

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

Daniel Thompson,
Petitioner

HUDOA No. 10-H-CH-LL72
Claim No. 7-71057616 OA

DECISION AND ORDER UPON RECONSIDERATION

On December 17, 2010, this Court issued a Decision and Order in the above-captioned proceeding that authorized an administrative offset of any federal payments due Petitioner after finding that the debt claimed by the Secretary was past due and legally enforceable against Petitioner. (Decision and Order (“Initial Decision”), issued December 17, 2010.) Pursuant to the Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”) issued by this Court on March 9, 2010, Petitioner had 30 days from the date of the Initial Decision to submit a Motion for Reconsideration of that decision. (Notice of Docketing, issued March 9, 2010, 1-2.) Such Motion would be granted only upon a showing of good cause. (*Id.*)

As a general rule, an administrative offset decision issued within the past calendar year is not, on its merits, reviewable. *See* 24 C.F.R. § 17.152(d). Petitioner is entitled, however, to such a review if the debt has become legally unenforceable since the issuance of the decision or if the Petitioner can present *newly discovered material* evidence that the debt is presently not enforceable. (*Id.*) (Emphasis added.)

On January 18, 2011, Petitioner filed a letter that the Court deemed to be a Motion for Reconsideration. (Petitioner’s Letter (“Pet’r’s Ltr.”), p. 1, filed January 18, 2011.) Petitioner raised, for reconsideration, issues regarding the enforceability of the alleged debt and regarding the alleged deficiencies in the appeals process. More specifically, Petitioner alleged that the undersigned failed to comply with 24 C.F.R. § 26.25,¹ which “urges hearing officials to deliver final determinations within 60 days of the closing of the record.” (Pet’r’s Ltr.) Additionally, Petitioner claimed that “the undersigned never acknowledged receipt of Petitioner’s final evidence submission, that the undersigned improperly interpreted the law as it pertains to the burden of proof, and that the sworn affidavit of Brian Dillon is not credible.” (*Id.*) Finally, Petitioner offered the “defense of laches” as a defense by stating that HUD’s “13-year delay in pursuing repayment of this debt denied him a fair hearing because the passage of time made it impossible to locate documentary evidence or witnesses.” (*Id.*)

This Court granted Petitioner’s Motion for Reconsideration but ordered the Secretary to address the concerns raised therein. (Ruling on Motion for Reconsideration and Order, (“Ruling and Order”) issued February 4, 2011.) The Secretary complied thereafter with the Court’s Order.

¹ 24 C.F.R. §26.25(e) provides: “The hearing officer shall *endeavor* to issue a determination within 60 days from the date of the closing of the record.” Consequently the hearing officer is not required to issue a determination within the 60 days noted in §26.25(e.)

(Secretary's Response to Petitioner's Motion to Reconsider ("Sec'y's Response"), filed March 2, 2011.)

The Secretary maintains, in his Response, that "Petitioner entered into a contractual agreement to repay the subject debt, that Petitioner defaulted on the loan, and that HUD provided a payment to the lender in accordance with the Title I insurance program due to Petitioner's default." (Sec'y's Response, ¶ 6.) As support, the Secretary filed documentary evidence that included a copy of the Note signed by Petitioner in which Petitioner agreed to pay the alleged debt. (Sec'y's Response, Attachment.) The Secretary also produced copies of: 1) the Assignment that shows that the Note was assigned to HUD; 2) the Title I Loss Application Voucher; 3) Petitioner's collection history profile from February, 1997 through July, 1997 of attempts to collect the alleged debt from Petitioner; and, 4) the document from HUD's Debt Management Collection System (DMCS) showing that HUD paid \$23,318.92 to the lender for the loss the lender incurred as a result of Petitioner's default on the loan. (Sec'y's Response; Attachments.) A review of the evidence presented by the Secretary first proves that HUD is, in fact, the holder of the Note. But, it also proves that Petitioner acknowledged his legal obligation to pay the debt on the loan extended because he had already paid 23 of the 240 payments due on the Note, each payment in the amount of \$292.72. (Id.) As a result, the Secretary has met his burden of proof that the debt remains enforceable against Petitioner, and to date, a balance of \$23,318.92 remains to be owed by Petitioner.

Petitioner has failed, on the other hand, to persuade this Court that he should not remain legally obligated to pay the debt that is the subject of this proceeding. Despite Petitioner being ordered to specifically address: 1) whether the debt that is the subject of this proceeding has become legally unenforceable since the issuance of the Decision and Order issued on December 17, 2010; and, 2) whether Petitioner submitted newly discovered material evidence that the debt is presently not legally enforceable, there is no indication from the record of this proceeding that Petitioner has complied with the Court's Order. (Order to Petitioner, March 4, 2011, p. 2). Petitioner's response to the Secretary's Response is now over twelve months past due.

A review of Petitioner's Motion that is the basis of this proceeding now reflects the arguments Petitioner previously raised as a basis for his initial appeal. Petitioner's arguments consists largely of defenses that were fully adjudicated in the Initial Decision and Order, and consists largely of reassertions of speculative or conclusory theories that would not be considered a legal basis for releasing Petitioner from his legal obligation to pay the alleged debt agreed to by Petitioner. This Court has consistently maintained that the purpose of reconsideration is not to afford a party the opportunity to reassert contentions that were fully considered and determined in a previous decision. See *Mortgage Capital of America, Inc.*, supra; *Louisiana Housing Finance Agency*, HUDBCA No. 02-D-CH-CC006, (March 1, 2004); *Paul Dolman*, supra; *Charles Waltman*, HUDBCA No. 97-A-NY-W196 (September 21, 1999); *Seyedahma Mirhosseini*, HUDBCA No. 95-A-SE-S615 (January 13, 1995).

As such, this Court must base its reconsideration upon the intended purpose for this proceeding and that purpose is to determine whether the debt that was previously determined to be past due and legally enforceable has since become legally unenforceable, or, determine whether certain newly discovered material evidence can be presented that proves that the subject

debt is presently not legally enforceable. (*See* 24 C.F.R. § 17.152(d).) In this case, the evidence of record again neither proves that the subject debt has become legally unenforceable nor shows that Petitioner has presented newly discovered evidence. In addition to the evidence presented by the Secretary that proves that Petitioner is responsible for the subject debt, Petitioner himself never denied that he owed the subject debt.

Because of Petitioner's failure to produce evidence that would otherwise warrant a decision in his favor, this Court remains unpersuaded that the debt that is the subject of this proceeding is not past due and legally unenforceable in the amount claimed by the Secretary. Therefore, this Court finds that Petitioner remains legally obligated to pay the debt in the amount claimed by the Secretary.

ORDER

Upon due reconsideration of the foregoing, the DECISION AND ORDER issued in this proceeding on December 17, 2010 in *In re: Daniel Thompson*, HUDOA No. 10-H-CH-LL72, is hereby **AFFIRMED**. It is hereby

FURTHER ORDERED that the DECISION AND ORDER issued in this matter SHALL NOT BE MODIFIED and shall remain in **FULL FORCE AND EFFECT**.



Vanessa L. Hall
Administrative Judge

March 30, 2012