

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

RENAISSANCE POINTE
APARTMENTS, LLC,

Petitioner,

FHFC Case No.: 2018-055BP
DOAH Case No.: 18-3806BID

v.

FLORIDA HOUSING FINANCE
CORPORATION AND MIDTOWN
LOFTS, LTD.,

Respondents,

and

HTG RAINBOW, 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 September 14, 2018. Petitioner Renaissance Pointe Apartments, LLC (“Renaissance”), Respondent Midtown Lofts, Ltd., (“Midtown”), and Intervenor HTG Rainbow, LLC (“IITG”) were applicants under Request for Applications 2018-102, Housing Credit Financing to Provide Affordable Multifamily Rental Housing that is a Part of Local Revitalization Initiatives (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 January 23, 2018, Florida Housing Finance Corporation (“Florida Housing”) issued the RFA, which solicited applications to compete for an allocation of low income housing credit funding. Midtown was preliminarily selected for funding as the highest ranked application with 100 points. Renaissance, the next highest ranked application with 99 points, was not selected for funding because the requested allocation amount exceeded the allocation amount remaining after funding Midtown’s application. HTG was selected for funding as the next highest ranked application with a funding request amount that could be fully funding by the remaining allocation. Renaissance timely filed its notices of intent to protest followed by a formal written protest. Because its funding request amount was higher than Midtown’s, if Renaissance were successful in its challenge to Midtown’s application it would have been selected for funding, and neither Midtown nor HTG would have been selected for funding.

The protests were referred to the Division of Administrative Hearings (“DOAH”). A formal hearing took place on August 17, 2018, in Tallahassee, Florida, before Administrative Law Judge Robert E. Meale (the “ALJ”). Midtown and HTG timely intervened and Midtown was granted party status as a respondent.

At hearing, Renaissance argued that Midtown's application should be ineligible for funding because Midtown incorrectly responded to a question regarding the occupancy status of units on its development site. Florida Housing, Midtown, and HTG argued that the error in Midtown's response to the occupancy status question was a waivable minor irregularity because it did not affect competition and it did not adversely impact Florida Housing or the public. In an effort to get this matter to the September Board meeting, all parties, including the ALJ, agreed to expedited time frames. 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 September 6, 2018. A true and correct copy of the Recommended Order is attached hereto as "Exhibit A." The ALJ determined that Renaissance failed to prove that Florida Housing's decision to waive, as a minor irregularity, Midtown's incorrect response to the occupancy status question was clearly erroneous or contrary to Florida Housing's governing statutes, rules, policies or the terms of the RFA. The ALJ recommended that Florida Housing enter a Final Order dismissing the protest of Renaissance.

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

RULINGS ON EXCEPTIONS

1. Florida Housing takes exception to Finding of Fact #13, arguing that the second, third, and fourth sentences are not based on competent substantial evidence, and are not relevant to the ultimate recommendation in the Recommended Order. A review of the record indicates that Florida Housing's argument is correct, and this exception is therefore accepted. Finding of Fact #13 is thus amended as follows:

~~13. In certain affordable housing solicitations, the disclosure of occupied dwelling units may respond to the requirement imposed by a federal or state agency, including FHFC, that the developer, at its expense, relocate certain occupants; however, the present solicitation includes no such requirement. Even in a solicitation free of such a requirement, the disclosure of occupied dwelling units is relevant because the solicitation document may contemplate that the property will be clear of occupants during construction. Here, the above quoted RFA provisions addressing occupied dwelling units clearly contemplate that the property will be clear of occupants during construction. Additionally, regardless of the provisions of the solicitation document, the disclosure of occupied dwelling units is relevant, for many projects, because holdover occupants would delay the start of construction on safety grounds. Although the justification for asking about unoccupied dwelling units is unclear, the justification for asking about occupied dwelling units is ample.~~

2. Florida Housing takes exception to Finding of Fact #15, noting a typographical error and arguing that those portions of this finding regarding what

would happen should the Credit Underwriter discover or fail to discover occupied units on the Development site are not supported by competent substantial evidence. A review of the record indicates that Florida Housing's argument is correct and this exception is therefore accepted. Finding of Fact #15 is thus amended as follows:

15. It is unlikely that the seller on a \$324,000 contract would have any difficulty in delivering sole and exclusion possession when, as is relevant here, the only impediment is two occupied dwelling units. But if the seller failed to deliver sole and exclusive ~~exclusion~~ possession of the property, the Credit Underwriter would likely have discovered the two occupied dwelling units, ~~and condition funding on the timely and appropriate relocation, at Midtown's expense, so that construction could commence timely. In the very unlikely event that the Credit Underwriter would have missed the two occupied dwelling units, as a practical matter, Midtown would have had to relocate the occupants prior to commencing construction. In sum, even ignoring the bargained-for undertaking in the agreement for purchase and sale to deliver sole and exclusive possession, there is no chance that Midtown's failure to disclose the two occupied 11 dwelling units would have allowed it to escape the relatively modest cost of relocating any occupants on the property, post-closing.~~

RULING ON THE RECOMMENDED ORDER

The Findings of Fact set out in the Recommended Order are supported by competent substantial evidence, with the exception of those portions of Findings of Fact #13 and #15 noted above.

The Conclusions of Law of the Recommended Order are reasonable and supported by competent, substantial evidence.

The Recommendation of the Recommended Order is reasonable and supported by competent, substantial evidence.

Florida Housing's Exceptions to the Recommended Order are accepted.

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

The Findings of Fact of the Recommended Order, except for Findings of Fact #13 and #15, are adopted as Florida Housing's Findings of Fact and incorporated by reference as though fully set forth in this Order.

Findings of Fact #13 and #15 are amended as noted above, and as such 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 scoring and ranking of RFA 2018-102 is **AFFIRMED** and the relief requested in the Petitions is **DENIED**.

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.