IN THE MATTER OF:	*	BEFORE THE
THE MORTGAGE FUNDING GROUP, INC.	*	MARYLAND COMMISSIONER
	*	OF
Respondent	*	FINANCIAL REGULATION
	*	Case No. DFR-FY2010-268

* * * * * * * * * * * * *

FINAL ORDER

Statement of the Case

The hearing on the above-captioned matter was held on April 5, 2010, and heard by the Deputy Commissioner of Financial Regulation, Mark Kaufman ("Deputy Commissioner"). This matter was scheduled for a hearing as a result of a Charge Letter and Notice of Hearing ("Charge Letter"), dated February 19, 2010, (Exhibit CFR 1A) issued by the Office of the Commissioner of Financial Regulation (the "Commissioner") to The Mortgage Funding Group, Inc. ("Respondent"), a mortgage lender licensed at times relevant to this Final Order ("Order") pursuant to Md. Code Ann., Fin. Inst. ("FI") § 11-501 *et seq.*

The Charge Letter alleges that Respondent violated FI § 11-515(c), and the Code of Maryland Regulations ("COMAR") 09.03.06.23, by failing to pay to the Commissioner fees owed to the Commissioner for a statutorily required examination conducted of the business of Respondent (the "Examination"). FI § 11-515(a). The Charge Letter further states that Respondent may be subject to sanctions by the Commissioner for the alleged violations of law, including suspension or revocation of Respondent's license and civil penalties pursuant to FI § 11-517(a)(4) and (5); FI § 2-115(b).

Respondent did not appear at the hearing, but proper service of the Charge Letter being established, the hearing proceeded pursuant to COMAR 09.01.02.09. Jedd R. Bellman, Staff Attorney, appeared as presenter of evidence on behalf of the Office of the Commissioner. Christopher J. Young, Assistant Attorney General, served as counsel to the Deputy Commissioner. The proceedings were electronically recorded.

Statement of Facts

From the testimony offered by George Kinsel, Director of Compliance for the Office of the Commissioner, and the exhibits presented, and with the opportunity to observe the demeanor of the witness and to assess his credibility, the Deputy Commissioner finds the relevant facts to be these:

1. Respondent was licensed under the Maryland Mortgage Lender Law ("MMLL"), (FI § 11-501 *et seq.*) during those times relevant to the examination of the business of Respondent by the Commissioner described in paragraph 4 of this Order (Exhibits CFR 3 and 4).

2. Respondent's mortgage lender license expired on February 11, 2010 (Exhibit CFR 3).

3. Respondent was properly served with the Charge Letter, giving thirty days notice of the hearing, as evidenced by: the Charge Letter (Exhibit CFR 1A), the certified mail receipt (Exhibit CFR 1B), the Affidavit of Service (Exhibit CFR 2), and the Commissioner's AS 400 computer print-out of Respondent's licensing information showing Respondent's address (Exhibit CFR 3).

4. Respondent was subject to examination by the Commissioner under FI § 11-515(a) and was examined during June 2009, (Exhibit CFR4).

5. Respondent was charged by the Commissioner the amount of $500.00 for the Examination.

6. Respondent has failed to pay the amount due, despite being sent:

a. An original invoice sent to Respondent by regular US mail on August 13, 2009, (Exhibit CFR 5);

b. An overdue notice sent to Respondent by email on September 13, 2009, (Exhibit CFR 6);

c. A second overdue notice sent to Respondent by email on September 28, 2009, (Exhibit CFR 7); and

d. A dunning letter dated January 26, 2010, sent by Assistant Attorney General W. Thomas Lawrie, via regular US mail demanding payment of the past-due fee (Exhibit CFR 8).

7. The amount due for the Examination remained unpaid as of the date of the hearing in this case. (Exhibit CFR 9).

Conclusions of Law

Based on the Findings of Fact, the Deputy Commissioner concludes that Respondent has violated FI § 11-515(c), and the COMAR 09.03.06.23, by failing to pay to the Commissioner fees owed to the Commissioner for the Examination required under FI § 11-515(a). The Deputy Commissioner also concludes that Respondent is subject to sanctions under FI § 11-517(a) and (c), including the suspension or revocation of Respondent's license

and a civil penalty not exceeding $5,000 for each violation, because Respondent (i) violated a provision of this MMLL and a regulation adopted under it (FI § 11-517(a)(4)), and (ii) otherwise demonstrated unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly, fairly, equitably, and efficiently (FI § 11-517(a)(5)). Moreover, the Commissioner has authority under FI § 2-115(b) to suspend or revoke Respondent's license, or to impose a civil penalty up to the permissible amount.

An issue arises as to whether the Commissioner may revoke Respondent's license when it had already expired prior to the hearing in this case. The Deputy Commissioner concludes that the Commissioner does have the authority to revoke Respondent's license notwithstanding the fact that it had expired at the time of the hearing. The voluntary surrender or expiration of a license prior to a hearing date does not deprive the Commissioner of the authority to revoke or suspend a license. To hold otherwise would cause the incongruous result that a licensee charged with regulatory violations could avoid sanction, including license suspension or revocation, merely by surrendering the license or allowing it to lapse. *See Nicoletti v. State Board of Vehicle Mfrs., Dealers and Salespersons*, 706 A.2d 891 (Pa. Cmwlth. 1998) (holding that respondent licensee had a right to renew license which the board could revoke); *see also Wise v. Ohio Motor Vehicle Dealer Bd.*, 106 Ohio App. 3d 562 (1995) (holding that voluntary surrender of license prior to hearing date does not deprive licensing agency of authority to revoke or suspend license).

Final Order

In consideration of the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** by the Deputy Commissioner that:

Respondent's Mortgage Lenders License is **REVOKED**; and it is further **ORDERED** that:

Respondent shall immediately pay to the Commissioner the past-due Examination Fee of $500.00 by delivering the payment to:

The Commissioner of Financial Regulation
Jessica Wienner, Paralegal
500 North Calvert Street, Suite 406
Baltimore, Maryland 21202

RESPONDENT IS ADVISED: Pursuant to State Govt. Art., Section 10-222, any party who is aggrieved by the Commissioner's decision, may file a petition for judicial review with the Circuit Court for the county where any party resides or has a principal place of business. Such petition must be filed within 30 days after Applicant's receipt of this Order (Md. Rule 7-203). The filing of a petition for judicial review does not automatically stay the enforcement of the Final Order.

COMMISSIONER OF FINANCIAL REGULATION

6/3/10 By: _____
Date Mark Kaufman, Deputy Commissioner