicants disclose Principals in the Principal Disclosure Form for each type of entity.”

It is undisputed that Marquis Partners failed to list Mr. Leon Wolfe as a manager of Cornerstone Marquis, LLC at the second disclosure level on the Principal Disclosure Form. As the ALJ correctly found, the terms of the RFA, Rule 67-48.002(93), F.A.C., the Continuing Advance Review process instructions, examples, and FAQs that are referenced in the RFA, and the testimony at hearing, taken together, specifically require that each Applicant must identify all of the Principals of each Principal entity identified on the Disclosure Form, and that failure to identify all such Principals will render an application ineligible for funding. The challenged findings are supported by competent substantial evidence, are reasonable, and are consistent with prior agency practice, and for the reasons stated in the Joint Response to Exceptions, Marquis Partners’ First Exception is rejected.

Exception 2

Marquis Partners takes exception to Finding of Fact 53, specifically the finding that “the omission of Mr. Wolfe as a manager of Cornerstone Marquis is a material deviation that cannot be waived.” Marquis Partners argues that this omission should have been waived as a “minor irregularity” and that the ALJ did not make specific findings relevant to such a determination.

In Conclusions of Law 76 and 77, however, the ALJ credited testimony adduced at hearing to support her conclusion that the omission of Mr. Wolfe should not be waived as a minor irregularity. While it may be that the ALJ occasionally mischaracterized conclusions as findings and vice versa, there is nonetheless competent substantial evidence to support Finding of Fact 53, and the conclusions of the ALJ are supported by credible testimony, are reasonable, and are consistent with past agency practice. For the reasons stated in the Joint Response to Exceptions, Marquis Partners' Second Exception is rejected.

Exception 3

Marquis Partners takes exception to Findings of Fact 47 and 53 in which the ALJ found that because the information submitted by Marquis Partners in its Principal Disclosure Form was incorrect, it should not have been awarded five points for participating in the Advance Review Process. As noted above, it is undisputed that the Form incorrectly omitted Mr. Wolfe as a Principal of Cornerstone Marquis, LLC, but Marquis Partners argues that because Florida Housing did not and could not know of this error at the time it reviewed the Form, the Form was "procedurally" correct and that Marquis Partners was therefore entitled to five points even though the Form was factually incorrect. For the reasons stated in the Joint Response to Exceptions, Marquis Partners' Third Exception is rejected.

Exceptions 4 and 6

Marquis Partners takes exception to Conclusions of Law 77 and 78, in which the ALJ concluded that Marquis Partners was ineligible for funding under the RFA. For the reasons stated above and in the Joint Response to Exceptions, Marquis Partners' Fourth and Sixth Exceptions are rejected.

Exception 5

Marquis Partners takes exception to Conclusions of Law 59, 60, and 61, in which the ALJ concluded that HTG Village View had standing to contest the preliminary award to Marquis Partners. Section 120.57(1)(l), Florida Statutes, provides that an agency in its final order "may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction." Questions of standing involve interpretations and applications of law over which Florida Housing does not have substantive jurisdiction. While the arguments presented in the Joint Response to Exceptions are persuasive, it is not appropriate for Florida Housing to review the ALJ's ruling on this question. Marquis Partners' Fifth Exception is rejected.

Exception 7

Marquis Partners takes exception to the Recommendation in the Recommended Order. For the reasons stated above, Marquis Partners' Seventh Exception is rejected.

Ruling on the Recommended Order

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

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 Finding of Fact 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 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 preliminary award of funding to Marquis Partners is rescinded, the relief requested in the Petition is granted, and HTG Village View shall be awarded funding under RFA 2017-113.

DONE and ORDERED this 14th day of September, 2018.

FLORIDA HOUSING FINANCE
CORPORATION



By: 
Chair

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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.