

Docket: 2001-2006(IT)G

BETWEEN:

MICHEL BOILY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on May 12, 2006, at Chicoutimi, Quebec.

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Counsel for the Appellant:

Carol Girard

Counsel for the Respondent:

Martin Gentile

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* ("the Act") for the 1990 to 1992 taxation years are allowed in accordance with the attached Reasons for Judgment.

The appeal from the assessment made under the Act for the 1993 taxation year is dismissed in accordance with the attached Reasons for Judgment.

The appellant is awarded half his costs.

Signed at Ottawa, Canada, this 31st day of May 2006.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 29th day of February 2008.

Erich Klein, Revisor

Citation: 2006TCC308
Date: 20060531
Docket: 2001-2006(IT)G

BETWEEN:

MICHEL BOILY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Lamarre Proulx J.

- [1] These appeals pertain to the 1990 to 1993 taxation years.
- [2] The issue is whether, within the meaning of subsection 163(2) of the *Income Tax Act*, the appellant acquiesced in the making of false statements in his income tax returns for the taxation years in issue in order to obtain tax refunds to which he was not entitled.
- [3] Three refund cheques were issued to the appellant. He claims never to have received the first two cheques, but admits that he received the third one.
- [4] I quote paragraphs 9 and 10 of the Notice of Appeal:

[TRANSLATION]

9. Michel Boily never knew that the cheque dated May 20, 1993 in the amount of \$5,329.22, and the cheque dated November 8, 1993 in the amount of \$4,768.21, had been issued, and he never cashed, or benefited from the amounts of, these cheques.

10. With respect to the cheque dated January 30, 1995 in the amount of \$3,726.17, Michel Boily acknowledges that he cashed it honestly believing that he was entitled to it in light of the representations that Mario Boucher, a Revenue Canada employee at the time, had made to him.

[5] Roland Pelletier, who retired on February 2, 2006, was the officer who conducted these investigations on behalf of the Minister of National Revenue ("the Minister"). He explained that Mario Boucher was a Revenue Canada employee who had the administrative power to authorize tax refunds. Mr. Boucher ran a scheme in which he used the system's electronic commands to authorize fraudulent income tax refunds on which he received kickbacks of roughly 66% from the taxpayers concerned.

[6] The report on the first interview with the appellant, held on May 4, 2000, was tendered as Exhibit A-3. The appellant says that he did not know the exact subject of the interview when he arrived for the meeting on May 4, 2000. Mr. Pelletier has no recollection that the specific purpose of the meeting, as stated in the report, had been explained to the appellant beforehand.

[7] The object of the meeting is described as follows:

[TRANSLATION]

Object of meeting: The main object of the meeting is to know the facts surrounding the Jonquière Taxation Centre's issuance of the following three cheques:

| | |
|------------|------------|
| 20/05/1993 | \$5,329,22 |
| 08/11/1993 | \$4,768,21 |
| 30/01/1995 | \$3,726,17 |

[8] The following are a few statements from the report:

[TRANSLATION]

...

We then told Mr. Boily that we work for the Investigations Division of the Canada Customs and Revenue Agency, and would like to know the facts surrounding the issuance of three cheques by the Jonquière Taxation Centre (\$5,329.22, \$4,768.21 and \$3,726.17). Mr. Boily made the following statements in response to the various questions that we asked him:

...

- He has a bank account at the National Bank in Chicoutimi-Nord.
- He knows Mario Boucher of the Jonquière Taxation Centre because he lived with him for about five months while he was getting divorced.
- Mario Boucher has offered to check his income tax returns. In connection with this, he recalls receiving a \$3,700 refund cheque and believes that he gave \$1,200 of this amount, in cash, to Mario Boucher.
- He has no recollection of the other two refund cheques, and does not understand what happened with his file. In fact, he says that he never received that money.

We told Mr. Boily that we would obtain copies of the three refund cheques and get back to him.

[9] There was another interview on June 7, 2000 (Exhibit A-4). The subject of the meeting was as follows:

[TRANSLATION]

Subject of meeting: The main subject of the meeting is the bank authorizations signed by Mr. Boily

[10] Among other things, the report states:

[TRANSLATION]

...

Mr. Boily then stated that he did not receive the \$5,329.22 cheque dated May 20, 1993, or the \$4,768.21 cheque dated November 8, 1993. However, he recognizes his signature on the back of the \$3,726.17 cheque dated January 30, 1995.

...

[11] Exhibit A-2 is a table prepared by Mr. Pelletier using the electronic statements produced at Tab 8 of Exhibit I-1. It shows the sources of the refunds and the years in respect of which each refund was issued. Thus, the amount of \$3,726.17 received in 1995 is related to a \$42,500 business loss claimed for the year 1993.

[12] The cheque, dated January 30, 1995, can be found at Tab 6 of Exhibit I-1. It bears a postal address, which, according to the appellant, is his mother's address.

[13] The appellant separated from his first spouse in 1991. After that, he first lived with his mother. Then, he rented a room in Mario Boucher's home. He knew Mr. Boucher because one of Mr. Boucher's brothers once dated his first wife's sister. Although he rented a room in Mr. Boucher's home, he spent little time there because he had then begun seeing his new spouse. This explains why he kept his mother's postal address.

[14] With respect to the receipt of the \$3,726.17 cheque, the appellant admitted that he gave Mr. Boucher \$1,200 if not almost one half of the value of the cheque. He said that he did not feel comfortable about what he did, and that he never asked Mr. Boucher to do his income tax returns again.

Analysis and conclusion

[15] It would be difficult for me to find that the appellant received the first two cheques when his version of the facts in this regard has never changed. He has consistently maintained that he never received nor cashed the cheques. And there is no evidence to the contrary.

[16] The first two cheques pertain to the years 1990 through 1992, and since there is no evidence that the appellant received them, the appeals concerning those years are allowed.

[17] With respect to the year 1993, the very fact that the appellant handed over \$1,200, or perhaps an even greater portion, of a \$3,726.17 cheque that was supposed to be an income tax refund and thus an amount to which the taxpayer was fully entitled, shows that the appellant acquiesced in the wrongful act. He himself stated that he realized that this was not acceptable, for after that, he never asked Mr. Boucher to prepare his income tax returns again.

[18] The appeal for the year 1993 must be dismissed.

[19] Counsel for the appellant contended that I should take the settlement proposal—to reimburse the amount of the cheque—into consideration in awarding costs. Unfortunately, this amount does not cover even half of the 1993 assessment. Nonetheless, if I consider the total tax involved for the four years in question, I cannot but observe that the appellant has been successful with respect to almost half of that amount. Under the circumstances, I am of the opinion that the appellant can be awarded half his costs.

Signed at Ottawa, Canada, this 31st day of May 2006.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 29th day of February 2008.

Erich Klein, Revisor

CITATION: 2006TCC308
COURT FILE NO.: 2001-2006(IT)G
STYLE OF CAUSE: MICHEL BOILY v. THE QUEEN
PLACE OF HEARING: Chicoutimi, Quebec
DATE OF HEARING: May 12, 2006
REASONS FOR JUDGMENT BY: The Honourable Justice
Louise Lamarre Proulx
DATE OF JUDGMENT: May 31, 2006

APPEARANCES:

Counsel for the Appellant: Carol Girard
Counsel for the Respondent: Martin Gentile

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