Date: 20070829

Docket: T-2195-06

Citation: 2007 FC 867

Ottawa, Ontario, August 29, 2007

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

RONNIE LOUIS BOZZER

Applicant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA (as represented by the Minister of National revenue in his capacity as Minister responsible for the Income Tax Act)

and

CANADA REVENUE AGENCY

and

THE ATTORNEY GENERAL OF CANADA

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 18.1(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 of an August 21, 2006 decision by a tax official on behalf of the

Minister of National Revenue (the Minister), dismissing the Applicant's request for a waiver of interest and penalties associated with amounts of tax owed with respect to the 1989 and 1990 taxation years.

[2] In a December 6, 2005 letter, the Applicant requested that the Minister waive the interest payable on the tax owed from the 1989 and 1990 taxation years by virtue of subsection 220(3.1) of the *Income Tax Act*, R.S.C. 1985, chap. 1 (5th Supp.) (the *ITA*), the so-called "fairness legislation", on the basis of financial hardship and alleging that the Minister had delayed in processing his Notices of Objection filed in response to the Minister's Notices of Assessment for those years.

[3] In a letter dated December 19, 2005, the Applicant was advised by the Respondent that his request with regard to departmental delay or error would be forwarded to the Appeals Division of the Tax Services Office. The letter also stated that the aspect of the request relating to financial hardship could not be considered due to CRA's policy, in effect since January 1, 2005, that debts over 10 years of age from the date of submission were excluded from consideration.

[4] This first-level Fairness Request was reviewed by a Canada Revenue Agency (CRA) officer, and a recommendation was issued that the request be denied.

[5] This recommendation and the remainder of the Applicant's file was then considered by a Team Leader of the Appeals Division (the Team Leader) charged with determining the matter. She found that the Fairness Request for the 1989 and 1990 taxation years was beyond the ten year time

limitation, and concluded that they would have needed to be submitted by December 31, 1999 and December 31, 2000 respectively to be considered. Therefore she had no authority to exercise the statutory discretion to cancel or waive interest. This decision to deny the Applicant's first level Fairness Request was communicated to him by a letter dated August 21, 2006. He was also informed that the *ITA* provided no right to appeal this decision, but that he could request that the Chief of Appeals of the Tax Services Office review the matter to ensure that the Team Leader had exercised her discretion in a fair and reasonable manner.

[6] The Applicant submitted such a second-level Fairness Request by way of a September 8, 2006 letter. This second-level request was forwarded to another CRA officer (the second-level CRA officer). In a November 14, 2006 letter, this CRA officer informed the Applicant of the Minister's preliminary position that the application appeared to be outside of the statutory time limitations, stating the basis of her interpretation and her intention to recommend that the Chief of Appeals deny his request. Nevertheless, she informed the Applicant that before making her final recommendation, he could make further representations before the matter was forwarded for final determination. Such further submissions were made in a December 4, 2006 letter from the Applicant, challenging the second-level CRA officer's interpretation of the applicable time limitation and offering an alternative view of the appropriate interpretation.

[7] On December 10, 2006, the second-level CRA officer completed the draft of her report and recommendation. However, before it was submitted to the Chief of Appeals of the Tax Services Office, the Applicant filed the present application for judicial review on December 13, 2006.

[8] On the issue of the timeliness of this application, the Applicant essentially submits that the November 14, 2006 letter from the second-level CRA officer, as a preliminary determination of his second-level Fairness Request, was a "decision". Consequently, his December 13, 2006 filing of a Notice of Application for the present judicial review was within the 30-day time limitation, as established by subsection 18.1(2) of the *Federal Courts Act* (the Act). I disagree.

[9] In my view, neither the November 14, 2006 letter to the Applicant, nor the CRA officer's draft report and recommendation to the Chief of Appeals, were decisions or orders within the meaning of section 18.1 of the Act. The letter clearly indicated that it was a preliminary statement of the Minister's position and invited further submissions from the Applicant. In my view, there was no ambiguity as to its nature; on its face, it was clearly not a final determination of the second-level Fairness Request.

[10] The affidavit evidence establishes that while the CRA officer had completed the draft of her report and recommendation on December 10, 2006, it was not submitted to the Chief of Appeals, designated with determining such a second-level Fairness Request, due to the Applicant's filing of the present application. Accordingly, no determination was made by the Minister's authorized delegate, nor was any such decision communicated to the Applicant, with regard to the second-level Fairness Request.

[11] While a wide range of administrative actions fall within the Court's judicial review mandate, the recommendation by the second-level CRA officer was not determinative of the Applicant's request for reconsideration, and was not binding upon the Chief of Appeals who was charged with making the decision. In my view, these preliminary documents were not "decisions or orders" within the meaning of paragraphs 18.1(4)(c) or 18.1(4)(d), having no direct effect on the Applicant's rights, and similarly do not qualify as a "matter" in regard to which a remedy might be available under section 18 or 18.1(3) of the Act.

[12] Accordingly, I conclude that the last "decision" relating to the present application is the denial of the Applicant's first-level Fairness Request with regard to departmental error or delay, communicated to the Applicant in the August 21, 2006 letter.

[13] Subsection 18.1(2) of the Act specifies that an application for judicial review in respect of a decision or order "shall be made within 30 days after the time the decision or order was first communicated". This time limitation exists in the public interest, bringing finality to administrative decisions in order to ensure their effective implementation without delay (*Berhad v. /Canada* (2005), 338 N.R. 75, 2005 FCA 267). A party seeking an extension of time bears the burden of establishing the elements necessary for an extension, generally by way of affidavit evidence subject to cross-examination (*Virdi v. Canada (Minister of National Revenue)*, 2006 FCA 38). An applicant

for an extension of time must establish a continuing intention to pursue the application, an arguable case, no prejudice to the respondent and a reasonable explanation for the delay (*Neis v. Baksa*, 2002 FCA 230, aff'd 2005 FCA 62). The fact that a decision-maker may occasionally be willing to reconsider a decision in light of new information does not extend the 30-day limit for seeking judicial review of a decision (*Didone v. Sakno*, 2003 FC 1530, [2003] F.C.J. No. 1945 (QL), aff'd 2005 FCA 62).

[14] In the present case, the Applicant has not filed a motion for an extension of time prior to the hearing**,** and has provided no reasonable explanation for the delay despite the fact that the present application was filed almost 90 days after the expiration of the 30-day time limitation that began to run from August 21, 2006. Consequently, I find that the present matter should be dismissed.

[15] Unfortunately for the Applicant, who has made a very able presentation**,** in view of this conclusion, which disposes of the present application for judicial review, it is unnecessary and inappropriate for the Court to address the issue of whether the Minister erred in exercising her discretion to deny the Applicant's request for a waiver of interest.

[16] For the above reasons, the present application for judicial review is dismissed with costs.

JUDGMENT

THIS COURT ORDERS that the present application for judicial review is dismissed with costs.

"Danièle Tremblay-Lamer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2195-06
STYLE OF CAUSE:	**RONNIE LOUIS BOZZER v. HMQ ET AL**
PLACE OF HEARING:	Vancouver, BC
DATE OF HEARING:	August 21, 2007
REASONS FOR ORDER:	TREMBLAY-LAMER J.
DATED:	August 29, 2007

APPEARANCES:

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Karen Truscott	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Vancouver, B.C.	THE APPLICANT
John Sims Department of Justice	FOR THE RESPONDENT