UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION
AND REHEARING DENIED: March 25, 2009

CBCA 1213-R

MICHAEL C. LAM,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Ray M. Shepard and Azim Chowdhury of Duane Morris LLP, Baltimore, MD, counsel for Appellant.

Gabriel N. Steinberg, Office of Regional Counsel, General Services Administration, Atlanta, GA, counsel for Respondent.

**BORWICK**, Board Judge.

In this small claims case, involving a sale of personal property at an auction conducted by respondent, the General Services Administration (GSA), appellant seeks reconsideration of that portion of our decision denying him $42,740.63 in breach damages. *Michael C. Lam v. General Services Administration*, CBCA 1213, 09-1 BCA ¶ 34,027 (2008). Appellant appeared pro se in the underlying appeal but retained counsel for the reconsideration motion. We deny reconsideration. Although the arguments were more artfully presented by counsel in the reconsideration motion, than previously presented by appellant in the underlying proceeding, the arguments were considered and rejected in the original decision.

## Background

In the underlying appeal, we found that GSA had breached the contract because it sold goods--375 used electric meter boxes--that turned out to be unavailable when appellant traveled to the depot, a Federal Emergency Management Agency (FEMA) site, to retrieve them. We therefore granted the appeal in part, awarding appellant $1719.82 in proven breach damages for appellant's travel costs to the depot.

Appellant based his amended quantum claim of $42,740.63 on one internet site's market price for new electric meter boxes, which appellant reduced by half to account for the used condition of the meter boxes GSA sold to appellant. We rejected appellant's proof of a market price as insufficient, arbitrary, and speculative. Our conclusion was buttressed by the disparity between the acquisition cost to the Government of $50 for new boxes, as detailed in the Government's excess property report, and the unit cost of $146.95 for the boxes as stated on the internet site. *Lam*, 09-1 BCA at 168,318. To the extent that the claimed damages of $42,740.63 represented lost profits on potential resale, we found that appellant had no commitment for their resale and that the GSA contracting officer had no reason to believe that appellant would put the goods up for sale. *Id*.

## Discussion

Respondent argues that because a decision issued under the small claims procedure is final, reconsideration is not available. See Respondent's Opposition to Appellant's Motion for Reconsideration at 3; *see* 41 U.S.C. § 608 (2006). However, the Board's rule on reconsideration does not prohibit small claims litigants from seeking reconsideration. Cases handled under the Contract Disputes Act (CDA) small claims procedure are subject to reconsideration as any other case before boards of contract appeals. *Cf. Palmer v. Barram*, 184 F.3d 1373 (Fed. Cir. 1999) (Court noted without adverse comment that board's small claims decision had been subject of reconsideration); *Wayne T. Palmer v. General Services Administration*, GSBCA 14063-R, 97-2 BCA ¶ 29,173; *Professional Window & House Cleaning, Inc.*, GSBCA 7603, 1985 WL 16489 (Apr. 2, 1985) (dicta); *Capital Electric Co.*, GSBCA 5551-R, 81-1 BCA ¶ 14,963.

Turning to the merits of the motion for reconsideration, the Board's rule on reconsideration provides, "Arguments already made and reinterpretation of old evidence are not grounds for granting reconsideration." Board Rule 26. Appellant simply restates issues already considered and decided, and such arguments are not sufficient for reconsideration. *Hook Construction, Inc. v. General Services Administration*, CBCA

423-R, 07-1 BCA ¶ 33,488. Appellant's expanded arguments for the sufficiency of the proof on the amended quantum claim for breach damages are no more convincing on the second telling than they were originally.

Appellant also seeks rehearing because the Board denied appellant's request to call the FEMA property manager, who appellant now maintains would have given "opinion evidence as to the value of the meter boxes." Reconsideration at 9. This statement has no support in the record. In his witness list, appellant sought to call the FEMA property manager merely to "verify what happened to the property and when the SCO [sales contracting officer] was notified of the missing property." Appellant's Revised Tentative Witness List at 2. The missing property issue was the subject of a stipulation by the parties and the SCO testified at the hearing. The Board properly regarded the purported testimony of the FEMA property manager on this issue as cumulative. Appellant also sought to call the FEMA property manager to verify a report and "other circumstances relating to the sale of the property." *Id*. However, the circumstances of the sale were thoroughly addressed by both the SCO and appellant himself at the hearing on this matter.

Appellant did not seek to call the property manager as a hearing witness to give an opinion as to the market value of the meter boxes. Nor was there any representation by appellant before the hearing that the property manager possessed information as to the market value of the meter boxes.

## Decision

The Board **DENIES** reconsideration and rehearing. Since this case was considered under the Board's small claims procedure and was, therefore, decided by a single judge, the motion for reconsideration and rehearing is likewise decided by the same single judge. *Cf. Palmer*, 97-2 BCA at 145,080.

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ANTHONY S. BORWICK
Board Judge