

Docket: 2005-4305(IT)G

BETWEEN:

AMID AGHAHOSSEINI NAEINI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on January 29, 2008, at Toronto, Ontario

By: The Honourable Justice Campbell J. Miller

Appearances:

Counsel for the Appellant: David J. Rotfleisch

Counsel for the Respondent: Craig Maw

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**JUDGMENT**

The appeals from the reassessments made under the *Income Tax Act* for the 2001 and 2002 taxation years are dismissed.

Costs are awarded to the Respondent.

Signed at Ottawa, Canada, this 6<sup>th</sup> day of February, 2008.

“Campbell J. Miller”

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Miller J.

Citation: 2008TCC87  
Date: 20080206  
Docket: 2005-4305(IT)G

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### **REASONS FOR JUDGMENT**

Miller J.

[1] Mr. Amid Aghahosseini Naeini appeals the Minister of National Revenue's (the "Minister") assessment of his 2001 and 2002 taxation years, on the basis that the Minister incorrectly included in his income interest of \$71,015 in 2001 and \$61,117 in 2002. Mr. Naeini argues that the interest arose on money belonging to his mother-in-law, Mehlagha Mostafavi Shirazi.

[2] Mr. Naeini and his wife immigrated to Canada from Iran in 1995, returned briefly to Iran before returning again to Canada in 1998. Mr. Naeini was a journalist and writer in Iran. He described in some detail problems he encountered with Iranian authorities in post-revolution Iran. This resulted in some considerable time in prison in 2001 as well as the loss of most of his assets in his newspaper business.

[3] Mrs. Naeini described her mother, Mrs. Shirazi, as "wealthy". She had run a beauty school in Tehran until the revolution, and then she worked for a couple of years from home. After her husband died, Mrs. Shirazi's wealth increased. According to Mrs. Naeini, her mother wanted to move this wealth out of Iran to America for the purpose of acquiring a property in the United States, which would ultimately lead to her being able to obtain a Green Card and live in the United States. Her mother has not been well in the last several years, suffering from

depression. Mrs. Naeini described the situation in Iran as difficult, particularly for women. It was hard for women to get visas and leave the country. It was also difficult to openly withdraw funds from the country. Mrs. Shirazi had friends and relatives in California.

[4] Mr. Naeini testified that he offered to help his mother-in-law shift her wealth to the United States by opening US accounts with the Bank of America in San Francisco. He opened and controlled several accounts with Bank of America in San Francisco from 1999 to 2006. For a period of time in 2001, while Mr. Naeini was in prison in Iran he was unable to do anything regarding his mother-in-law's financial affairs.

[5] According to Mrs. Naeini, her mother liquidated her wealth by the selling of jewellery and antiques. Mrs. Shirazi would sell these belongings from home and would receive cash or what Mr. Naeini referred to as "cheque money", something akin to money orders or some such money equivalent. Mrs. Shirazi would either deposit these cheque monies into a bank in Tehran or accumulate it and deposit it with an exchange office. The "exchange place" was the term used by the interpreter to describe the office that Mr. and Mrs. Naeini referred to as the place where Mrs. Shirazi would deliver funds for forwarding on to the United States. According to Mr. Naeini, the exchange place would receive either the cheque monies or the cash and would transfer these funds through an office in Dubai to the Bank of America accounts set up by Mr. Naeini in San Francisco. He further testified that one simply did not use banks in Iran to transfer monies: things were not done in the open.

[6] Mr. Naeini set up the Bank of America accounts in San Francisco in early 1999 with a deposit of \$500. He claimed that this would allow his mother-in-law a conduit to deposit funds for the purpose of acquiring a US property and also to create a record for her so she could ultimately get a visa. According to Mr. Naeini, the accounts could not be put in Mrs. Shirazi's name as she was not present in the United States; neither could she simply sign banking documents as they required confirmation from a US embassy, which did not exist in Iran. Mrs. Shirazi was unwell, according to Mr. Naeini, suffering from depression and was unable to secure a visa to get to the United States. She had in fact only visited Canada on one occasion.

[7] In March 1999, a deposit of \$100,000 was made into the Bank of America account set up by Mr. Naeini in his own name. The Bank of America monthly statement for that month shows the following:

03/08 Funds transfer Ref. NTA06720261 source: Fedwire Sender Ref: G0090670610201 Benef: Mr. Amid A Naeini Orig: Abbas Aghahosseini Naeini

[8] Mr. Abbas Naeini is the Appellant's brother, who Mr. Naeini claimed helped his mother-in-law with this first transfer. With respect to the many subsequent transfers, Mr. Naeini indicated that his mother-in-law was assisted by friends and family in Tehran, as she was not well enough to handle it herself.

[9] The Respondent produced about 600 pages of Bank of America statements covering the period from 1999 to 2006 consisting of seven Investment CD accounts, one Interest Maximizer account and one Prima account, all in Mr. Naeini's name. During this period, over \$4 million was deposited into these accounts. As several monthly statements were missing, it is difficult to say with any certainty exactly how much was deposited. Both Mr. and Mrs. Naeini were adamant that the funds were Mrs. Shirazi's, arising from the sale of her personal property and transferred into these several accounts.

[10] While numerous deposits into the accounts appeared in the statements over the years, there were only a handful of withdrawals. Mr. Naeini offered an explanation for one of the withdrawals of \$5,000, which he suggested was for a friend in need. He claimed he sought his mother-in-law's approval before using these funds and he redeposited the \$5,000 to his mother-in-law's bank in Tehran within a couple of months. With respect to another withdrawal for \$15,000, Mr. Naeini could not recall what this pertained to. There were also cheques of \$100,000, \$400,000 and \$500,000 for which no explanation was given. Mr. Naeini's position was generally that all the money that was deposited in the accounts remained in the accounts for his mother-in-law, though there may have been movement amongst the accounts. In November 2006, \$4,256,990 was withdrawn from the Bank of America to a Swiss bank account to his mother-in-law's credit.

[11] Mr. Naeini acknowledged that he directed the management of the accounts, for example advising the Bank on the term for certificates of deposit. He explained that his mother-in-law did not understand the difference in accounts and simply left it to him. According to Mr. Naeini, Mrs. Shirazi wanted the money untouched and was prepared to leave it in accounts which yielded a low rate of return. Mr. Naeini stated that had it been his money, he would have sought greater returns.

[12] When asked if he had any record of the wire transfers from Iran to Dubai, or any evidence of withdrawals from his mother-in-law's bank accounts in Tehran, Mr. Naeini responded that these transfers were done on trust. That is the way it had to be in Iran according to Mr. Naeini: it could not be handled through Iranian banks.

[13] The trial was adjourned to allow Mr. Naeini time to arrange for a representative from the Bank of America to provide evidence. He was unsuccessful in making these arrangements.

[14] Finally, Mr. Naeini's 2000, 2001 and 2002 tax returns indicate that he owned five or six rental properties yielding gross rental of approximately \$120,000 a year with approximately \$15,000 of net income annually.

[15] The Minister reassessed Mr. Naeini for his 2001 and 2002 taxation years in January and May 2005, respectively, to include in Mr. Naeini's income interest from the Bank of America accounts in the amounts of \$71,015 and \$61,117.

[16] The issue is simply whether the interest income is Mr. Naeini's income subject to tax in Canada. This is entirely a factual determination.

[17] The Naeinis' description of post-revolution Iran paints a bleak picture of repression and censorship. It is difficult for Canadians to fully appreciate how such a society functions. So, when Mr. Naeini talks in terms of moving funds offshore, not openly, but having to rely on trust, and without the documentary trace that a North American might expect, one cannot immediately leap to a negative inference. Yet there were actions that took place in North America or within the international financial community, outside of Iran, that I would expect might leave a paper trail. What I am really faced with is Mr. and Mrs. Naeini testifying that Mrs. Shirazi deposited her own money with Mr. Naeini to invest in the United States pending its use to buy property in the United States. The only documentary records I have are incomplete bank records indicating all accounts are in Mr. Naeini's name. Millions of dollars were deposited into those accounts between 1999 and 2006, mainly through something called "International Media Services", purportedly from Dubai, and in 2006, \$4.2 million was withdrawn to Mrs. Shirazi's credit. Neither side provided any sort of reconciliation to satisfy me that what was deposited equated to what was ultimately released to Mrs. Shirazi plus any accumulated interest.

[18] The concerns I have with Mr. Naeini's story are as follows:

- (a) As a registered owner of the several Bank of America accounts Mr. Naeini had complete control over the investments. There is no evidence he took any regular directions from Mrs. Shirazi. Neither was there any correspondence, let alone agreement, governing how Mr. Naeini was to handle millions of dollars for his mother-in-law.
- (b) Most of the funds came through something called “International Media Services”. Based on Mr. Naeini’s testimony that the money flowed through Dubai, I conclude International Media Services has some Dubai connection. It was not suggested that Dubai suffered under a similar repressive regime as Iran such that records of a Dubai financial institution could not be accessed.
- (c) Both the Naeinis testified that Mrs. Shirazi sought real estate in the United States and had at least one possible acquisition, which fell apart due to a problem with asbestos. The Appellant deemed it unnecessary to provide documentary support for any possible real estate deal.
- (d) While I accept Mrs. Shirazi may have been too unwell, and that there may be too many hurdles to have had her come to Canada to provide evidence, the complete lack of any corroboration from her is of concern.
- (e) Although I received some 600 pages of monthly bank records covering 1999 to 2006, there were many gaps. What occurred in those missing months? Were funds withdrawn? Were funds deposited from different sources? Some attempt to provide a clear picture of what went in, what interest accumulated and what came out would have been most useful. Instead I am left to speculate as to what happened to create balances that do not align. More significantly, I am left with no explanation for cheques of \$100,000, \$400,000 and \$500,000 in the year 2000. Were they all re-invested? Were they all paid out to Mr. Naeini? I was provided no explanation.
- (f) I recognize that commercial transactions in Iran might be conducted to a different standard that might be expected in Canada, especially as they might pertain to moving funds offshore. Yet I find the explanation that Mrs. Shirazi had people coming to her house to buy jewellery and antiques, paying with cash or with “cheque money” running into the

millions of dollars highly suspect. I then am asked to believe she rarely put the funds into banks, but used the family to take the cash to an exchange place from where it got transmitted to Dubai and not to the United States. It is a remarkable story.

[19] I balance against these concerns the Naeinis' testimony that the amounts would have been in Mrs. Shirazi's name except that she could not complete the necessary paperwork either in the United States or Iran. On balance, I find Mr. Naeini has not proven that the monies were the property of his mother-in-law. As there is no other explanation put forward as to whose money it is, I conclude the money belongs to the person in whose name the bank accounts are established – Mr. Naeini.

[20] I have found this matter a close call. There are, however, too many gaps, unexplained cheques, insufficient corroboration, documentary or otherwise, to allow Mr. Naeini's appeals.

[21] Had I found that Mrs. Shirazi did in fact send her money to Mr. Naeini, there are still several possible scenarios I would have had to consider:

- (a) The money always remained Mrs. Shirazi's as Mr. Naeini contends.
- (b) Mrs. Shirazi simply gave the money to her son-in-law and daughter.
- (c) Mrs. Shirazi lent the money to Mr. Naeini to be repaid on demand.
- (d) Mrs. Shirazi entered into a family financial arrangement whereby Mr. Naeini controlled the funds subject to some sort of recall right to Mrs. Shirazi for some or all of the funds.

[22] The evidence that supports the position that the money remained Mrs. Shirazi's was primarily the fact that in 2006, \$4.2 million was sent to her. What has not been proven, however, was whether this represented all monies paid into the accounts by her, plus interest. As indicated earlier, there were cheques in 2000 alone totalling \$1 million, which have not been adequately explained. That fact, combined with gaps in the monthly records, is not proof that Mrs. Shirazi got back all she put in, plus interest. The records are equally consistent with a loan to Mr. Naeini or some family arrangement whereby he had use of the money until Mrs. Shirazi wanted some or all of it back. Families can enter peculiar financial

arrangements for any number of reasons. I find the fact that \$4.2 million was sent to an account in Mrs. Shirazi's name is not conclusive that the money always belonged to her. As the Crown pointed out, this occurred after these appeals had been brought.

[23] I find Mr. Naeini has not proven the facts favour one interpretation over another. Indeed, the control that Mr. Naeini had over the accounts, including the ability to write cheques, some of which are unaccounted for, tips the balance to a finding that the family arrangement, whatever it might have been, rendered the money his for the purposes of earning income on it. It is for Mr. Naeini to demolish the Minister's assumption that he received interest in 2001 and 2002 as registered owner of the Bank of America accounts. He has been unable to do so. The case is dismissed, with costs.

Signed at Ottawa, Canada, this 6th day of February, 2008.

“Campbell J. Miller”

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Miller J.



CITATION: 2008TCC87  
COURT FILE NO.: 2005-4305(IT)G  
STYLE OF CAUSE: Amid Aghahosseini Naeini v. The Queen  
PLACE OF HEARING: Toronto, Ontario  
DATE OF HEARING: January 29, 2008  
REASONS FOR JUDGMENT BY: The Honourable Justice Campbell J. Miller  
DATE OF JUDGMENT: February 6, 2008

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