IN THE FLORIDA SUPREME COURT

Case No. 69,785

State of Florida :
Appellant, Defendant :
:
v. :
:
Housing Finance Authority:
of Pinellas County, :
Florida, a Public Body :
Corporate and Politic, :
Appellee, Plaintiff :

BOND VALIDATION APPEAL FROM
THE CIRCUIT COURT OF THE SIXTH
JUDICIAL CIRCUIT IN AND FOR
PINELLAS COUNTY, FLORIDA
CIR. CIV. 86-5568-16

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE

Appellee, Housing Finance Authority of Pinellas County, Florida (the "Authority") accepts as accurate the statement of the Case as presented in Appellant's Initial Brief.

STATEMENT OF THE FACTS

All facts which were in evidence before the lower court were presented by the Appellee through testimony of its witnesses and documentary evidence. Appellant presented no evidence of its own, attempting instead to establish its case on cross-examination of Appellee's witnesses.

After Darlene Kalada, Executive Director of the Authority, explained the criteria used to evaluate potential projects to be financed, the Assistant State Attorney inquired why the Authority perceived a need for building apartments in light of newspaper articles "full of facts indicating that Pinellas County is now overbuilt with apartments" (App. 7, p. 18). Ms. Kalada explained that the rental market in general does not respond to the needs of those which the Authority was created to assist - low, moderate and middle income families (Id.). Pointing out the strong absorption rate of apartments financed by the Authority, she distinguished the product generally constructed in the market from that provided by the Authority (Id.). She testified further that the no-children policy common in Pinellas County "has a very severe impact on the rental market" (App. 7, p. 19) and that the Authority is able to make units available to families with children (Id.). Ms. Kalada explained that the Authority continually evaluates the rental market to monitor the local need for additional

rental housing (App. 7, p. 21). She stated that rental projects financed by the Authority are not sitting vacant (Id.).

After hearing testimony of Mr. David Scussel's education in real estate and urban land studies, including a Master's Degree in economics, with a specialty in economic development, as well as his professional association membership, and experience in several hundred housing market analyses (App. 7, pp. 23, 24), the Court accepted the Authority's housing market consultant as an expert (App. 7, p. 23). His firm was retained by the Authority specifically to "perform an analysis or study of the local market to determine needs for low and moderate income rental housing in Pinellas County" (App. 7, p. 25). Since completing his original report in 1984 and an update in 1985, Mr. Scussel has "continued on a regular basis to survey the Pinellas County rental market to determine changes in rent and vacancies," both by County and areas within the County (App. 7, pp. 26, 27). Mr. Scussel provides such information to the Authority, through its staff, on a regular and continuous basis (App. 7, p. 27). He stated his expert opinion that there is "continuing need for rental housing to serve the low and moderate income segments of the Pinellas County Market, particularly housing directed to families, and it is demonstrated in certain areas of the County" (Id.). He testified that the new apartment complexes with abnormally high vacancy rates typically do not accept families and are aimed at higher income households (App. 7, p. 28).

At the hearing held October 30, 1986, Mr. Scussel did agree with the court that the greatest need for rental housing is among families earning $15,000 a year or less and needing three bedrooms (App. 8, p. 5). He noted that the planning and delivery of new apartments takes twenty to twenty-four months (Id.). Despite current vacancies, Mr. Scussel testified that he expects shortages of available units to occur in 1987 (App. 8, p. 6, 7). He also stated that the recently enacted federal tax law will result in fewer investor-owned rental projects (Id.).

On cross-examination Mr. Scussel stated that he omitted from his report two specific complexes with less than 1,000 total units and which had a history of abnormally high vacancy rates (App. 8, p. 10). This was done because they were not typical or representative of the overall market conditions (Id.).

Mr. Gray Dunlap, of the investment banking firm of William R. Hough & Co., testified regarding various methods of enhancing the credit for a particular financing (App. 7, pp. 34-35, pp. 40-42, p. 44). He testified that credit enhancement may be necessary for a particular project in order to achieve a high bond rating, which in turn results in lower interest rates to the borrower (App. 7, p. 40, 41). When the Assistant State Attorney expressed concern that this encouraged financings for developers which are the greatest credit risks, Mr. Dunlap responded that credit enhancement is designed to lower the interest rates in order to make the transaction work from a financial standpoint (App. 7, p. 44).

Mr. Dunlap stated that many projects are not financable at interest rates which would result from a B credit rating, because the mortgage payment would be too high (App. 7, p. 41). Thus, enhancing the developer's credit results in a lowering of the interest rate which in turn lowers mortgage payments, thereby resulting in a financially feasible project (Id).

Bond counsel testified at some length regarding the requirements of law and of the documents before the court (App. 7, pp. 53-69). She stated that the documents before the court contained "numerous references and discussions about the so-called security devices" (App. 7, p. 57). She further pointed out that the documents before the court do contain the requirements which must be satisfied by the mortgages or other security devices which will ultimately be executed in connection with a particular financing (App. 7, p. 63). On cross examination of bond counsel, the Assistant State Attorney conjured up a situation wherein bond counsel admitted bondholders may not have recourse against a developer, if the developer never executed any mortgage or other appropriate document (App. 7, pp. 61, 62). The Assistant State Attorney apparently believes that the mere presence of the documents before the court would guarantee they would be executed. Such reasoning ignores the clear obligation imposed by Resolution No. 86-7 of the Authority (App. 2, Exhibit C) which requires that before any series of the bonds are sold the Authority shall designate a trustee to enter into an indenture of trust and shall adopt or

approve such forms of notes, mortgages, loan agreements, security device agreements, land use restriction agreements or other documents as shall be proper to be used in the development, operation and functioning of the multi-family bond program (App. 2, Exhibit C, p. 29). The resolution further provides that such documents shall insure that the proceeds of the bonds will be used for the appropriate purposes, that all payments on the mortgage loans or security devices will be held in trust for the benefit of the bondholders, and that none of the proceeds of the sale of the bonds or payments made will be diverted to other purposes (App. 2, Exhibit C, p. 31). The form of trust indenture, which was presented to the court, expressly pledges for the benefit of the bondholders all rights which the Authority has in receipts from any mortgage loans or security devices, as well as investment earnings on funds held pursuant to the indenture (App. 2, Exhibit C, App. A, pp. 2 and 3). Bond counsel made it very clear that the bonds could not be closed or delivered without the necessary mortgages or other security devices being in place prior to such delivery (App. 7, pp. 68 and 69).

In questioning bond counsel, the Assistant State Attorney exhibited some concern regarding the power to amend the trust indenture (App. 7, pp. 63-65). The indenture can be amended in certain respects upon the consent in writing of the owners of not less than 60% or such other percentage as the issuer may approve prior to delivery of any series of the bonds (App. 7, pp. 63 and 64). The Assistant State Attorney's emphasis of the language "or

such other percentage as the issuer may approve" (Appellant's Initial Brief, p. 8) is misplaced. The percentage of bondholders whose consent is required must be established prior to delivery of any series of the bonds (App. 7, p. 64), which is the point in time when the contract with the bondholders is established. Bond counsel went on to identify certain types of amendments which could be made only with consent of all bondholders, and certain types of amendments which could not be made even with consent of bondholders (App. 7, p. 64).

SUMMARY OF ARGUMENT

The Authority's determination of need for multi-family rental housing affordable by persons and families of moderate, middle and lesser income and the lower court's validation decree are clothed with a presumption of correctness. The record presents ample evidence of both a currently existing need for such housing in Pinellas County and a projected need in the near future. No evidence was presented to contradict the testimony and report of the Authority's consultant. The Authority has properly exercised its discretion after diligent inquiry.

The proceedings of the Authority establish very clear conditions which must be satisfied prior to issuance of any series of bonds, including execution of documents which insure compliance with applicable law. Where the obligation exists to execute documents which contain terms requiring payment and use of revenues as required by law, the exact forms of such documents need not be presented at validation. Procedures and safeguards are in place which assure compliance with all legal requirements.

ARGUMENT

ISSUE I: THE LOWER COURT PROPERLY FOUND THAT THE BONDS PROPOSED TO BE ISSUED WILL SERVE A VALID PUBLIC PURPOSE.

In Section 159.602, Florida Statutes, the Florida Legislature declared a necessity for the creation of local Housing Finance Authorities to provide housing affordable by persons or families of moderate, middle or lesser income. This need was affirmed at the local level by the Board of County Commissioners of Pinellas County in Ordinance 82-32 (App. 2, Exhibit C). These legislative declarations of necessity are entitled to great weight. State v. Leon County, 400 So.2d 949 (Fla. 1981). In State v. Housing Finance Authority of Polk County, 376 So.2d 1158 (Fla. 1979), the Florida Supreme Court upheld the same findings by the legislature, the board of county commissioners and the local Housing Finance Authority to the effect that providing housing for moderate, middle and lesser income households serves a valid public purpose.

Section 159.612(1), Florida Statutes, (1985) provides that:

> A housing finance authority may issue revenue bonds from time to time in the discretion of the housing finance authority for the purposes of this act (emphasis added).

Appellee does not dispute that the Authority's declaration of necessity is subject to judicial review. In order to reverse the validation judgment on Appellant's first ground, the Court must find that the Authority's finding of need constitutes an abuse of that discretion. Getzen v. Sumter County, 103 So. 104 (Fla.

1925). See also, Jackson Lumber Co. v. Walton County, 116 So. 771 at 787 (Fla. 1928), Lewis v. Leon County, 107 So. 147 at 159 (Fla. 1926).

Appellant contends that the standard for this Court's review is whether there exists competent substantial evidence to support the determination of need for multi-family rental housing in Pinellas County to be occupied by persons or families of moderate, middle or lesser income. Even under the less stringent standard proposed by Appellant, the validation decree should nevertheless be affirmed.

Substantial evidence exists if the record contains evidence from which the trier of fact could draw a conclusion, or make a finding. See Lalow v. Codomo, 101 So.2d 390 (Fla. 1958); Union Trust Co. v. Baker, 143 So.2d 565 (Fla. 2d DCA 1962). The appellate court should not substitute its judgment for that of the lower court or the issuing agency.

The report of the Authority's housing market consultant indicates that the Pinellas County population has increased by some 20,900 new residents during each of the past fifteen years and is expected to increase by 24,800 new residents per year through 1990 (App. 9, p. i). The report also concludes that the family segment of the market continues to be the most underserved portion of the market (Id.). As the post-World War II "baby boom" generation matures, and with increased employment opportunities in the area, the demand for family-size apartments is expected to increase

(App. 9, pp. i, ii). Appellant would have the Authority blind itself to the housing needs in the near future, and issue bonds to finance only those projects which the market could absorb today, despite the unrefuted evidence that the process of financing and constructing multi-family housing takes twenty to twenty-four months (App. 8, p. 5).

Appellant relies on the decision in Baycol, Inc. v. Downtown Development Authority, 315 So.2d 451 (Fla. 1975) to argue that the Authority must show a present need for the approximately 3,000 apartment units which could be financed with $100,000,000 in revenue bonds. Baycol involved the certiorari review of an eminent domain proceeding, "one of the most harsh proceedings known to the law" (Id., at 455). A property owner challenged the necessity of taking its lands to be used for a parking garage and shopping mall, where the need for the parking would come into existence only upon completion of the shopping center project. Requiring a present and existing public need before a property owner's land may be taken, as in Baycol, is a far cry from saying that bonds may not be validated under the circumstances before this Court.

The evidence before the Court very clearly shows that the Authority is not proposing to issue $100,000,000 in bonds in a single transaction. Rather, the Authority intends to finance individual projects with separate series of bonds (App. 7, pp. 20, 34; App. 2, Exhibit C, Section 7). The procedures followed by the Authority in determining whether to finance any project involve a then-current review of the need for housing (App. 7,

p. 21). The Authority requires that family size units be made available and that location be one of the most important factors taken into consideration (App. 7, pp. 15-16).

The Legislature has said projects for the purposes proposed by the Authority serve a valid public purpose, and this Court has upheld the propriety of that legislative determination. Section 159.602, Fla. Stat. (1985); State v. Housing Finance Authority of Polk County, supra.

The consultant's report states that "under normal conditions an overall average vacancy rate of 4.0 to 5.0 percent is desirable" (App. 9, pp. 29-30). The Appellant, apparently on the basis of newspaper articles which are not part of the record (App. 7, p. 18), refers to the "distressed" Pinellas County rental market (Appellant's Initial Brief, p. 11), although the evidence shows an overall county vacancy rate only 1.8% in excess of that described as "desirable." It should be borne in mind that such rate is based on the general rental market. By law, the Authority may provide housing only for persons or families of moderate, middle or lesser income. Chapter 159, Part IV, Florida Statutes (1985). Appellant introduced absolutely no evidence to contradict the testimony of Ms. Kalada and Mr. Scussel that the needs of the group which the Authority may lawfully serve are not being adequately met by the conventional rental market (App. 7, p. 18; App. 7, pp. 27, 28).

Appellant notes that the rental market as a whole in Pinellas County is experiencing its highest rental vacancy rate in ten

years. The vacancy rates in the general rental market do not reflect vacancy rates among rental housing serving that segment of the population which the Authority is legally responsible for serving (App. 7, pp. 18-21). Furthermore, Table 13 in the consultant's report shows that vacant units can be absorbed with incredible speed when economic conditions change, as evidenced by the December, 1975 vacancy rate of 18.9% dropping to 8.9% only one year later (App. 9, p. 41).

Table 23 of the Consultant's report (App. 9) identifies new rental apartments planned, under construction or recently completed. In questioning Mr. Scussel, the Assistant State Attorney attempted to show that the market analysis had not even included all projects financed by the Authority (App. 8, p. 12-14).

The Assistant State Attorney again referred to newspaper articles allegedly discussing the Authority's approval of specific projects for financing (Id.). Appellant introduced into evidence no newspaper articles, nor any evidence supporting the statements allegedly made therein. The suggestion that bond issues may have been closed without the funds having been used to build housing units indicates a lack of understanding of the bond issuance process. The first step in the process is adoption of an "inducement resolution" whereby the Authority evidences its intent to proceed with a particular financing once various conditions are met (App. 7, p. 59). The fact that an inducement resolution has been adopted does not mean bonds are automatically issued. Table

23 clearly included projects which had been the subject of inducement resolutions but which were never actually financed (App. 8, pp. 13-16). Because some projects obviously were never constructed, it was appropriate for Mr. Scussel to exclude them from his calculations of available apartment units.

Despite the Assistant State Attorney's persistent questioning, Appellee's expert witness never retreated from the conclusion that a need for affordable housing exists and is expected to continue in Pinellas County.

The record before this Court clearly shows that the Authority had before it more than ample evidence from which it could reasonably have concluded that a need for housing affordable to persons or families of moderate, middle or lesser income exists in Pinellas County and will continue to exist through the next few years. With this evidence before it, the Authority cannot be said to have abused its discretion. The Court is reminded that the Authority is not proposing to do a single $100,000,000 bond issue at one time. Rather, it proposes to issue separate series of bonds from time to time in the amounts required to finance individual projects which meet its criteria and are within the overall financing framework as set forth in this proceeding (see, App. 7, pp. 20, 34; App. 2, Exhibit C, Section 7). Until a specific financing plan for an individual project is presented to the Authority, it is impossible to know what the precise terms and conditions of the mortgage or other security device will be. The

Authority has established the parameters within which each project may be financed and operated. Having so set the "boundaries," nothing more is required of the Authority at this preliminary stage of the bond issuance proceedings.

The judgment of validation should be affirmed.

ISSUE II: THE ACTUAL FORMS OF MORTGAGE OR OTHER SECURITY DEVICE WERE NOT REQUIRED TO BE PRESENTED TO THE LOWER COURT WHERE THE RECORD DESCRIBES THE COVENANTS WHICH MUST BE CONTAINED THEREIN PRIOR TO ISSUANCE OF ANY BONDS.

In the recent case of Wohl v. State, 480 So.2d 639 at 640 (Fla. 1985), this Court stated:

> The scope of review by this Court in bond validation cases is limited. The purpose of bond validation proceedings and the scope of judicial inquiry held pursuant to chapter 75, Florida Statutes (1983), is to determine if a public body has the authority to issue such bonds under the Florida constitution and statutes, to decide whether the purpose of the obligation is legal, and to ensure that the authorization of the obligations complies with the requirements of law...The final judgment validating the Commission's revenue bonds comes to the Court with a presumption of correctness, and appellants must demonstrate from the record the failure of the evidence to support the Commission's and the trial court's conclusions.

See also, Taylor v. Lee County, 498 So.2d 424 (Fla. 1986).

Appellant contends that the actual forms of mortgage or other security device providing for payment of the bonds must be presented to the Court in order for the bonds to be validated, relying on Section 159.612(2), Florida Statutes (1985), which provides:

> Any bonds issued pursuant to the provisions of this act shall be secured by a mortgage or other security device.

Nothing in the resolution of Appellee authorizing the issuance of the bonds (App. 2, Exhibit C) (the "Authorizing Resolution") contemplates securing the bonds in any manner other than by a mortgage or other security device. The term "security device" is defined as

> one or more of: a letter of credit, a surety or guaranty agreement, collateral, insurance agreement, or other agreement which provides security for the repayment of principal of and interest on the bonds (Id. at 7).

Section 14 of the Authorizing Resolution, entitled "Pledge of Revenues," provides in pertinent part, that "There are hereby irrevocably pledged to the payment of the Bonds" all sums paid pursuant to "loan, acquisition or other agreements with the Issuer or with respect to security devices" (Id. at 24). The Authorizing Resolution also states:

> The Indenture for any Series of Bonds shall also provide for the collection of amounts payable under Security Devices or the foreclosure by or in the name of the Trustee of mortgages and other security interests held by it which become in default, and may provide for the purchase by the Trustee at foreclosure sale of any mortgaged property or other security interests and the leasing and/or selling by the Trustee of any property so acquired. (Id. at 27) (emphasis added).

It authorizes "the execution of such loan agreements, security device agreements, mortgage acquisition and servicing agreements as shall be sufficient to commit participating Lenders to originate from loaned Bond proceeds, or Sponsors to enter into and the Authority to apply Bond proceeds to the acquisition of qualified Mortgage Loans" (Id. at 28). The Authority is required to adopt the necessary security documents prior to sale of any series of bonds (Id.). The Authorizing Resolution requires that such documents be executed in such form and substance as shall insure that the proceeds of the bonds are applied to appropriate purposes, and to insure that:

> All payments made upon the Mortgage Loans or Security Device or the acquisition and servicing agreements, including late fees and the net proceeds of Security Devices, or foreclosure of mortgages or other security interests shall be held in trust by the party receiving them and after deducting only the fees, charges and expenses expressly authorized shall be promptly paid to the Trustee to be held, administered and disbursed for the benefit of the Bondholders in accordance with the terms of the Indenture (Id. at 31).

The basic form of trust indenture approved by the Authority pledges for the benefit of the bondholders all of the Authority's right, title and interest in payments under any mortgage or other security device, the security underlying any such security device, and the funds and accounts held by the Trustee pursuant to such trust indenture (Exhibit A to Exhibit C, App. 2).

Validation of housing bonds without the forms of all security devices has become accepted practice in this state. Circuit Courts in Dade, Palm Beach and Clay Counties have validated some $500,000,000 of bonds, in the aggregate, on the basis of documents which are basically the same as those now before this Court. See, Housing Finance Authority of Dade County (Florida) v. State, Case No. 85-45760 (CA-21) (Fla. 11th Cir. Ct. 1985); Housing Finance Authority of Clay County v. State, Case No. 84-1004 CA (Fla. 4th Cir. Ct. 1984); Housing Finance Authority of Palm Beach County v. State, Case No. 84-5369 CA (L)(H) (Fla. 14th Cir. Ct. 1984). The provisions of the documents, taken together, clearly show that provisions have been made to assure compliance with Chapter 159, Part IV, Florida Statutes (1985).

The sole purpose of a validation proceeding is to determine whether the issuing entity has constitutional and statutory

authority to issue the bonds in question, and whether such authority has been exercised "in accordance with the spirit and intent of the law." McCoy Restaurants, Inc. v. City of Orlando, 392 So.2d 252 at 253 (Fla. 1980). The Courts have stated that:

> The object of the proceedings is to have finally adjudicated by the court in advance of their issuance whether or not the proposed obligations . . . . have been validly authorized and may be issued in the form, containing the recitals, covenants, undertakings, pledges or limitations stipulated, described, or set up in the authorizing ordinance or resolution providing for same . . . . and to judicially determine the legal sufficiency of the proceedings constituting the initiatory steps for the issuance and sale of the particular obligation sought therein to be validated. State v. Citrus County, 157 So. 4 at page 5 (Fla. 1934) (emphasis added).

That some steps remain to be taken after validation has thus been acknowledged by this Court's long-standing recognition that validation proceedings review the "initiatory steps" for the issuance and sale of bonds (Id.). Similarly, this Court has long recognized that not all documents will necessarily be before the validating court, but that certain "recitals, covenants, undertakings, pledges or limitations" may be "stipulated, described or set up in" the resolution authorizing the issuance of bonds (Id.).

In McCoy Restaurants, Inc. v. City of Orlando, supra, the Court held that a validation proceeding was not the proper forum for determining the legality of a proposed form of lease. The lease in McCoy Restaurants was tantamount to the security devices in the instant case, as both provide the very source of revenues

for paying the bonds. As recently as December, 1986 this Court has upheld the principle of McCoy Restaurants, in Taylor v. Lee County, supra. In Taylor, the Court held that a county's power to impose tolls on previously toll free roads and bridges could not be adjudicated in a bond validation proceeding,

> although the generation of revenues to fund this bond issue depends on the County's authority to impose tolls. 498 So.2d at 425.

Appellant states that the Court could "disapprove an issued bond because of specific provisions in the mortgage that was to secure the bonded indebtedness," (Appellant's Initial Brief, p. 16), citing Jacksonville Shipyards, Inc. v. Jacksonville Electric Authority, 419 So.2d 1092 (Fla. 1982). In that case, the Court was actually construing language which permitted both JEA and Florida Power and Light Company to mortgage their respective interests in an electric generating plant without consent of the other. Recognizing that in the circumstances presented in that case a referendum would be required before JEA could mortgage its interest, the Court stated,

> Since as of now there has been no attempt by the JEA to mortgage its ownership in the plants to be constructed and pledge such mortgage as payment for the bonds, we need not address this issue. 419 So.2d at 1095.

Appellant's reliance on the Jacksonville Shipyards case is erroneous.

The Appellant's reliance on the case of International Brotherhood of Electrical Workers Local Union No. 177 v. Jacksonville Port Authority, 424 So.2d 753 (Fla. 1982), is similarly misplaced. The Appellant correctly notes that the Court

approved the trial court's finding of ability of the issuing Authority to pay for the bonds and that the bonds would be payable as required, solely from specified revenues (Appellant's Initial Brief, p. 16). Appellant goes on to state "The mortgage, as the source of payment for the instant proposed bond issue must be the basis for this court's findings that the Authority can meet the proposed $100,000,000 bond obligation" (Id.). Appellant notes once again that the bonds proposed to be issued by the Authority will be in multiple series, each with its own unique type of security device to provide adequate security for payment. The bonds at issue in International Brotherhood, supra, were proposed to have been issued pursuant to Chapter 159, Part II, Florida Statutes (1981), which contains an express requirement that the issuer must conclude, inter alia, that the purchaser and operator of a bond-financed project is financially responsible and able to fulfill its financial and managerial obligations. Id; Section 159.29, Florida Statutes. Chapter 159, Part IV, Florida Statutes (1985), pursuant to which the Appellant operates, contains no such requirements.

If the Authority were required to present the actual forms of mortgages or other security devices at the very preliminary stage of a financing when validation occurs, as Appellant insists, then the Authority would lack the flexibility needed for it to meet its legislative mandate to provide affordable housing. The legislature has required that

> As long as a shortgage of housing exists, a housing finance authority shall not unreasonably refuse to participate in the financing of any qualifying housing development upon request. Section 159.619, Florida Statutes (1985).

Finally, Appellant argues that security devices were specifically left out of the validation judgment at the court's direction. However, a review of the lower court's judgment (App. 1), shows that the judgment restates current law regarding collateral attacks (App. 1, p. 9, paragraph 22):

> To the extent that bonds are to be secured pursuant to mortgages or security devices which were not before this court at validation, and such documents contain provisions that do not satisfy the requirements of the bond resolution, the trust indenture, or other requirements of law, this validation would not preclude subsequent challenges to these documents not before the court as enunciated in Glatstein v. City of Miami, 399 So.2d 1005 (Fla. 3d DCA 1981).

Provision having been made to assure compliance with Chapter 159, Part IV, Florida Statutes (1985), and the lower court having expressly recognized the availability of remedies to challenge mortgages or other security devices which do not conform to law, the judgment of validation should be affirmed.

CONCLUSION

As Appellee has shown, the Authority has a reasonable basis for determining that a need exists for moderate, middle and lesser income housing in Pinellas County. The Court should not substitute its judgment for that of the Authority on matters which the legislature has placed in the Authority's discretion, and which are reasonably supported by evidence before the Authority.

The documents before the Court clearly set the boundaries within which the bonds are proposed to be issued. These boundaries include prescribing the type and required legal effect of the security for the bonds. If the forms of security devices to be actually executed in connection with a given series of bonds do not satisfy the requirements of the Authorizing Resolution as presented to the Court, subsequent remedies would be available.

> It is an elemental principle of appellate procedure that every judgment, order or decree of a trial court brought up for review is clothed with the presumption of correctness and that the burden is upon the appellant in all of such proceedings to make error clearly appear. State v. Town of Sweetwater, 112 So.2d 852, 854 (Fla. 1959)

Appellant having failed to make error clearly appear, the judgment of validation should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to C. Marie King, Assistant State Attorney, P.O. Box 5028, Clearwater, Florida 33518 this 12th day of February, 1987.

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