

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

In the Matter of:

Steven Moran,

Petitioner.

Case No. 20-AM-0116-AO-023

7-210166440A

December 11, 2023

DECISION AND ORDER UPON RECONSIDERATION

On March 29, 2023, the Tribunal issued its *Decision and Order* (“Decision”) in Steven Moran, HUDOHA No. 20-AM-0116-AO-023, finding Steven Moran (“Petitioner”) indebted to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”) when, after Petitioner sold his home, he failed to repay the Secretary a Subordinate Note in the amount of \$4,089.12. The Decision permitted the Secretary to seek repayment of the debt (in addition to accumulated interest, fees, and penalties) by administrative offset. On August 29, 2023, in its *Ruling on Petitioner’s Motion to Reopen and Order for Documentary Evidence*, the Tribunal granted *Petitioner’s Motion to Reopen* based on “Substantial New Evidence” Petitioner submitted in support of his contention that he prepaid the debt to his mortgage provider.

Upon careful consideration, the Tribunal finds altering the Decision is not warranted. Petitioner remains indebted to the Secretary for the full amount owed.

PROCEDURAL HISTORY

On or about March 9, 2020, Petitioner filed a *Request for Hearing* (“Request”) with the Tribunal in response to a *Notice of Intent to Collect by Treasury Offset* (“Notice of Intent”) he received from HUD. On March 10, 2020, the Tribunal issued a *Notice of Docketing, Order, and Stay of Referral* (“Notice of Docketing”). On March 29, 2023, the Tribunal issued its Decision.

On August 29, 2023, Petitioner submitted the aforementioned additional evidence. The Tribunal treated the submission as *Petitioner’s Motion to Reopen* (“Petitioner’s Motion”) and, on that same day, granted Petitioner’s Motion. Accordingly, the Tribunal ordered the Secretary to submit documentary evidence and legal argument to prove that Petitioner is indebted to the Department in the amount claimed. On October 2, 2023, the Secretary timely submitted the *Secretary’s Statement in Opposition to Petitioner’s Motion to Reopen*. On October 3, 2023,

Petitioner submitted further evidence in support of his position. He also stated he would be “open to discussing a settlement and requesting a settlement judge.”¹

DISCUSSION

While the Tribunal granted Petitioner’s Motion, it was untimely filed more than 30 days after the Decision issued.² As Petitioner is representing himself before the Tribunal, Petitioner’s Motion is treated as a request for an extension of time pursuant to 24 C.F.R. § 26.16(d).³ The Tribunal further treats Petitioner’s October 3, 2023, submission as a *Motion to Supplement Petitioner’s Motion*. See, e.g., 24 C.F.R. § 26.15(a)(2).

The purpose of reopening a previously decided matter is not to afford a party the opportunity to reassert contentions the Tribunal has already considered and adjudicated. See Mortgage Capital of America, Inc., infra; Louisiana Housing Finance Agency, HUDBCA No. 02-D-CH-CC006 (March 1, 2004); Charles Waltman, HUDBCA No. 97-A-NY-W196 (Sept. 21, 1999). As a general matter of law, a motion to reopen must be based on newly discovered evidence, a patent error such as an error in mathematical computation or a clear error of fact or law, a need for clarification of the decision, or other good cause such as evidence that the debt has become legally unenforceable since the issuance of the previous decision. See Lawrence Svroatka, HUDOA No. 07-A-CH-HH10 (Jan. 8, 2009); Mortgage Capital of America, Inc., HUDBCA No. 04-D-NY-EEO32 (Sept. 19, 2005); Paul Dolman, HUDBCA No. 99-A-NY-Y41 (Nov. 4, 1999); Anthony Mesker, HUDBCA No. 94-C-CH-S379 (May 10, 1995); and Appeals of Walber Const. Co., HUDBCA No. 79-385-C17 (Sept. 2, 1982). In such cases, the Tribunal, at its discretion, will review a previous decision only when such compelling circumstances require it. If the grounds for review will only have a collateral effect and will not result in a change in the decision, the decision will be maintained. See Mastic-Tar Co., Inc., ASBCA No. 7272, 1962 BCA ¶ 3429; 1962 BCA ¶ 3365.

Here, Petitioner cites no compelling circumstances such as a clear error of fact or law to warrant changing the Decision, and Petitioner provides no evidence that the debt has become legally unenforceable since the Decision. Instead, Petitioner presents evidence and arguments similar to that which the Tribunal previously considered in the Decision.⁴ Petitioner also

¹ The U.S. Department of Treasury has authority to negotiate and accept settlement offers related to this debt and can be reached at 1-888-826-3127.

² The Notice of Docketing informed Petitioner that a motion for reconsideration of the Tribunal’s written decision may be filed within 30 days of the date of the written decision and shall be granted only upon a showing of good cause.

³ The procedural rules for administrative offsets (24 C.F.R. §§ 17.65 – 17.79) do not expressly cover reopened decisions. Therefore, the Tribunal looks to 24 C.F.R. Part 26, which applies “where a hearing is required by statute or regulation to the extent that rules adopted under such statute or regulation are not inconsistent.” See 24 C.F.R. § 26.1; Samuel V. Jackson, HUDBCA No. 01-C-CH-BB54 (March 23, 2001).

⁴ As mentioned, Petitioner contends that he paid the debt to his mortgage provider. However, the Subordinate Note binds no third parties, only Petitioner and the Secretary. Accordingly, a cause of action, if any, for reimbursement of the debt from a third party must be pursued in another forum. The Tribunal makes no finding or comment on whether such a cause of action exists. Petitioner further contends he signed the Subordinate Note with the expectation that unused funds would be returned to the Secretary. However, the Subordinate Note includes no such terms.

provides no explanation as to why the documents attached to Petitioner’s Motion were not presented prior to issuance of the Decision, especially as the documents appear to have been in his possession before he made his Request. See Thomas Dunwoodie, HUDOA No. 11-H-NY-LL11 (July 13, 2012) (denying reconsideration, in part, because Petitioner’s evidence was available for the Tribunal’s consideration prior to the issuance of its decision). Accordingly, Petitioner fails to traverse the express language of the Subordinate Note he signed and agreed to that states, under “Borrower’s Promise to Pay,” “In return for a loan received from Lender, Borrower promises to pay the principal sum of \$4,089.12 (four thousand eight-nine and 12/100 dollars) to the order of Lender.” Further, the Subordinate Note also expressly directs Petitioner to make payment to the Office of Housing FHA-Comptroller in Washington, D.C. Thus, in the absence of a release from HUD discharging Petitioner from the obligation to repay the debt, Petitioner remains indebted to the Secretary for the full amount owed, in addition to interest, fees, and penalties. See In re Juanita Mason, HUDOA No. 08-H-NY-AWG70, at 3 (Dec. 8, 2008) (“... [F]or Petitioner not to be held liable for the debt, there must either be a release in writing from the lender... or valuable consideration accepted by the lender from Petitioner....”) (citations omitted).

Petitioner further contends that the amount now owed is excessive. However, HUD is required to charge the debtor interest, administrative costs, and penalties. See 31 U.S.C. §§ 3717(a) and (e)(1)-(2). Fees and administrative costs (which include a collection fee charged by Treasury, see 31 U.S.C. § 3711(g)(6)) total 30% of any amount collected.

ORDER

For the reasons set forth above, the Tribunal finds Petitioner remains indebted to the Secretary for the full amount owed. Thus, the Tribunal’s Decision and Order in Steven Moran, HUDOHA No. 20-AM-0116-AO-023 (March 29, 2023) **REMAINS IN EFFECT** and constitutes the final agency decision with respect to the past due status and enforceability of the debt. See 24 C.F.R. § 17.73(a).

SO ORDERED,

**ALEXANDER
FERNANDEZ-
PONS**

Digitally signed by: ALEXANDER
FERNANDEZ-PONS
DN: CN = ALEXANDER FERNANDEZ-
PONS C = US O = U.S. Government
OU = Department of Housing and Urban
Development, Office of the Secretary
Date: 2023.12.11 15:04:24 -05'00'

Alexander Fernández-Pons
Administrative Law Judge