



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 23, 2023

CBCA 7517-FEMA

In the Matter of HOUSING PRESERVATION TRUST, INC.

Sara M. Lord and Orlando J. Cabrera of Arnall Golden Gregory LLP, Washington, DC, counsel for Applicant.

Adrienne L. Williams-Octalien, Director, Office of Disaster Recovery, Virgin Islands Public Finance Agency, St. Croix, VI, appearing for Grantee.

Maureen Dimino, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **LESTER**, **GOODMAN**, and **CHADWICK**.

CHADWICK, Board Judge, writing for the panel.

Housing Preservation Trust, Inc. (HPT) sought arbitration as to whether the Federal Emergency Management Agency (FEMA) should extend the time within which corporate affiliates of HPT may submit initial requests for public assistance (RPAs) relating to Hurricanes Irma and Maria, which damaged the United States Virgin Islands in September 2017. The procedural background of this matter is complicated, but the decisive factors are that HPT is not an “applicant” for public assistance and does not control or speak for an applicant. Accordingly, we dismiss the arbitration.

Background

HPT represents that it is a general partner of four nonprofit, limited liability partnerships that provide affordable housing in the Virgin Islands. After Hurricanes Irma and Maria, FEMA twice extended the deadline to request public assistance, ultimately setting the deadline as December 29, 2017. Forty months later, in April 2021, HPT requested a further extension of the RPA deadline on behalf of the four housing entities it says it controls. HPT attached to the extension request several copies of what appears to have been a notional or proposed request for public assistance (FEMA Form 009-0-49 9/16) for one of the housing providers. The single-page form was undated (the “DATE SUBMITTED” box was blank), did not request a dollar amount, and was not accompanied by any cost documentation.

FEMA denied the extension request in November 2021. HPT filed an appeal of that denial, which FEMA denied in July 2022. In September 2022, HPT notified the Board that the four housing providers “elect arbitration before the . . . Board . . . with respect to” FEMA’s July 2022 appeal decision, with HPT acting as the “controlling general partner.”

In the initial scheduling conference under Board Rule 607 (48 CFR 6106.607 (2021)), it was agreed that the issue that HPT wants us to decide is “whether FEMA should accept” RPAs from the housing providers. In its submissions to the Board, HPT primarily refers to itself, collectively, as “Appellants,” rather than as “applicant” or “applicants.” On the merits, which we do not reach, HPT argues that it shows good cause to extend the RPA deadline pursuant to 44 CFR 206.202(f)(2) because FEMA provided misleading information regarding the interplay between FEMA public assistance and Small Business Administration loans for nonprofit entities. FEMA denies misleading anyone.

Discussion

Congress has authorized the Board to resolve eligibility disputes brought to us by “applicant[s] for [public] assistance.” 42 U.S.C. § 5189a(d)(1) (2018) (“[A]n applicant for assistance under this subchapter may request arbitration[.]”); *see* Rule 604(a); 44 CFR 206.206(b); *see also* 44 CFR 206.201 (defining “applicant”). We do not read this language as providing a broad mandate to review or intervene in stages of the administrative process that precede the submission of grant applications. *See generally* 44 CFR 206.202(b), (c), (f)(2). Here, HPT asks us to find that “Appellants[’] request for an extension” of the twice-extended deadline to request assistance “is fair and equitable.” HPT Reply at 7. As HPT has not submitted any RPAs (with submission dates and supporting cost information), but only seeks a determination that the deadline to file, which has long since passed, should be extended, HPT is not an “applicant,” and this is not a dispute brought to us by an “applicant for public assistance.” 42 U.S.C. § 5189a(d)(1). We do not consider this pre-application matter to be among those that the Board has been tasked by statute to decide.

Decision

The arbitration is dismissed.

Kyle Chadwick

KYLE CHADWICK
Board Judge

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.
Board Judge

Allan H. Goodman

ALLAN H. GOODMAN
Board Judge