

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

OCEAN BREEZE EAST
APARTMENTS, LLC

Petitioner,

FHFC Case No.: 2018-020BP
DOAH Case No.: 18-2131BID

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

FINAL ORDER DISMISSING PETITION

1. On October 6, 2017, Florida Housing Finance Corporation (“Florida Housing”) issued Request for Applications 2017-113, Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties (the “RFA”).
2. On March 16, 2018, Florida Housing posted notice of its intended decision to award funding in the RFA. Ocean Breeze East Apartments, LLC (“Ocean Breeze”) was preliminarily selected for funding from Palm Beach County.
3. HTG Heron Estates Family, LLC, (“HTG Heron”), Channel Side Apartments, Ltd., (“Channel Side”), and Ocean Breeze timely filed notices of intent to protest followed by formal written protests challenging the preliminary funding award for Palm Beach County.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Wm. Blamery / DATE: 7/20/18

4. The protests were referred to the Division of Administrative Hearings (“DOAH”). The case was assigned to Administrative Law Judge (“ALJ”) Hetal Desai and a hearing was scheduled for May 21, 2018.

5. Prior to hearing, Florida Housing filed a Motion to Dismiss Petitioner Ocean Breeze. Ocean Breeze filed a response to the motion.

6. In its motion to dismiss, Florida Housing argued that Ocean Breeze’s petition failed to comply with Rule 28-106.201, Fla. Admin. Code, in that the petition does not allege any disputed issues of fact, does not allege that Florida Housing’s proposed action should be reversed or modified, and does not state what relief is sought. Ocean Breeze filed its petition for the sole purpose of preserving its right to “raise issues concerning the eligibility of other Applications which responded to the RFA and may challenge the Ocean Breeze Application.”

7. In its response, Ocean Breeze agreed that its petition does not allege any disputed issues of fact, does not allege that Florida Housing’s proposed action should be reversed or modified, and was filed for the purpose of preserving its right to raise issues against other challengers.

8. In the Motion to Dismiss and the response, Florida Housing and Ocean Breeze raised the question of whether a specifically named party has the right to challenge deficiencies in the challenger’s own application or whether a specifically

named party is subject to the general restriction that an intervenor must take the case as it finds it.

9. On May 17, 2018, the ALJ issued an Order Severing Cases and Relinquishing Jurisdiction Over Case 18-2131BID (the “Order”), attached as Exhibit “A”. In her Order, ALJ Desai found that Ocean Breeze, as a specifically named party whose substantial interests are being determined in the proceeding, “can raise any issue that could be raised by a party, including eligibility and responsiveness issues against [Petitioners’].” Pursuant to Section 120.52(13), Fla. Stat., Ocean Breeze had standing as a party in the challenges initiated by HTG Heron and Channel Side.

10. ALJ Desai severed the Ocean Breeze protest from the HTG Heron and Channel Side protests and relinquished jurisdiction back to Florida Housing to enter a final order of dismissal.

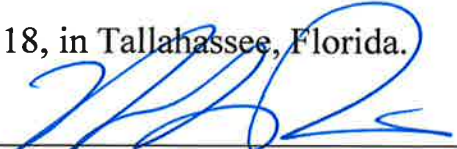
11. Ocean Breeze has no objection to the dismissal of its petition.

12. Florida Housing adopts and incorporates the attached Order as if it were fully set forth here.

IT IS THEREFORE ORDERED: The Petition is DISMISSED with prejudice.

Done this 20th day of July, 2018, in Tallahassee, Florida.




Harold L. Price
Executive Director
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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.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HTG HERON ESTATES FAMILY, LLC,

Petitioner,

vs.

Case No. 18-2130BID

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

OCEAN BREEZE EAST APARTMENTS,
LLC,

Petitioner,

vs.

Case No. 18-2131BID

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

CHANNEL SIDE APARTMENTS, LTD,

Petitioner,

vs.

Case No. 18-2132BID

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

ORDER SEVERING CASES
AND RELINQUISHING JURISDICTION OVER CASE 18-2131BID

This cause came for consideration upon Respondent Florida Housing Finance Corporation's (Florida Housing) Motion to Dismiss Petitioner Ocean Breeze East Apartments, LLC (Motion to Dismiss), filed May 10, 2018. The motion indicated that the

other parties were not in opposition, but may file responses. Ocean Breeze East Apartments, LLC (Ocean Breeze), filed its response to the Motion to Dismiss on May 16, 2018; no other party has filed a response in the time allotted by Florida Administrative Code Rule 28-106.204(1). No oral argument is necessary.

Florida Housing referred three Formal Written Protest and Petition for Administrative Proceeding (petitions) for relief "challenging" Florida Housing's award of funding to Ocean Breeze, pursuant to Request for Application 2017-113 Housing Credit Financing for Affordable Housing Developments (RFA):

1. DOAH Case No. 18-2130BID, filed by HTG Heron Estates Family, LLC (HTG Heron);
2. DOAH Case No. 18-2131BID, filed by Ocean Breeze; and
3. DOAH Case No. 18-2132BID, filed by Channel Side Apartments, LTD (Channel Side).

Whereas Ocean Breeze had the successful application, both HTG Heron and Channel Side were unsuccessful applicants and are now challenging Florida Housing's scoring and ranking of the applications submitted. In addition to filing its own petition, Ocean Breeze filed a Notice of Appearance/Motion to Intervene on April 27, 2018, in both the HTG Heron and Channel Side cases (DOAH Case Nos. 18-2130BID and 18-2132BID).

On May 1, 2018, the undersigned entered an Order consolidating these cases. A status conference hearing was held on May 3, 2018, during which the parties discussed the necessity and appropriateness of Ocean Breeze's petition (DOAH Case No. 18-2131BID).

In its Motion to Dismiss, Florida Housing argues that Ocean Breeze's petition fails to comply with rule 28-106.201, regarding the sufficiency of the pleading to initiate an administrative proceeding at the Division of Administrative Hearings. That Petition states in relevant part:

12. OCEAN BREEZE takes the position that Florida Housing's scoring of its Application was neither erroneous, arbitrary, capricious or contrary to competition.

13. Several other notices of intent to protest however have been filed and Florida Housing's scoring actions may be changed by those challenges. The results of any challenge may impact Ocean Breeze'[s] funding and OCEAN BREEZE believes that any change to the current scoring [sic] would be arbitrary and capricious.

Based on the Ocean Breeze's pleadings, there are no facts in dispute as to whether Florida Housing correctly awarded the funding to it. Knowing these deficiencies, instead of dismissing Ocean Breeze's petition when it had jurisdiction, Florida Housing referred it to the Division of Administrative Hearings (DOAH) and then filed its Motion to Dismiss.

Ocean Breeze argued at the status conference and in its response that it filed its petition as a "defensive pleading," in an abundance of caution to ensure it would have the rights of a "party" and not an "intervenor."^{1/} Both Florida Housing and Ocean Breeze pose the following question: "[C]an Ocean Breeze raise eligibility issues against challengers or is it limited only to litigating the eligibility issues raised in the existing case by the challengers or Florida Housing?"

As the winning bidder, Ocean Breeze is a "party" to DOAH Case Nos. 18-2130BID and 18-2132BID because it is a specifically-named person whose substantial interests are being determined in the proceedings and it has entered appearances in both cases pursuant to rule 28-106.205(3). See § 120.52(13)(a), Fla. Stat. (2017). As such it was unnecessary for Ocean Breeze to file a separate petition. The answer to the question posed is that Ocean Breeze can raise any issue that could be raised by a party, including eligibility and responsiveness issues against HTG Heron and Channel Side.

For these reasons, DOAH Case No. 18-2131BID is severed from Case Nos. 18-2130BID and 18-2132BID; jurisdiction over DOAH Case No. 18-2131BID is relinquished to Florida Housing to enter a final order of dismissal; and the file in DOAH Case No. 18-2131BID is closed.

DONE AND ORDERED this 17th day of May, 2018, in Tallahassee, Leon County, Florida.

Hetal Desai

HETAL DESAI
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of May, 2018.

ENDNOTE

^{1/} Florida courts have held the rights of an intervenor are subordinate and much more limited than the rights of the parties. See Envntl. Confederation of SW Fla., Inc. v. IMC Phosphates, Inc., 857 So. 2d 207, 211 (Fla. 1st DCA 2003). As explained in IMC Phosphates, this is based on Florida Rules of Civil Procedure 1.230, which states that "intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding." The same principle has been applied in administrative proceedings. Id. (citing Humana of Fla., Inc. v. Dep't of Health and Rehab. Servs., 500 So. 2d 186, 188 (Fla. 1st DCA 1986)); also see Broward Children's Ctr., Inc. v. Plantation Nursing & Rehab. Ctr., 66 So. 3d 1063, 1064 (Fla. 1st DCA 2011) (affirming ALJ's finding that intervention was inappropriate in a rule challenge, where Agency conceded rule was invalid and intervenor sought to defend rule).

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