

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

POSTMASTER ASSOCIATES, LTD.,

Petitioner,

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

FHFC CASE NO.: 2005-010UC  
APPLICATION NO. 2005-054C

RECEIVED  
2005 AUG 26  
11:11:12  
FLORIDA HOUSING FINANCE CORPORATION

---

**FINAL ORDER**

This cause came before the Board of Directors of the Florida Housing Finance Corporation (“Board”) for consideration and final agency action on August 25, 2005. On or before February 16, 2005, Postmaster Associates, Ltd. (“Petitioner”) submitted its 2005 Universal Cycle Application (“Application”) to Florida Housing Finance Corporation (“Florida Housing”) to compete for funding/allocation from the Low Income Housing Tax Credits Program. Petitioner timely filed its Petition Requesting Informal Hearing and Grant of the Relief Requested, pursuant to Sections 120.569 and 120.57(2), Florida Statutes, (the “Petition”) challenging Florida Housing’s scoring on parts of the Application. An informal hearing was held in this case on July 12, 2005, in Tallahassee, Florida, before Florida Housing’s designated Hearing Officer, David Ramba. Petitioner and Respondent timely filed a Joint Proposed Recommended Order.

After consideration of the evidence, arguments, testimony presented at hearing, and the

1. Petitioner has satisfactorily demonstrated that its Developer has prior developer experience sufficient to satisfy, and thus has satisfied, the Application's threshold requirements of Part II., Section B., Subsection 1.c., of the 2005 Universal Application; and

2. Petitioner's Application should be scored as having 66 total points and 7.50 proximity tie-breaker points, and having satisfied all threshold requirements.

### **RULING ON THE RECOMMENDED ORDER**

The findings and conclusions of the Recommended Order are supported by competent substantial evidence.

### **ORDER**

In accordance with the foregoing, it is hereby **ORDERED**:

1. The findings of fact of the Recommended Order are adopted as Florida Housing's findings of fact and incorporated by reference as though fully set forth in this Order.

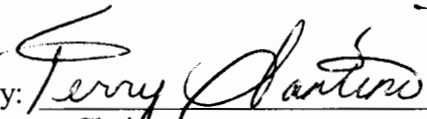
2. The conclusions of law of the Recommended Order are adopted as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Order.

3. Petitioner's Application is scored as having 66 total points and 7.50 proximity tie-breaker points, and having satisfied all threshold requirements.

IT IS HEREBY ORDERED that Petitioner's Application is scored as having 66 total points and 7.50 proximity tie-breaker points, and having satisfied all threshold requirements.

DONE and ORDERED this 25<sup>th</sup> day of August, 2005.

FLORIDA HOUSING FINANCE  
CORPORATION

By:   
Chairperson

Copies to:

Wellington H. Meffert II  
General Counsel  
Florida Housing Finance Corporation  
337 North Bronough Street, Suite 5000  
Tallahassee, FL 32301

Stephen P. Auger  
Deputy Development Officer  
Florida Housing Finance Corporation  
337 North Bronough Street, Suite 5000  
Tallahassee, FL 32301

Gary J. Cohen, Esquire  
Shutts & Bowen  
201 S. Biscayne Blvd.  
Suite 1508  
Miami, FL 33131

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN LUTHER KING, JR., BLVD., TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.**

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

POSTMASTER ASSOCIATES, LTD.,

FHFC CASE NO.: 2005-010UC  
APPLICATION NO. 2005-054C

Petitioner,

v.

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

---

**RECOMMENDED ORDER**

Pursuant to Notice, an informal administrative hearing was scheduled for this case in Tallahassee, Florida, before Florida Housing Finance Corporation's appointed Hearing Officer, David E. Ramba. At the time of hearing, the parties filed a Joint Proposed Recommended Order.

**APPEARANCES**

**For Petitioner:**

Gary J. Cohen, Esquire  
Shutts & Bowen  
201 S. Biscayne Blvd.  
Suite 1508  
Miami, FL 33131

**For Respondent:**

Wellington Meffert, General Counsel  
Florida Housing Finance Corporation  
200 N. E. ...

### **JOINT EXHIBITS**

The following exhibits were admitted into evidence:

Exh. 1: Exhibit 11 to Petitioner's Application (Developer Prior Experience chart)

Exh. 2: NOPSE Scoring Summary Sheet (dated 4/14/2005)

Exh. 3: Petitioner's Cure for Exhibit 11 to Petitioner's Application

Exh. 4: NOAD filed against Petitioner's Application

Exh. 5: Final Scoring Summary Sheet (dated 5/25/2005)

Exh. 6: Temporary Certificate of Occupancy (Ward Tower)

Exh. 7: Florida Building Code (Miami Dade Administrative) sec. 106.1.3

Exh. 8: Page 6, 2005 Universal Application Instructions

### **WITNESSES**

- There were no witnesses for either party.

### **STATEMENT OF THE ISSUE**

The issue in this case is whether applicant has demonstrated sufficient prior development experience in the completion of at least two affordable rental housing developments.

### **PRELIMINARY STATEMENT**

Petitioner applied for funding during the 2005 Universal Cycle, seeking an allocation of Low Income Housing Tax Credits ("Housing Credits"). Petitioner was notified by Florida Housing of its final scores on or about May 25, 2005. On June 9, 2005, Petitioner timely filed a

review of the Petition, Florida Housing granted Petitioner an informal hearing in this matter. Petitioner sought a determination that the Petitioner had demonstrated sufficient prior developer experience. The Parties are agreed that Petitioner has done so.

### **FINDINGS OF FACT**

1. The Petitioner is Postmaster Associates, Ltd. ("Postmaster"), a Florida limited partnership, whose address is: c/o MDHA Development Corporation, 7483 S.W. 24<sup>th</sup> Street, Suite 209, Miami, Florida 33155.

2. Respondent, Florida Housing Finance Corporation, ("Florida Housing"), is a public corporation under Chapter 420, Fla. Stat., to administer the financing and refinancing of projects which provide housing affordable to persons and families of low, moderate and middle income in Florida.

3. Petitioner has applied for an allocation of competitive 9% low-income housing tax credits under the Low Income Housing Tax Credit ("HC") program administered by Florida Housing, as authorized by the U.S. Department of the Treasury. The HC program is set forth in Section 42 of the Internal Revenue Code of 1986, as amended, and it awards developers and investors a dollar for dollar reduction in income tax liability through the allocation of tax credits in exchange for construction of affordable rental housing units.

4. The 2005 Universal Cycle Application, which is applicable to applications for HC, is adopted as Form UA1016 (Rev. 02/05) by R. 67-48.004(1)(a), Fla. Admin. Code, consists of Parts I through V and instructions, some of which are not applicable to every Applicant. Some

points; however, the failure to provide complete, consistent and accurate information as prescribed by the instructions may reduce the Applicant's overall score.

5. On or about February 16, 2005, Petitioner submitted to FLORIDA HOUSING an HC application in the Large County set-aside for the 2005 funding cycle. The application was submitted in an attempt to assist in the financing of the construction of a 55 unit apartment complex in Miami, Florida.

6. Under the HC program, the HC applications are scored by FLORIDA HOUSING. A finite amount of tax credits are allocated to applicants in certain geographic areas (large county, medium county and small county areas as defined by FLORIDA HOUSING) and pursuant to certain set-aside classifications. Only those applications receiving the highest scores are awarded tax credits. Petitioner's ability to finance its proposed project will be jeopardized if tax credits are not obtained; accordingly, Petitioner's substantial interests are affected by this proceeding.

7. In Petitioner's initial HC application submitted on or about February 16, 2005, Petitioner indicated (in Exhibit 11 submitted as part of its application) that MDHA Development Corporation possessed the requisite developer experience by submission of a "prior experience chart developer" which reflected three completed developments; Ward Tower under the affordable housing program of "MMRB and 4% tax credit", and Abacoa Town Center and Village at Abacoa Town Center developed under a local inclusionary zoning ordinance. (Exhibit "1")



proximity tie-breaker points awarded, and that Petitioner had failed to satisfy numerous threshold requirements.

9. As a result of Notices of Potential Scoring Errors (“NOPSE’s”) filed against Petitioner, FLORIDA HOUSING notified Petitioner on or about April 14, 2005 that its score remained the same, that its total proximity tie-breaker points remained the same, and that Petitioner had failed the threshold requirement of “Developer Prior Experience Chart” because “Inclusionary zoning is not considered to be an affordable housing program. Therefore, the Developer Prior Experience Chart provided in the Application does not reflect experience with a minimum of two affordable housing developments.” (Exhibit “2”)

10. On or about April 26, 2005, Petitioner submitted “cure” documentation to FLORIDA HOUSING resolving the various threshold items failed (site plan approval, site control, zoning and environmental safety). Petitioner also submitted cure documentation as to the “Developer Prior Experience Chart”, submitting, *inter alia*, a new “Developer Prior Experience Chart” reflecting an additional completed affordable housing development on such chart. As a result of its “cure” documentation, Petitioner’s “prior experience chart” reflected two completed affordable housing developments utilizing tax exempt bonds and 4% tax credits (Ward Tower and Longwood Vista). (Exhibit “3”)

11. On or about May 4, 2005 a Notice of Alleged Deficiency (“NOAD”) was filed against Petitioner’s cure documentation, alleging *inter alia*, that the Ward Tower transaction (which was contained in Petitioner’s original submission and re-submitted as part of its cure on a

12. On or about May 25, 2005, FLORIDA HOUSING advised Petitioner that its total points remained at 66, that Petitioner's total proximity tie-breaker points were increased to 7.5, that Petitioner's other threshold failures (site plan approval, site control, zoning and environmental safety) had been satisfactorily cured. (Exhibit "5")

13. In the final scoring summary, FLORIDA HOUSING determined, *inter alia*, that (as evidenced in Item 6T of the scoring summary) Petitioner failed the threshold requirement of developer prior experience because a NOAD provided evidence that one of the developments (Ward Tower) had not received its Certificate of Occupancy. (Exhibit "5")

14. A temporary certificate of occupancy was issued for the Ward Tower development (a single building development) on April 7, 2005 (before the cure deadline of April 26, 2005). (Exhibit "6") Under the Florida Building Code applicable to Miami-Dade County, issuance of a temporary certificate of occupancy permits a developer to allow tenants to move into and occupy a building; that is, the building is effectively "completed" since occupancy is permitted.

15. Petitioner met the threshold requirement of developer experience by virtue of completing two affordable housing developments under the affordable housing program of tax exempt bonds and 4% tax credits, Ward Tower and Longwood Vista.

#### **CONCLUSIONS OF LAW**

1. Pursuant to Sections 120.569 and 120.57(2), Fla. Stat. and Rule 67-48.005, Fla. Admin. Code, the Hearing Officer has jurisdiction over the parties to this proceeding.

2. Pursuant to Sec. 420.507(22)(f), Fla. Stat., Florida Housing is authorized to

3. Florida Housing's application form and instructions are adopted as Form UA1016 (Rev. 2-05), Rule 67-48.004(1)(a), Fla. Admin. Code.

4. The Petitioner submitted an application for the 2005 Universal Application Cycle to Florida Housing in which it sought an allocation of tax credits under the Low-Income housing Tax Credit (HC) program in the 2005 Universal Cycle.

5. The Application requires, through the Instructions to Part II., Section B., Subsection 1.c., requires that Applicant's developer must demonstrate experience in the completion of at least two affordable rental housing developments by providing, "behind a tab labeled 'Exhibit 11,' a "Prior Experience Chart," (Exhibit "8") for a developer to demonstrate that it has the requisite experience in having completed two affordable housing developments.

6. The issue in this proceeding is whether the developer, MDHA Development Corporation had completed the Ward Tower Project. The temporary certificate of occupancy is the functional equivalent of the certificate of occupancy required by Exhibit 11. (Exhibit "7"),

6. Petitioner has complied with the instructions and provided evidence, through its "Prior Experience Chart," and in its "cure documentation," that the developer (MDHA Development Corporation) has the necessary and relevant developer experience and that the threshold requirement of developer experience has been met.

#### **RECOMMENDATION**

Based on the Findings of Fact and Conclusions of Law stated above, it is hereby RECOMMENDED that Florida Housing enter a Final Order that:

2. Petitioner's Application should be scored as having 66 total points and 7.50 proximity tie-breaker points, and having satisfied all threshold requirements.

Respectfully submitted this 2<sup>nd</sup> day of August, 2005.



---

David E. Ramba, Hearing Officer

Copies furnished to:

GARY J. COHEN  
FL BAR No.: 0353302  
Shutts & Bowen  
201 S. Biscayne Blvd., Suite 1508  
Miami, FL 33131

WELLINGTON H. MEFFERT II  
FL BAR No.: 0765554  
Florida Housing Finance Corporation  
227 North Bronough Street, Ste. 5000  
Tallahassee, FL 32301-1329