UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 6, 2026

CBCA 8587-FEMA

In the Matter of HOGAR MANUEL MEDIAVILLA NEGRÓN, INC.

Lemuel Cancel-Méndez and Daniel Meléndez-Barreiro of Nevares, Sánchez-Álvarez & Cancel, PSC, San Juan, PR; and Antonio Pavía Vidal, Guaynabo, PR, counsel for Applicant.

Heriberto López Guzmán, Jan Carlos Bonilla Silva, and Alexandra Filiberti Garcia, Central Office for Recovery, Reconstruction, and Resiliency, Guaynabo, PR; and Alice Morales Roldán, Legal Director, Melanie N. Negrón Rivera, Deputy Legal Director, and Gina G. Rosado Quiñones, Legal Project Manager, Central Office for Recovery, Reconstruction, and Resiliency, San Juan, PR, counsel for Grantee.

Brock Pierson and John Ebersole, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC; and Emanuel Rier Soto, Disaster Litigation and Arbitration, Federal Emergency Management Agency, Department of Homeland Security, Guaynabo, PR, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **VERGILIO**, **KULLBERG**, and **VOLK**.

KULLBERG, Board Judge, writing for the Panel.

The applicant, Hogar Manuel Mediavilla Negrón, Inc. (Hogar), a private nonprofit (PNP) organization, requests that the panel restore public assistance (PA) in the amount of $2,138,065.75, which the Federal Emergency Management Agency (FEMA) deobligated. Hogar requested PA for the cost of repairing hurricane damage to the Gladys Roig Cabrer Elderly Apartments (facility). FEMA initially determined that Hogar was eligible to receive

PA for damage caused by a hurricane, and Hogar received funding for repairs to the facility, which were completed. FEMA then deobligated those funds after it determined that Hogar neither owned nor operated the facility. Hogar contends that it was legally obligated to repair the damage to the facility. This matter was decided on the written record without a hearing. FEMA, Hogar, and the grantee, the Central Office for Recovery, Reconstruction and Resiliency, submitted briefs. After receipt of the parties' briefs and the closing of the record in this matter, the panel reopened the record and requested supplemental briefs. For the reasons stated below, the panel finds that Hogar is ineligible to receive PA, and FEMA has properly deobligated previously obligated funds for PA.

Background

On May 17, 2007, Hogar, as general partner, executed a limited partnership agreement with the initial limited partner for the formation of the Gladys Roig Cabrer Elderly L.P., S.E. (limited partnership) "pursuant to the New York Revised Uniform Limited Partnership Act." FEMA Exhibit 1 at 2. The purpose of the limited partnership was to "acquire, develop, finance, construct, and/or rehabilitate, own, maintain, operate[,] and sell or otherwise dispose of a 100-unit multifamily apartment complex intended for rental to low-income households, to be known as Hogar Manual Mediavilla Negron Elderly Apartments, and to be located in Humacao, Puerto Rico." *Id*. at 2-3. The agreement provided the following:

> [T]he General Partner, within the authority granted to it under this Agreement, shall have full, complete and exclusive discretion to manage and control the business of the Partnership[,] . . . shall make all decisions affecting the business of the Partnership and shall manage and control the affairs of the Partnership to the best of its ability and use its best efforts to carry out the purpose of the Partnership. In so doing, the General Partner shall take all actions necessary or appropriate to protect the interests of the Limited Partner of the Partnership. The General Partner shall devote such of its time as is necessary to the affairs of the Partnership.

Id. at 47. On November 28, 2007, the limited partnership entered into a housing management agreement with Star Management Corporation (Star). Applicant Exhibit K at 401.[1]

On May 23, 2008, Hogar and the limited partnership entered into a lease agreement in which Hogar, the lessor, leased land to the limited partnership, the lessee. Applicant

---

[1] Page references are to Bates numbers, where provided. Citations to filings or exhibits without page numbers are to .pdf page numbers, excluding cover pages.

Exhibit B at 17-19. The lease noted that the lessee had filed an application with the Puerto Rico Housing Finance Authority (PRHFA) for:

> the allocation of low-income housing tax credits ("LIHTC") pursuant to Section Forty-Two (42) of the United States Internal Revenue Code and the Tax Regulations approved thereunder (the "Code"), and intends to construct on the Premises one or more structures which will contain a number of housing units and facilities to be rented to and operated by LESSEE for the benefit of eligible individuals and families under the LIHTC program (hereinafter called the "Improvements").

Id. at 19. The period of the lease was sixty-five years at an annual rate of one dollar. *Id*. at 20. The lease further provided:

> It is agreed and understood[,] however[,] that notwithstanding the Rent, the main consideration for the grant of this Lease by LESSOR to LESSEE is the direct and indirect benefits to be derived by LESSOR from LESSEE'S commitment to develop, operate[,] and administer a low income housing rental Project in the Premises continuously and without any interruption throughout the Term (except for any interruptions caused by any casualty or condemnation of the Premises or any part thereof), as the same may be extended, and otherwise provided for in this Lease.
>
> **Five**: **<u>Title to Improvements</u>**. LESSOR and LESSEE further agree that until the expiration or sooner termination of the Term, as the same be extended, LESSEE shall be the owner of the Improvements and that at the expiration or earlier termination of the Term, as the same may be extended, title to the Improvements shall pass to LESSOR as provided in this Lease.
>
> . . . .
>
> Title to the improvements shall pass to LESSOR ipso facto at the expiration or earlier termination of the Term, as the same may be extended, free and clear of any and all liens, encumbrances and claims by third parties.

Id. at 20-21.

The lease also required the lessee, at its own expense, to obtain insurance policies that "name LESSOR, LESSEE, and the Investment Partners (if required) and any designees of any of the foregoing, as insured." Applicant Exhibit B at 28. The lease also provided the following:

> In the event the Premises or the Improvements should be damaged by fire, explosion or any other casualty or occurrence and (a) such casualty or occurrence shall not be covered by LESSEE's Insurance (provided that LESSEE's insurance company's refusal to afford coverage is not based on LESSEE's breach of its obligation to obtain and/or maintain LESSEE's insurance) or (b) the Premises or the Improvements be damaged to the extent of more than twenty-five (25%) of the cost of replacement thereof, then in either case, LESSEE, with the written consent of the Investment Partners and of any Leasehold Mortgagee, may elect to terminate this Lease by giving notice of such election to LESSOR no later than ninety (90) days after the date of such fire, explosion, casualty or occurrence, stating the effective date of termination of this Lease, which shall be no more later [than] thirty (30) days after the date on which such notice of termination shall have been given and (a) upon the date specified in such notice, this Lease shall terminate and LESSOR and LESSEE shall be fully released and discharged from all further liability and responsibility to one another, and any proceeds of casualty insurance in respect of the Improvements and the Premises shall be paid over to LESSOR, to any Leasehold Mortgagee and to LESSEE in accordance with the schedule hereinafter set forth.

Id. at 39-40. Finally, the lease provided that it "shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico." *Id*. at 54.

On June 1, 2008, the parties amended the limited partnership agreement to replace Hogar as general partner with Hogar GRC, LLC as the new general partner and transfer interest in the limited partnership to HMMN, Inc. FEMA Exhibit 1 at 2. By an amendment to the limited partnership agreement, dated October 17, 2008, Hogar GRC, LLC withdrew as general partner and became a limited partner, and HMMN, Inc. withdrew as a limited partner and became a general partner. *Id*. On October 31, 2008, the limited partnership agreement was amended and restated as follows:

> WHEREAS, the parties hereto now desire to enter into this Amended and Restated Agreement of Limited Partnership to (i) continue the Partnership; (ii) admit U.S.A. Institutional Tax Credit Fund LXIX L.P., a Delaware limited partnership, to the Partnership as the Investment Partnership and The Richman Group Capital Corporation, a Delaware corporation as the Special Limited Partner; (iii) withdraw Hogar GRC, LLC as a limited partner of the

> Partnership; (iv) reassign Interests in the Partnership; and (v) set forth all of the provisions governing the Partnership.

Id. at 3. Schedule A to the limited partnership agreement showed HMMN, Inc. with a .01% partnership interest based upon its capital contribution and United States Institutional Tax Credit Fund LXIX with a 99.99% partnership share. *Id*. at 95.

From September 17 to November 15, 2017, Hurricane Maria caused widespread damage throughout Puerto Rico, and, on September 20, 2017, the President issued a declaration of a disaster (FEMA-4339-DR-PR (DR-4339)). Applicant Exhibit L at 416. On February 7, 2018, Hogar submitted to FEMA a request for PA for repairs to the facility. *Id*. FEMA subsequently obligated project costs that totaled $2,214,108.87. *Id*.

From September 17 to 21, 2022, Hurricane Fiona caused damage from heavy rain, flooding, and mudslides in Puerto Rico, and, on September 17, 2022, the President issued a declaration of a disaster (FEMA 4671-DR-PR (DR-4671)). FEMA Exhibit 6, First Appeal Analysis at 1. On October 12, 2022, Hogar requested PA for damage caused by Hurricane Fiona to the facility. *Id*. FEMA's determination memorandum (DM), dated December 16, 2022, determined that Hogar was a PNP, but it was ineligible to receive PA because it had not shown that it owned or operated the facility. FEMA Exhibit 6 at 1.

On February 3, 2023, Hogar filed its first appeal of the DM, which FEMA denied on January 2, 2024, and, on March 1, 2024, Hogar filed its second appeal. FEMA Exhibit 7, Second Appeal Analysis at 1-2. FEMA's analysis of Hogar's second appeal, which FEMA denied on July 16, 2024, stated the following:

> In support of its application, . . . [Hogar] also provided various historical documentation concerning its organization. This documentation included a May 17, 2007, Agreement of Limited Partnership for the formation of [the] Gladys Roig Cabrer Elderly, L.P (Limited Partnership) for purpose of constructing, owning, maintaining, leasing, and operating multi-unit residential housing. This Limited Partnership identified [Hogar] as the general partner for this corporation. Documentation provided shows that [Hogar], in its role of General Partner for the Limited Partnership, signed a lease agreement on October 5, 2007, identifying itself as the owner and lessor of the land and the Limited Partnership, as the lessee of the land, as well as the owner and operator of the buildings to be used for low-income housing.
>
> . . . .

> [Hogar] provided documentation including an amendment to the Limited Partnership signed on October 17, 2008, where HMMN, Inc., a New York LLC for-profit corporation—a different entity from [Hogar]—became the new general partner, and Hogar GRC, LLC, another for-profit corporation, became the new limited partner.

Second Appeal Analysis at 1-2 (footnotes omitted). In denying the appeal, FEMA determined that Hogar neither owned nor operated the facility because "the lease agreement identifies the Limited Partnership, not [Hogar], as the owner and operator of the buildings to be used for low-income housing, as well as the party responsible for maintenance, repairs, and insurance costs." *Id*. at 2. FEMA also noted that Hogar was no longer the general partner of the limited partnership because "HMMN, Inc., a separate entity from [Hogar], became the general partner." *Id*. at 3. Finally, FEMA noted that there was no evidence that "HMMN, Inc., the for-profit corporation that operates the Housing Complex, is an eligible PNP applicant under the PA program." *Id*.

On August 9, 2023, Hogar entered into a contract for repairs, and the contractor completed construction on April 30, 2024. Applicant's Supplemental Brief at 2. Hogar's president executed a certificate of completion and acceptance on May 16, 2024, that certified an adjusted final contract value of $2,116,526. *Id*. at 3.

On September 4, 2024, FEMA applied its findings regarding Hogar's lack of eligibility to receive PA in connection with Hurricane Fiona to its previous determination regarding Hurricane Maria (DR-4339) and issued a DM that deobligated the PA previously obligated in connection with Hurricane Maria. Applicant Exhibit L at 417. The grantee, on behalf of Hogar, filed its first appeal of that DM on December 9, 2024, which FEMA denied on July 8, 2025. *Id*. at 414. FEMA noted the following:

> Among other things, [Hogar] maintains that it operates and controls the Limited Partnership, as evidence by the fact that [Hogar] retains 100 percent ownership of HMMN, Inc. While [Hogar] recognizes that the Limited Partnership is the lessee of the Facility, it asserts that the day-to-day management of the Facility is carried out by HMMN, Inc. It also argues that in accordance with Title 26 of the United States Code (26 U.S.C.) § 42(h)(5), if a PNP holds 100 percent of the stock of a qualified corporation, such as the general partner, that corporation is considered to meet the ownership and material participation requirements of the Low-Income Tax Credit (LIHTC) program.

Id. at 417-18. FEMA also noted that:

> It is an undisputed fact that the Lease Agreement identifies the Limited Partnership, and not [Hogar], as the owner and operator of the Facility, as well as the party responsible for maintenance, repairs, and insurance costs. Likewise, the Partnership Agreement identifies HMMN, Inc., instead of [Hogar], as the general partner of the Limited Partnership.

Id. at 419. Additionally, FEMA stated that "HMMN, Inc. (and by extension the Limited Partnership) as a for profit entity, cannot establish eligibility by piggybacking on [Hogar's] status as a PNP for purposes of meeting FEMA's PNP eligibility criteria." *Id*. at 419 n.16. FEMA concluded that Hogar neither owned nor operated an eligible PNP facility and was not legally responsible for restoring the facility. *Id*. at 420.

Hogar submitted to the Board its request for arbitration (RFA) and, at the panel's direction, a summary of its request, and FEMA filed its opposition to Hogar's request for arbitration. The panel conferred with the parties, the parties elected to have this matter decided on the written record, and the parties submitted briefs. The panel reopened the record and directed the parties to address the question of "whether FEMA is precluded under 42 U.S.C. § 5205 (2018) from deobligating the previous payment of PA to the applicant in this matter." Order (Apr. 21, 2026). The panel received supplemental responses from Hogar and FEMA.

Discussion

At issue is whether FEMA properly determined that Hogar neither owns nor operates the facility and whether FEMA can now deobligate funds already paid for repairs to the facility. Our authority in this matter is pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§ 5121–5207 (2024). Hogar contends that it operates the facility as the sole owner of the general partner of the limited partnership, and, under the terms of the lease, it had the legal responsibility for making repairs to the facility. The parties filed additional responses to the panel's inquiry as to whether the Stafford Act placed limits on FEMA's authority to deobligate funds under 42 U.S.C. § 5205, Disaster grant closeout procedures (section 5205). FEMA contends that section 5205 applies only to state and local governments, but Hogar argues that section should also apply to PNPs.

The panel addresses, initially, whether section 5205's closeout procedures limit FEMA's authority to deobligate PA in the case of an applicant that is a PNP. The relevant portions of section 5205 provide the following:

> **(a) Statute of limitations**
>
> **(1) In general**
>
> . . . [N]o administrative action to recover any payment made to a State or local government for disaster or emergency assistance . . . shall be initiated in any forum after the date that is 3 years after the date of transmission of the final expenditure report for the project as certified by the grantee.
>
> . . . .
>
> **(c) Binding nature of grant requirements**
>
> A State or local government shall not be liable for reimbursement or any other penalty for any payment made under this chapter if–
>
> (1) the payment was authorized by an approved agreement specifying the costs;
>
> (2) the costs were reasonable; and
>
> (3) the purpose of the grant was accomplished.

42 U.S.C. § 5205(a)(1), (c). FEMA policy, citing section 5205, states that "[t]he language of Section [5205], if applicable, only prohibits FEMA from recovering certain payments from state, Indian tribal governments, or local governments, and does not extend such protections to private-non-profits." FEMA Recovery Policy, FP 205-081-2 (Mar. 31, 2016) (FEMA Recovery Policy) at 1 n.5.[2] Additionally, FEMA's Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018) states that "[s]ection [5205] does not apply to PNPs." PAPPG at 146 (citing FEMA Recovery Policy). Hogar is a PNP, and, consequently, it is not protected from the limitations that section 5205 places on FEMA's authority to deobligate funds for PA.

Hogar argues that section 5205(c) precludes FEMA from deobligating funds for PA that it has paid to its contractor for completed repairs to the facility in a "retroactive

---

[2] The Stafford Act defines a state as "any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands." 42 U.S.C. § 5122(4).

eligibility re-determination."[3] Applicant's Supplemental Brief at 6, 7. The United States Court of Appeals for the Fifth Circuit held that "Congress extended § 5205(c) protection *only* to 'State or local government[s]' and not private nonprofits." *Holy Cross College, Inc. v. Criswell*, No. 23-30085, 2024 WL 2318166 (5th Cir. 2024) at *3 (quoting 41 U.S.C.§ 5205(c)), *aff'g*, 648 F. Supp. 3d 747 (E.D. La. 2023). The court concluded that "[w]here Congress 'includes particular language in one section of a statute but omits it in another,' we 'generally presume' that Congress acted 'intentionally and purposely in the disparate inclusion or exclusion." *Id*. (quoting *Rodriguez-Avalos v. Holder*, 788 F.3d 444, 451 (5th Cir. 2015) (quoting *Brown v. Gardner*, 513 U.S. 115, 120 (1994))). "Congress . . . 'has the right to make th[e] choice' of who receives § 5205(c) immunity even if that choice is "ill-advised." *Id*. at *4 (quoting *Mississippi Poultry Association, Inc. v. Madigan*, 31 F.3d 293, 310 (5th Cir. 1994)). While the Fifth Circuit's decision is not binding precedent, the panel finds no basis to dispute the court's reasoning and will not extend the Stafford Act beyond the meaning Congress intended.

Hogar argues that section 5205(c) applies because it contracted for the repair work, the cost of the work was reasonable, and the purpose of the grant was accomplished. Applicant's Supplemental Brief at 6. Accordingly, Hogar urges the panel to extend the protections provided under section 5205 to PNPs, but such an argument ignores any reasonable interpretation of the Stafford Act and FEMA policy. This panel can only apply statute, regulation, and policy within the limits allowed in an arbitration, and "[a]n arbitrator's 'proper task [is] to identify the rule of law that governs' a situation, not to make public policy." *Louisiana Department of Natural Resources*, CBCA 4984-FEMA, 16-1 BCA ¶ 36,321, at 177,082 (quoting *Stolt-Nielson S.A. v. AnimalFeeds International Corp.*, 559 U.S. 662, 673 (2010)).

The panel's discussion, accordingly, turns to whether Hogar owns or operates the facility. Among those entities eligible to apply for PA are "[p]rivate non-profit organizations or institutions which own or operate a private nonprofit facility as defined in § 206.221(e)." 44 CFR 206.222(b) (2017). FEMA policy states that it "must determine whether the PNP owns or operates an eligible facility in order to determine whether the Applicant is eligible." PAPPG at 9. "An eligible PNP . . . must actually own or operate the facility at issue to be eligible–responsibility for repairs is not enough." *University of North Carolina at Asheville Foundation, Inc*., CBCA 8610-FEMA, 26-1 BCA ¶ 38,975, at 189,762. Under the terms of the lease, Hogar owned the land upon which the facility was located, but the lessee, the limited partnership, owned the facility. The lease imposed responsibility on the lessee for

[3] Hogar did not argue that the three-year limitations period set forth in section 5205(a) applied in this matter.

obtaining insurance for the facility, and it stated that the limited partnership was responsible for building, operating, and managing the facility. Additionally, the lease provided for the lessor to become the owner of the facility only upon the end of the term of the lease or the termination of the lease, but neither of those conditions apply to this matter. Under the terms of the lease, Hogar neither owned nor operated the facility.

Hogar argues that "[i]n *Bay Medical Center*[, CBCA 7826-FEMA, 24-1 BCA ¶ 38,492], the CBCA rejected FEMA's narrow construction of 'legal responsibility' in [a] similar context where a nonprofit employed subsidiaries and leases yet retained ultimate control." Applicant's Summary of RFA at 3. The panel's decision in *Bay Medical Center* involved an applicant that owned and leased a surgical facility that was damaged. 24-1 BCA at 187,094. That decision noted, contrary to FEMA's position that the lessee was responsible for the repairs to the facility, that the applicant was not relieved of its obligation to repair the facility because the lease did not specify that the lessee was responsible for such repairs. *Id*. at 187,098. Hogar errs in suggesting that the panel's decision in *Bay Medical Center* applies to this matter. As discussed above, Hogar was not the owner of the facility, and a PNP must show that it is either the owner or the operator of the facility to be eligible for PA. The panel does not read *Bay Medical Center* as changing that requirement as allowing a PNP to be eligible for PA by asserting an obligation to repair a leased property. Finally, the limited partnership owns the facility, which is all of the improvements on the property for which Hogar has sought PA, and it has been recognized that a lessor cannot recover PA for the lessee's improvements to a leased property. *See Buffalo Ridge Regional Railroad Authority*, CBCA 8701-FEMA, 26-1 BCA ¶ 38,991, at 189,838 ("Our decision here should not be interpreted as requiring FEMA to provide PA funding for improvements to the property that [the lessee], rather than [the lessor], owns.").

Hogar argues that "its control is preserved: by owning 100% of the General Partner entity." RFA at 8. A limited partnership is, generally, defined as follows:

> [P]artnership comprised of one or more general partners who manage business and who are personally liable for partnership debts, and one or more limited partners who contribute capital and share in profits but who take no part in running business and incur no liability with respect to partnership obligations beyond contribution.

Limited Partnership, Black's Law Dictionary (6th ed. 1990). Hogar was the general partner when the limited partnership agreement was executed, but HMMN, Inc., a for-profit entity, became the general partner before the events relevant to this matter. Having ceased to be the general partner of the limited partnership, Hogar no longer has the rights and liabilities of a general partner and cannot now assert that it still operates the facility.

Hogar contends that it exercises "de facto" control over the facility. RFA at 1. In *University of North Carolina*, the panel stated that "'[a] parent corporation which by its stock ownership controls its subsidiary, and which as a party litigant asserts only its stockholder's . . . rights,' lacks standing to maintain a suit to enforce the subsidiary's rights." 26-1 BCA at 189,760. (quoting *Schenley Distillers Corp. v. United States*, 326 U.S. 432, 435 (1946)). Hogar's assertion of de facto control is not sufficient to overcome the fact that it is not the general partner of the limited partnership, and FEMA properly determined that Hogar lacks eligibility to receive PA.

Additionally, Hogar contends that "because of the special [Low-Income Housing Tax Credit (LIHTC)] rule for nonprofit involvement ([Internal Revenue Code (IRC), 26 U.S.C. § 42(h)(5)]), the project qualifies as a nonprofit-owned, materially-participating development." RFA at 8. That IRC section provides that "a qualified low-income housing project is described . . . if a qualified nonprofit organization is to own an interest in the project (directly or through a partnership) and materially participate . . . in the development and operation of the project." 26 U.S.C. § 42(h)(5)(B). However, Hogar fails to explain how compliance with that IRC section amounts to either ownership or the operation of the facility. While Hogar's ownership of HMMN, Inc., the general partner, may amount to compliance with the LIHTC rule for nonprofit involvement, the panel does not find that such compliance amounts to either ownership or operation of the facility for the purpose of eligibility for PA.

Decision

The panel denies the applicant's request for relief from FEMA's deobligation of funds.

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge

Daniel B. Volk
DANIEL B. VOLK
Board Judge