

**UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451**

Mailed: April 4, 2011

Cancellation No. 92053537

Modern Housing, LLC

v.

American Casino and
Entertainment Properties,
LLC

**George C. Pologeorgis,
Interlocutory Attorney:**

Respondent's answer to the petition to cancel was due in this case on March 5, 2011. Respondent did not file an answer to the petition to cancel on such date nor did it file a timely motion to further extend its time to answer. In view thereof, the Board issued a notice of default on March 10, 2011 requiring respondent to show cause why judgment should not be entered against it. On March 29, 2011, respondent filed its answer contemporaneously with its response to the Board's March 10, 2011.

In its response, respondent claims that it did not timely file an answer due to a docketing error by respondent's counsel and, therefore, the Board's default notice should be discharged. Additionally, respondent

requests the instant proceeding be suspended pending the disposition of a civil action between the parties in the United States District Court for the District of Nevada.¹ Respondent has submitted a copy of the civil action complaint.

Whether default judgment should be entered against a party is determined in accordance with Fed. R. Civ. P. 55(c), which reads in pertinent part: "for good cause shown the court may set aside an entry of default." As a general rule, good cause to set aside a defendant's default will be found where the defendant's delay has not been willful or in bad faith, when prejudice to the plaintiff is lacking, and where defendant has a meritorious defense. *See Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

In this case, the Board finds that petitioner is not prejudiced by respondent's approximate three week late filing and, by filing an answer which denies the fundamental allegations in the petition to cancel, respondent has asserted a meritorious defense to the petition. Moreover, the Board finds that the reasons for respondent's delay were not willful or in bad faith, but unintentional and

¹ Civil Case 2:11-cv-00222, styled *American Casino and Entertainment Properties, LLC v. Modern Housing, LLC*, filed in the United States District Court for the District of Nevada on or about February 9, 2011.

excusable. In view of the foregoing, the notice of default is hereby set aside and respondent's answer is noted and accepted.

Additionally, the Board finds that respondent's request to suspend this proceeding pending final determination of the civil action between the parties is well taken. It is the policy of the Board to suspend proceedings when the parties are involved in a civil action, which may be dispositive of or have a bearing on the Board case. See Trademark Rule 2.117(a).

A review of the complaint in the civil case indicates that a decision by the district court could be dispositive of, or have a bearing on, the issues in this cancellation proceeding.

Accordingly, proceedings are **suspended** pending final disposition of the civil action between the parties.

Within twenty days after the final determination of the civil action, the interested party should notify the Board so that this case may be called up for appropriate action. During the suspension period the Board should be notified of any address changes for the parties or their attorneys.