

Federal Court of Appeal



Cour d'appel fédérale

Date: 20121203

Docket: A-475-11

Citation: 2012 FCA 317

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

BETWEEN:

TOASTMASTER INC.

Appellant

and

**THE MINISTER OF NATIONAL REVENUE AS REPRESENTED BY THE ATTORNEY
GENERAL OF CANADA**

Respondent

Heard at Toronto, Ontario, on December 3, 2012.

Judgment delivered from the Bench at Toronto, Ontario, on December 3, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on December 3, 2012)

DAWSON J.A.

[1] This is an appeal of a decision of the Federal Court. For reasons cited as 2011 FC 1309, 400 F.T.R. 39, the Federal Court dismissed an application for judicial review of a decision of a delegate of the Minister of National Revenue. The delegate declined to exercise her discretion to cancel interest under the taxpayer relief provision contained in subsection 220(3.1) of the *Income Tax Act* R.S.C., 1985, c.1 (5th Supp.).

[2] On this appeal, the appellant taxpayer argues that the Federal Court Judge erred by concluding that the delegate's decision was reasonable.

[3] In our view, the appellant has failed to establish that the Judge erred in his application of the reasonableness standard.

[4] We see no error in his conclusion that the delegate did not fetter her discretion or in his conclusion that the decision was within the range of possible, acceptable outcomes defensible on the facts and the law.

[5] The essence of the appellant's position is that the interest charge of over \$600,000 on an ultimate tax balance of approximately \$42,000 is absurd. However, this result reflects the fact that large losses sustained in the 2003 and 2004 taxation years were carried back to the 2001 and 2002 taxation years, and losses in the 2006 and 2007 years were applied to the 2005 taxation year. Had the appellant filed its tax returns when required in 2001, 2002, and 2005 it would have had taxable income in those years and been required to pay tax thereon. Only in subsequent years when a loss was incurred could a request for a loss carry back be made, which would result in a reassessment for the earlier years. The result of the late filing therefore benefited the appellant in that it was able to claim the loss carry back in the late filed 2001, 2002 and 2005 tax returns.

[6] The appellant also argues that it should not have had to pay interest because it relied on professional tax advice to the effect that it had no permanent establishment in Canada. It did not file

tax returns. However, as counsel for the appellant conceded in oral argument, there is no evidence that the appellant was told that it need not file tax returns.

[7] On these facts it was open to the delegate to conclude that the appellant failed to show that it exercised a reasonable amount of care with respect to its affairs.

[8] For these reasons, the appeal will be dismissed with costs.

"Eleanor R. Dawson"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-475-11

**(APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE O'REILLY,
DATED NOVEMBER 15, 2011 IN DOCKET NO. T-1251-10)**

STYLE OF CAUSE: TOASTMASTER INC v THE
MINISTER OF NATIONAL
REVENUE AS REPRESENTED BY
THE ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 3, 2012

REASONS FOR JUDGMENT OF THE COURT BY: (NADON, SHARLOW & DAWSON
J.J.A.)

DELIVERED FROM THE BENCH BY: DAWSON J.A.

APPEARANCES:

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