

Federal Court



Cour fédérale

**Date: 20161014**

**Docket: T-451-16**

**Citation: 2016 FC 1145**

**Ottawa, Ontario, October 14, 2016**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**STUART MORRISON**

**Applicant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**JUDGMENT AND REASONS**

**I. The Proceeding**

[1] Stuart Morrison [the Applicant] has applied for judicial review of a decision of the Minister of National Revenue [the Minister] dated February 16, 2016 [the Decision] in which, following a reconsideration, the Minister denied the Applicant's second level request for relief from all the interest he had been charged pursuant to subsection 220(3.1) of the *Income Tax Act*, RSC, 1985, c 1 (5th Supp) [the Act]. The Applicant requested relief for his 1997 and 1998 tax

years on the basis of financial hardship, error and delay on the part of the Canada Revenue Agency [the CRA] and extraordinary circumstances.

## II. Background

[2] In 1997 and 1998, the Applicant purchased art at wholesale prices as part of a tax shelter arrangement. His cash outlays were \$22,334.00 in 1997 and \$24,408.00 in 1998. He then donated the art to a registered charity and was given a charitable receipt for the retail value of the art. He then claimed deductions for charitable donations of \$71,208.00 in 1997 and \$85,642.00 in 1998.

[3] The Applicant was audited and the deductions were not accepted. In 2001, the Applicant was reassessed for 1997 and 1998. It was found that he owed approximately \$140,000.00 in principal, interest and penalties. In response, the Applicant filed Notices of Objection [the Objections].

[4] Shortly thereafter, in a letter dated October 16, 2001, the Minister notified the Applicant that his Objections would be held in abeyance pending the outcome of two test cases involving similar tax shelters. They were *Klotz v R*, 2004 TCC 147, aff'd 2005 FCA 158, leave to appeal to SCC refused, [2005] SCCA No 286 (SCC) and *Nash v R*, 2004 TCC 651, rev'd 2005 FCA 386, leave to appeal to SCC refused, [2006] SCCA No 20 (SCC) [the Test Cases]. The Applicant was also advised that, notwithstanding the fact that his Objections were being held in abeyance, interest would continue to accumulate on his tax debt until it was paid.

[5] The final decision in the Test Cases was made on April 20, 2006, when the Supreme Court of Canada denied leave to appeal. As a result of this litigation, the tax shelters were found to be fraudulent. The Minister therefore denied the Objections and issued new Notices of Reassessment on May 20, 2008.

[6] After the reassessment in 2008, the Applicant made first and second level requests for taxpayer relief in respect of the period when his Objections were held in abeyance (October 16, 2001 to May 20, 2008). In response to the Applicant's submissions, interest charges for 1998 were forgiven for the following periods due to CRA's delay: October 27, 2008 to January 22, 2010; July 23, 2010 to September 15, 2010; and January 7, 2011 to May 16, 2011. Interest relief was also granted on May 20, 2008 but the extent is unknown. As well, the Applicant was given relief from all penalties which amounted to \$16,904.50 for 1997 and \$19,830.85 for 1998.

[7] The CRA made settlement offers in 2002 and 2006, while the Objections were held in abeyance. Neither suggested any interest relief. The first offer was written on a "Without Prejudice" basis. The second offer was not styled "Without Prejudice". However, in the absence of a notification that "Without Prejudice" no longer applied, it is my view that it continued to govern.

[8] The Applicant refused both offers and also refused to sign a waiver needed to implement the second suggested settlement.

[9] In May of 2014, the Applicant sold a house that he had renovated. Because the Respondent had placed a lien on the property, all amounts owing for 1997 and 1998 were paid.

### III. The Decision

[10] On August 13, 2013, after the parties agreed that a reconsideration would be undertaken, the Applicant made a second, second level request for interest relief. As had been the case with his earlier requests, no documents were provided to substantiate the alleged hardship and no specifics were provided about the alleged delays. This request led to the Decision under review.

[11] The following three reasons were given to support the Applicant's request for interest relief:

- the extraordinary circumstances; namely, the complex and elaborate tax shelter fraud which caused the tax debt and which allegedly took the CRA and the courts years to unravel and understand;
- severe financial hardship over the years which had precluded payment of the tax debt; and
- delay caused by CRA which the Applicant said was the entire period when the Objections were being held in abeyance awaiting the outcome of the Test Cases.

[12] The Decision forgave interest charges for 1997 as they had earlier been forgiven for 1998 (see para 6 above) but no further relief was given for reasons which included the following:

- supporting documentation showing financial hardship was not provided;
- no effort was made to make voluntary payments or a payment arrangement;
- tax returns were late or not filed;
- requests for information were not responded to in a timely manner (it took the Applicant nine months to report what he actually paid for the art);

- the Applicant ignored letters from the audit section;
- credit reports showed that his home was mortgage free; therefore, he had the resources needed to make payments;
- he was told interest would accrue while the Objections were held in abeyance; and
- there were no further delays attributable to the Appeals Division or arising from changes in the personnel who handled his file.

[13] The Decision also states several times that the Applicant's refusal to accept CRA's offers to settle was a factor in the rejection of his request for interest relief.

#### IV. Discussion and Conclusion

[14] Given that the settlement offers were made on a "Without Prejudice" basis, the Applicant was entitled to have his request for interest relief considered without regard for the outcome of the settlement discussions. In my view, the Respondent's repeated reliance on his refusals to settle breached his right to procedural fairness.

[15] Since no deference is owed in these circumstances, the application for judicial review will be allowed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is granted.

The Applicant's request for interest relief for the years 1997 and 1998 is to be reconsidered by a different member of the Appeals Branch without regard for the fact that the Applicant refused to accept the CRA's offers to settle his tax debt for those years.

"Sandra J. Simpson"

---

Judge

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

**DOCKET:** T-451-16

**STYLE OF CAUSE:** STUART MORRISON v THE MINISTER OF  
NATIONAL REVENUE

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 13, 2016

**JUDGMENT AND REASONS:** SIMPSON J.

**DATED:** OCTOBER 14, 2016

**APPEARANCES:**

Ian Iatzko FOR THE APPLICANT

Andrea Jackett FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

DioGuardi Tax Law FOR THE APPLICANT  
Barristers and Solicitors  
Mississauga, Ontario

William F. Pentney, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of  
Canada  
Toronto, Ontario