Date: **20100322**

Docket: **T-2255-07**

Citation: **2010 FC 326**

Toronto, Ontario, March 22, 2010

PRESENT:　The Honourable Mr. Justice Hughes

BETWEEN:

VINCENT M. FORMOSI

Applicant

and

THE CANADA REVENUE AGENCY

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1]　　The Applicant is a Canadian taxpayer. He, as a self-represented litigant, is before the Court

seeking judicial review of a decision of Officials of the Canada Revenue Agency dated November

23, 2007 in which they declined the Applicant's request that interest and penalties imposed on him

as a result of delinquent payment of income tax, be foregone. For the reasons that follow I am

dismissing this application with costs.

[2]   The review of a decision of this kind in respect of whether interest and penalties should be waived as provided for under the provisions of Section 220(3.1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp) as amended, is judged by the Court on a standard of reasonableness as provided for by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9 and as applied, for instance, in *Lanno v. Canada (Customs and Revenue Agency)*, 2005 FCA 153. Reasonableness connotes as stated by the Supreme Court at paragraph 47 "*...a margin of appreciation within the range of acceptable and rational solutions.*"

[3]   The Court must, therefore, look at the decision under review and determine if it was "reasonable". If it was, the application for judicial review must be dismissed. In the present case the Applicant appears to have been under a misunderstanding as to appropriate evidence. The Court must conduct a review based on what was before the decision maker, not on additional evidence and affidavits put before the Court.

[4]   In the present situation the record shows that the Applicant has a history of delinquency in filing tax returns and paying his taxes. In some cases he has filed and paid promptly, but in many instances he has not. As a result, in 2006, a sum in excess of six figures was owing. This amount was paid but penalties and interest remained.

[5]   The Applicant made a submission listing a number of deaths and illnesses of members of his immediate family as well as instances of personal illness. However on some occasions those events did not match with the years of delinquency and in all instances the Applicant did not clearly show a

connection between those events and the delinquencies. This failure to connect was a basis for the Respondent refusing to waive penalties and interest as was the history of the Applicant of several delinquencies.

[6]   Admittedly, on occasion and more recently, the Applicant has been better about prompt reporting and payment. However there is no doubt that there have been far too many occasions of delinquency. The Respondent's decision was within the acceptable range of reasonableness.

[7]   The Applicant also argues that the decision was made by one Officer of the Respondent Agency and reviewed and concurred by another, thus creating, in effect, an institutional bias. I do not accept this argument. The *Income Tax Act* gives to the Minister through the Minister's Officials the duty to make such a decision and they have done so.

[8]   The Application is dismissed. The Respondent, being successful, is entitled to costs to be fixed at the Column III level.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1.   The application is dismissed;

2.   The Respondent is entitled to costs to be taxed at the Column III level.

"Roger T. Hughes"

Judge