

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

GARFIELD PLACE APARTMENTS, LTD.,

Petitioner,

v.

**FHFC CASE NO. 2002-0039
Application No. 2002-065B**

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

RECOMMENDED ORDER

Pursuant to notice and Sections 120.569 and 120.57(2), Florida Statutes, the Florida Housing Finance Corporation, by its duly designated Hearing Officer, Diane D. Tremor, held an informal hearing in Tallahassee, Florida, in the above styled case on August 29, 2002.

APPEARANCES

For Petitioner, Garfield
Place Apartments, Ltd.:

Thomas J. Settle
730 Bonnie Brae St.
Winter Park, FL 32789

For Respondent, Florida Housing
Finance Corporation:

Hugh R. Brown
Assistant General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

STATEMENT OF THE ISSUE

There are no disputed issues of material fact. The sole issue for determination is whether the Respondent, Florida Housing Finance Corporation, erred in its scoring and ultimate rejection of Petitioner's Multifamily Mortgage Revenue Bond Application for the 2002 Funding Cycle. More specifically, the issues are whether Respondent properly determined that: (1) Petitioner failed to properly complete Part III, Section D of the Application, resulting in a loss of five (5) points from Petitioner's score, and (2) that Petitioner failed to meet threshold requirements regarding financing (Part V, B, Exhibit 45, "Commitment to Defer Developer Fee"), resulting in the rejection of Petitioner's application.

PRELIMINARY STATEMENT

At the informal hearing, the parties stipulated to the admission into evidence of Exhibits 1 through 8.¹ Official recognition of the Universal Application Instructions (Form UA1016) was taken. At the commencement of the hearing, the parties filed a Prehearing Stipulation (Exhibit 1) containing a Joint Stipulation of Facts. That document basically describes the application process, and the circumstances regarding the scoring of Petitioner's application with regard to the issues in dispute. The Joint Stipulation of Facts is attached to this Recommended

¹ Exhibit 3 was improperly identified on the record as being Part V, Section D of the Application. The correct identification of that Exhibit is Part III, Section D.

Order as Exhibit 1, and the facts recited therein are incorporated in this Recommended Order.

Subsequent to the hearing, the parties timely submitted their Proposed Recommended Orders.

FINDINGS OF FACT

Based upon the undisputed facts and documents received into evidence at the hearing, the following relevant facts are found:

1. Petitioner, Garfield Place Apartments, LTD, timely submitted its Multifamily Mortgage Revenue Bond Application Number 2002-065B for the 2002 Funding Cycle.

2. The Universal Application Package contains Instructions. Part III of the Application pertains to “Development.” Section D of Part III requires the applicant to set forth its “Demographic or Area Commitment,” and the Instructions specifically state that “Applicants may select only one of the following” seven designations of commitment. The application form itself does not repeat this instruction to select only one designation. In its initial application, Petitioner checked two of the designations; to wit: “urban in-fill development” and “large family development.” As a consequence, Petitioner did not receive the five points available for either designation. Petitioner asserts that it never intended to apply under the “urban in-fill category,” since it was not seeking qualification for housing credits, but checked both

The Universal Application Instructions, which, along with the application form itself, are adopted as rules by existing Rule 67-21.002(97), Florida Administrative Code. As such, applicants, as well as the Florida Housing Finance Corporation, are bound by their terms. Moreover, Section 67-21.003(2) mandates that:

Failure to submit an Application completed in accordance with the Application instructions and these rules will result in rejection of the Application or a score less than the maximum available in accordance with the instructions in the Application and this rule chapter.

The application instructions are abundantly clear with respect to Part III, Section D, pertaining to “Demographic or Area Commitment.” They explicitly state that “Applicants may select only one of the following.” The fact that the application form did not repeat this instruction does not relieve applicants from complying with the application instructions. Indeed, the very first page of those instructions encourage applicants to review the instructions and the applicable rules before completing and submitting an application.

The application of Petitioner’s argument that the Respondent should have gleaned Petitioner’s intent to apply as a “large family development,” and thereby eliminate from Petitioner’s application the check-mark Petitioner placed next to “urban in-fill category” would be inconsistent with Rule 67-21.003(1), Florida Administrative Code, which prohibits Respondent’s staff from assisting any applicant. The materiality of Petitioner’s erroneous completion of Part III, Section D, with respect to the very competitive application process which the Respondent’s

rules require is exemplified by Rule 67-21.003(14)(i), Florida Administrative Code. That rule mandates that certain items, including “demographic or area commitment,” be included in the initial application and cannot be revised, corrected or supplemented after the application deadline. The Respondent has thus determined, by rule, that the initial submission of the demographic or area commitment designation by an applicant is essential to a fair, competitive process. This rule further requires that failure to submit these items shall result in rejection of the application without opportunity to submit additional information. The Petitioner having failed to indicate a single demographic or area commitment designation, the Respondent would have been justified, under its rules, to reject Petitioner’s application on this ground alone.

With respect to the financing documents, specifically Exhibit 45, Petitioner was afforded the opportunity to “cure” its initial omission of providing the length of time in which the developer committed to defer its developer fee. However, instead of curing Exhibit 45, the Petitioner’s revised Exhibit 45 failed to include the name of the developer, and instead inserted its own name. Thus, there was no commitment by the developer to defer its developer fee and there was no offset of a funding shortfall until the closing of permanent financing or after the closing of permanent financing. The Application instructions clearly provide that if a deferred development fee is to be utilized as a source of funding during the construction and/or permanent phases, the “Developer” must provide an executed “commitment to Defer Developer Fee” form

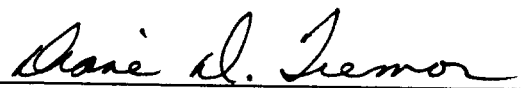
within the application. Petitioner's failure to provide such a form constitutes its failure to meet the threshold requirements of the application process.

In summary, Respondent's application of the clear and unambiguous rules to the scoring and rejection of the Petitioner's Application Number 2002-065B was neither clearly erroneous nor unreasonable. Indeed, the rules (which include the instructions and the application form) compel such a result.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law recited herein, it is RECOMMENDED that the Respondent's scoring of Petitioner's application with respect to Part III, Section D and the disqualification of Petitioner's Exhibit 45, resulting in the rejection of Petitioner's application for failure to meet threshold requirements, be upheld.

Respectfully submitted and entered this 10th day of September, 2002.



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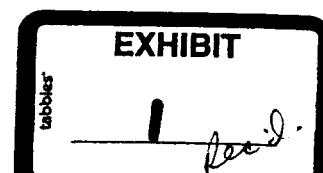
PREHEARING STIPULATION

The Parties, by and through Petitioner, *pro se*, and undersigned counsel for Respondent, submit this Prehearing Stipulation for purposes of expediting the informal hearing scheduled for 2:00pm, August 29, 2002, in Tallahassee, Florida, and state as follows:

STIPULATED FACTS

The parties have agreed to and stipulate to the following facts:

1. Petitioner, Garfield Place Apartments, Ltd. ("Garfield Place") is a Florida for-profit limited partnership with its address at 730 Bonnie Brae Street, Winter Park, Florida 32789, and is in the business of providing affordable rental housing units.
2. Respondent, Florida Housing Finance Corporation ("Florida Housing"), is a public corporation that administers governmental programs relating to the financing and refinancing of housing and related facilities in Florida, pursuant to Section 420.504, Florida Statutes.
3. The Multifamily Mortgage Revenue Bond (MMRB) program is administered by Florida Housing, and annually awards affordable housing developers low interest loans and non-



competitive tax credits for the purposes of financing the acquisition and rehabilitation of low and very low income rental housing units.

4. Pursuant to statutory mandate, Florida Housing has established by rule a competitive application process to evaluate, score and competitively rank all applicants. (See Section 420.507 (22)(f), Florida Statutes and Rule Chapter 67.48 F.A.C.) Awards for the MMRB program are included in a single application process (the “Universal Application”) governed by Rule Chapters 67-21 and 67-48, Florida Administrative Code.

5. The 2002 Universal Application and accompanying instructions are incorporated by reference into Chapter 67-21, Florida Administrative Code, by Rule 67-21.002(97), Florida Administrative Code.

6. Upon the completion of the competitive application process, Florida Housing ranks the competing applicants by score.

7. Certain parts of the Universal Application are designated as “threshold” items, which if not attained, will result in the rejection of the Application regardless of numeric score.

8. Applicants whose applications meet threshold may be deemed eligible for funding in order of rank, until all funds for the annual cycle are depleted.

9. On or before April 15, 2002, Garfield Place submitted to Florida Housing a MMRB application for the 2002 funding cycle (“Application”), to obtain below-market interest rate bonds and accompanying non-competitive housing tax credits, to aid in the financing of an apartment complex to be named Garfield Place and to be located in Deland, Florida.

10. Florida Housing scored the application in accordance with the provisions of Section 420.5087, Florida Statutes, and Fla. Admin. Code R. 67-21, and subsequently advised Garfield Place by letter that its preliminary score was 65 of a possible 71 points, but that the Application had failed to achieve “threshold”.

11. Garfield’s Place position in the rankings is predicated first on attaining “threshold”, and thereafter, its ability to be awarded funds is dependent not only on its own score, but on the relative scores of other competing applicants.

12. In Part III, section D of the Universal Application (Demographic or Area Commitment), Garfield Place selected both “Urban In-Fill Development” and “Large Family Development” out of the seven choices provided.

13. The Universal Application instructions provide that an Applicant may only select one (1) of the seven (7) options for Demographic or Area Commitment in Part III, section D of the Universal Application.

14. The Universal Application includes items designated as “incurable”, items that cannot be revised, corrected or supplemented after the application deadline of April 15, 2002.

15. Part III, section D. of the Universal Application is designated as an “incurable” item.

16. Florida Housing awarded no points to Garfield Place for Part III D. of the Universal Application in either preliminary or final scoring.

17. In its initial Application, Garfield Place submitted an exhibit (Exhibit 45) related to Part V, section B (Commitment to Defer Developer Fee), but failed to indicate the number of years of deferment.

18. Garfield Place was given an opportunity to cure the defect in Exhibit 45, and submitted a revised Exhibit 45 during the “cure period.”

19. Garfield Place’s revised Exhibit 45 incorrectly lists the name of the Applicant (“Garfield Place Apartments, Ltd.”) in the blank labeled “Developer.” The Developer for the Garfield Place project is P.A.C. Land Development Corporation.

20. As a result of the error in revised Exhibit 45, Florida Housing invalidated the exhibit, which resulted in a gap in financing, which resulted in the Application failing to achieve “threshold”, thereby resulting in the rejection of the Application.

JOINT EXHIBITS

The parties proffer the following joint exhibits:

Exhibit 1: Prehearing Stipulation.

Exhibit 2: Petition Requesting Review of Florida Housing Finance Corporation ‘s Scoring of Application No. 2002-065B Garfield Place Apartments.

Exhibit 3: Part III, section D of Garfield Place’s Application.

Exhibit 4: Page 19 of the Universal Application instructions.

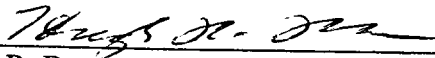
Exhibit 5: Part V, section B of Garfield Place’s initial Application.

Exhibit 6: Garfield Place’s initial Exhibit 45 to the Universal Application.

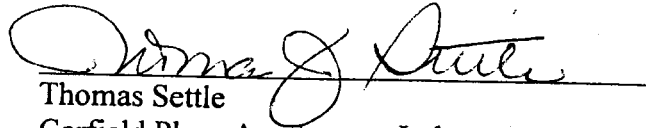
Exhibit 7: Garfield Place's Cure form for Part V, section B of the Universal Application, including the form, revised Exhibit 45 and Garfield Place's explanation of the cure (3 pages total).

Exhibit 8: Florida Housing's final 2002 Universal Scoring Summary for the Garfield Place Application (#2002-065B) dated July 22, 2002.

Respectfully submitted this 29th day of August, 2002.



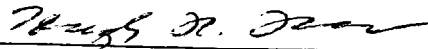
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by via regular U. S. Mail and/or hand delivery to Thomas Settle, Garfield Place Apartments, Ltd., 730 Bonnie Brae St., Winter Park, FL 3278 and to Chris Bentley and Diane Tremor, Hearing Officers, 2458 Blairstone Pines Drive, Tallahassee, FL 32301, this 29th of August, 2002.



Hugh R. Brown
Assistant General Counsel