

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

SPINAL CORD LIVING-ASSISTANCE
DEVELOPMENT, Inc. (SCLAD)

Petitioner,

vs.

FHFC CASE NO. 2007-028UC
Application No. 2007-024H

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice and Sections 120.569 and 120.57(2) of the 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 22, 2007.

APPEARANCES

For Petitioner:

Angelina P. Rodriguez, *Pro Se*
Spinal Cord Living-Assistance
Development, Inc. (SCLAD)
240 E. First Avenue-Ste. 122
Hialeah, FL 33010

For Respondent:

G. Keith Lewis
Qualified Representative
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 in this proceeding is whether Petitioner's application failed to meet threshold requirements because the amount of funding initially requested was changed during the "cure" period.

PRELIMINARY STATEMENT

Prior to the informal hearing, the Respondent, Florida Housing Finance Corporation, filed its Request for representation by a qualified representative, pursuant to Rule 28-106.106, Florida Administrative Code. That Request was approved by Order of the undersigned dated August 20, 2007.

No Prehearing Stipulation was filed in this case. At the informal hearing, Petitioner's Exhibits 1 and 2 were received into evidence, and official notice was taken of Respondent's rules. The Findings of Fact herein are based upon the Petitioner's Exhibits, the Respondent's rules, the undisputed facts contained within the Petitioner's Petition and undisputed facts presented through argument made during the informal

hearing.

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. Along with other applicants, Petitioner, SPINAL CORD LIVING-ASSISTANCE DEVELOPMENT, INC. (SCLAD), submitted its application requesting \$1,100,000.00 in HOME funds for SCLAD Plaza, an 18-unit barrier-free rental project for persons with disabilities in Hialeah, Miami-Dade County.

2. Petitioner's initial application listed first mortgage financing of \$521,009 from the Bank of America. However, the letter from that Bank states that "this letter is presented for discussion only and does not represent a financing commitment on the part of Bank of America." In its preliminary scoring, Respondent accordingly determined that the loan amount could not be counted as a source of financing. (Petitioner's Exhibit 1)

3. In accordance with the application procedure, Petitioner was given an opportunity to provide appropriate cures for the items indicated in the Preliminary scoring of its application. Petitioner was provided with a document entitled

“Instructions for Filing Cures,” which document cited to Rule 67-48.004(6), Florida Administrative Code. That rule sets forth the procedures and instructions for the submission of documentation to address and cure issues raised in prior scoring and/or by Notices of Possible Scoring Errors.

4. In its cure purporting to address its financing shortfall, Petitioner attempted to defer its \$205,000 developer fee and to increase the HOME funding amount requested by \$316,000, for a total request of \$1,416,000.

5. Rule 67-48.004(14), Florida Administrative Code, provides that certain items must be included in the application and may not be revised, corrected or supplemented after the application deadline. The same rule provides that “any attempted changes to these items will not be accepted.” Among the items listed in Rule 67-48.004(14) is: “(n) Funding Request (except for Taxable Bonds) amount.”

6. In final scoring of Petitioner’s application, Respondent found that Petitioner had failed to meet a threshold requirement due to its financing shortfall because it was not allowed to change the HOME funding amount requested.

CONCLUSIONS OF LAW

Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Chapter 67-48, Florida Administrative Code, the Hearing Officer has jurisdiction of the parties and the subject matter of this proceeding. The Petitioner’s substantial interests are

affected by the proposed action of the Respondent Corporation. Therefore, Petitioner has standing to bring this proceeding.

The prime issue in this proceeding is whether Respondent properly rejected Petitioner's attempt to cure its financing shortfall by increasing the funds requested.

The facts demonstrate that Petitioner initially requested \$1.1 million in funding, and also listed first mortgage financing of \$521,009 from Bank of America. However, the "commitment" for that loan submitted in a letter from the Bank of America stated that its letter "does not represent a financing commitment on the part of Bank of America". In an attempt to "cure" the resulting financing shortfall, Petitioner deferred its developer fee of \$205,000, and requested an increase in the HOME funding amount of \$316,000. This constitutes a clear violation of Rule 67-48.004(14)(n), Florida Administrative Code.

Rule 67-48.004(14)(n) is clear and unambiguous. It provides, in pertinent part:

(14) Notwithstanding any other provision of these Rules, there are certain items that must be included in the Application and cannot be revised, corrected, or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in the rejection of the Application without opportunity to submit additional information. **Any attempted changes to these items will not be accepted.** Those items are as follows:

...

(n) Funding Request (except for Taxable Bonds) amount; . . .

(Emphasis supplied) Accordingly, Petitioner's attempt to change its funding request from \$1,100,000 by \$316,000, for a total request of \$1,416,000 was properly rejected by Respondent.

Just as an applicant is bound to follow the rules governing the funding application process, so is the Respondent Florida Housing Finance Corporation. Agencies are required to follow their own rules. Cleveland Clinic Florida Hospital v. Agency for Health Care Administration, 679 So.2d 1237 (Fla. 1st DCA 1996).

In its presentation at the informal hearing and in its Proposed Recommended Order, Petitioner does not allege that Rule 67-48.004(n), Florida Administrative Code, is ambiguous or that Respondent erroneously interpreted that Rule. Instead, Petitioner argues that its project is meritorious and is needed in the community. It is asserted that failure to fund the project would jeopardize project funding from all other sources, increase project costs and delay the availability of affordable housing units that are desperately needed. While these assertions may provide reasons for a waiver or variance from Respondent's Rule 67-48.004(14)(n), such assertions are outside the scope of the instant proceeding which challenges the Respondent's actions in scoring Petitioner's application.¹

¹ It is the understanding of the undersigned that Petitioner has, in fact, submitted to the Respondent a Petition for Variance/Waiver from Rule 67-48.004(14)(n), and that such Petition is currently pending before the Respondent.

Petitioner argued that Rule 67-48.004(14)(n) was not cited in the Instructions for Filing Cures which Petitioner received from Respondent after its preliminary scoring, and asserts that Petitioner should not, therefore, be subject to that rule. This argument is without merit. To allow Petitioner to ignore the entirety of Rules not cited in the Instructions for Filing Cures would be to totally disregard the rules governing competitive funding applications. The Instructions furnished to Petitioner simply contain the procedural rules and documentation necessary for filing cures. They are provided to applicants as a courtesy and do not diminish, alter or excuse the strict requirements of Chapter 67-48, Florida Administrative Code. In fact, the very first paragraph of the 2007 Universal Application Instructions, which are themselves adopted as a rule (Rule 67-48.004(1)(a), F.A.C.), encourage applicants to review Chapter 67-48, and state that “[a]pplicants are responsible for ensuring that their developments meet all applicable laws and regulations.”

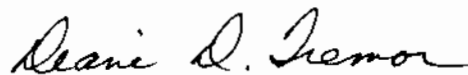
As a final matter, Petitioner’s Proposed Recommended Order seeks relief not contained within its Petition for informal proceedings or included in Petitioner’s argument offered at the informal hearing. Petitioner requests in its Proposed Recommended Order that it be permitted to again revise its funding request to the level made at the time of the application deadline (\$1.1 million); that it be permitted to provide Respondent with proof of its ability to cover the financing shortfall created

by that revision (i.e., \$316,000) within ten days of the Final Order; and that the Respondent then find that Petitioner's application meets threshold and restore its ranking in the 2007 Universal Application Funding Cycle. Such a third revision at this stage of the competitive application process is not permitted under the applicable rules which govern this proceeding, and this request must, accordingly, be denied.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law recited herein, it is RECOMMENDED that a Final Order be entered affirming the Respondent's scoring of Petitioner's application (i.e., rejecting said application for a violation of Rule 67-48.004(14)(n), F.A.C.), and denying the relief requested in the instant Petition.

Respectfully submitted this 5th day of September, 2007.



DIANE D. TREMOR
Hearing Officer for Florida Housing
Finance Corporation
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555

Copies furnished to:

Sherry M. Green, Clerk
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

G. Keith Lewis
Qualified Representative
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

Angelina P. Rodriguez, *Pro Se*
Spinal Cord Living-Assistance
Development, Inc. (SCLAD)
240 E. First Avenue-Ste. 122
Hialeah, FL 33010

NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

In accordance with Rule 67-48.005(3), Florida Administrative Code, all parties have the right to submit written arguments in response to a Recommended Order for consideration by the Board. Any written argument should be typed, double-spaced with margins no less than one (1) inch, in either Times New Roman 14-point or Courier New 12-point font, and may not exceed five (5) pages. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301-1329, no later than 5:00 p.m. on September 10, 2007. Submission by facsimile will not be accepted. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to Recommended Orders.