

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

THE VILLAGES MIAMI PHASE II, LTD,

Petitioner,

v.

FHFC Case No. 2016-017BP

FHFC RFA No. 2015-108

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent,

and

JASMINE HOUSING, LTD. And  
HTG PRINCETON PARK, LLC,

Intervenors.

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**ORDER DISMISSING PETITION**

On May 23, 2016, Florida Housing Finance Corporation received a Petition, pursuant to Sections 120.569 and 120.57(3), from The Villages Miami Phase II, LTD (Petitioner) challenging its proposed decisions regarding Request for Applications (RFA) 2015-108. On May 26, 2016, Florida Housing received a Motion to Dismiss from Jasmine Housing, LTD (Intervenor). This Motion alleged that Petitioner had not properly filed a Notice of Protest as required by Section 120.57(3)(b), Fla. Stat. On May 27 Respondent Florida Housing Finance Corporation served on Petitioner

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

 /PATL: 6-16-16

an Order to Show Cause why the Motion to Dismiss should not be granted. On June 3, 2016, Petitioner filed its Response to Order to Show Cause.

On May 11, 2016, a Notice of Protest from “The Villages Apts, Phase II” was received by Florida Housing. While this notice did identify the RFA number and the Application number, it did not contain the name of the Applicant, the Developer, or any other person aside from the attorney that signed it.

Section 120.57(3), Fla. Stat., sets forth the procedures to be followed regarding any challenge to Florida Housing’s proposed action to fund or not fund applicants under RFA 2015-108. It states:

(b) Any person who is adversely affected by the agency decision or intended decision shall file with the agency a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision. . . . The formal written protest shall be filed within 10 days after the date the notice of protest is filed. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this chapter.

The Villages Apts, Phase II is the name of the proposed Development that was the subject of Application 2016-257C. It is undisputed that the proposed Development is not a “person” as defined in Section 120.52(14), Fla. Stat. While The Villages Apts, Phase II did file a document entitled Notice of Protest, it did not ultimately file a formal written protest.

The Villages Miami Phase II, LTD, is the name of the Applicant that filed Application 2016-257C, and is a “person” as defined in Section 120.52(14), Fla.

Stat.<sup>1</sup> This entity did file a formal written protest, but did not first file a Notice of Protest as required by Section 120.57(3)(b), Fla. Stat.

In the case of Arbours at Ambassador Place, LLC v. Florida Housing Finance Corp., FHFC Case No. 2013-041BP (F.O. March 14, 2014), the Notice of Protest was filed by the Developer of a proposed Development rather than by the Applicant. In response to a Motion to Dismiss, the Administrative Law Judge granted that motion and issued an order closing file. This Recommended Order was adopted by Florida Housing as a Final Order. While neither Order identified the precise legal basis for the decision, it appears from the record that it was because the entity filing the Notice of Protest and the entity filing the formal Petition were not one and the same.

In the present case, not only did different entities file the Notice of Protest and formal Petition, the entity filing the Notice of Protest was not even a person as defined by statute. The Petitioner argues that this was somehow a “scrivener’s error” and that Florida Housing should ignore this discrepancy because it could be inferred from other information within the Notice of Protest which proposed agency action was going to be challenged. A typographical error, such as that involving the name of the Applicant, could be overlooked as a scrivener’s error. In this case, however,

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<sup>1</sup> The Application actually identifies the Applicant as “The Village Miami Phase II, LTD.” This is considered a scrivener’s error.

there was no typographical error to be overlooked. Allowing a non-person to file a Notice of Protest, and a different entity to file a formal Petition, would violate both the law and agency precedent.

Petitioner argues that because Florida Housing's public notices of its intended decisions identify proposed Applications that have been selected for funding, and do not specifically identify the Applicants, this somehow means that the Notice of Protest need not be submitted by a person and that the formal Petition can be submitted by a different entity. Petitioner even goes so far as to claim that "Notice which does not identify the "person" whose substantial interest are being determined is no notice at all." This argument entirely misconstrues the purpose of public notice, which is to give notice of proposed agency action to the public at large. Section 120.57(3)(a) requires an agency to "provide notice of a decision or intended decision concerning a solicitation, contract award, or exceptional purchase by electronic posting." In response to such notice, "any person who is adversely affected by the agency decision or intended decision" may challenge such decision. It is up to the readers of the notice to evaluate whether they are or may be substantially affected by the proposed agency action. There is no requirement in statute or case law that an agency must identify by name those persons who are being impacted by a proposed decision, nor could such a requirement ever be met with certainty.

The Notice of Intended Decision was published on Florida Housing's website at 11:10 a.m. on May 6, 2016. That Notice contained the following statement:

Any unsuccessful Applicant may file a notice of protest and a formal written protest in accordance with Section 120.57(3), Fla. Stat., Rule Chapter 28-110, F.A.C., and Rule 67-60.009, F.A.C. Failure to file a protest within the time prescribed in Section 120.57(3), Fla. Stat., shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.

This statement clearly put Petitioner on notice that it was Florida Housing's position that the Applicant, rather than the Developer or the Development, was the person having standing to challenge this proposed agency action. While Petitioner suggests that the Notice of Intended Decision should be read as somehow giving the Development the right to file a Notice of Protest, this reading is not supported by the plain language of the Notice.

Petitioner also cites to the Uniform Rule of Procedure 28-110.003, Fla. Admin. Code, which states:

(1) A notice of protest shall be addressed to the office that issued the solicitation or made any other decision that is intended to be protested; shall identify the solicitation by number and title or any other language that will enable the agency to identify it; and shall state that the person intends to protest the decision. If a bond is required, it shall not be filed with the notice unless otherwise required by law.

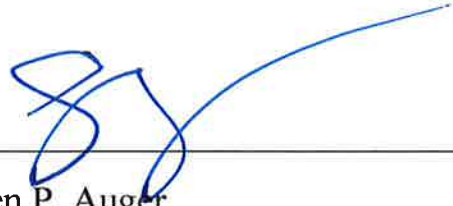
Petitioner reads this rule as somehow showing that "non-precise" notices are acceptable, since the rule does not specifically require the legal name of the party filing the notice. The rule requires that the Notice of Protest be addressed properly; that the Notice identify the solicitation; and that the Notice state that the "person"

intends to protest the decision. What the rule does not do is alter the statutory requirement that only a person can file a Notice of Protest, nor does it alter the requirement that the person filing the formal Petition be the same person that filed the Notice.

Finally, Petitioner cites to two cases for the proposition that it would be an abuse of discretion for Florida Housing to dismiss the protest without giving petitioner leave to amend. Amending the petition, however, would not cure the problem that a non-person filed the Notice of Protest, nor could such amendment conform the entity filing the Notice of Protest to the entity filing the Petition except by amending the Petition to be filed in the name of the Development. Petitioner has cited to no cases suggesting that Florida Housing has the authority to allow the Notice of Protest to be amended at this point.

Section 120.569(2)(c), Fla. Stat., states: "Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured." In this case, Petitioner failed to file a Notice of Protest in accordance with Section 120.57(3)(b), Fla. Stat., and Florida Housing has determined that this defect cannot be cured through any amendment to the Petition. For this reason, the Petition is DISMISSED with prejudice.

Done this 16<sup>th</sup> day of June, 2016.



Stephen P. Auger  
Executive Director  
Florida Housing Finance Corporation  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 16<sup>th</sup> day of June, 2016 by electronic mail to the following:

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**NOTICE OF RIGHT TO JUDICIAL REVIEW**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.569, 120.57, AND 120.68, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.**