

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

FLORIDA HOUSING FINANCE
CORPORATION,

Petitioner,

v.

FHFC CASE NO.: 2012-031UC
Application Nos. 2011-070C,
2011-076C, and 2011-077C

FLAGLER SQUARE APTS. LTD.,
FLAGLER SQUARE DEVELOPERS,
LLC,
BISCAYNE RIVER VILLAGE PHASE
I, LTD.,
MM BISCAYNE RIVER VILLAGE I,
LLC,
BISCAYNE RIVER VILLAGE PHASE
II, LTD.,
MM BISCAYNE RIVER VILLAGE
PHASE II, LLC,
GONZALO DeRAMON, and
MICHAEL COX,
Respondents.

ADMINISTRATIVE COMPLAINT

1. Petitioner is Florida Housing Finance Corporation (“Florida Housing”), a public corporation, with its address at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, organized to provide and promote the public welfare by administering the governmental function of financing and

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Della M. Hassell /DATE: 6/6/2012

refinancing housing and related facilities in the State of Florida. Section 420.504, Fla. Stat.

2. Respondent, Flagler Square Apts., Ltd. (“Flagler Square”), is a limited partnership authorized to conduct business in the State of Florida. MM Flagler Square Apartments, LLC, is a limited liability company authorized to conduct business in the State of Florida, and is the sole General Partner of Flagler Square Apts., Ltd. The business address for both is 150 SW 2nd Street, Suite 1302, Miami, Florida 33131.

3. Respondent, Biscayne River Village Phase I, Ltd. (“Biscayne Village I”), is a limited partnership authorized to conduct business in the State of Florida. MM Biscayne River Village Phase I, LLC, is a limited liability company authorized to conduct business in the State of Florida, and is the sole General Partner of Biscayne River Village Phase I, Ltd. The business address for both is 150 SW 2nd Street, Suite 1302, Miami, Florida 33131.

4. Respondent, Biscayne River Village Phase II, Ltd. (“Biscayne Village II”), is a limited partnership authorized to conduct business in the State of Florida. MM Biscayne River Village Phase II, LLC, is a limited liability company authorized to conduct business in the State of Florida, and is the sole General Partner of Biscayne River Village Phase I, Ltd. The business address for both is 150 SW 2nd Street, Suite 1302, Miami, Florida 33131.

5. Biscayne Housing Group, LLC is the sole manager/member of Downtown Miami Grocery, LLC, is the sole manager/member of Flagler Square Apartments, LLC, is the sole manager/member of, MM Biscayne River Village Phase I, LLC, and is MM Biscayne River Village Phase II, LLC. The business address for each is 150 SW 2nd Street, Suite 1302, Miami, Florida 33131.

6. Respondent Gonzalo DeRamon (“DeRamon”) and Respondent Michael Cox (“Cox”) are the manager/members of Biscayne Housing Group, LLC. The business address for each is 150 SW 2nd Street, Suite 1302, Miami, Florida 33131.

7. Florida Housing administers various affordable housing programs including the Low Income Housing Tax Credit (HC) Program pursuant to Section 42 of the Internal Revenue Code and Section 420.5099, F.S., under which Florida Housing is designated as the HC agency for the state of Florida within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code, and Rule Chapter 67-48, F.A.C.; and

8. The 2011 Universal Cycle Application, through which affordable housing developers apply for low income rental housing tax credits under the above-described affordable housing program administered by Florida Housing, together with Instructions and Forms, comprise the Universal Application Package or UA1016 (Rev. 2-11) adopted and incorporated by Rule 67-48.004(1)(a), F.A.C.

9. Because the demand for HC tax credits exceeds that which is available, qualified affordable housing developments must compete. To assess the relative merits of proposed developments, Florida Housing has established a competitive application process known as the Universal Cycle pursuant to Rule Chapter 67-48, F.A.C. Specifically, Florida Housing's application process for the 2011 Universal Cycle, as set forth in Rule 67-48.001-.005, F.A.C., involves the following:

- a. the publication and adoption by rule of a "Universal Application Package," which applicants use to apply for funding under the HC and HOME Programs administered by Florida Housing;
- b. the completion and submission of applications by developers;
- c. Florida Housing's preliminary scoring of applications (preliminary scoring summary);
- d. an initial round of scoring challenges in which an applicant may take issue with Florida Housing's scoring of another application by filing a Notice of Possible Scoring Error ("NOPSE");
- e. Florida Housing's consideration of the NOPSEs submitted, with notice (NOPSE scoring summary) to applicants of any resulting change in their preliminary scores;
- f. an opportunity for the applicant to submit additional materials to Florida Housing to "cure" any items for which the applicant was deemed to have failed to satisfy threshold or received less than the maximum score;
- g. a second round of challenges whereby an applicant may raise scoring issues arising from another applicant's cure materials by filing a Notice of Alleged Deficiency ("NOAD");

- h. Florida Housing's consideration of the NOADs submitted, with notice (final scoring summary) to applicants of any resulting change in their scores;
- i. an opportunity for applicants to challenge, by informal or formal administrative proceedings, Florida Housing's evaluation of any item in their own application for which the applicant was deemed to have failed to satisfy threshold or received less than the maximum score;
- j. final scores, ranking of applications, and award of funding to successful applicants, including those who successfully appeal the adverse scoring of their application; and
- k. an opportunity for applicants to challenge, by informal or formal administrative proceedings, Florida Housing's final scoring and ranking of competing applications where such scoring and ranking resulted in a denial of Florida Housing funding to the challenging applicant.

10. Florida Housing prepared the application package for the competitive 2011 Universal Cycle. The application package is adopted by reference and incorporated into Rule 67-48.004(1)(a), Fla. Admin. Code, and includes the application form, application exhibit forms, and application instructions ("Instructions"). One of the programs that is administered through the 2011 Universal Cycle is the federal Low Income Housing Tax Credit Program that allocates low income rental housing tax credits.

11. Section 420.507(35), Fla. Stat., provides:

(35) To preclude from further participation in any of the corporation's programs, for a period of up to 2 years, any

applicant or affiliate of an applicant which has made a material misrepresentation or engaged in fraudulent actions in connection with any application for a corporation program.

12. Also, Rule 67-48.004(12), Fla. Admin. Code, provides:

(12) If the Board determines that any Applicant or any Affiliate of an Applicant:

(a) Has engaged in fraudulent actions;

(b) Has materially misrepresented information to the Corporation regarding any past or present Application or Development;

(c) Has been convicted of fraud, theft or misappropriation of funds;

(d) Has been excluded from federal or Florida procurement programs; or

(e) Has been convicted of a felony;

The Applicant and any of the Applicant's Affiliates will be ineligible for funding or allocation in any program administered by the Corporation for a period of up to two (2) years, which will begin from the date the Board makes such determination. Such determination shall be either pursuant to a proceeding conducted pursuant to Sections 120.569 and 120.57, F.S., or as a result of a finding by a court of competent jurisdiction.

13. During the 2011 Universal Cycle, Flagler submitted an application to Florida Housing for the Flagler Square apartment project, No. 2011-070C ("Application"), seeking an allocation of low income rental housing tax credits.

14. During the 2011 Universal Cycle, Biscayne Village I submitted an application to Florida Housing for the Biscayne River Village Phase I apartment

project, No. 2011-076C (“Application”), seeking an allocation of low income rental housing tax credits.

15. During the 2011 Universal Cycle, Biscayne Village I submitted an application to Florida Housing for the Biscayne River Village Phase I apartment project, No. 2011-077C (“Application”), seeking an allocation of low income rental housing tax credits.

16. As the competition for tax credits is intense and the supply limited, Florida Housing has included “tie breaker” items in the Universal Cycle Application. Among these is a system of awarding tie-breaker points for proximity to services, such as grocery stores, medical facilities, and public transportation.

17. A grocery store is defined at page 33 in the Universal Application Instructions:

Grocery Store - For purposes of proximity tie-breaker points, a Grocery Store means a retail establishment, open to the public, regardless of a requirement of a membership fee, consisting of 4,500 square feet or more of contiguous air conditioned space available to the public, which as its major retail function sells groceries, including foodstuffs, fresh and packaged meats, produce and dairy products, which are intended for consumption off-premises, and household supplies, such as Publix Super Markets, Winn Dixie Stores, Super Wal-Mart Stores, etc.

18. In its Application No. 2011-070C, Flagler sought an award of tie-breaker points for the development’s proximity to the “Downtown Miami Grocery Store,” located at 100 South Miami Avenue, 2nd Floor, Miami, Florida.

19. Flagler represented to Florida Housing that the Downtown Miami Grocery Store at 100 South Miami Avenue, 2nd Floor, Miami, Florida, was a “grocery store” within the meaning of the 2011 Universal Application Instructions, seeking to persuade Florida Housing to award tie-breaker points on the application for the each project’s proximity to a grocery store.

20. In its Application No. 2011-076C, Biscayne Village I sought an award of tie-breaker points for the development’s proximity to the “Downtown Miami Grocery Store,” located at 500 West Flagler Avenue, Miami, Florida.

21. Biscayne Village I represented to Florida Housing that the Downtown Miami Grocery Store located at 500 West Flagler Avenue, Miami, Florida, was grocery store within the meaning of the 2011 Universal Application Instructions, seeking to persuade Florida Housing to award tie-breaker points on the application for the project’s proximity to a grocery store.

22. In its Application No. 2011-077C, Biscayne Village II sought an award of tie-breaker points for the development’s proximity to the “Downtown Miami Grocery Store,” located at 500 West Flagler Avenue, Miami, Florida.

23. Biscayne Village II represented to Florida Housing that the Downtown Miami Grocery Store located at 500 West Flagler Avenue, Miami, Florida, was a grocery store within the meaning of the 2011 Universal Application

Instructions, seeking to persuade Florida Housing to award tie-breaker points on the application for the each project's proximity to a grocery store.

24. A "Certificate of Use," was issued for the 100 South Miami Avenue, 2nd Floor, location by the City of Miami on October 25, 2011 as a "Grocery – Retail – Inc. Beer & Wine." The Certificate includes instructions, including, "Do not operate the business until a Certificate of Use, a Business Tax Receipt, and if applicable, a Certificate of Occupancy are issued." The Certificate of Use only verifies that the location is zoned for a retail business.

25. Downtown Miami Grocery did not obtain a food sale license from the Department of Business and Professional Regulation. Downtown Miami Grocery, LLC did not apply for a Resale Tax Certificate from the Florida Department of Revenue, under that name, and did not apply for a Resale Tax Certificate for either the 100 South Miami Avenue or the 500 West Flagler Street location. Both a food sale license and a resale tax certificate are required for a grocery to operate lawfully in the State of Florida.

26. On or about August 11, 2011, Michael Cox executed a six-month lease on behalf of Downtown Miami Grocery for the 100 North Miami Avenue property, "to qualify for some state permits to build a development." Cox wanted only a six-month lease, refused the option to extend the lease.

27. Photographs of the 100 South Miami Avenue location provided to Florida Housing in January, 2012, reveal an almost empty space, containing three upright coolers, a few boxes of produce, a shelf unit containing a few loaves of bread, and a meat cooler with prepackaged meat bearing Publix Supermarket pricing labels, with Downtown Miami Grocery labels stuck on the packages.

28. Two female employees of Govinda's restaurant in the 100 South Miami Avenue building reported that the "food market," was apparently open only for a few weeks in January, 2012, but that when they attempted to purchase some milk in January 2012, they were told that the store was closed; and that two women would stand at the door tell anyone who attempted to enter that they were not open for business. The restaurant employees stated that they never saw regular traffic at the "food market," and described the interior as big, with empty shelves and little to no merchandise.

29. By March 5, 2012, Downtown Miami grocery had vacated the 100 South Miami Avenue location. Photographs taken on March 5, 2012, reveal that the location was abandoned, completely vacant except for several bare plywood units which contained some produce in earlier photographs, and had been vacant for a month.

30. The “grocery store,” located at 100 South Miami Avenue, 2nd Floor, Miami, Florida, was a sham, set up for the sole purpose of inducing Florida Housing to award tie-breaker proximity points.

31. Cox signed a six-month lease, which ended on March 2, 2012, for the Downtown Miami Grocery location at 500 West Flagler Street.

32. Residents and workers in the neighborhood confirm that the Flagler Street “food market” was only open for a brief period in January 2012, but that they were told by two women at the site that the store was closed and not selling anything.

33. Photographs taken on March 5, 2012, of the interior of the 500 West Flagler street location reveal an almost completely bare building, with two bare plywood bins similar to those used to hold small amounts of produce in photographs of the interior of 100 South Miami Avenue, 2nd Floor. Large pieces of air conditioning ductwork are in the middle of the floor.

34. The “grocery store,” located at 500 West Flagler Street, Miami, Florida, was a sham, set up for the sole purpose of inducing Florida Housing to award tie-breaker proximity points.

COUNT I

35. Petitioner realleges and reincorporates the allegations set forth in paragraphs 1, 2, 5-12, 13, 16-19, and 24-30, as though fully set forth in this Count I.

36. Respondents committed fraud and/or material misrepresentation in violation of section 420.507(35), Florida Statutes, and Rule 67-48.004(112), Florida Administrative Code, when they included the “grocery store,” located at 100 South Miami Avenue, 2nd Floor, Miami, Florida, in the Flagler Square Apartments, Ltd., Application No. 2011-070C, for the sole purpose of inducing Florida Housing to award tie-breaker proximity points.

COUNT II

37. Petitioner realleges and reincorporates the allegations set forth in paragraphs 1, 3, 5-12, 14, 16-17, 20-21, 25, and 31-34, as though fully set forth in this Count II.

38. Respondents committed fraud and/or material misrepresentation in violation of section 420.507(35), Florida Statutes, and Rule 67-48.004(112), Florida Administrative Code, when they included the “grocery store,” located at 500 West Flagler Street, Miami, Florida, in the Biscayne River Village Phase I, Ltd., Application No. 2011-076C, for the sole purpose of inducing Florida Housing to award tie-breaker proximity points.

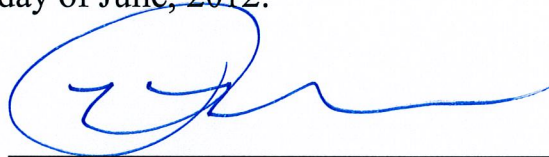
COUNT III

39. Petitioner realleges and reincorporates the allegations set forth in Paragraphs 1, 4-12, 15, 16-17, 22-23, and 31-34, as though fully set forth in this Count III.

40. Respondents committed fraud and/or material misrepresentation in violation of section 420.507(35), Florida Statutes, and Rule 67-48.004(112), Florida Administrative Code, when they included the “grocery store,” located at 500 West Flagler Street, Miami, Florida, in the Biscayne River Village Phase I, Ltd., Application No. 2011-076C, for the sole purpose of inducing Florida Housing to award tie-breaker proximity points.

WHEREFORE, Petitioner respectfully requests the Florida Housing Finance Corporation impose a penalty precluding Respondents and any Affiliates from participation in any program administered by the Corporation for a period of up to two years from the date of any Final Order issued hereupon.

Respectfully submitted this 6th day of June, 2012.



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NOTICE OF RIGHTS

Please be advised that Respondent has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoenas and subpoenas duces tecum issued on his or her behalf if a hearing is requested. Rule 28-106.111 Florida Administrative Code, provides in part that if Respondent fails to request a hearing within 21 days of receipt of agency pleading, Respondent waives the right to request a hearing on the facts alleged.

Mediation under Section 120.573, Florida Statutes, is not available for administrative disputes involving this type of agency action.

1. I do not desire a proceeding.
2. I elect an informal proceeding to be conducted in accordance with Sections 120.569 and 120.57(2), Florida Statutes. In this regard I desire to (Choose one):
 - submit a written statement and documentary evidence; or
 - attend an informal hearing to be held in Tallahassee.
3. I elect a formal proceeding at the Division of Administrative Hearings. This option is available only if there are disputed issues of material fact.

Date: _____

Signature

Name: _____

Address: _____

Phone: _____
(include Area Code)

TO PRESERVE YOUR RIGHT TO A PROCEEDING, YOU MUST RETURN THIS FORM WITHIN TWENTY-ONE (21) CALENDAR DAYS OF RECEIPT OF THIS NOTICE. THE FORM MUST BE RETURNED TO THE FLORIDA HOUSING FINANCE CORPORATION AT 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA, 32301, ATTENTION CORPORATION CLERK.