

Federal Court



Cour fédérale

Date: 20230712

Docket: T-1118-22

Citation: 2023 FC 944

Ottawa, Ontario, July 12, 2023

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

HAJAR PROPERTIES INC.

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Hajar Properties Inc., seeks judicial review of a Canada Revenue Agency [CRA] decision denying its request for taxpayer relief [the Decision]. Pursuant to subsection 220(3.1) of the *Income Tax Act*, RSC, 1985, c 1 (5th Supp) [ITA], the Applicant sought relief from paying \$8,783.14 in penalties and interest imposed due to the late filing of its 2018 corporate tax return.

[2] The Applicant argues that the late filing of its taxes was not the corporation's fault. Rather, it had provided the income tax information to its accountant well before the filing deadline, but the accountant had relocated and failed to file the return on time.

[3] For the reasons that follow, I am dismissing the application for judicial review. The CRA second-level review officer [the Officer] reasonably denied the Applicant's request for relief on the basis that taxpayers are ultimately responsible for ensuring their tax returns are filed on time.

II. **Background**

A. *Request for Taxpayer Relief*

[4] The Applicant filed its tax return for the year ending December 31, 2018, over six months late, on January 17, 2020. The Applicant was assessed \$8,783.14 in penalties and interest for the late filing.

[5] The Applicant submitted an initial Request for Taxpayer Relief to the CRA to cancel or waive these penalties and interest. The Applicant stated that its tax return was late because the President, Sam Hajar [Mr. Hajar], had been occupied with his ailing parents and that his accountant had moved offices. While the Applicant had provided its paperwork to the accountant on April 12, 2019, the accountant did not file the return by the June 30, 2019 deadline. In support of its claim for relief, the Applicant also cited financial hardship and its positive compliance history.

[6] After considering the Applicant's request, a CRA officer at the first-level of review [first-level review Officer] denied the request for relief. The first-level review Officer determined that Mr. Hajar's personal financial situation was not relevant to the corporation's financial situation as they are separate entities. In terms of Mr. Hajar's parents' medical situation, the first-level review Officer stated he was unable to conclude there were circumstances that prevented the Applicant from filing its return on time. Finally, the first-level review Officer held that, despite the accountant's move, the Applicant remained responsible for ensuring its tax returns were filed on time.

B. *The Decision – Second-Level Review*

[7] The Applicant requested a second-level review of its application for taxpayer relief on the sole basis that the first-level review Officer did not consider the failure of its accountant to file the tax return on time due to the relocation of his practice.

[8] After an independent review, the Officer denied the Applicant's second-level request for reconsideration. While acknowledging the accountant had moved, the Officer determined that it is the taxpayer's ultimate responsibility to ensure their tax returns are filed on time:

Under Canada's self-assessment tax system, corporations are responsible for ensuring their tax returns are completed correctly, filed on time and that payments are made when due.

Although you may use the services of a professional, the relationship between a taxpayer and a tax preparer is one of choice, and any negative consequences of that choice remains between those parties. Relying on a professional, does not absolve you from your responsibility.

While I understand that your accountant failed to file your corporate tax return even though you provided him all the

documents prior to the due date because he was moving his office, you remain responsible to comply with the Canada Revenue Agency (CRA) requirements and to act appropriately to ensure that your corporation tax return is filed on time.

III. Issues and Standard of Review

[9] Before hearing the parties on the merits of this application, I dealt with two procedural matters as further explained below: (i) the proper parties to this application; and (ii) the representation of the corporate Applicant by Mr. Hajar, a non-lawyer.

[10] The only issue on the application is whether the Officer erred in denying the Applicant's second-level request for taxpayer relief under subsection 220(3.1) of the *ITA*. The applicable standard of review is that of reasonableness: *Northview Apartments Ltd v Canada (Attorney General)*, 2009 FC 74, at para 9 [*Northview Apartments*]; *Canada Revenue Agency v Telfer*, 2009 FCA 23, at para 24.

[11] In accordance with *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the focus of reasonableness review is the decision actually made, including the reasoning and outcome. As emphasized by the Supreme Court, “the role of the courts is to review, and they are, at least as a general rule, to refrain from deciding the issue themselves” (at para 83). A reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker” (at para 85). The hallmarks of reasonableness are justification, transparency and intelligibility (at para 99).

IV. **Analysis**

A. *Proper Parties*

[12] The Notice of Application improperly named the parties. The proper Applicant is the corporate taxpayer Hajar Properties Inc., not “Sam Hajar as Hajar Properties”. The proper Respondent, in accordance with Rule 303(2) of the *Federal Courts Rules*, SOR/98-106 [*Rules*], is the Attorney General of Canada. As a result, at the outset of the hearing, I ordered that the title of the proceedings be amended immediately to name Hajar Properties Inc. as the Applicant and the Attorney General of Canada as the Respondent.

B. *Representation of the Corporate Applicant*

[13] Mr. Hajar, the President and sole proprietor of the Applicant Hajar Properties Inc., sought to represent the corporate Applicant at the hearing of this judicial review application on the basis that the corporation does not have the financial means to hire a solicitor. Unfortunately, through no fault of Mr. Hajar, this issue only arose the day before the scheduled hearing.

[14] I issued a Direction requesting that the parties address this matter at the outset of the hearing. After hearing submissions from both Mr. Hajar and the Respondent, I issued brief oral reasons, with further written reasons to follow.

[15] For the following reasons, I exercised my discretion under Rule 120 of the *Rules* to grant leave for Mr. Hajar to represent the corporate Applicant for the sole purpose of the hearing of

this judicial review application. In my view, in accordance with Rule 3 of the *Rules*, this is the most just, expeditious and least expensive outcome in the circumstances.

[16] Pursuant to Rule 120, a corporation is to be represented by a solicitor in all proceedings, unless the Court grants leave in special circumstances for it to be represented by an officer, partner or member.

[17] The jurisprudence is clear that in order to establish special circumstances, a corporation must generally demonstrate that: (i) it cannot afford a lawyer; (ii) the proposed representative will not be required to be both advocate and witness; (iii) the issues are not so complex as to be beyond the proposed representative's capabilities; and (iv) the action can proceed in an expeditious manner: *El Mocambo Rocks Inc v Society of Composers, Authors and Music Publishers of Canada (SOCAN)*, 2012 FCA 98, at paras 3-5; *Alpha Marathon Technologies Inc v Dual Spiral Systems Inc*, 2005 FC 1582 at para 3; *UBS Group AG v Yones*, 2022 FC 487, at para 7 [*UBS Group*].

[18] As determined by Justice McHaffie in *UBS Group*, these “factors are not determinative or exhaustive, they must generally be met to establish special circumstances to justify an order permitting representation of a company by an officer” (at para 7). He further held that these factors strike a “balance between important principles underlying regulation of the legal profession, the public interest in effective access to the Court through efficient and timely Court proceedings, and the need for access to justice” (at para 10).

[19] The Respondent did not oppose Mr. Hajar acting as a representative at the hearing of this judicial review application.

[20] Considering the generally accepted factors, I make the following findings. First, the record supports that the Applicant cannot afford a lawyer. Mr. Hajar had to cash-in personal investments to pay the penalties and interest at issue in this application on behalf of the corporate Applicant. The corporation has been in a deficit position for some time now. Second, as a judicial review application, this matter will be determined based on the record before the decision-maker. Indeed, the Applicant filed no affidavit evidence. Thus, Mr. Hajar was not in the position of acting as both advocate and witness. Third, the issues in this application are straightforward—whether the Officer erred in denying the Applicant’s second-level request for reconsideration of the imposition of \$8,783.14 in penalties and interest for the late filing of its 2018 tax return. I am satisfied that this issue is within the capabilities of Mr. Hajar. In fact, Mr. Hajar has some court experience as a former military police officer. Finally, at this late stage of the process, the most expeditious manner to proceed is by granting Mr. Hajar leave to represent the corporate Applicant.

[21] I underscore that I granted leave under Rule 120 based on the very specific circumstances before this Court and for the limited purpose of allowing Mr. Hajar to represent the Applicant at a hearing that had already been scheduled.

C. *The Decision is Reasonable*

[22] I am satisfied that the Officer made a reasonable decision in the circumstances.

(1) Discretionary Authority to Waive Penalties and Interest

[23] In accordance with subsection 220(3.1) of the *ITA*, the Minister of National Revenue has discretion to waive or cancel penalties and interest owing by a taxpayer. CRA officers with the requisite delegated authority exercise this discretionary power.

[24] The decision-making process at the CRA provides for two levels of review for taxpayers who make a request for relief from penalties and interest. A taxpayer who is not satisfied with the CRA's decision at the first level may request a second-level review. The CRA decision-maker at the second level would not have been involved with the first-level request.

[25] The CRA developed administrative guidelines to inform the exercise of discretion under subsection 220(3.1) of the *ITA*. Part II of Information Circular IC07-1R1, *Taxpayer Relief Provisions*, August 18, 2017 [the Information Circular], provides guidelines for cancelling or waiving penalties and interest.

[26] In situations involving third-party delays, the CRA will assess whether the circumstances were beyond the taxpayer's control, pursuant to certain factors listed in paragraph 25 of the Information Circular. These factors include (i) natural or human-made disasters, such as flood or fire; (ii) civil disturbances or disruption in services, such as a postal strike; (iii) serious illness or accident; and (iv) serious emotional or mental distress, such as death in the immediate family.

[27] Paragraph 35 of the Information Circular provides that taxpayers are generally responsible for delays caused by a third party acting for the taxpayer. It further states that, in “exceptional situations”, it may be appropriate to provide relief to taxpayers due to third party errors or delays.

(2) Taxpayer Responsible for Third-Party Delays in Filing

[28] The Applicant argues that the Officer failed to properly consider its reason for the late filing of its tax return—the accountant moving his office. At the hearing, Mr. Hajar argued that this was a matter out of the Applicant’s control and that it should not be penalized.

[29] The law is clear, however, that taxpayers are responsible for complying with their tax reporting obligations, including the filing of tax returns on time. This Court has further consistently determined that a taxpayer relief application, such as in this case, cannot validly be based on third-party errors or delays: *Northview Apartments*, at para 11; *Légaré v Canada Customs and Revenue Agency*, 2003 FC 1047, at para 10; *Tadross v Canada (Minister of National Revenue)*, 2004 FC 1698, at paras 10-11; *Babin v Canada (Canada Customs and Revenue Agency)*, 2005 FC 972, at para 12.

[30] I agree with the Respondent that the accountant’s move does not constitute either an extraordinary circumstance or an exceptional situation (as referred to in paragraphs 25 and 35 respectively of the Information Circular) that prevented the timely filing of the Applicant’s tax return.

[31] The Officer reasonably concluded that the accountant's move does not justify relieving the Applicant of its obligation to file its tax return on time:

While I understand that your accountant failed to file your corporate tax return even though you provided him all the documents prior to the due date because he was moving his office, you remain responsible to comply with the Canada Revenue Agency (CRA) requirements and to act appropriately to ensure that your corporation tax return is filed on time [emphasis added].

[32] It was incumbent on the Applicant to exercise due diligence in ensuring its tax obligations were met, even though it employed an accountant to file its return. Based on the record before the Officer, the Applicant provided its income tax information to the accountant on April 19, 2019, well before the filing deadline. However, the Applicant failed to follow-up to ensure the return was being filed on time. The Applicant only followed-up three months later on July 20, 2019, after the filing deadline had expired. Ultimately, the tax return was not filed until January 17, 2020—over six months after the filing deadline.

[33] At the hearing, the Applicant acknowledged that the onus is on the taxpayer to file on time, but argued that the Officer should have put “more weight” on its “track record”. The fundamental difficulty with this argument is that the Applicant only challenged the first-level review Officer's decision on the basis that he had not considered the accountant's move. The Applicant did not raise other issues, such as its compliance history, at the second-level review. As a result, the Applicant is now precluded from raising its compliance history before this Court on judicial review.

[34] I note, however, that despite not raising it as a ground of review at the second level, the Officer briefly addressed compliance history. She concluded that it is but “one factor considered to determine whether or not the CRA will cancel or waive penalties and interest”. As the judge sitting in review of the Officer’s decision, I cannot reweigh the evidence before the decision-maker, as suggested by the Applicant. It was for the Officer to weigh the relevant factors and considerations and come to a decision.

[35] While the ill health of Mr. Hajar’s parents was raised in the Notice of Application, it was not pursued in the Applicant’s written or oral submissions. As pointed out by the Respondent, the Officer had no obligation to inquire into this issue given it was not raised by the Applicant at the second-level review. Moreover, as the Respondent notes, the first-level review Officer considered these circumstances, but did not receive any further explanation or information from the Applicant when requested.

D. *Costs Not Payable*

[36] The Respondent sought \$2,040 in costs, in accordance with Column III of Tariff B of the *Rules*. In exercising my discretion over the allocation of costs under Rule 400(1), and having regard to all the circumstances of this case, I am not awarding costs to the Respondent.

JUDGMENT in T-1118-22

THIS COURT'S JUDGMENT is that:

1. The title of the proceedings is amended to name Hajar Properties Inc. as the Applicant and the Attorney General of Canada as the Respondent;
2. Leave is granted, in accordance with Rule 120 of the *Federal Courts Rules*, to allow Mr. Sam Hajar to represent the Applicant at the hearing of this judicial review application; and
3. The application for judicial review is dismissed without costs.

"Anne M. Turley"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1118-22

STYLE OF CAUSE: HAJAR PROPERTIES INC. v THE ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 27, 2023

JUDGMENT AND REASONS: TURLEY J.

DATED: JULY 12, 2023

APPEARANCES:

Sam Hajar

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Gabriel Caron

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT