

Federal Court



Cour fédérale

Date: 20180918

Docket: T-447-18

Citation: 2018 FC 925

Ottawa, Ontario, September 18, 2018

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

SUZANNE LACHANCE

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of the decision of the Minister of National Revenue [the Minister] declining to exercise the discretion to allow an extension of the time limitation under subsection 265(3) of the *Excise Tax Act*, RSC 1985, c E-15 [the *ETA*].

II. Background

[2] The Applicant, Suzanne Lachance, is the joint owner of a home in Caledon, Ontario. On October 31, 2016, the Applicant submitted a GST/HST New Housing Rebate Application for Owner-Built Houses [the Application], along with a request for an extension to the deadline for submitting her Application.

[3] The GST/HST New Housing Rebate program allows an individual to recover some of the GST, or the federal part of the HST, paid for a new or substantially renovated house [the Federal Rebate]. Individuals may also be eligible for a rebate of the provincial share of the HST [the Provincial Rebate].

[4] A taxpayer must satisfy a number of conditions to be eligible for a rebate. Two of the conditions are relevant here.

[5] First, as expressed in paragraph 256(2)(b) of the *ETA*, the fair market value of the home at the time of construction or substantial renovation must be less than \$450,000. This condition applies only to the Federal Rebate program.

[6] The Canada Revenue Agency [CRA] publishes a guide to help taxpayers understand the rebate program, “GST/HST New Housing Rebate” [the Guide]. Page 10 of the Guide details that

an individual may be eligible for the Provincial Rebate despite owning a house valued in excess of \$450,000:

If you are an individual who paid the HST to build or substantially renovate a house, build a major addition that forms part of a renovation of your house, or convert a non-residential building to residential use, you are eligible to claim an Ontario or British Columbia new housing rebate if:

...

you are eligible to claim a GST/HST new housing rebate for some of the federal part of the HST, or you would be eligible if the fair market value of the house at the time the construction or substantial renovation was substantially completed was less than \$450,000. This means that a provincial new housing rebate may be available even if a GST/HST new housing rebate for the federal part of the HST is not available.

[7] Second, as expressed in paragraph 256(3)(a) of the *ETA*, a rebate application must be filed within two years of the earliest of the following: the day on which the complex is first occupied, the day on which the ownership is transferred, or the day on which construction was substantially completed. If the deadline is not met, the Minister may exercise the discretion provided in paragraph 256(3)(b) and permit a late application.

[8] When considering exercising the discretion to permit a late application, the Minister considers the factors in sections 25 and 26 of Information Circular 07-1R1 [the Taxpayer Relief Provisions]. Section 25 allows for taxpayer relief in extraordinary circumstances such as natural disasters or serious illness, while section 26 allows for taxpayer relief in circumstances caused by actions of the CRA, such as when the CRA has provided incorrect information or errors in material available to the public and to a taxpayer.

[9] The construction of the Applicant's home was substantially completed on August 16, 2014. The final occupancy inspection took place several months later. Therefore, the deadline for the Applicant to submit her Application was August 16, 2016.

[10] In April 2016, the Applicant reviewed the Guide to determine whether she was eligible for a rebate. The Applicant concluded, based on the language on pages 8 and 10 of the Guide, that because the value of her home exceeded \$450,000 she was ineligible to receive both the Federal Rebate and the Provincial Rebate. In October 2016, the Applicant made further inquiries and realized that the value of her home did not preclude her from receiving the Ontario Provincial Rebate.

[11] The Applicant submitted her Application dated October 31, 2016, along with a letter requesting an extension of time to file her Application and detailing her confusion with the language of the Guide.

[12] A Team Leader in the Rebates Division of the Prince Edward Island Tax Centre responded to the Applicant and denied her request for an extension of time. The Team Leader explained that the Applicant had not provided any extraordinary circumstances, as contemplated in the Taxpayer Relief Provisions, which would justify an extension of time.

[13] In a letter dated January 5, 2017, the Applicant requested a second review. The Director of the Prince Edward Island Tax Centre responded to the Applicant and denied the Applicant's request for an extension of time. The Director explained that the Applicant had not presented

error or delay on behalf of the CRA, or circumstances beyond the Applicant's control as defined in the Taxpayer Relief Provisions, which would have affected the Applicant's ability to file her Application within the time limit.

[14] On August 14, 2017, the Applicant filed a Notice of Application seeking judicial review. On November 16, 2017, the Applicant and the Minister agreed to a third review of the Applicant's request for an extension of time, and the matter was returned to the CRA.

[15] In a letter dated February 27, 2018, Kathleen Navas, a Manager with the CRA in the GST/HST Rebates Processing, Assessment, Benefits and Service Branch, denied the Applicant's request for an extension of time [the Minister's Decision]. Ms. Navas outlined that when considering extensions to file a rebate application, the Minister bases her decision on the Taxpayer Relief Provisions.

[16] Ms. Navas outlined that page 8 of the Guide states that a Provincial Rebate may be available in circumstances where the Federal Rebate is not available, and this information is repeated in two locations on page 10 of the Guide. Ms. Navas concluded that there were no errors in the Guide that could, in the context of this file, be considered an action of the CRA warranting extending the period to file a rebate application per the Taxpayer Relief Provisions.

[17] On March 8, 2018, the Applicant filed a Notice of Application seeking judicial review of the Minister's Decision.

III. Issue

[18] Was the decision of the Minister to deny the Applicant's request for Taxpayer Relief reasonable under the circumstances?

IV. Standard of Review

[19] The appropriate standard of review is reasonableness (*March v Canada*, 2013 FC 394 at para 12).

V. Analysis

[20] The Applicant's submissions focus on the language contained in the Guide. The Applicant writes that but for the inaccurate instructions in the Guide, she would have filed her Application in April 2016. The Applicant suggests that the language contained on page 10 of the Guide results in a taxpayer having to pretend that their house has a value of less than \$450,000, and that this is "like asking them to lie". The Applicant argues that this language is not acceptable, and is misleading Ontarians into believing they do not qualify for the Provincial Rebate.

[21] I find that the Minister's Decision was reasonable, based on the information available, and was a proper exercise of the discretion granted pursuant to paragraph 256(3)(b) of the *ETA*.

The Minister's Decision applied the Taxpayer Relief Provisions, and was based on a proper consideration of the following facts:

- i. There were no circumstances beyond the control of the Applicant that prevented her from applying within the prescribed time period;
- ii. No actions of any employee of the CRA caused delay to the Applicant;
- iii. The impugned wording in the Guide is not incorrect or inaccurate.

[22] Page 10 of the Guide states that a taxpayer is eligible for a Provincial Rebate in two scenarios: if they are eligible to claim some of the federal part of HST as a Federal Rebate, or if they would be eligible to claim a Federal Rebate but for the value of their home exceeding \$450,000. The Minister's conclusion that there were no errors in the above language or that the language does not mislead or misinform, is reasonable.

[23] In her letter of February 27, 2018, the manager of GST/HST Rebates Processing for the CRA outlined that she had reviewed all of the documents provided by the Applicant, as well as the first and second level reviews conducted by the CRA. She concluded that there were no errors in the Guide that could be, in the context of the Applicant's file, considered an action of the CRA warranting an extension of time to file a rebate application. The manager's letter clearly outlined her reasoning and basis for her decision.

[24] It is not the role of this Court to reweigh the evidence that was before the Minister.

[25] However, I do have sympathy for the Applicant's position that the language in the Guide could be more clearly articulated so as to avoid any unnecessary confusion on when a Provincial Rebate is available in contrast to the Federal Rebate. Better clarity in the Guide on this issue would no doubt be helpful to taxpayers.

JUDGMENT in T-447-18

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. No costs are awarded.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-447-18

STYLE OF CAUSE: SUZANNE LACHANCE v THE MINISTER OF
NATIONAL REVENUE

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 13, 2018

JUDGMENT AND REASONS: MANSON J.

DATED: SEPTEMBER 18, 2018

APPEARANCES:

Ms. Suzanne Lachance

FOR THE APPLICANT,
ON HER OWN BEHALF

Ms. Alisa Apostle

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT