

FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE	
F I L E D	Aug. 4, 2023 4 août 2023
Josephine Chan	
Toronto, ON	1

FEDERAL COURT OF APPEAL

BETWEEN

MOHAMMAD YADGAR

Appellant

- and -

HIS MAJESTY THE KING

Respondent

NOTICE OF APPEAL**TO THE RESPONDENT:**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Appellant. The relief claimed by the Appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the Appellant. The Appellant requests that this appeal be heard at (place where Federal Court of Appeal (or Federal Court) ordinarily sits).

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the Federal Courts Rules and serve it on the Appellant's solicitor, or where the Appellant is self-represented, on the Appellant, **WITHIN 10 DAYS** of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

August 4, 2023

Issued by: "Jake Schutz"
(Registry Officer)

Address of local office: 180 Queen Street W.
Suite 200
Toronto, ON
M5V 3L7

TO: Registrar of the Federal Court of Appeal

AND TO: **Attorney General of Canada**
Department of Justice Canada
Tax Law Services Section
120 Adelaide Street West
Suite 400 | Pièce 400
Toronto, Ontario M5H 1T1

Per: AMIN NUR
E-mail: Amin.nur@justice.gc.ca

Counsel for the Respondent

THE APPELLANT APPEALS to the Federal Court of Appeal from the order of Gabrielle St-Hilaire, J, of the Tax Court of Canada, dated July 18, 2023, in which she dismissed the Appellant's appeals for years 2006, 2007, 2008 and 2009. Her Honor also confirmed the imposition of penalties pursuant to subsection 163(2) of the *Income Tax Act* (ITA);

THE APPELLANT ASKS that the Court set aside the decision of the Tax Court judge and allow the appeal accordingly, and grant cost for the appeal and as well as cost at the Tax Court;

GROUND OF THE APPEAL

Subject to the receipt of the transcripts, the grounds of the appeal are as follows:

(i) THE BACKGROUND FACTS INCLUDING DEALINGS WITH COSTA

1. The Appellant is an Afghani refugee. He came to Canada in 1995. The Appellant testified that from the time he came to Canada in 1995, as a refugee, to the time he was reassessed by Canada Revenue Agency (CRA), he had no reliable facility in the English language. He testified that he tried to go to school to learn English, but he was unable to continue given the stresses of late nights, in operating the business and family responsibilities which followed thereafter. He further testified that as a butcher, he dealt with other Afghanis who spoke his language;
2. He testified that he had no knowledge whatsoever of what constitutes income and had no knowledge of what goes into a tax return. He testified that since he came to Canada, he completely relied on the services of others who prepared his return. As he

recalled, he never ever signed a return, and was not familiar with its contents;

3. He saved a significant amount of money while working and had received moneys from his father and as well, had proceeds from real estate sales. These funds he kept at home. He testified that he used food etc. from his store, and so he had little personal expenses;
4. As for the relevant period in question, he testified that he relied completely on a tax preparer and accountant whose name was Costa. He testified that Costa was given all of his business records, including all bank statements and invoices to prepare the various tax returns. When he inquired about his returns of Costa, he would often be advised by him not to worry and that the returns for his corporation were being prepared or had been prepared;
5. He testified that Costa directed him to open a second bank account in his personal name which he treated as a second business bank account. He was told that this was a means by which costs could be reduced. He testified that he exclusively used that account for business;
6. He was also encouraged by Costa to borrow money from the business to buy his home and that he could pay it back whenever he could. There was no advice given by Costa that he could take a housing loan from the corporation to buy his home;

7. He testified that he discovered that Costa had been lying to him that he had in fact filed the corporate returns and so when CRA garnished the business bank account. Once that was discovered he immediately terminated the services of Costa. He then hired the accounting firm Accountax; owned by a Mr. Sajid Usami.
8. The Appellant also testified that every step taken in the context of his business, such as the various incorporations, was done by Costa based on Costa's advice. Costa basically advised him that this would be good for the business. He went along with such advice as he trusted that Costa would see to his interest;
9. He testified that he did not understand the difference between corporation's money and his personal matters. He sincerely believed that the funds were his own and that there was no difference as between himself in terms of money in the account and the corporation. In other words, he did not know there were tax implications if for example he were to remove funds from the corporation's bank account;

(ii) OTHER WITNESS EVIDENCE

10. Mr. Usami, the owner of Accountax, the firm which took over from Costa, testified. He indicated that Costa had truly messed up the Appellant's books and had given really bad advice to the Appellant. He had to clean up the mess. He confirmed that the Appellant had no understanding whatsoever of how income and taxes worked and also confirmed that indeed, the books and records he relied upon to prepare the

various schedules CRA accepted were obtained from Costa. Who had been given to him by the Appellant;

11. Most significantly, he testified that the Appellant had no knowledge nor appreciation that the business of the Corporation was different from his own personal affairs. For example, the opening of the personal accounts wherein he deposited business revenue, the Appellant never saw a difference as between himself and the corporation;
12. The witness indicated that the personal bank account said to have been ordered to be opened by Costa was used exclusively for business transactions;
13. The witness also confirmed that his clientele is south Asian and Pakistani etc and that it is a continuing cultural practice for such clients to save and keep their cash at home;

(iii) THE AUDITOR'S APPROACH

14. The auditor picked up the amount deposited in the personal business account as the Appellant's income, despite the fact that the evidence was clear that the deposits were being made with the understanding that business expenses were to be paid from the personal bank account;
15. The auditor also did not give the Appellant the benefit of a doubt despite the fact that

he received bad advice from Costa. In fact, the Appellant could have acquired a housing loan from the corporation rather than take the cash out of the corporation bank account as advised by Costa but that was not considered by the auditor. The fact that the cash had been deposited in the new personal account which had been used for business operations was nonetheless attributed to the Appellant as income;

16. Penalties were applied to the amounts despite the Appellant's complete lack of any knowledge of business, income and taxes, and the fact that he totally relied on Costa. Furthermore, the Appellant had no understanding whatsoever of the fact that he could pay tax on money he took from the corporation;

(iv) THE COURT PROCEEDING AT THE TAX COURT

17. The Respondent called no witness nor was there any evidence tendered by it either by agreed statement of facts or otherwise. Thus, there was no evidence before the court whatsoever to prove the Respondent's assumptions set out in its Reply which it relied upon to reassess the Appellant;

(v) THE REASONS OR DECISIONS

18. The trial judge in her reasons did not set out the relevant evidence regarding the level of knowledge and the Appellant's challenges in learning English as stated above;

19. The trial judge completely ignored the evidence of the Appellant witness which was relevant to the issue of the level of the standard of care as someone in similar circumstances could expect from the Appellant. This was related to the correctness of the trial judge's finding that the Appellant was neglectful;
20. The trial judge treated the allegations in the Respondent's Reply as proven facts, and as well at times, simply adopted the allegations of facts as set out in the Respondent and Appellant's pleadings as evidence. Case in point, there was no evidence whatsoever presented by the Respondent as to why in this case, there should be a finding of gross or knowing conduct warranting the application of penalties;

(vi) PARTICULARS OF THIS APPEAL

21. The Trial Judge committed an overriding and palpable error when she completely ignored relevant evidence of the Appellant's background and knowledge of the ITA and its application and also ignored the evidence of the witness; who confirmed the complete lack of awareness and knowledge of the Appellant;
22. Despite the fact that the matter before the Court related to subsection 15(1) of the *Income Tax Act* (ITA) reassessment, the Trial judge nonetheless, took the view that despite the evidence before her of an Appellant who in good faith had no understanding whatsoever of the intricacies of the corporate taxation or even general knowledge of income, found that he had been neglectful. This was an error of law;

23. The trial judge erred in law when she relied on allegations of facts in the party's pleadings without hearing any evidence from the Respondent regarding the statute barred year issue and the imposition of penalties pursuant to subsection 163(2) of the ITA;
24. The Trial Judge's Reasons were inadequate and incomplete, thereby frustrating appropriate appellate review;
25. The Trial Judge erred in law in confirming the imposition of penalties for each of the years in question; and
26. Given the absence of a reliable transcript of the proceeding, this prejudices the Appellant such that he is unable to effectively put forward his case and as well, such absence frustrates the Court's ability to appropriately consider the case before it;
27. Section 27(1) of the *Federal Courts Act*; Rules 337, & 337.1, *Federal Courts Rules*;
28. The Appellant requests that the appeal be heard in Toronto, Ontario, Canada.

Date: July 31, 2023.



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FEDERAL COURT OF APPEAL

BETWEEN:

MOHAMMAD YADGAR

Appellant,

-and-

HER MAJESTY THE QUEEN

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Notice of Appeal

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