

Federal Court
of Appeal



Cour d'appel
fédérale

CANADA

Date: 20101117

Docket: A-326-09

Citation: 2010 FCA 310

**CORAM: NADON J.A.
SHARLOW J.A.
STRATAS J.A.**

BETWEEN:

BENJAMIN R. HOFFMAN

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on November 16, 2010.

Judgment delivered at Ottawa, Ontario, on November 17, 2010.

REASONS FOR JUDGMENT BY:

SHARLOW J.A.

CONCURRED IN BY:

NADON J.A.
STRATAS J.A.

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REASONS FOR JUDGMENT

SHARLOW J.A.

[1] Dr. Benjamin R. Hoffman is appealing the judgment of the Federal Court (2009 FC 832) dismissing his application for judicial review of a decision of the Minister denying Dr. Hoffman's request for administrative relief.

[2] Dr. Hoffman's request was based primarily on subsection 152(4.2) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), one of the "fairness provisions". Subsection 152(4.2) permits the Minister to reassess an income tax return for a particular year after the normal limitation period if

the taxpayer requests the reassessment and the reassessment would result in a refund or a reduction in tax payable for the year.

[3] In the same application for judicial review, Dr. Hoffman also challenged the correctness of the Minister's determination of accrued interest. That is not a request for discretionary relief, but a request for a correction to the determination of the amount of Dr. Hoffman's debt to the Crown.

[4] According to his memorandum of fact and law, Dr. Hoffman is now seeking the following relief from the Minister:

- (a) a recalculation of accrued interest relating to his tax liability for the 1998 taxation year, on the basis that a \$35,000 tax instalment payment made in December, 1998 was treated as though it had been made in July, 1999, resulting in an initial overcharge of interest and related penalties for a six month period as well as continuing overcharges of compound interest on the overcharged amount;
- (b) an increase of approximately \$78,000 to either his capital loss or his allowable business investment loss (ABIL), representing the adjusted cost base of the shares of a certain failed corporation; and
- (c) a deduction of approximately \$20,000 for legal and accounting expenses.

[5] The task of this Court is to determine whether the Federal Court judge correctly determined the standard of review and applied it properly: *Canada Revenue Agency v. Telfer*, 2009 FCA 23. It is undisputed that reasonableness is the standard of review of a decision of the Minister to grant or

deny relief under one of the fairness provisions: *Lanno v. Canada (Customs and Revenue Agency)*, 2005 FCA 153. Thus, the reasonableness standard of review applies to Dr. Hoffman's request for changes to his capital loss or ABIL, and to his request for additional legal and accounting expense deductions. Justice Evans, writing for the Court in *Telfer*, explained the reasonableness standard of review as follows at paragraph 25:

When reviewing for unreasonableness, a court must examine the decision-making process (including the reasons given for the decision), in order to ensure that it contains a rational "justification" for the decision, and is transparent and intelligible. In addition, a reviewing court must determine whether the decision itself falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law" [*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9] at para. 47.

[6] The Federal Court judge concluded that the decision of the Minister was reasonable in so far as it denied Dr. Hoffman any further deductions. Having carefully considered the record and the submissions of Dr. Hoffman at the hearing, I have not been persuaded to the contrary. The record discloses that the Minister thoroughly reviewed and considered the information submitted by Dr. Hoffman in relation to the requests made at the outset and in the course of subsequent correspondence. I agree with the Federal Court judge that, given the information available to the Minister, his decision was reasonable.

[7] Dr. Hoffman complains that the Minister's continual requests for further information were unreasonable and arbitrary. He points out that he actually incurred significantly more losses than he

claimed, and that his current requests for adjustment were intended to achieve no more than a fair and equitable overall result. It is not for this Court to assess the overall fairness of Dr. Hoffman's tax indebtedness. Given the adjustments sought by Dr. Hoffman, the nature and quality of the documentary evidence he was able to provide, and the sometimes confusing manner in which Dr. Hoffman attempted to explain his claims, it was not unreasonable for the Minister to conclude that his claims were not proved well enough to justify a further reassessment.

[8] Dr. Hoffman's request to the Minister in relation to the determination of his interest obligation stands on a slightly different footing. He is not seeking a discretionary waiver of interest under subsection 220(3.1) of the *Income Tax Act*, which is the most frequent request by taxpayers in relation to interest. Rather, he is requesting that his interest obligation be determined correctly.

[9] The provisions of the *Income Tax Act* that contain the rules for determining interest are intended to provide only a single correct determination of interest payable at a particular point in time. Where it is established that the Minister is claiming from a taxpayer interest that is not correctly calculated because, for example, it is based on an incorrect determination of the date on which an instalment payment was made, it is appropriate to require a correction to the account.

[10] Dr. Hoffman, in his communications with the Minister, alleged that the interest charged appeared to be excessive. It is not clear from the record when or whether Dr. Hoffman informed the Minister that Dr. Hoffman was asserting that the Minister's interest calculation was wrong because a \$35,000 payment made in December, 1998 was treated as having been made on July 26, 1999.

[11] In any event, there is evidence in the record indicating that the \$35,000 payment in issue was credited to Dr. Hoffman's instalment account on December 7, 1998. The instalment interest and related charges for 1998 were calculated on the basis of the payment having been received on December 7, 1998. The \$35,000 instalment was applied to Dr. Hoffman's 1998 tax liability when his 1998 income tax return was assessed in July, 1999.

[12] The record also discloses that a tax official undertook a detailed review of the interest calculation for 1998, which took into account the \$35,000 payment as having been made in December, 1998. The official found the calculation, as reflected in Dr. Hoffman's statements of account, to be correct. The record contains no evidence to the contrary. The only reasonable conclusion on the record is that the Minister determined Dr. Hoffman's interest obligation correctly.

[13] For these reasons, I would dismiss the appeal with costs.

“K. Sharlow”

J.A.

“I agree
M. Nadon”

“I agree
David Stratas”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-326-09

**(APPEAL FROM A JUDGMENT OF THE HONOURABLE LOUIS S. TANNENBAUM
OF THE FEDERAL COURT DATED AUGUST 17, 2009, IN DOCKET NO. T-353-07)**

STYLE OF CAUSE: Benjamin R. Hoffman v. Attorney
General of Canada

PLACE OF HEARING: Ottawa

DATE OF HEARING: November 16, 2010

REASONS FOR JUDGMENT BY: Sharlow J.A.

CONCURRED IN BY: Nadon J.A.
Stratas J.A.

DATED: November 17, 2010

APPEARANCES:

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(SELF REPRESENTED)

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SOLICITORS OF RECORD:

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