

Federal Court



Cour fédérale

**Date: 20150205**

**Docket: T-1726-14**

**Citation: 2015 FC 153**

**Vancouver, British Columbia, February 5, 2015**

**PRESENT: The Honourable Mr. Justice S. Noël**

**BETWEEN:**

**THOMAS R. JARROLD**

**Applicant**

**and**

**CANADA REVENUE AGENCY**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is application for judicial review of a decision of Rick Stewart, Assistant Commissioner of the Legislative Policy and Regulatory Affairs Branch of the Canada Revenue Agency [CRA], to deny remission of the goods and services tax [GST], directors liabilities, plus related penalties and interest, and costs awarded by the Federal Court of Appeal [FCA], in respect of two corporate accounts of Thomas R. Jarrold [the Applicant], T. Jarrold & Associates Ltd. [Associates Ltd.] and T. Jarrold Management Systems Ltd. [Management Systems Ltd.].

II. Facts

[2] The Applicant is a certified management accountant.

[3] He was the sole director of Associates Ltd. and Management Systems Ltd.

[4] The Applicant requested a remission order in the amount of \$14,746.25 GST, plus \$72,936.22 related penalties and interest, in respect of two corporate accounts, Associates Ltd. and Management Systems Ltd., which he no longer operates. The Applicant also requested remission of \$3,252.27 in costs awarded by the FCA that have been allocated to his T1 account.

[5] The Applicant was assessed director's liability for Associates Ltd. in December 2006 for the 1991 to 1993 period in the amount of \$35,645.42, comprised of \$8,027.21 net GST, \$16,823.12 in penalties and \$10,795.09 interest. Without the Applicant knowing, his bookkeeper was collecting but not remitting the GST in order to satisfy Associates Ltd.'s financial obligations. When the Applicant discovered this situation, he filed outstanding quarterly returns in January 1994 for the various periods between April 1, 1991, and June 30, 1993. He did not however remit any of the net GST owing on those returns. Although the Applicant filed a GST return in 1999 for the period ending September 30, 1997, he did not remit the \$3,267.60 net tax owing on that return.

[6] The Applicant appealed the director's liability assessment of Associates Ltd. to the Tax Court of Canada [TCC] in 2009 (*Jarrold v Canada*, 2009 TCC 164), where the TCC upheld the CRA assessment. The Applicant then appealed the TCC decision to the FCA in 2010

(*Jarrold v Canada*, 2010 FCA 278). The FCA ruled in the CRA's favour. Both courts found that the Applicant had not met the defence for due diligence, that CRA officials had satisfied the assessing provisions of section 323 of the *Excise Tax Act*, RSC 1985, c E-15, and that there was a very high standard of care required of the Applicant as the sole director of Associates Ltd. and an accounting professional to ensure the remittance of trust funds. The FCA also stated that the Applicant never stopped being a director of Associates Ltd., that the two-year statutory limit to assess director's liability had not been contravened, and lastly, that the CRA was within its right to assess the Applicant personally.

[7] The Applicant began operating Management Systems Ltd. on January 1, 1994, and was assessed director's liability on January 28, 2009, in respect of GST returns filed without payment for various reporting periods between April 1, 1995, and June 30, 1996. The assessment was for \$16,471.99, consisting of \$4,826.08 net tax and \$11,645.91 in related penalties and interest. The Applicant was also assessed director's liability for the payroll account on the same date for the 1996 and 1997 taxation years for \$33,091.62, consisting of \$12,206.03 net tax and \$20,885.59 in related penalties and interest. The payroll debt was acquitted on January 19, 2011, via a CRA judgment registered against a property the Applicant sold. A further \$1,271.08 from that judgment was allocated to reduce the Applicant's GST liability on the account.

### III. Contested Decision

[8] The Assistant Commissioner assessed the Applicant's circumstances against the four main criteria for recommending remission before denying the Applicant's remission. The four

main criteria are financial setback coupled with extenuating factors, incorrect action or advice on the part of CRA officials, extreme hardship, or unintended results of the legislation.

[9] The Assistant Commissioner states that the Applicant's request seems to mainly be based on the financial hardship he is experiencing in acquitting the GST liabilities at issue. The Assistant Commissioner is of the opinion that there are no circumstances beyond the Applicant's control that have caused a tax debt to exist or prevented him from addressing that debt.

[10] The Assistant Commissioner also states that CRA adequately assessed the director's liability under section 323 of the *Excise Tax Act*, as the TCC and FCA confirmed.

[11] The Statistics Canada low income cut-off [LICO] for Canadian localities analysis, used to determine whether extreme hardship exist, demonstrated that the Applicant's T1 returns since 2006 shows a total income between \$29,000 and \$45,000, which places him above LICO for a one-person household in Surrey, British Columbia. The Assistant Commissioner also adds that the CRA records show that the Applicant has equity in two properties he co-owns with his son Stephen and Ms. Della Foster. Extreme hardship does not exist.

[12] Finally, the Assistant Commissioner concludes that no unintended results of the legislation are involved in the Applicant's case and that his history of non-compliance with respect to Associates Ltd. and Management Systems Ltd. were taken into consideration in denying the remission request.

IV. Parties' Submissions

[13] The Applicant submits that Ms. Stirling, of the Business Integration and Program Operations Division Excise and GST/HST Rulings Directorate, prepared a report 28 months after his request of November 10, 2011. The Applicant states that if she would have contacted him, perhaps natural justice could have prevailed. The Applicant further argues that it took the CRA 13 years to pursue director's liability, that he did not request remission of the taxes due and that extenuating circumstances apply to his situation.

[14] The Respondent, on the other hand, responds that the Assistant Commissioner's decision is reasonable because the financial setback remission guideline criteria did not apply to the Applicant nor did the remission guideline criteria of extreme hardship. The Respondent also adds that the Assistant Commissioner assessed the Applicant based on a two-person household and not only a one-person household. In both analyses, the Applicant earned income in excess of LICO. The Respondent further argues that the Applicant did not dispute that the CRA maintained regular contact with him with regard to his tax liabilities. Moreover, the Assistant Commissioner properly considered the director's liability assessments issued to the Applicant "under section 323 of the *Excise Tax Act* that held him liable for the GST debt of Associates Ltd. for GST collected between 1991 and 1993 that was upheld by the Tax Court of Canada and the Federal Court of Appeal".

V. Issue

[15] The Applicant submits the following three issues:

- CRA failed to observe principles of natural justice or procedure laid out in their own manual;
- The long delays in this process are a violation of natural justice;
- CRA based its decision on incorrect assumptions.

[16] The Respondent states that the issue is whether or not the Assistant Commissioner's decision is reasonable. I agree, and it is this reasonableness issue that is dealt with in the following paragraphs.

#### VI. Standard of Review

[17] The issue stated above is a question of mixed fact and law. Also, subsection 23(2) of the *Financial Administration Act*, RSC 1985, c F-11 confers a very broad discretion to the Governor in Council to recommend remission. The reasonableness standard thus applies (*Germain v Canada (Attorney General)*, 2012 FC 768 at paras 27 to 29 [*Germain*]; *Waycobah First Nation v Canada (Attorney General)*, 2001 FCA 191 at paras 12 and 13 [*Waycobah*]). The Court shall only intervene if it concludes that the decision is unreasonable, and falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] SCJ No 9 at para 47).

#### VII. Analysis

[18] Subsection 23(2) of the *Financial Administration Act* states:

(2) The Governor in Council may, on the recommendation of the appropriate Minister, remit any tax or penalty, including any interest paid or payable thereon, where the Governor in Council considers that the collection of the tax or the enforcement of the penalty is unreasonable or unjust or that it is otherwise in the public interest to the remit tax or penalty.

(2) Sur recommandation du ministre compétent, le gouverneur en conseil peut faire remise de toutes taxes ou pénalités, ainsi que des intérêts afférents, s'il estime que leur perception ou leur exécution forcée est déraisonnable ou injuste ou que, d'une façon générale, l'intérêt public justifie la remise.

[19] The Minister of Revenue is the “appropriate” Minister for purposes of recommending remission and has delegated this authority to the Commissioner of Revenue, the head of the CRA. The Commissioner of Revenue has in turn delegated this authority to the Assistant Commissioner (Respondent’s Application Record [RAR], pages 114, at para 8; Affidavit of Rick Stewart pages 2-3 at paras 2-5). The Assistant Commissioner may thus recommend to the Governor in Council to remit any tax or penalty, including any interest paid or payable thereon (*Germain supra* at para 51). The decision of the Assistant Commissioner is based on the Remission Committee’s recommendation. The Remission Committee reviews the recommendation of whether or not to deny remission by the officials in the Business Integration and Program Operations Division of the Excise and GST/HST Rulings Directorate (Affidavit of Rick Stewart, page 3 at paras 10-11), in this case Ms. Stirling’s April 10, 2014 report and recommendations. Before making a final decision, the Assistant Commissioner reviews each letter and all other documentation provided to him (Affidavit of Rick Stewart, page 3 at paras 12-13).

[20] In the case at bar, the decision to deny remission to the Applicant is essentially based on the remission guidelines. The Applicant's history of non-compliance with respect to Associates Ltd. and Management Systems Ltd., his personal circumstances, and the CRA's Headquarters Remission Committee evaluation were also taken into consideration ([RAR], Tab G, pages 2-3). Although the guidelines do not have force of law and should not be used to confine the exercise of discretion of the decision-maker to the guidelines (*Waycobah supra* at para 28), they:

May be quite helpful in ensuring consistency and enabling those governed by statutory provisions to know which factors may affect their claims. It will therefore be perfectly legitimate for an administrative authority to rely on a policy or a guideline in making a decision, so long as that policy or guideline does not remove the decision from the decision-maker or predetermine a matter without an opportunity to address the merits (*Ibid* at para 43).

[21] The Remission Guidelines state the following:

#### Section III – Remission Guidelines

Each remission request is considered on its own merits to determine whether collection of the tax or enforcement of the penalty is unreasonable or unjust, or if remission is in the public interest, in accordance with the broad terms set out in section 23 of the *Financial Administration Act*. To assist CRA officials in that assessment, guidelines have been developed, based upon characteristics common to past cases. These are:

- Extreme hardship;
- Incorrect action or advice on the part of CRA officials;
- Financial setback coupled with exhausting factors; and
- Unintended results of the legislation.

These guidelines provide a framework within which a remission might be supported. However, it must be kept in mind that they do not cover every circumstance; there may be other valid reasons that would justify consideration of a remission order. Good judgement



must be exercised at all times and all relevant factors should be taken into consideration, e.g.: a person's compliance history, credibility, age and health (RAR page 25).

[22] I have reviewed the parties' records and their respective submissions, Ms. Stirling's April 10, 2014 report, and the Remission Committee's deliberations, and I find that the Assistant Commissioner's decision is reasonable. I also agree with the Respondent's analysis.

[23] The Applicant submits that he is a single parent with a disabled son who is dependent on him, that he is a single-person household, that he has failing health and that his disposable income is shrinking. The Assistant Commissioner's evaluation and conclusion that the financial setback remission guideline criteria do not apply to the Applicant is reasonable. Indeed, in his affidavit of the judicial review, the Applicant did not adduce any evidence that identifies factors that the Assistant Commissioner failed to consider in his analysis. Indeed, there were no circumstances beyond the Applicant's control that caused the tax debt to exist or that prevented him from addressing that debt. The Assistant Commissioner, in coming to this conclusion, properly considered the TCC and FCA decisions which concluded that the Applicant acted without due diligence in the management of his corporate affairs to ensure the remittance of trust funds. Moreover, the Assistant Commissioner properly determined that the remission guideline criteria of extreme financial hardship did not apply to the Applicant's case, because based on the facts, the Applicant's income places him above the LICO for both the one-person and two-person household. The Assistant Commissioner also considered the Applicant's equity in the two properties he co-owns as well as rental income in coming to this determination. Moreover, the fact that Ms. Foster is the Applicant's girlfriend and not his partner, as alleged by the Applicant, has no bearing on the reasonableness of the Assistant Commissioner's Decision.

[24] The Applicant also submitted that it “only took thirteen years to pursue director’s liability” and that he has no record or does not recall receiving such an assessment (Applicant’s Memorandum of Facts and Law [AM] at point no 2). Ms. Stirling’s report however demonstrates constant communication between the Applicant and CRA starting in 1994 (RAR page 74-75). Ms Stirling’s report also states that:

Mr. Jarrold subsequently appealed the Associates Ltd. director’s liability assessment to the TCC. On January 28, 2009, prior to the scheduled hearing date, he was further assessed director’s liability in respect of both the GST and payroll debts on the Management Systems Ltd. account in the amount of \$16,471.99 and \$33,091.62, respectively. He requested a TCC adjournment to have the appeal heard once Management Systems Ltd. had resolved an objection he intended to file, the CRA opposed the adjournment on the basis that the assessment periods were different and therefore the cases were not sufficiently related. ACSES indicates that Mr. Jarrold objected to the GST assessment for Management Systems Ltd. on April 16, 2009, which was finalized but not mailed until November 16, 2011 owing to a mail strike. Mr. Jarrold did not appeal the director’s liability assessment in respect of Management Systems Ltd payroll account (RAR page 75).

[25] The Applicant did not demonstrate any inaccuracies in Ms. Stirling’s report or any evidence that would contradict it. Moreover, the TCC and FCA both confirmed that the Applicant never ceased to be a director of the corporations under a director’s liability assessments as per section 323 of the *Excise Tax Act*. The Assistant Commissioner’s conclusion that the Applicant had knowledge of the director’s liability of both Associates Ltd. and Management Systems Ltd. is thus reasonable.

[26] As for the Applicant’s submission that CRA misapplied funds received from him to the wrong corporate account, there is evidence in the Respondent’s Application Record that the

funds were applied in accordance with the instructions of the Applicant's authorized representative at the time (RAR, Affidavit of Rick Stewart, Tab A, pages 10-11 at paras 33-34; RAR, Ms. Stirling report, Tab C, page 71; RAR, Tab L, page 105; RAR, Tab M, page 108).

[27] The Applicant also raised the issue that it took "a full twenty eight months after my request of November 10, 2011 without contact to the local CRA office or myself to determine if there were circumstances she (Ms. Stirling) might be aware of" (AM at para 1). This procedural argument cannot stand. The *Financial Administration Act* does not prescribe any procedures for handling requests for tax debt reduction. It is left to the discretion of the Minister. There was thus no need for the local CRA office to conduct an initial review and Ms. Stirling was not obliged to contact the Applicant. Moreover, the Applicant was given an opportunity to include the information he wished the Assistant Commissioner to consider in his remission request. The Assistant Commissioner thus had the opportunity to evaluate all the information provided by the Applicant in making his decision.

[28] The Assistant Commissioner's decision is thus reasonable. He properly assessed the remission guidelines and took into considerations other relevant factors such as the Applicant's history of non-compliance with respect to the T2, T4 and GST filing and remittance requirements of Associates Ltd. and Management Systems Ltd. The Assistant Commissioner did not err in the exercise of his discretion. The intervention of this Court is not warranted.

VIII. Conclusion

[29] The Assistant Commissioner's decision is reasonable and no intervention from this Court is warranted. The application for judicial review is dismissed with costs to the Respondent.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed,  
with costs to the Respondent.

“Simon Noël”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1726-14

**STYLE OF CAUSE:** THOMAS R. JARROLD V CANADA REVENUE  
AGENCY

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** FEBRUARY 2, 2015

**JUDGMENT AND REASONS:** NOËL S J.

**DATED:** FEBRUARY 5, 2015

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