

Federal Court



Cour fédérale

**Date: 20130417**

**Docket: T-1334-12**

**Citation: 2013 FC 394**

**Ottawa, Ontario, April 17, 2013**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**ANGELA MARCH**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR ORDER AND ORDER**

**INTRODUCTION**

[1] Ms. Angela March (the “Applicant”) seeks judicial review of the decision by the Minister of National Revenue (the “Minister”), here represented by the Attorney General of Canada (the “Respondent”). In that decision, made on June 7, 2012, the Minister, by his duly authorized delegate D.K. DiMillo, declined to positively exercise the discretion to allow an extension of the time limitation set out in paragraph 256(3)(a) of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the “ETA”).

## **BACKGROUND**

[2] The following details are taken from the contents of the Certified Tribunal Record (the “CTR”) and the affidavits filed by the parties, that is the affidavit of the Applicant and the affidavit of Dave DiMillo, an employee of the Canada Revenue Agency (“CRA”) who was the Director of the Summerside Tax Centre of the CRA in Summerside, Prince Edward Island, at the times relevant to this application.

[3] The Applicant, a resident of Green’s Harbour, Newfoundland and Labrador, built a new house which she occupied in May 2009. She applied for the “GST/HST New Housing Rebate” pursuant to the ETA in April 2011, that is shortly before the expiry of the two-year time-frame set out in paragraph 256(3)(a) of the ETA.

[4] According to her affidavit, the Applicant waited six months to make contact with the CRA because she had read that processing the rebate claim can take up to six months. When she called the CRA office in Summerside in early November 2011, she was advised that there was no record of her rebate claim having been received. She was also told that she should have sent the application in by registered mail. Finally, the Applicant was told to re-submit her claim and to ask for “Taxpayer Relief” since she was six months past the deadline for filing, which would have been May 2011.

[5] The Applicant sent her rebate claim to the Summerside office, by facsimile, on November 4, 2011. When she called to follow up, she was told that the fax had not been received. A second fax sent by the Applicant was received by the CRA on November 28, 2011. The Applicant received her Notice of Assessment on December 7, 2011. In January 2012, the Applicant was advised to submit a Notice of Objection to the Summerside Tax Centre.

[6] The record shows that the Summerside Tax Centre prepared a "Taxpayer Relief Provision Fact Sheet" on two occasions. The first sheet was prepared on December 7, 2011, by a taxation officer with the Summerside Tax Centre. This sheet was reviewed and signed by two other employees, including an Assistant Director, on December 12, 2011.

[7] The Applicant then received a letter dated February 29, 2012, advising that her appeal had been declined. By letter dated March 21, 2012, the Applicant sought reconsideration of her application for the exercise of discretion to allow her late-filed application for the GST rebate to be processed.

[8] A second "Taxpayer Relief Provision Fact Sheet" was prepared by Officer Russell Boyle after the Applicant requested reconsideration of the refusal of her request for taxpayer relief. This sheet is dated April 11, 2012. It was reviewed and signed by two other employees, including Mr. DiMillo, the Director, on June 7, 2012.

[9] By letter dated June 7, 2012, the CRA advised the Applicant that her application had been reviewed and that in the opinion of Mr. DiMillo, Director of the Summerside Tax Centre, there was

no basis upon which to grant an extension of time to file the rebate application. The Applicant was also advised that she could seek judicial review of this negative decision in the Federal Court of Canada. On July 5, 2012, the Applicant commenced this application for judicial review.

## **SUBMISSIONS**

[10] The Applicant argues that according to the report contained at page 23 of the CTR, her rebate application would have been granted if filed on a timely basis.

[11] The Respondent submits that the decision is reasonable, having regard to the facts and the guidelines that apply to the exercise of the discretion provided by paragraph 256(3)(b) of the ETA.

## **DISCUSSION AND DISPOSITION**

[12] The first matter to be addressed is the standard of review. Since the issue here is the manner in which the decision-maker, that is Mr. DiMillo, exercised the discretion under the ETA, having regard to the facts presented by the Applicant, the standard of review is reasonableness. The scope and content of “reasonableness” was discussed by the Supreme Court of Canada in *Dunsmuir v.*

*New Brunswick*, [2008] 1 S.C.R. 190 at para. 47, as follows:

Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result.

Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[13] The relevant guidelines are set out in “Income Tax Information Circular” IC07-1, entitled “Taxpayer Relief Provisions” (the “Guidelines”). Mr. DiMillo, at paragraph 5(g) of his affidavit, said that he considered the Guidelines. This document sets out, in section 23, some circumstances when taxpayer relief can be granted. These circumstances include extraordinary circumstances or actions of the CRA. Section 24 allows the Minister to grant relief in circumstances not described in section 23. Section 25 provides examples of “extraordinary circumstances” as follows:

- a) natural or man-made disasters such as, flood or fire;
- b) civil disturbances or disruptions in services, such as a postal strike;
- c) a serious illness or accident; or
- d) serious emotional or mental distress, such as death in the immediate family.

These four examples of “extraordinary circumstances” are also listed in the CRA’s guide entitled “GST/HST New Housing Rebate”. Although this document is not part of the CTR, it is a publicly available document that is relevant to this proceeding.

[14] The Applicant did not specify any one of these events as being the reason why her rebate application did not reach the Summerside office in May 2011, although she suggested in her letter

of March 21, 2012, that there may have been a postal strike in the summer of 2011 that could have affected delivery of the mail.

[15] The record shows that the “Taxpayer Relief Provision Fact Sheets” prepared on December 7, 2011, and April 11, 2012, provided a brief review of the relevant facts and analysis pertaining to the reasonable care taken by the Applicant. In this case, there were six questions in this section. Five positive answers were given; only one question was answered in a way that was contrary to the Applicant’s interests. This was a question relating to whether the taxpayer, that is the Applicant, had been “negligent/careless in complying with the law”?

[16] According to Officer Boyle’s April 11, 2012, analysis, the Applicant had been careless because she “did not make a reasonable effort to ensure the rebate application was received prior to the filing deadline.” Officer Boyle recommended that the tax relief application be dismissed. He referred to a postal “dispute” as a possible reason for the application not being received but also noted that the postal service disruption took place in the spring / summer of 2011 on an intermittent basis and only affected “certain Canada Post operations for very short periods of time.”

[17] In his decision dated June 7, 2012, Mr. DiMillo made the following comments:

Your comments about the late-filed 2009 rebate application, were noted and considered in relation to the legislation.

My review reveals no indication of any error or delay on our part, or circumstances beyond your control. Also, the documents provided do not demonstrate that the application was submitted prior to the legislated filing deadline. As a result, I have concluded it would not be appropriate to allow an extension of time to file your rebate application.

[18] As noted above, the decision made by Mr. DiMillo was a discretionary one pursuant to subsection 256(3) of the ETA which provides as follows:

<p>256(3) A rebate under this section in respect of a residential complex shall not be paid to an individual unless the individual files an application for the rebate on or before</p>	<p>256 (3) Les remboursements prévus au présent article ne sont versés que si le particulier en fait la demande au plus tard :</p>
<p>(a) the day (in this subsection referred to as the “due date”) that is two years after the earliest of</p>	<p>a) à la date qui suit de deux ans le premier en date des jours suivants :</p>
<p>(i) the day that is two years after the day on which the complex is first occupied as described in subparagraph (2)(d)(i),</p>	<p>(i) le jour qui suit de deux ans le jour où l'immeuble est occupé pour la première fois de la manière prévue au sous-alinéa (2)d(i),</p>
<p>(ii) the day on which ownership is transferred as described in subparagraph (2)(d)(ii), and</p>	<p>(ii) le jour où la propriété est transférée conformément au sous-alinéa (2)d(ii),</p>
<p>(iii) the day on which construction or substantial renovation of the complex is substantially completed; or</p>	<p>(iii) le jour où la construction ou les rénovations majeures de l'immeuble sont achevées en grande partie;</p>
<p>(b) any day after the due date that the Minister may allow.</p>	<p>b) à toute date postérieure à celle prévue à l'alinéa a), fixée par le ministre.</p>

[19] In this case, the Guidelines, as noted above, provide guidance as to relevant matters that should be considered by the decision-maker. I would note that the questions on the Taxpayer Relief Provision Fact Sheet also provide guidance since these questions are focused on the actions taken by someone looking for the kind of relief sought by the Applicant here.

[20] Subsection 256(3)(b) of the ETA confers a discretion, not an obligation, on the Minister with respect to GST application deadlines. That the Minister's delegate is afforded discretion means that no particular result, positive or negative, is preordained. I refer in this regard to the decision of Justice Rouleau in *Kaiser v. Canada (Minister of National Revenue)* (1995), 93 F.T.R. 66 at para. 10 where he said:

Absent bad faith on the part of the Minister, a breach of the principles of natural justice or consideration of extraneous or irrelevant factors, there is nothing to warrant the Court's interference with the exercise of his discretion. I am unable to conclude any of these exist in the present case.

[21] The same considerations apply in this case. There is nothing on the record to support an argument that there was a breach of natural justice by the Minister towards the Applicant. There is nothing on the record to show that there was consideration of extraneous or irrelevant factors in this case.

[22] In my opinion, the decision here is reasonable. The decision-maker reviewed the materials sent in by the Applicant. The discretion is to be exercised in relation to the evidence submitted. In this case, there was effectively no evidentiary foundation to support the Applicant's request for a positive exercise of discretion. There was no evidence, for example, about the timing of a postal service interruption or the areas of the country that were affected by it. The only document submitted by the Applicant was the completed application for the GST rebate. However, this document cannot be considered to be "evidence" in support of the taxpayer relief discretion.



[23] I am satisfied that the decision-maker considered relevant factors and did not consider irrelevant factors. The refusal to extend the time for filing the GST rebate application was reasonable in the circumstances.

[24] In the result, this application for judicial review is dismissed. In the exercise of my discretion pursuant to the *Federal Courts Rules*, SOR/98-106, I make no order as to costs.

**ORDER**

This application for judicial review is dismissed. In the exercise of my discretion pursuant to the *Federal Courts Rules*, SOR/98-106, I make no order as to costs.

“E. Heneghan”

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Judge

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

**DOCKET:** T-1334-12

**STYLE OF CAUSE:** ANGELA MARCH v. ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** St. John's, Newfoundland and Labrador

**DATE OF HEARING:** February 26, 2013

**REASONS FOR ORDER AND ORDER:** HENEGHAN J.

**DATED:** April 17, 2013

**APPEARANCES:**

Ms. Angela March	FOR THE APPLICANT (ON HER OWN BEHALF)
Ms. Deanna Frappier	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Ms. Angela March Green's Harbour, Newfoundland and Labrador	FOR THE APPLICANT (ON HER OWN BEHALF)
William F. Pentney Deputy Attorney General of Canada St. John's, Newfoundland and Labrador	FOR THE RESPONDENT