

Federal Court



Cour fédérale

Date: 20131017

Docket: T-1263-12

Citation: 2013 FC 1049

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, October 17, 2013

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

MICHEL TREMBLAY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision rendered on June 7, 2012, by Jean-François Leblanc (the minister's delegate), manager of the Taxpayer Relief Centre of Expertise, Canada Revenue Agency (CRA). In his decision, the minister's delegate dismissed the request for cancellation of penalties imposed for the late filing of income tax returns by the applicant under subsection 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5th suppl) (ITA).

[2] The applicant is a businessman who has been working in the field of construction for 50 years.

[3] He made a first request for relief to cancel the penalties and interest for the taxation years of 1998 and 1999, in which he described his precarious financial situation (Respondent's Record, Affidavit of Diane Michaud, Exhibit 1, at pp 6-8).

[4] In a decision rendered on April 19, 2011, the CRA's Team Co-ordinator, Revenue Collections, granted the cancellation of interest for the taxation years of 1998 and 1999, but refused the cancellation of penalties (Respondent's Record, Decision of April 19, 2011, at pp 10-12).

[5] On May 20, 2011, the applicant made a second request for relief relating to the taxation years of 1998 and 1999 to obtain the cancellation of penalties (Respondent's Record, Affidavit of Diane Michaud, Exhibit 3, at pp 14-15).

[6] On June 7, 2012, the minister's delegate rejected the applicant's second request for relief and refused to cancel the penalties (Respondent's Record, Decision of June 7, 2012, at pp 17-20). The applicant acknowledges that he already had the interest cancelled but [TRANSLATION] "now requests that the Federal Court grant the cancellation of penalties ..." (Applicant's Record, Applicant's Memorandum of Fact and Law, at page 2).

[7] The decision under judicial review before the Court is the decision of June 7, 2012, by the minister's delegate.

[8] The issue raised by this case is the following: Was the decision of the minister's delegate not to grant the cancellation of penalties for the late filing of tax returns reasonable?

[9] As for the standard of review, the Court is of the view that the standard of reasonableness applies to the decision of the minister's delegate (*Lanno v Canada (Customs and Revenue Agency)*, 2005 FCA 153, at paras 6-7, 139 ACWS (3d) 191 (*Lanno*); *Telfer v Canada (Revenue Agency)*, 2009 FCA 23, at para 24, [2009] FCJ No 71 (QL) (*Telfer*); *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 (*Dunsmuir*)). Specifically, the standard of reasonableness applies generally to discretionary decisions (*Dunsmuir*, above at para 51). The Federal Court of Appeal also confirmed that the decisions of the minister applying subsection 220(3.1) of the ITA are subject to the standard of reasonableness (*Lanno*, above at paras 6-7; *Telfer*, above, at para 24).

[10] It must be remembered that this is an application for judicial review. As a Court of review of a discretionary decision, the Court cannot re-weigh the facts of the matter. It also cannot substitute its judgment to that of the minister's delegate. Its role is limited to that of ensuring that the decision rendered by the minister's delegate is part of the possible and defensible outcomes in respect of the facts and law (*Dunsmuir*, above, at para 47).

[11] The applicant finds that the delays caused by the conflict with his accountant justify the late filing of its returns and that it was not reasonable to uphold the penalties. In the facts, the applicant relied on an error committed by a third party, in this case his accountant, as a situation beyond his

control or exceptional circumstances explaining his delay. The Court cannot accept this argument for the following reasons.

[12] The evidence does not show that the applicant's accountant was negligent or incompetent or that he engaged in misconduct. The applicant's filing with the Ordre des comptables en management accrédités du Québec was for a mediation relating to fees (Tribunal Record, Letter from Gilles Cossette, trustee of the Ordre des comptables en management accrédités du Québec, to Michel Tremblay, October 18, 2000, tab 42) and no misconduct by the accountant was brought to the attention of the minister's delegate or this Court. The evidence shows that the applicant, in financial difficulty, was not able to pay the fees due to the accountant, who then kept the uncompleted financial statements. The Court can only note that the evidence submitted by the applicant shows that the accountant hired to complete the financial statements was hired only for the year 1998, although the year 1999 is also at issue in this matter (Tribunal Record, Letter from Jacques Doucet to Michel Tremblay, May 31, 1999, tab 41).

[13] Subsection 220(3.1) of the ITA gives the Minister discretion to "waive" penalties and interest payable by the taxpayer. The Court recalls that the guidelines relating to taxpayer relief provide that, barring exceptional circumstances, taxpayers are generally considered to be responsible for errors made by third parties (Respondent's Record, Affidavit of Jean-François Leblanc, Exhibit 2, Income Tax Information Circular No IC07-1, at para 35, at pp 61-62). Several Federal Court decisions have confirmed this finding: *Northview Apartments Ltd v Canada (Attorney General)*, 2009 FC 74, at para 11, 176 ACWS (3d) 882; *Légaré v Canada (Customs and Revenue Agency)*, 2003 FC 1047, at para 10, [2004] 5 CTC 44; *Babin v Canada (Customs and Revenue*

Agency), 2005 FC 972, at para 12, [2005] 4 CTC 1; *Quastel v Canada (Revenue Agency)*, 2011 FC 143, at para 29, 2011 GTC 2016; *Jones Estate v Canada (Attorney General)*, 2009 FC 646, at para 59-60, [2009] FCJ No 813 (QL); *Fleet v Canada (Attorney General)*, 2010 FC 609, at para 29, [2010] 5 CTC 85. In the case before us and with respect to the record, nothing allows this Court to depart from this principle.

[14] The applicant also failed to explain, despite his financial difficulties, how his situation prevented him from estimating its revenues or contacting the CRA to learn his rights and tax obligations. Specifically, it appears that the applicant did not act diligently to remedy any delay or omission. Indeed, he filed his tax returns 1085 days late for the year 1998 and 719 days late for the year 1999. Further, he remained inactive to the CRA for 897 and 694 days for the 1998 and 1999 taxation years respectively, while he was under formal demands to file income tax returns.

[15] Also, the Court noted the applicant's numerous late returns as well as his repeated delays to pay the amounts due to the CRA between 1993 and 2009. The Court noted that, among the factors used to arrive at its decision, the minister's delegate may consider whether the taxpayer has a history of compliance with tax obligations (Respondent's Record, Income Tax Information Circular No IC07-1, at para 33, p. 61).

[16] The guidelines specify that an applicant's difficult financial situation does not justify the cancellation of penalties except in extraordinary circumstances, such as natural disasters or serious illness or when the financial situation of a company is such that the enforcement of penalties would jeopardize the survival and welfare of the community (Respondent's Record, Income Tax

Information Circular No IC07-1, at para 23-27 and 33, pp 60-61). None of these extraordinary circumstances were established.

[17] While the Court finds the applicant's situation unfortunate, it did not discern any error in the exercise of the discretion of the minister's delegate. He conducted a reasonable assessment of the facts and the evidence submitted before him and applied the relevant provisions. The decision of the minister's delegate is clear and falls within the range of possible, acceptable outcomes justified by the facts and the law. Therefore, the Court's intervention is not warranted.

[18] For these reasons, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed, with costs.

“Richard Boivin”

Judge

Certified true translation
Catherine Jones, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1263-12

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