

Federal Court



Cour fédérale

Date: 20120928

Docket: T-915-11

Citation: 2012 FC 1146

Ottawa, Ontario, September 28, 2012

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**T & S FIRST CHOICE
RENOVATIONS LIMITED**

Applicant

and

CANADA REVENUE AGENCY

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This judicial review concerns a decision of the Canada Revenue Agency [CRA] denying T & S First Choice Renovation Limited's [First Choice] request for the cancellation or waiver of penalties and interest with respect to its corporate tax, payroll and GST accounts for the 2007 tax year. The decision letter was only concerning the payroll 2007 accounts. GST for 2007 and 2008 and payroll for 2008 were considered in a second letter. That second letter was a first administrative

review. Both letters are in the Applicant's Record; CRA only included the one that was under judicial review.

[2] The original style of cause suggested that the decision was in respect of Mr. Dakha personally but the record indicates that the decision was made in respect of the corporation only. The only debt at issue is that of the corporation even though Mr. Dakha used personal money in the amount of \$10,000 to try to address the corporate liability.

[3] In the course of argument, it was made clear by counsel for the Respondent that this matter did not involve either Mr. Dakha or his associate Mr. Sidhu personally and that no claim has been advanced against them personally.

II. BACKGROUND

[4] The application for tax relief is based on s 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp), which gives the Minister of National Revenue the discretion to waive or cancel in whole or in part penalties and interest otherwise payable.

220. (3.1) The Minister may, on or before the day that is ten calendar years after the end of a taxation year of a taxpayer (or in the case of a partnership, a fiscal period of the partnership) or on application by the taxpayer or partnership on or before that day, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by the taxpayer or partnership in respect of that taxation year or fiscal period,

220. (3.1) Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin de l'année d'imposition d'un contribuable ou de l'exercice d'une société de personnes ou sur demande du contribuable ou de la société de personnes faite au plus tard ce jour-là, renoncer à tout ou partie d'un montant de pénalité ou d'intérêts payable par ailleurs par le contribuable ou la société de personnes en application de la présente loi

and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.

pour cette année d'imposition ou cet exercice, ou l'annuler en tout ou en partie. Malgré les paragraphes 152(4) à (5), le ministre établit les cotisations voulues concernant les intérêts et pénalités payables par le contribuable ou la société de personnes pour tenir compte de pareille annulation.

[5] The CRA, which acts as the Minister's delegate, has issued an information circular (Canada Revenue Agency, Income Tax Information Circular IC07-1, "Taxpayer Relief Provisions" (May 31, 2007)) explaining the policy to be applied. There are three circumstances where relief may be granted:

- extraordinary circumstances – natural disasters, serious illness or accident and the like;
- actions of the CRA – processing delays, misinformation and similar actions; and
- inability to pay or financial hardship – for a person, prolonged inability to supply necessities or for a corporation, extreme financial difficulty and jeopardy to continued operations.

[6] The factors which are examined are:

- (a) whether or not the taxpayer has a history of compliance with tax obligations;
- (b) whether or not the taxpayer has knowingly allowed a balance to exist on which arrears interest has accrued;

- (c) whether or not the taxpayer has exercised a reasonable amount of care and has not been negligent or careless in conducting their affairs under the self-assessment system; and
- (d) whether or not the taxpayer has acted quickly to remedy any delay or omission.

[7] Mr. Dakha and Mr. Sidhu were the directors of First Choice. Mr. Dakha was largely responsible for business development.

[8] Mr. Dakha was seriously injured in a motorcycle accident in 2007 which meant that he could not continue to work. The business lost revenue and ceased operations in 2008.

[9] First Choice, through Mr. Dakha, applied for tax relief in 2008 and the final decision regarding the 2007 payroll taxes was issued in April 2011.

III. ANALYSIS

[10] It is well-established that the standard of review for the Minister's discretion is reasonableness (*Tefler v Canada (Revenue Agency)*, 2009 FCA 23).

[11] I can find nothing unreasonable in the Minister's decision. The factors were examined and a rational conclusion was reached on each:

- There was no causal connection between Mr. Dakha's injury and the failure to meet tax obligations as there was another director capable of meeting the fiscal obligations.
- The continuity of operations was a moot point as the corporation had ceased operations in 2008 for reasons other than pending tax liabilities.
- The corporation had not made a meaningful attempt to address the tax portion of the debt although Mr. Dakha certainly did.
- The corporation had not exercised reasonable care in conducting its tax affairs because it had past problems with compliance. The corporation had allowed penalties to accrue on its accounts since 2002.

[12] Under all these circumstances, I cannot see where the Minister's decision in respect of First Choice is unreasonable.

IV. CONCLUSION

[13] This judicial review will be dismissed without costs.

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review is dismissed
without costs.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-915-11

STYLE OF CAUSE: T & S FIRST CHOICE RENOVATIONS LIMITED
and
CANADA REVENUE AGENCY

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: September 25, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** Phelan J.

DATED: September 28, 2012

APPEARANCES:

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(ON HIS OWN BEHALF)

Ms. Selena Sit FOR THE RESPONDENT

SOLICITORS OF RECORD:

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