

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**FHFC CASE NO. 2017-052VW
RFA NO. 2016-294C**

CATHEDRAL TOWERS, LTD.,

Petitioner

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION**

PETITION FOR WAIVER OF RULE 67-48.0072(17)(f), F.A.C.

CATHEDRAL TOWERS, LTD., a Florida limited partnership (“Petitioner”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for a waiver of Rule 67-48.0072(17)(f), Florida Administrative Code (2014). This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code.

THE PETITIONER

1. The address, telephone number and facsimile number of the Petitioner is:

Cathedral Towers, Ltd.
c/o Blue Sky Communities
Attention: Shawn Wilson
5300 West Cypress Street, Suite 200
Tampa, Florida 33607
Telephone: (813) 384-4825
Facsimile: (727) 579-0145

2. The address, telephone number and facsimile number of Petitioner’s counsel is:

Heather Toft, Esq.
Broad and Cassel

390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4200
Facsimile: (407) 425-8377
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3. Petitioner successfully applied for financing from the Housing Tax Credit (“HC”) program in the Request for Applications 2015-111 – Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments (the “RFA”) that the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner’s application number is 2016-294C (the “Application”). Petitioner applied for HC to finance a portion of the costs to rehabilitate an 18-story, 203-unit existing HUD multi-family rental development in Duval County, Florida known as Cathedral Towers (the “Development”).

THE RULE FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from Rule 67-48.0072(17)(f), F.A.C. (2014) (the “Rule”), which provides:

67-48.0072 – Credit Underwriting and Loan Procedures.

* * *

(17) The General Contractor must meet the following conditions:

* * *

(f) Ensure that not more than 20 percent of the construction cost is subcontracted to any one entity, with the exception of a subcontractor contracted to deliver the building shell of a building of at least five (5) stories which may not have more than 31 percent of the construction cost in a subcontract, *unless otherwise approved by the Board for a specific Development*. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant’s request, inclusive of construction costs and the General Contractor’s fees.

Emphasis supplied.

STATUTES IMPLEMENTED BY THE RULES

5. The Rule implements, among other sections of the Florida Housing Finance Corporation Act,¹ the statute that created the Housing Credits Program. See §420.5093, Florida Statutes. The Act designates the Corporation as the State of Florida’s housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, the Corporation is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits. Section 420.5099(1) and (2), Florida Statutes (2014). Accordingly, the Rule subject to Petitioner’s waiver request is implementing, among other sections of the Act, the statutory authorization for the Corporation’s establishment of distribution procedures for the HC Program.

6. The pertinent statute regarding granting of waivers provides: “[W]aivers shall be granted ... when application of a rule would create a substantial hardship or would violate principles of fairness.” Section 120.542(2), Florida Statutes. “Substantial Hardship” is defined as a demonstrated economic, technological, legal or other type of hardship to the person requesting the waiver.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

7. The Rule gives the Board the authority to approve a subcontract that exceeds 20% of the construction costs for a specific Development upon consideration of the facts and circumstances of the request, including the construction costs and the General Contractor’s fees.

8. In the case of the Petitioner’s Development, the Petitioner is rehabilitating an 18-story existing multifamily family apartment complex, and has entered into a guaranteed

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes.

maximum price construction contract for the rehabilitation work (the "GC Contract"). One component of the GC Contract is the mechanical work, the scope of which is very large for this Development, involving more than 350 new fan coil units, new chillers, a new outdoor air unit, new building-wide controls, new thermostats, new boilers, new exhaust fans, and new pumps (the "Mechanical Work"). Due to the size and scope of the Mechanical Work, the general contractor sought bids from four mechanical subcontractors. In response to the request for bids, the general contractor received three bids, with one mechanical subcontractor electing not to bid. All three bids exceeded 20% of the construction costs in the GC Contract. The subcontractor selected for the Mechanical Work has a base subcontract that will be approximately 26% of the GC Contract, and was the lowest bid. In order to proceed with the rehabilitation of this Development, the Petitioner will need the Corporation to waive the Rule requirement or the Petitioner will not be able to move forward with the rehabilitation of the Development, as the Mechanical Work is an important component to the overall scope of the rehabilitation.

9. In light of the considerable time that it takes to develop new multi-family rental housing and to preserve existing affordable multifamily housing, the Corporation's statutes and rules are designed to allow the flexibility necessary to respond to circumstances that may exist for a certain development, particularly those that arise through no fault of the Petitioner. Indeed, the specific language of Rule 67-48.0072(17)(f) provides the Corporation with the flexibility to permit subcontracts in excess of the 20% limitation after considering the facts and circumstances of each Applicant's request.

10. Petitioner's general contractor sought multiple bids for the Mechanical Work, and all bids received exceeded the 20% limitation. Given the results of the bid request, Petitioner seeks the Corporation's approval, in accordance with the Rule, to allow the mechanical

subcontract to exceed the 20% limitation in the Rule so that Petitioner can proceed to closing and commence rehabilitation of the Development as scheduled. Failure to grant Petitioner's request for a Rule waiver will result in a substantial hardship to Petitioner in that Petitioner will not be able to proceed with the rehabilitation of the Development in a timely manner, if at all, since the Mechanical Work is an important component to the overall rehabilitation of the Development.

11. Petitioner believes that a waiver of this Rule will serve the purposes of Section 420.5099 and the Act that are implemented by Rule Chapter 67-48, because one of the goals of the Corporation is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households by ensuring:

The maximum use of available tax credits in order to encourage development of low-income housing in the State, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the Applicant to proceed to completion of the project in the calendar year for which the credit is sought.

Section 420.5099(2), Florida Statutes (2014).

The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to create inducements and opportunities for private and public investment in rental housing and to encourage the construction and reconstruction of new and rehabilitated housing in an orderly and sustained manner and, thereby, to meet the shortage and reduce the results thereof. The State Housing Tax Credit Program was created for the purposes of stimulating creative private sector initiatives to increase the supply of affordable housing in urban developments, including specifically housing for the elderly, in accordance with legislative findings for the need. By

granting this waiver, the Corporation would recognize the goal of preserving affordable housing through rehabilitation of existing developments.

12. The requested waiver will not adversely impact the Development or the Corporation.

TYPE OF WAIVER

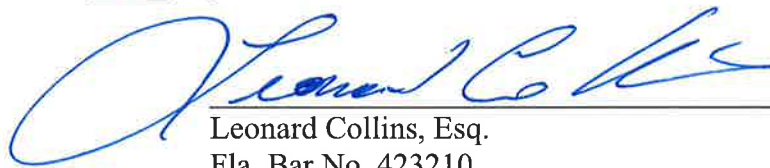
13. The waiver being sought is permanent in nature.

14. Should the Corporation have questions or require any additional information, Petitioner is available to provide any additional information necessary for consideration of the Petition.

ACTION REQUESTED

15. For the reasons set forth herein, Petitioner respectfully requests Florida Housing (i) grant the requested waiver of the 20% limitation on subcontracts and allow the selected subcontract under the GC Contract; (ii) grant the Petition and all the relief requested herein, and (iii) grant such further relief as it may deem appropriate.

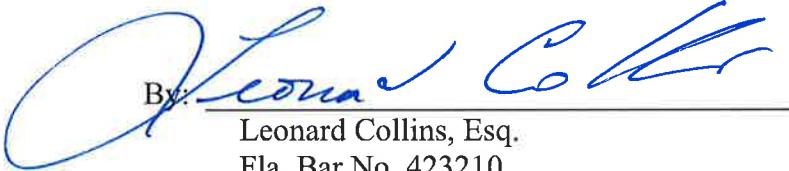
Respectfully submitted this 5th day of July, 2017.



Leonard Collins, Esq.
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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

The original Petition is being served by hand delivery, for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, with copies served by hand delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 5 day of July, 2017.

By: 
Leonard Collins, Esq.
Fla. Bar No. 423210