

Federal Court



Cour fédérale

**Date: 20210517**

**Docket: T-1170-18**

**Citation: 2021 FC 452**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, May 17, 2021**

**PRESENT: The Honourable Mr. Justice Bell**

**BETWEEN:**

**MINISTER OF NATIONAL REVENUE**

**Respondent - Applicant**

**-and-**

**ANDREI OCTAV MOISE**

**Moving Party - Respondent**

**JUDGMENT AND REASONS**

I. Nature of motion

[1] This is a motion to review an authorization ordered by the Honourable Mr. Justice Diner dated June 19, 2018. In response to an *ex parte* motion, Justice Diner authorized the Minister of National Revenue (the Minister) to proceed forthwith against the respondent–moving party, Andrei Octav Moise (Mr. Moise), with any or all of the collection measures listed in

paragraphs 225.1(1)(a) to (g) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the ITA).

Mr. Moise exercised his right under subsection 225.2(8) of the ITA to file a motion seeking to have the *ex parte* order set aside.

## II. Relevant facts

[2] On June 7, 2018, the Canada Revenue Agency (CRA) issued notices of reassessment against Mr. Moise for the following taxation years: 2006 to 2011 and 2013 to 2014. On the same day, the CRA also issued notices of reassessment against Paxum Inc. and OA Internet Services Ltd. (OA), companies of which Mr. Moise was the sole shareholder and director.

[3] The affidavits dated June 13, 2018, of Manon Lacas, the auditor who issued the notices, and that dated June 14, 2018, of Julie Papineau, collections officer, alleged the following facts:

- A. Mr. Moise has lived in Romania since 2014;
- B. The Superior Court of Quebec, in its decision No. 500-17-075030-125, dismissed Mr. Moise's challenge of the collection measures undertaken by the Agence du revenu du Québec (ARQ), on the basis that the auditor's reasons for suspecting that Mr. Moise might dissipate his assets were [TRANSLATION] "real and substantial";
- C. Mr. Moise, as director of the companies Paxum Inc. and OA, transferred approximately \$9,000,000 out of Canada between 2006 and 2014. Mr. Moise made several misrepresentations to the auditor, Manon Lacas, during the audit, or simply failed to provide the information requested by her; and

D. At the time the collection measures were undertaken, Mr. Moise owned, jointly with his wife, Ileana Herling, in a Royal Bank of Canada (RBC) account, an amount of \$32,099.56. To the CRA's knowledge, this amount was never seized by the ARQ and could therefore be rapidly transferred out of Canada at any time.

[4] On June 15, 2018, the Minister filed a motion for an authorization to proceed forthwith with the collection of the amounts set out in the notices of reassessment. On June 19, 2018, the Honourable Mr. Justice Diner authorized the Minister to proceed forthwith with collection measures. On June 21, 2018, Julie Papineau sent an administrative seizure to the above-mentioned RBC account. On July 19, 2018, Mr. Moise filed a notice of motion with this Court challenging Justice Diner's order.

### III. Relevant provisions

[5] The relevant provisions are subsections 225.2(2) and 225.2(8) of the ITA. They read as follows:

***Income Tax Act, R.S.C. 1985,  
c. 1 (5th Supp.)***

**Authorization to proceed  
forthwith**

**225.2(2)** Notwithstanding section 225.1, where, on ex parte application by the Minister, a judge is satisfied that there are reasonable grounds to believe that the collection of all or any part of an amount assessed in respect of a taxpayer

***Loi de l'impôt sur le revenu,  
L.R.C. (1985), ch. 1 (5e  
suppl.)***

**Recouvrement compromis**

**225.2(2)** Malgré l'article 225.1, sur requête ex parte du ministre, le juge saisi autorise le ministre à prendre immédiatement des mesures visées aux alinéas 225.1(1)a) à g) à l'égard du montant d'une cotisation établie relativement à un contribuable,

would be jeopardized by a delay in the collection of that amount, the judge shall, on such terms as the judge considers reasonable in the circumstances, authorize the Minister to take forthwith any of the actions described in paragraphs 225.1(1)(a) to 225.1(1)(g) with respect to the amount.

#### **Review of authorization**

**225.2(8)** Where a judge of a court has granted an authorization under this section in respect of a taxpayer, the taxpayer may, on 6 clear days notice to the Deputy Attorney General of Canada, apply to a judge of the court to review the authorization.

aux conditions qu'il estime raisonnables dans les circonstances, s'il est convaincu qu'il existe des motifs raisonnables de croire que l'octroi à ce contribuable d'un délai pour payer le montant compromettrait le recouvrement de tout ou partie de ce montant.

#### **Révision de l'autorisation**

**225.2(8)** Dans le cas où le juge saisi accorde l'autorisation visée au présent article à l'égard d'un contribuable, celui-ci peut, après avis de six jours francs au sous-procureur général du Canada, demander à un juge de la cour de réviser l'autorisation.

#### IV. Issues

[6] I am of the view that there is only one issue to be resolved by this Court: has Mr. Moise met his initial burden of establishing reasonable grounds to doubt that granting an extension would compromise the Minister's ability to collect the amounts claimed?

#### V. Positions of the parties

##### A. *Moving party—respondent*

[7] Mr. Moise submits that the CRA attributed to the three taxpayers, namely, himself, OA and Paxum Inc., extensive income, allegedly unreported, in connection with the activities of OA and Paxum Inc., resulting from the sale of natural supplements. Mr. Moise submits that he, OA

and Paxum Inc. never sold these products and that the notices of reassessment are unfounded. Furthermore, the income attributed to these taxpayers in the notices of reassessment does not come from one of their sources of income and therefore cannot be connected to a distribution of dividends or cash. He also states that this property was already subject to an ARQ mortgage when the Minister obtained the order from Justice Diner and that his wife has an undivided half interest in the property. Mr. Moise also states that the building is a family residence that is part of the family patrimony. He submits that the collection measures undertaken with respect to his family residence would cause serious and irreparable harm.

B. *Respondent-applicant*

[8] The Minister submits with respect to the burden of proof for a person bringing a motion under subsection 225.2(8) of the ITA that the taxpayer must initially establish that there are reasonable grounds to doubt that the test required by subsection 225.2(2) of the ITA has not been met (*Canada (National Revenue) v. Reddy*, 2008 FC 208 at para. 7).

[9] The Minister claims that Mr. Moise, based on the grounds set out in his motion and the explanations provided during his cross-examination, has not met this burden. The Minister submits that this Court “lacks jurisdiction to deal with the assessment and is bound by the deeming provisions of subsection 152(8)” of the ITA (*Canada (Minister of National Revenue) v. Thériault-Sabourin*, 2003 FCT 124 at para. 10).

[10] In response to Mr. Moise’s argument that his property was already subject to an ARQ mortgage and that his wife had an undivided half interest in this property when Justice Diner

authorized the taking of action forthwith against his property, the Minister states that the amount of \$32,099.58 that Mr. Moise held jointly with his wife was not seized by the ARQ in the course of its collection measures.

[11] In response to Mr. Moise's claims that he did not intend to dissipate his assets and does not intend to violate his obligations under the ITA, the Minister argues that this is not relevant to meeting its burden, because the Court must objectively take into account the effect or result of the measures taken against the assets (*Services M.L. Marengère Inc. (Re)*, 1999 CanLII 9004 (FC) at para. 72).

[12] The Minister notes that Mr. Moise made statements in his affidavit that conflict with the statements made in an affidavit dated September 18, 2007, in a previous matter based in the United States. The Minister also notes that Mr. Moise is not challenging the essential allegations of the Minister's motion that led to Justice Diner's order. He also admitted the following points on cross-examination: he currently resides in Romania and has resided there since 2014; OA has not had a post office box in Canada for at least the past two years; he confirms having signed an affidavit in the context of legal action undertaken in the United States in 2007 and that the signed affidavit contained a significant error with respect to the fact of OA's sales of Vimax products; and he admits to having transferred significant amounts abroad from Paxum Inc. to Paxum Belize.

## VI. Analysis

[13] When authorization is granted in accordance with subsection 225.2(2) of the ITA, the taxpayer may apply to a judge of the Court to review the authorization under subsection 225.2(8) of the ITA. When the Court is faced with such an application, the Minister has the ultimate burden of justifying the decision, but the taxpayer must first establish reasonable grounds to doubt that the test required by subsection 225.2(2) has been met (*Canada v. Proulx*, 2011 FC 1231 (CanLII) at para. 17 [*Proulx*]).

[14] As explained in *Proulx* at paragraph 18, the review of the order issued under subsection 225.2(8) of the ITA involves, at least, the application of the following two-part test:

1. The applicant has the initial burden of mustering evidence that there are reasonable grounds to doubt that the test required by subsection 225.2(2) of the ITA has been met; and
2. The Minister has the ultimate burden of justifying the jeopardy collection order granted on an *ex parte* basis.

[15] The first part of the test applicable to the review set out in subsection 225.2(8) of the ITA involves determining whether Mr. Moise has succeeded, through affidavits and/or the cross-examination of the Minister's witnesses, in reasonably demonstrating that the evidence originally submitted to Judge Diner did not meet the test set out in subsection 225.2(2).

[16] The evidence that Mr. Moise filed before this Court includes the two exhibits appended to his affidavit dated November 11, 2019. The first exhibit establishes that he is the sole shareholder and director of Paxum Inc. and OA. The second exhibit contains contracts of OA's

affiliates. Furthermore, as stated in the Minister's written submissions, the authorization at issue is to proceed forthwith against Mr. Moise and not against the companies Paxum Inc. and OA. Therefore, that evidence is irrelevant to this dispute. Also, there is no evidence that Mr. Moise cross-examined the Minister's witnesses.

[17] The Minister presented three affidavits with several appended exhibits, including the transcript of the examination on Mr. Moise's affidavit that took place on August 5, 2020, including the exhibits consulted during the examination. Among other things, the evidence demonstrates the following:

- Mr. Moise is married to Ileana Herling and together they have three minor children. They are undivided co-owners of the only two immovable assets remaining to the couple, namely, the residence situated at 72 Champlain Street in Roxboro and a vacant lot in Brossard.
- Mr. Moise is the sole shareholder and director of the companies Paxum Inc. and OA. Mr. Moise, in his capacity as director of Paxum Inc. and OA, transferred approximately \$9,000,000 out of the country between 2006 and 2014.
- Mr. Moise currently lives in Romania.
- Mr. Moise made inaccurate statements to the auditor Manon Lacas during the audit or simply failed to provide the information requested by her.
- At the time of the collection measures, Mr. Moise and his wife, Ms. Herling, held an amount of \$32,099.56 in an RBC bank account.



[18] Moreover, the evidence shows that Mr. Moise made statements in his affidavit of November 11, 2019, that contradict statements made in a previous affidavit, specifically, the affidavit relating to the matter based in the United States in 2007.

[19] Given that there is no evidence before this Court to show that the Minister has failed to meet the test in subsection 225.2(2) of the ITA, I am of the view that Mr. Moise has failed to meet his initial burden. In light of this conclusion, there is no need to proceed to the second part of the *Proulx* test.

## VII. Conclusion

[20] The motion to set aside the order dated June 19, 2018, is dismissed.

[21] At the hearing, I asked the parties to try to reach an agreement on the amount of costs. On February 2, 2021, the Minister filed a letter informing the Court that the parties had agreed to costs in the amount of \$4,350. Given that the motion to set aside the order dated June 19, 2018, is dismissed, I award the costs to the respondent-applicant.

**JUDGMENT**

**THIS COURT'S JUDGMENT** is that the motion to set aside the order dated June 19, 2018, is dismissed, and that costs in the amount of \$4,350.00 are payable by Mr. Moise to the respondent-applicant.

“B. Richard Bell”

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Judge

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

**DOCKET:** T-1170-18

**STYLE OF CAUSE:** MINISTER OF NATIONAL REVENUE v ANDREI  
OCTAV MOISE

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JANUARY 28, 2021

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

**DATED:** MAY 17, 2021

**APPEARANCES:**

Louis Sébastien FOR THE RESPONDENT-APPLICANT

Bogdan Draghia FOR THE MOVING PARTY-RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada FOR THE RESPONDENT-APPLICANT

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