

Federal Court



Cour fédérale

Date: 20121015

Docket: T-725-12

Citation: 2012 FC 1202

Ottawa, Ontario, October 15, 2012

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**ESTATE OF CORINNE KELLEY
(EXECUTORS RONALD AND DEBORAH
HAYDEN)**

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The executors of the Estate of Corinne Kelley [the Haydens] seek to set aside a decision of Doug McLean, Director of the Winnipeg Tax Services Office, dated February 22, 2012, denying, in part, their request for taxpayer relief pursuant to subsection 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp). This is the second adjudication of their request for taxpayer relief.

[2] On November 15, 2011, Justice Mosley heard an application by the Haydens to review a decision of the Canada Revenue Agency [CRA] denying the first request for relief from interest and penalties assessed to the estate of Corinne Kelley. Justice Mosley quashed that decision on November 22, 2011, and sent the matter back to the CRA for reconsideration in accordance with his Reasons. The present application is a judicial review of the reconsidered decision.

[3] Justice Mosley summarized the facts of this case in *Kelley Estate v Canada (Attorney General)*, 2011 FC 1335, provided direction to the CRA and optimistically stated: “This is a matter that should be resolved with the exercise of reasonable discretion by the agency and without additional public expenditures.”

[4] I have concluded that this decision again must be quashed and returned for yet another decision by a different decision-maker. I reach this conclusion because the decision-maker unreasonably failed to consider one of the specific directions given by Justice Mosley in paragraph 36 of his Reasons for Judgment - to consider the fact that the Haydens never received a T4RSP slip in Corinne Kelley’s name for \$5,502.

[5] The Haydens say that the \$5,502 T4RSP slip was in George Kelley’s name but with Corinne Kelley’s Social Insurance Number. This is corroborated by the CRA’s own records. They say they called the CRA and that the CRA told them that no information could be provided about George Kelley’s account. They say that they therefore sent that T4RSP to the executors of George Kelley’s estate, and treated it as their responsibility. According to the CRA’s advice at the time, that appears to have been the correct thing to do.

[6] The first time the Haydens might have been alerted that the \$5,502 ought to have been attributed to Corinne Kelley was in October 2008, when a Notice of Reassessment was sent. That reassessment was based on considerably more income than the T4RSP received by the Haydens in 2006 indicated, and apparently triggered the Haydens to attempt to understand where all this extra income was from. However, even though the amount was higher, the connection to George Kelley's RRSP might not have been immediately self-evident. Moreover, by the CRA's own admission, information should not have been flowing to the Haydens until November 18, 2008, when their authorization as executors was established, so it is not clear that the Haydens reasonably could have learned where the extra income was from until after November 18, 2008. The CRA points to a letter sent to the Haydens on September 16, 2008, that states that "Corrine Kelley held a registered retirement savings plan (RRSP) in the amount of \$45,361.84 on July 31, 2003. ... This amount will be added to the 2003 income tax return." At the hearing the Haydens denied having received that letter.

[7] Furthermore, although the Haydens filed an affidavit in the application heard by Justice Mosley stating that they had received a T4RSP in October 2006 reflecting an amount of \$39,719.00, as is stated in paragraph 35 of the Reasons of Justice Mosley, they now inform the Court that their statement was in error and that the amount ought to have read \$34,734.18, the amount reflected on the T4RSP reproduced at page 54 of the Application Record. If that is accepted, then the Director ought to also consider whether the Haydens' failure to pay the tax on that part of the income earlier than they did has some justification.

[8] Lastly, during the hearing respondent's counsel noted that the two T4RSP forms that issued in the amounts of \$34,734.18 and \$39,719.00 were with respect to different RRSP

accounts and the report of the larger sum has nothing to do with the report of the smaller sum. That fact may not have been clear to the decision-maker who relied on a recommendation that stated: “As the estate was not aware of the missing T4RSP income [of \$39,719.00] until 2006, I believe a reduction in arrears [of] interest from April 30, 2004, to October 3, 2006, is warranted.” It may well be that the Haydens were not aware of the “missing” RRSP amount until 2008 or later.

[9] For these reasons, the decision must be set aside and a new decision rendered. It is obvious to the Court that both parties would be well served if prior to that decision being made there was a frank and full discussion between the parties as to the precise chronology of events and the knowledge the Haydens had, or did not have, or ought to have had, at the relevant times regarding the missing RRSP funds.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is granted and the matter is remitted to the Canada Revenue Agency for reconsideration by a different decision-maker in accordance with these reasons.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-725-12

STYLE OF CAUSE: ESTATE OF CORINNE KELLEY (EXECUTORS
RONALD AND DEBORAH HAYDEN) v
ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: October 10, 2012

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

DATED: October 15, 2012

APPEARANCES:

Deborah Hayden, Ronald Hayden	FOR THE APPLICANT (ON HER OWN BEHALF)
Melanie T. Petrunia	FOR THE RESPONDENT

SOLICITORS OF RECORD:

NIL	FOR THE APPLICANT
MYLES J. KIRVAN Deputy Attorney General of Canada Halifax, Nova Scotia	FOR THE RESPONDENT