

Federal Court



Cour fédérale

Date: 20150130

Docket: T-1109-14

Citation: 2015 FC 117

Ottawa, Ontario, January 30, 2015

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

CAMERON SCOTT ROBINSON

Applicant

and

CANADA REVENUE AGENCY

Respondent

JUDGMENT AND REASONS

[1] Cameron Scott Robinson (the Applicant) has brought an application for judicial review of a decision of the Canada Revenue Agency (CRA), pursuant to s 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp), to grant him only partial relief from all interest and penalties levied on his income taxes since 2000.

I. Background

[2] The Applicant's difficulties with the CRA have been ongoing for approximately 15 years. He conceded that between 2000 and 2005 he did not file income tax returns at all. His explanation was that he has never been good at paperwork, and his work as a fitness instructor and massage therapist did not generate a significant amount of income. Furthermore, his investments had performed badly and so he assumed that he did not owe any taxes.

[3] As a fitness instructor and massage therapist the Applicant had multiple sources of income. None of the health facilities that retained his services deducted taxes at the source, which the Applicant considers to be at the root of his problems. It was not until 2006, when the CRA informed him that he owed in excess of \$100,000, that the Applicant retained an accountant to help him address the situation. Following several exchanges with the CRA, the outstanding debt was calculated to be approximately \$27,000 plus interest and filing penalties.

[4] In 2012, the Applicant was involved in a serious accident. He was riding his bicycle when he was struck by a car. He was unable to work for four months, and to this day he has not fully recovered. He lost his job with GoodLife Fitness due to his inability to work full-time. He advised the Court that his doctor has recommended that he work no more than half time. The Applicant has other outstanding debts, and he also pays child support for a young son.

[5] The Applicant noted that he holds approximately \$60,000 in investments. While his ability to gain access to these funds has been affected by the CRA's enforcement measures,

counsel for the Respondent advised the Court that the Applicant's use of these funds is no longer subject to any restriction by the CRA.

[6] In 2010, the Applicant applied to the CRA for relief from interest and penalties owed on his unpaid taxes. The application was refused. The Applicant made two further requests for relief in 2012. There followed numerous exchanges between the Applicant and the CRA, which culminated in a decision by the CRA dated April 11, 2014. This is the decision that is now subject to judicial review.

II. The CRA's Decision

[7] In its decision dated April 11, 2014, the CRA noted the following:

- a) the Applicant was still suffering as a result of his accident;
- b) the accident had caused him to be terminated from GoodLife Fitness;
- c) the Applicant had been attempting to resolve issues surrounding his unpaid taxes for many years, but without success;
- d) the Applicant's current medical and financial situation had reduced his income considerably;
- e) the Applicant had a history of non-compliance, and since 2000 all of his income tax returns were filed late with the exception of the one for 2010;
- f) the Applicant had not identified any circumstances that had prevented him from filing his income tax returns when they were due; and

g) the Applicant had not taken reasonable care in the conduct of his affairs and had knowingly allowed a balance to exist.

[8] The CRA cancelled all interest owed on arrears up to the date of the decision based on the financial and medical information provided by the Applicant. This amounted to approximately \$28,000. The CRA declined to waive the outstanding penalties, totalling approximately \$10,000.

III. Standard of Review

[9] The CRA's authority to waive or cancel interest and penalties with respect to a person's personal income tax is found in s. 220(3.1) of the *Income Tax Act*. The standard of review for a decision made under s. 220(3.1) is reasonableness. A reviewing court must determine whether the decision falls "within a range of possible outcomes which are defensible in respect of the facts and the law" (*Telfer v Canada Revenue Agency*, 2009 FCA 23 at para 25, [2009] FCJ No 71 (QL), citing *Dunsmuir v New Brunswick*, 2008 SCC 5, [2008] 1 SCR 190 at para 47).

Analysis

[10] The Applicant did not identify any specific matter that the CRA had failed to take into account in considering his request for relief of interest and penalties. Nor did he allege that he had been denied an opportunity to present his case. On the contrary, a review of the file confirms that the Applicant provided extensive information to the CRA. The decision itself is transparent and intelligible. As noted above, the Applicant's grounds for relief were accurately summarised

within the decision, and the Applicant was ultimately successful in his request for relief from interest on outstanding arrears.

[11] The Applicant nevertheless complains that the CRA did not give full consideration to his financial hardship and his efforts to rectify his tax situation in declining to waive the filing penalties. I disagree. As noted in the CRA's decision, the Applicant did not identify any circumstances that would explain his failure to file his income tax returns on time. The Applicant advised the Court that he holds a degree in economics. He is a well-travelled and sophisticated man who has been self-employed for many years.

[12] The Applicant's assertion that he believed he did not owe taxes during the period 2000 to 2005 does not provide him with an excuse for failing to file his income tax returns, and he acknowledges that this was a mistake. From 2006 onwards he benefited from the services of an accountant, and he also retained a financial services company to help him manage his investments. He offered no explanation for his failure to file income tax returns in a timely manner from 2006 onwards. I note that his 2010 return was filed on time.

[13] I am therefore satisfied that the decision of the CRA to grant the applicant's request for relief from all interest on income tax arrears, but to decline to waive the filing penalties, falls within a range of possible outcomes which are defensible in respect of the facts and the law. The application for judicial review is dismissed.

IV. Costs

[14] The Respondent has requested costs of the application. Ordinarily the Respondent would be entitled to costs. However, in this case the Respondent twice sought extensions of time in order to file and serve documents in accordance with the *Federal Courts Rules*, citing inadvertence. The Respondent's non-compliance with the *Rules* caused delay and inconvenience to both the Applicant and the Court. In my view, this is not an appropriate case for an award of costs.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs to either party.

“Simon Fothergill”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1104-14

STYLE OF CAUSE: CAMERON SCOTT ROBINSON v. CANADA
REVENUE AGENCY

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 27, 2015

**REASONS FOR JUDGMENT
AND JUDGMENT:** FOTHERGILL J.

DATED: JANUARY 30, 2015

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