

Lawsuit Could Undermine Decades of Nonprofit LIHTC Development

RiseBoro Community Partnership Inc. vs. SunAmerica Housing Fund Puts Nonprofit Developers' Rights at Risk, Could Potentially Erode the Purpose of LIHTC

Not-for-profit developer [RiseBoro Community Partnership Inc.](#), represented by Goldstein Hall's litigation team, is currently in a LIHTC dispute against its investor SunAmerica Housing Fund in a case that could have serious implications for nonprofit developers across the country and put the long-term affordability of millions of LIHTC developments at risk.

[Goldstein Hall](#) is litigating RiseBoro's right to exercise its right of first refusal for an affordable housing development after Year 15. RiseBoro contends that it had a previously negotiated Partnership Agreement with the investor, and SunAmerica is trying to violate the terms of the agreement. SunAmerica, however, is arguing that despite procuring 15 years' worth of tax credits, it is not only entitled to the additional full market value of the project, but also to veto any attempt by RiseBoro to purchase the project at its minimum purchase price.

Essentially, SunAmerica contends that a not-for-profit sponsor is not entitled to purchase an affordable housing project unless the investor partner (or equivalent) is willing to sell. SunAmerica further pleads that RiseBoro breached fiduciary duties for even attempting to purchase the affordable housing project in the first place.

As Goldstein Hall Managing Partner David Goldstein notes, "I can't think of any nonprofits who would enter into a deal with an investor if the investor had not promised to transfer the property to the nonprofit in Year 15 via the Section 42(i)(7) right of first refusal. The tax lawyers shouldn't be modifying the intent of the parties at the inception of the deal, or 15 years later. I'm confident that we will build a broad national coalition to coalesce around that point."

According to Goldstein Hall Litigation Partner Brian Markowitz, the potential implications of this case are significant, "It could erode the very purpose of LIHTC, undermine decades of community development across the nation, displace community-based not-for-profit organizations, and strip them of their opportunity to own affordable housing projects. Moreover, investor partners could be allowed to double dip by not only securing millions in federally allocated tax credits, but also seeking market value prices from private purchasers in an effort to convert these vital affordable housing projects into market-rate residences."

As a mission-driven law firm and a certified Benefit Corporation (B-Corp.) committed to empowering not-for-profit clients to build strong organizations and communities, Goldstein Hall is singularly positioned to vigorously defend and enforce not-for-profit developers' rights.

To get updates on this case and similar LIHTC Dispute cases, [sign up here](#).