

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

KAREN SERVANT

Petitioner,

v.

FHFC CASE NO.: 2014-066VW

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, on September 5, 2014, an informal administrative hearing was held in this case in Tallahassee, Florida, before Florida Housing Finance Corporation's appointed Hearing Officer, Chris McGuire.

APPEARANCES

For Petitioner:

Karen Servant  
15 Milbark Ct.  
Homosassa, FL,  
34446

For Respondent:

Matthew A. Sirmans  
Florida Bar No. 0961973  
Assistant General Counsel  
Florida Housing Finance Corporation  
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## STATEMENT OF THE CASE

The issue in this case is whether Petitioner met the statutory requirements under Section 120.542, Florida Statutes, relating to her Petition for Waiver of Rule 67-59.210(1)(d), F.A.C., by a preponderance of the evidence, to be entitled to a waiver of that rule by the Board of Directors of Florida Housing.

There are no disputed issues of material fact.

## PRELIMINARY STATEMENT

At the hearing the Parties filed a Prehearing Stipulation. The Prehearing Stipulation is attached to this Recommended Order as Attachment A, and the facts recited therein are incorporated in this Recommended Order. Some of those facts are reiterated below for clarity.

At the informal hearing, Joint Exhibits 1-6 were admitted into evidence. The final hearing was recorded, but no transcript was ordered. All parties timely submitted Proposed Recommended Orders on or before September 15, 2014. The parties' Proposed Recommended Orders have been given consideration in the preparation of this Recommended Order.

## EXHIBITS

- Exhibit J-1: Joint Stipulation of Facts and Exhibits.
- Exhibit J-2: Petitioner's W-2 for the year 2012.
- Exhibit J-3: HHF Eligibility Computation Form for Petitioner, dated 10/22/13.
- Exhibit J-4: Excerpt from 2013 Income Limits form, demonstrating AMI for Citrus county.
- Exhibit J-5: Eight Amendment to Commitment to Purchase Financial Instrument and HFA Participation Agreement, between U.S. Department of Treasury and Florida Housing.
- Exhibit J-6: Final Order, In Re: Karen Servant, FHFC Case No.2014-066VW

## FINDINGS OF FACT

1. Petitioner Karen Servant is an individual who resides at 15 Milbark Court, Homosassa, Florida 34446.

2. Respondent Florida Housing Finance Corporation (FCHC) is a public corporation, with its address at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32310, organized to provide and promote the public welfare by administering the governmental function of financing and refinancing housing and related facilities in the State of Florida.

3. In 2010, the United States Department of the Treasury ("U.S. Treasury") created the Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets ("HHF Fund") and allocated funds under the Emergency Economic Stabilization Act of 2008 to Florida and other states. FCHC administers the HHF Fund programs and uses a portion of these funds specifically for targeted unemployment programs that provide temporary assistance to eligible homeowners.

4. Florida Housing's use of these funds is governed by written agreements with U.S. Treasury which are incorporated by reference in Rule Chapter 67-59, Florida Administrative Code (F.A.C.), pursuant to Section 420.507(33), Florida Statutes. The rule governs the eligibility requirements that homeowners must meet to participate in the HHF Fund program. One of the HHF programs is the Principle Reduction ("HHF-PR") program.

5. On or about September 25, 2013, Petitioner applied for financial assistance through the HHF-PR program. Petitioner is the sole occupant of her house, located in Citrus County, Florida. The HHF-PR program is designed to provide financial assistance to eligible borrowers with up to \$50,000 to reduce the principal balance of the first mortgage thereby reducing the loan to value of the first mortgage to no less than 100%. The HHF-PR program is operated on a first come, first served basis.

6. One of the eligibility requirements for the HHF-PR program, as specified in Rule 67-59.210(1)(d), F.A.C., is that the applicant cannot have an adjusted household income that exceeds 140% of the Area Median Income (“AMI”). For 2013, 140% of the AMI for Citrus County for a sole occupant is \$47,040.

7. As part of her application, Petitioner provided four pay stubs, which demonstrated that Petitioner’s anticipated annual income is \$97,028.23, or 288.8% of the AMI for Citrus County, Florida. Petitioner provided her IRS W-2 Form for the year 2012, which provided that her Medicare wages and tips was \$96,545.02.

8. On or about October 22, 2013, Petitioner’s application for HHF-PR funds was denied because she failed to meet the eligibility requirement that her income be no greater than 140% of the AMI for Citrus County.

9. On April 2, 2014, Petitioner requested a variance or waiver of Rule 67-59.210(1)(d), F.A.C., on the grounds that application of that rule would violate principles of fairness. Petitioner did not dispute that she failed to meet the eligibility requirements of that rule.

10. On June 13, 2014, Petitioner’s request for a variance or waiver was denied by the Board of Directors of Florida Housing, on the basis that Petitioner failed to demonstrate that she suffered a substantial hardship or that it would violate principles of fairness to apply the rule to Petitioner. Petitioner timely filed her “Petition for Judicial Review of Waiver Rule Chapter 67-59.210,” seeking a hearing on the denial of her request.

#### CONCLUSIONS OF LAW

1. Pursuant to Sections 120.569 and 120.57(2) and (3), Florida Statutes, the Hearing Officer has jurisdiction of the parties and the subject matter of this proceeding. Respondent’s



decision in this case affected the substantial interests of Petitioner, and thus she has standing to challenge the proposed agency action.

2. Section 120.542, Florida Statutes, sets forth the criteria by which requests for variances from rule requirements are evaluated. The statute provides that a person requesting a variance must first demonstrate that the purpose of the underlying statute will be achieved by other means than are provided for by rule. If that burden can be met, then the petitioner must next demonstrate that application of the rule would create a substantial hardship or would violate principles of fairness.

3. In this case Petitioner requested a variance from the requirements of Rule 67-59.210, F.A.C. That rule identifies Section 420.507(33), Florida Statutes, as the law being implemented, which is essentially the same as saying that it is the “underlying statute” as specified in Section 120.542, Florida Statutes.

4. Section 420.507(33), Florida Statutes, empowers FCHC to, among other things, “receive federal funding in connection with the corporation’s programs directly from the Federal Government and to receive federal funds for which no corresponding program has been created in statute and establish selection criteria for such funds by request for proposals or other competitive solicitation.” There is no statute that directly refers to the HHF programs administered by FCHC.

5. Respondent administers the Federal HHF programs in accordance with a document entitled “Commitment to Purchase Financial Instrument and HFA Participation Agreement” (the “Agreement”), which document is incorporated by reference in Chapter 67-59, F.A.C. The Eighth Amendment to the Agreement, effective September 20, 2013, includes in Schedule B-4 the specific criteria by which FCHC is required to implement the HHF-PR program. I conclude that the

“purpose of the underlying statute” in this case is to empower and require FCHC to implement the HHF-PR program in accordance with Schedule B-4 of the Agreement.

6. Schedule B-4 of the Agreement states that the intent of the Principal Reduction program is to “assist severely underwater, low-to-moderate income homeowners.” It also sets out eligibility criteria that include documentation that adjusted household income does not exceed 140% of the AMI for the county of residence.

7. By her own admission, Petitioner is not a “low-to-moderate income homeowner.” The undisputed facts show that her income is in fact more than twice the maximum allowable income under both Schedule B-4 and Rule 69-57.210, F.A.C. Neither her petition nor any other documentation submitted by Petitioner demonstrate that granting her variance and thus making her eligible for funding under the HHF-PR program would serve the purpose of underlying statute by providing funding to low-to-moderate income homeowners.

8. Since Petitioner has failed the first requirement in Section 120.542, Florida Statutes, it is not technically necessary to address the second requirement, which is to demonstrate either hardship or unfairness. However, her petition was denied by Respondent solely on the grounds that she had failed to make such a demonstration, and it thus seems prudent to address this issue.

9. Section 120.542(1), Florida Statutes, explains the purpose of a variance to be to provide relief to persons when “strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances.” The clear intent here is that variances should be used only in unusual situations where a person’s particular circumstances make application of an otherwise reasonable rule unreasonable. Simply showing that application of a particular rule would cost money, time, or resources, for example, in the same

way that it costs every other affected person, will generally not form the basis for the granting of a variance.

10. The Petition did not actually allege that application of the rule would create a substantial hardship. Even if it had, however, there was no evidence presented that Petitioner would suffer “a demonstrated economic, technical, legal or other type of hardship.” There was some testimony that she might have to make some house repairs in the future and would not be able to afford them, but this testimony was not supported by any evidence and is too uncertain to form the basis for a demonstration of hardship. Even if such evidence had been presented, it would not be sufficient to demonstrate hardship that is unusual or different from the hardship faced by every other homeowner in Florida.

11. The Petition did allege that application of the rule would violate principles of fairness. However, Section 120.542, Florida Statutes, defines a violation of principles of fairness to mean that “the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.” Petitioner made no such demonstration, and in fact it was her testimony that the rule affected her in exactly the same way that it affected every other person whose property is worth less than is owed on it.

12. Petitioner’s primary complaint appears to be that the rule itself is flawed and should not include any limits on income as part of the eligibility criteria. Whether this argument has merit or not cannot be determined in this proceeding. Challenges to existing rule language can only be made in accordance with Section 120.56, Florida Statutes. For the purposes of this hearing, held in accordance with Section 120.57(2) and (3), Florida Statutes, existing rules must be presumed valid.



13. I conclude that Petitioner has failed to demonstrate that the purpose of the underlying statute would be met if the variance is granted. I also conclude that Petitioner has failed to demonstrate that denying the variance would create a substantial hardship or violate principles of fairness.

**RECOMMENDATION**

Based on the Findings of Fact and Conclusions of Law stated above, it is RECOMMENDED that a Final Order be entered dismissing the "Petition for Judicial Review of Waiver Rule Chapter 67-59.210."

Respectfully submitted this 27<sup>th</sup> day of September, 2014.



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Copies furnished to:

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