

**UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

<b>In the Matter of:</b>	)	
<b>Metro Funding Corp.,</b>	)	<b>HUDALJ 10-E-096-MR/59</b>
<b>Respondent.</b>	)	

**ORDER GRANTING GOVERNMENT’S MOTION TO DISMISS  
FOR FAILURE TO DEFEND**

The Mortgagee Review Board of the United States Department of Housing and Urban Development (“the Government”), pursuant to Section 202 of the National Housing Act of 1934 (“Housing Act”), 12 U.S.C. § 1708, and 24 C.F.R. § 25.5, filed a Notice of Administrative Action dated March 24, 2010, withdrawing Respondent’s HUD/FHA approval for one year. Respondent filed a response on April 7, 2010, appealing the withdrawal action. A Notice of Hearing and Prehearing Order, as amended by an April 16, 2010, Correction to Notice of Hearing and Prehearing Order (“Order”), was issued by the undersigned, requiring the parties to submit Prehearing Exchanges on or before April 23, 2010, and scheduling the hearing for May 4, 2010.

On April 23, 2010, the Government filed its Prehearing Exchange. To date, Respondent has not filed its Prehearing Exchange, in violation of the Order. As a result, the Government filed a Motion to Dismiss for Failure to Defend (“Motion” and “Mot.”) on April 28, 2010, asking the undersigned to dismiss Respondent’s appeal with prejudice on the basis that Respondent has not filed its Prehearing Exchange, and has “refus[ed] to communicate” with the Government. Mot. at 2. Specifically, the Government alleges that since its call with the President of Metro Funding Corp., Bruno Linares, was disconnected, neither Mr. Linares nor any other representative of Respondent returned the Government’s six subsequent calls, responded to the Government’s voicemail messages, or contacted the Government otherwise. Mot. at 2 n.1.

The applicable regulations provide as follows, in pertinent part:

§ 26.34 Sanctions.

(a) The ALJ may sanction a person, including any party or representative, for failing to comply with an order, rule, or procedure governing the proceeding; failing to prosecute or defend an action; or engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the

hearing.

(b) Any sanction, including, but not limited to, those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order compelling discovery, the ALJ may impose an appropriate sanction for such noncompliance, including, but not limited to, the following:

- (1) Drawing an inference in favor of the requesting party with regard to the information sought;
- (2) In the case of requests for admission, deeming any matter about which an admission is requested to be admitted;
- (3) Prohibiting the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; or
- (4) Striking any part of the pleadings or other submissions of the party failing to comply with the order.

(d) If a party fails to prosecute or defend an action brought under subpart B of this part, the ALJ *may dismiss the action or may issue a decision* against the non-prosecuting or defending party. *Such decision of the ALJ shall constitute final agency action and shall not be appealable to the Secretary under § 26.52 of this part.*

(e) The ALJ may refuse to consider any motion, request, response, brief, or other document that is not filed in a timely fashion.


24 C.F.R. § 26.34 (emphasis added).

Section 26.34(b) of the regulations provides that a sanction imposed on a non-defending party “shall reasonably relate to the severity and nature of the failure” to defend. Respondent’s representative has had one, albeit incomplete conversation with the Government attorney, after which it appears he made no effort to reconnect, and instead, ignored the Government’s phone calls and voicemail messages, and deliberately avoided settlement discussions with the Government. Also, because a hearing was set in a timely fashion after Respondent requested an appeal of the Government’s withdrawal action, and a reasonable deadline set for Prehearing Exchanges, Respondent was given every opportunity to defend against the Government’s action before an Administrative Law Judge in accordance with the Housing Act and its implementing regulations at 24 C.F.R. Part 25. Yet, Respondent failed to file its Prehearing Exchange in

accordance with the Order and has failed to communicate with the Government attorney regarding the appeal process. The nature of Respondent's failure to defend warrants dismissal in accordance with 24 C.F.R. § 26.34(b).

**ORDER**

1. The findings of fact and conclusions of law as set forth in the Government's March 24, 2010, Notice of Administrative Action issued to Respondent Metro Funding Corp. (FHA ID 26044-0000-6 (Title 2)) are incorporated herein by reference.
2. Consistent with 24 C.F.R. § 26.34 and with the general authority of the presiding Administrative Law Judge provided for in 24 C.F.R. § 26.32, the Government's Motion to Dismiss for Failure to Defend is hereby **GRANTED**.
3. Accordingly, it is hereby **ORDERED** that the Mortgagee Review Board's withdrawal of Respondent's HUD/FHA approval for one year, as set forth in the Notice of Administrative Action, is hereby **AFFIRMED** without further proceedings.

  
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Susan L. Biro  
Chief Administrative Law Judge<sup>1</sup>

Date: April 29, 2010  
Washington, D.C.

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<sup>1</sup> The Administrative Law Judges of the United States Environmental Protection Agency are authorized to hear cases pending before the United States Department of Housing and Urban Development pursuant to an Interagency Agreement in effect beginning March 4, 2010.