

Citation: 2015 TCC 234

Date: 20151110

Docket: 2014-2633(IT)I

BETWEEN:

FREDERICK J.E. SMITH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR ORDER

(Appeal called for hearing and decision rendered orally from the Bench
on August 31, 2015 at Toronto, Ontario.)

Boyle J.

[1] Respondent's counsel has moved under section 18(21) of the *Tax Court Act* for a dismissal, as Mr. Smith has again not appeared at a scheduled hearing.

[2] Mr. Smith did not attend a prior hearing called in February of this year. At that time, Mr. Smith alerted Crown counsel an hour before the hearing of an ailing family member. At that time, Justice Pizzitelli denied the Crown's motion to dismiss and adjourned the matter *sine die* to be set down promptly and, importantly, peremptorily at a future date.

[3] Mr. Smith's new address was specified in Justice Pizzitelli's earlier Order; yet, the notice of today's hearing, which was sent by registered letter, was returned to the Court unclaimed, and so it was resent by regular mail by the Court. Crown counsel's letter of August 10 has tracking information from Canada Post indicating that it was successfully delivered to that address.

[4] I understand that Mr. Smith did not provide any documents supporting his rental loss claim in that one year to Canada Revenue Agency at the objection stage, nor did he provide any to Respondent's counsel when asked in preparation for the February hearing or, again, for today's hearing.

[5] I will presume that Mr. Smith acted in good faith in filing his Notice of Appeal and commencing this process. However, it appears that at some point he has decided not to pursue it with the requisite diligence. He did not communicate with the Court regarding today's hearing when a simple quick phone call would have sufficed, nor did he contact the Court in writing or by e-mail with respect to today's hearing. He simply e-mailed Crown counsel last Friday, this being Monday, indicating that he would not be attending and that he needed an adjournment.

[6] I see no reason or circumstance warranting another hearing at a later date in Mr. Smith's case. Mr. Smith's inaction has the effect of wasting public resources and available Court sitting dates for both the Court and the Respondent. It is an abuse of the Court's process, and it also has the effect of unduly delaying the effective and prompt resolution of the appeal, which it appears he is not pursuing, and it should therefore be dismissed.

[7] I am dismissing the appeal on Respondent counsel's motion, and I am fixing costs in accordance with Rule 10(2) amounts at \$625.

This Amended Reasons for Order is issued in substitution of the Reasons for Order dated October 1, 2015.

Signed at Ottawa, Canada, this 10th day of November 2015.

“Patrick Boyle”

Boyle J.

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COURT FILE NO.: 2014-2633(IT)I

STYLE OF CAUSE: FREDERICK J.E. SMITH AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: August 31, 2015

**AMENDED REASONS FOR
ORDER BY:** The Honourable Justice Patrick Boyle

**DATE OF AMENDED REASONS
FOR ORDER:** **November 10, 2015**

APPEARANCES:

For the Appellant: No one appeared
Counsel for the Respondent: Lesley L'Heureux
John Chapman

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

William F. Pentney
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