

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

ROYAL GROVE APARTMENTS  
DEVELOPMENT PARTNERS, LLC,

Petitioner,

v.

FHFC Case No. 2017-024BP  
FHFC RFA No. 2016-110

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent,

and

HTG LUNA, LLC,

Intervenor.

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**ORDER DISMISSING PETITION**

On April 10, 2017, Florida Housing Finance Corporation (Respondent) received a Petition, pursuant to Sections 120.569 and 120.57(3), Fla. Stat., from Royal Grove Apartments Development Partners, LLC (Petitioner) challenging its proposed decision regarding Request for Applications (RFA) 2016-110. On April 19, 2017, Florida Housing received a Motion to Dismiss from HTG Luna, LLC (Intervenor). This Motion alleged that Petitioner had not properly filed a Notice of Protest as required by Section 120.57(3)(b), Fla. Stat.

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

 /DACL: 4-24-17

On March 29, 2017, at 9:45 a.m., a Notice of Protest from Petitioner was received by Florida Housing via email (along with three other Notices of Protest from applicants that did not ultimately file formal written protests). On March 30 Respondent served on Petitioner an Order to Show Cause why the Notice of Protest should be considered to have been timely filed. On April 3 Petitioner filed a response to the Order to Show Cause via email.

Rule 67-60.009(2), Fla. Admin. Code, states:

(2) Applicants not selected for funding under any competitive solicitation issued pursuant to this rule chapter may only protest the results of the competitive solicitation process pursuant to the procedures set forth in Section 120.57(3), F.S., and Chapter 28-110, F.A.C.

Rule 28-110.003(2), Fla. Admin. Code, states:

(2) A notice of protest shall not be filed before the 72-hour period begins. *The 72-hour period begins upon electronic posting of a decision or intended decision. The notice of protest must be received by the agency before the 72-hour period expires.* The notice of protest must be filed with the agency clerk unless otherwise designated by the solicitation. [*emphasis added*]

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 2016-110. 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. . . . Saturdays, Sundays, and state holidays shall be excluded in the computation of the 72-hour time periods provided by this paragraph.

The Notice of Intended Decision was published on Florida Housing's website at 9:29 a.m. on March 24, 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.

In its response to the Order to Show Cause, Petitioner notes that it received an email notification from Respondent at 1:09 p.m. on March 24 and was under the mistaken impression that the Notice of Protest was thus due before 1:09 p.m. on March 29. That email, however, simply referred recipients to Florida Housing's website as follows:

Today, the Board of Directors of Florida Housing Finance Corporation approved the Review Committees' motions and staff recommendations to adopt the scoring results, to select Applications for funding and invite the Applicants to enter credit underwriting regarding RFAs 2016-110 and 2016-115.

The Notice of Intended Decision for RFA 2016-110 Housing Credit Financing for Affordable Housing Developments Located in Medium and Small Counties can be found on page <http://www.floridahousing.org/Developers/MultiFamilyPrograms/Competitive/2016-110/>

The Notice referenced in the email clearly identified itself as the Notice of Intended Decision, and clearly stated that it was posted March 24, 2017 at 9:29 a.m.

The email notification sent to applicants as a courtesy in no way misled applicants into believing that the official electronic posting of Florida Housing's intended decision, and the specific time noted in that posting, did not begin the statutory 72-hour period within which the Notice of Protest must be filed.

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 timely 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 24 day of April, 2017.



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Harold L. Price  
Executive Director  
Florida Housing Finance Corporation  
227 North Bronough Street, Ste. 5000  
Tallahassee, FL 32301-1329  
850/488-4197

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 24 day of April, 2017 by electronic mail to the following:

J. Stephen Menton  
Tana D. Storey  
Rutledge Ecenia, P.A.  
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Florida Housing Finance Corporation  
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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.**