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

In the Matter of: **Thomas Dunwoodie,** Petitioner	HUDOA No. 11-H-NY-LL11 Claim No. 7-805449920A July 13, 2012

DECISION AND ORDER UPON RECONSIDERATION

On August 18, 2011, a Decision and Order was issued in the above-captioned case. The administrative judge held that the Secretary is authorized to seek collection of Petitioner's debt to the U.S. Department of Housing and Urban Development by means of administrative offset of any federal payments dude to Petitioner to the extent authorized by law. On August 26, 2011, Petitioner filed a letter with this Court in which he again alleged that the debt in this case had been satisfied. (Petitioner's Letter ("August 26 Letter"), filed August 26, 2011.) The Court deemed Petitioner's timely filed letter to be a Motion for Reconsideration. The Court granted Petitioner's Motion and then ordered the Secretary to file a response in which the Secretary would address the allegations raised by Petitioner. (Ruling on Petitioner's Motion for Reconsideration and Order, issued February 16, 2012.) On February 29, 2012, the Secretary complied with the Court's Order.

Reconsideration is within the discretion of the Court and will not be granted in the absence of compelling reasons, e.g., newly discovered material evidence, clear error of fact or law, or evidence that the debt has become legally unenforceable since the issuance of the Decision and Order. *See Lawrence Syrovatka*, HUDOA No. 07-A-CH-HH10 (January 8, 2009); *Mortgage Capital of America, Inc.*, HUDBCA No. 04-D-NY-EEO32 (September 19, 2005); *Paul Dolman*, HUDBCA No. 99-A-NY-Y41 (November 4, 1999); *Anthony Mesker*, HUDBCA No. 94-C-CH-S379 (May 10, 1995); 24 C.F.R. § 17.69(d). In addition, it is not the purpose of reconsideration to afford a party the opportunity to reassert contentions that have been fully considered and determined by the Court. *See Mortgage Capital of America, Inc.*, supra; *Louisiana Housing Finance Agency*, HUDBCA No. 02-D-CH-CC006 (March 1, 2004); *Charles Waltman*, HUDBCA No. 97-A-NY-W196 (September 21, 1999).

Petitioner's Motion for Reconsideration states, "I have enclosed a letter dated April 7, 2011 from U.S. Department of Housing and Urban Development stating that the claim has been paid. I have also enclosed a copy of the Consumer Note which is stamped paid in full." (August 26 Letter, p. 1.) The April 7 letter Petitioner refers to is signed by Kimberly A. Tompkins, a debt servicing representative from HUD's Financial Operations Center. Petitioner also included a

letter from Brian Dillon, the director of the Financial Operations Centers' Asset Recovery Division, which stated that the mortgage had been cancelled and satisfied. (Id. at pp. 2-3.) Petitioner also provided a copy of a Final Report and Account from the United States Bankruptcy Court for the District of New Jersey that listed HUD as one of the creditors being paid a distribution. (Petitioner's Second Letter ("March 26 Letter"), p. 2, filed March 26, 2012.) The letters, along with the Final Report from the Bankruptcy Court, seem to support Petitioner's contention that he has successfully paid in full the subject debt. Such documentation does, on its face, constitute compelling evidence that the subject debt may be satisfied. Even the Secretary admits that the letters from Tompkins and Dillon were accurate when they were sent. (Sec'y. Memo, ¶ 7.)

However, the Secretary claims that Petitioner's Motion is "without merit and lacks good faith" because Petitioner knew or should have known when he made the Motion that "Treasury reversed the offset that occurred in March 2011 and returned those funds to his wife." (Sec'y. Memo, ¶ 12.) The Secretary contends that the U.S. Department of Treasury reversed the payment that Petitioner claims paid the debt in full, and "presumably those funds were returned" to Michelle Dunwoodie, Petitioner's wife. (Id. at ¶ 8.) Even though Petitioner received two letters from HUD that indicated that the alleged debt was paid in full, the Secretary contends that the subsequent reversal of such payments occurred before this Court issued the initial Decision and Order on August 18, 2011. As a result, the Secretary concludes that "Aside from the payment received via Treasury offset in March 2011, which was reversed, no other payments have been received by HUD from Petitioner or his wife." (Sec'y Memo., ¶ 13.) Finally, the Secretary states, "It appears that Petitioner is attempting to take advantage of a set of circumstances that caused HUD to inform him (in error) that the Note was satisfied." (Sec'y Memo., ¶ 14.)

As proof that the offset was in fact reversed and returned to Petitioner, the Secretary produced a copy of Petitioner's Case Reconstruction Report. (Sec'y. Memo; Ex. A, p. 8.) The report indicated that an offset in the amount of $4,389.63 was received on March 11, 2011, and thereafter reversed on April 20, 2011. (*Id.*) The Secretary claims the reversal in fact occurred on March 16, 2011 but did not appear in HUD's debt management system until April 20, 2011. (*Id.*) As support the Secretary submitted a copy of the Treasury Offset Program (TOP) Report dated February 23, 2012 that showed the offset amount of $4665.52 seized on March 11, 2011 was later reversed on March 16, 2011 for a fee of $17.00. (Secretary's Memorandum in Opposition to Petitioner's Motion for Reconsideration, "Sec'y. Memo," filed February 29, 2012.)

After reviewing the TOP report, it was evident that between March 16, 2011 and April 20, 2011 neither HUD nor Petitioner was aware that the debt remained outstanding. As previously indicated, the letters to Petitioner were sent between March 16, 2011 and April 20, 2011, on April 7, 2011 and April 8, 2011 respectively. Based on the record, the cause for confusion was delayed communication, not lack of evidence. These letters, alone, are insufficient as a basis to support Petitioner's claim that the subject debt was already paid in full. The only evidence the letters provide as support is proof that HUD considered the debt paid at the time the letters were sent, not as proof that the subject debt is currently past due and unenforceable. Petitioner's statement that the debt has already been paid in full is, in essence, a claim that the debt is unenforceable because it has already been paid. But, the evidence relied

upon by Petitioner is not considered newly discovered evidence nor is it considered material evidence of a factual or legal error that had not already been presented, or available to be presented, prior to the issuance of the Decision and Order.

In addition, Petitioner's argument, that the subject debt was discharged by bankruptcy, had been previously adjudicated. In the initial Decision and Order, the administrative judge ruled that the bankruptcy proceeding only discharged Petitioner's arrearages — approximately $5,400, but the balance of the debt remained past due and legally enforceable and was unaffected by the bankruptcy proceeding. *See Thomas Dunwoodie*, Decision and Order, issued August 18, 2011. In Petitioner's March 26 Letter, he referred to the 2008 Final Report he offered from the bankruptcy court as newly discovered evidence that the subject debt had been discharged. This Report does not sufficiently persuade the Court that the subject debt was discharged. According to the record of this proceeding, the Final Report offered by Petitioner reflects a 2008 issuance date that predated the date of the initial Decision and Order in this case. As such, the Court is convinced that the evidence now offered by Petitioner as newly discovered was evidence that was actually available for review and consideration by the Court prior to the issuance of the Decision and Order. Such evidence cannot now be considered newly discovered and thus rendered as a basis for reconsideration. Moreover, the Final Report and Account Petitioner submitted merely restates that the bankruptcy discharged $5,394.20 — the amount of Petitioner's arrearages. It also does not prove as erroneous the Court's earlier finding that a debt remained outstanding even after Petitioner's alleged discharge by bankruptcy. As a result, this Final Report does not constitute material evidence or evidence of factual or legal error.

After reviewing the record in its entirety, it is evident that there was some confusion whether Petitioner remained indebted to HUD based upon the letters he received from HUD, both of which indicated that the subject debt was paid off. It is equally apparent from the record that by the time this proceeding was initiated, Petitioner was either aware or should have been aware that the offset had been reversed and returned to Petitioner. Such confusion in the record was the product of communication delays between HUD and the Treasury Department, not the product of what actually transpired regarding the debt owed by Petitioner. The Secretary has successfully persuaded the Court that the subject debt remains to be owed by Petitioner. Without sufficient evidence from Petitioner to otherwise refute the Secretary's position, the Court is also fully persuaded that Petitioner knew, or should have known, that the offset funds that were reversed and successfully proven to be returned to Petitioner could have been used to pay the subject debt.

Without any newly discovered evidence or any material evidence of clear error of fact or law to refute the evidence presented by the Secretary, it is hereby

ORDERED that the **DECISION AND ORDER** issued in this matter on August 18, 2011, **SHALL NOT BE MODIFIED**, and shall remain in **FULL FORCE AND EFFECT**.

Vanessa L. Hall
Administrative Judge