Federal Court  Cour fédérale

Date: 20190528

Docket: T-1563-18

Citation: 2019 FC 751

Ottawa, Ontario, May 28, 2019

PRESENT: Mr. Justice Pentney

BETWEEN:

ABDULRAHMAN SHARANEK

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGNCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Abdulrahman Sharanek, was found to be carrying over $22,000 in cash when he was boarding an aircraft leaving Canada, bound for Germany. The money was seized, and he appealed to the Respondent.

[2] His appeal was denied, largely because he did not make submissions on the merits when offered the opportunity to do so. The Applicant says he never received the letter inviting him to provide these submissions, and that he left a voice message in reply to the Respondent's

telephone message left on his phone, but he never received a return call. The Applicant now seeks judicial review of the decision to deny him relief under section 29 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 [the *Act*].

[3] For the reasons that follow, I am dismissing this application for judicial review.

I. Background

[4] On August 14, 2017, while the Applicant was preparing to board an international flight leaving Canada and bound for Germany, a Border Security Officer (the Officer) employed by the Respondent asked him if he was carrying any money, as none had been declared. The Applicant said that he had exactly $10,000. He also said that he had no money in his checked bags. The Applicant provided the Officer with several envelopes containing a total of $11,000 from his carry-on luggage. He said that he intended to give the money as a gift to his brother for his wedding, in Lebanon.

[5] When the Applicant was taken to the secondary examination area for further questioning, he admitted that he had more cash in his checked luggage. He said that the funds were from his business running a barbershop, but he indicated he had never filed any corporate income taxes from this business. A search of his checked luggage revealed a further $11,315 in cash, plus bank drafts in the amount of $35,000. The Applicant stated that he was engaged to be married, and that the money was for his own wedding in Lebanon; he indicated that only a few hundred dollars were intended for his brother's wedding.

[6] The Applicant was found to be carrying over $22,000 in cash, but he had not completed a currency declaration. The currency was seized on the basis of a contravention of subsection 12(1) of the *Act*. The Officer noted a number of indicators from the interaction with the Applicant:

(a) Purposefully trying to evade currency-reporting requirements;

(b) Travelling internationally with large sums of cash in checked luggage;

(c) Not being able to provide any proof as to where the cash came from;

(d) Travelling to a high-risk area for terrorist financing;

(e) Suspicion of trying to evade Canadian taxes for the past six years;

(f) Not being overly concerned about having all the cash taken away; and

(g) Story changing about what the currency was being used for.

[7] Based on this, the Officer seized the currency and a copy of the seizure report was provided to the Applicant. The Applicant filed an online appeal of the seizure pursuant to section 25 of the *Act*.

[8] The Respondent prepared a Notice outlining the basis of the seizure decision and sought to provide it to the Applicant. The Notice was sent first by registered mail on December 1, 2017, but it was returned as unclaimed. On January 3, 2018, the Respondent sent the Notice by regular mail, but that was returned and the envelope was marked “moved/unknown.” On February 8, 2018, an official from the Recourse Directorate of the Respondent telephoned the Applicant at the number he had provided on his online application, and left a voicemail asking him to call back. No call from the Applicant was received. Finally, on March 16, 2018, another employee from the Recourse Directorate called the Applicant and advised him that if he did not contact the

Respondent by March 19, 2018, the appeal would be decided based on the information in the file. According to the Respondent's official record, there was no response from the Applicant, despite these efforts to reach him. The Applicant, however, states that he phoned and left a voicemail on one occasion, but did not indicate the name or number of the person whom he called, nor did he make other attempts to contact the Respondent.

[9] The Minister communicated his decision denying the appeal by letter on April 5, 2018. The letter sets out the basis of the decision: the evidence established a contravention of subsection 12(1) of the *Act*; the Officer who seized the currency had reasonable grounds to suspect the funds were proceeds of crime; the Recourse Directorate had made numerous attempts to contact the Applicant, without success, and the Applicant had not provided any further submissions; it was the Applicant's legal responsibility to be aware of the requirement to report the export of currency, and it was the Applicant's legal responsibility to submit documents in support of his appeal.

[10] The Applicant seeks judicial review of this decision.

II. Issues and Standard of Review

[11] There are two issues raised in this case:

A. Was the Applicant denied procedural fairness?

B. Was the decision reasonable?

[12] The Respondent also submits that parts of the Applicant's affidavit should be struck, because it contains new evidence that was not before the decision-maker. It is not necessary to

deal with this argument at length. The Applicant agreed that parts of the affidavit were merely repetitive of material already in the record. In relation to the new evidence as to the source of the seized funds, this is clearly inappropriate in an application for judicial review, and I indicated during the hearing that I would not be giving any weight to these paragraphs of the affidavit. In keeping with the Court's usual practice, rather than striking portions of the affidavit I will simply ignore those aspects (see *Armstrong v Canada (Attorney General)*, 2005 FC 1013 for a discussion of the relevant jurisprudence).

[13] In relation to procedural fairness, the Federal Court of Appeal has clarified the approach regarding the standard of review analysis in *Canadian Pacific Ltd v Canada (Attorney General)*, 2018 FCA 69. What a reviewing court must do is to ask "with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed… even though there is awkwardness in the use of the terminology, this reviewing exercise is "best reflected in the correctness standard" even though, strictly speaking, no standard of review is being applied" (para 54).

[14] In relation to the second argument regarding the merits of the decision, the reasonableness standard applies, and the decision is entitled to deference: *Dag v Canada (Public Safety and Emergency Preparedness)*, 2008 FCA 95 at para 4; *Sellathurai v Canada*, 2008 FCA 255 at para 25 [*Sellathurai*]. Reasonableness review "is concerned with the reasonableness of the substantive outcome of the decision, and with the process of articulating that outcome" *(Canada (Attorney General) v Igloo Vikski Inc*, 2016 SCC 38 at para 18). This involves an examination of justification, transparency, and intelligibility in the decision-making process, and whether the

decision falls within a range of acceptable outcomes that are defensible in fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

III. Analysis

A. *Was the Applicant denied procedural fairness?*

[15] The Applicant argues that the manner in which his case was dealt with constituted a denial of procedural fairness. He does not take issue with the finding of a violation of subsection 12(1) of the *Act*. The entire focus of the application is upon the denial of relief from forfeiture.

[16] The relevant provisions that govern this matter are sections 25-29 of the *Act*, which set out the appeal and relief process. In summary, section 25 provides for a right of appeal by persons whose currency is seized; the person may "request a decision by the Minister as to whether subsection 12(1) was contravened.…" Once an appeal is filed, the Minister is to provide "written notice of the circumstances of the seizure…" (subsection 26(1)), and the individual may "furnish any evidence in the matter that they desire to furnish" (subsection 26(2)). The Minister must then decide whether subsection 12(1) has been contravened (section 27). If no contravention is found, the seized funds shall be returned (section 28). However, if a contravention is found, the Minister must consider whether a penalty less than forfeiture is appropriate (subsection 29(1)).

[17] The Applicant cites these provisions in support of his argument that the decision on a section 25 appeal involves a two-step process: first, pursuant to section 27, the Minister must determine whether there has been a contravention of subsection 12(1); only if such a violation is

found does the Minister move to the second stage, under which a determination must be made pursuant to section 29 as to whether relief from forfeiture of the seized funds is appropriate.

[18] The Applicant submits that the denial of procedural fairness occurred when the Respondent made the decision on both aspects of the matter, without providing a further opportunity for the Applicant to make further submissions. In essence, the Applicant takes the position that the Notice that was never successfully delivered to the Applicant involved only the question of whether a contravention of subsection 12(1) had occurred, and that it was procedurally unfair for the Respondent to make the decision on forfeiture on the basis of that Notice, without providing a further opportunity for submissions on whether forfeiture was an appropriate penalty in the circumstances.

[19] The difficulty with the Applicant's argument on this point is that it is contrary to the accepted and binding jurisprudence on the topic. I need only refer to the decision of the Federal Court of Appeal in *Sellathurai*, at para 32:

> As this Court pointed out in *Tourki v. Canada (Minister of Public Safety and Emergency Preparedness*), 2007 FCA 186, [2008] 1 F.C.R. 331 (*Tourki*), that which is the subject of review under sections 25 to 30 is the conclusion that there has been a breach of section 12, not the consequences of that breach: see paragraphs 16-18. Of course, the applicant's only interest in challenging the finding under section 12 is to attempt to obtain the return of the funds seized or the penalty paid. And since the only way to access the discretion vested in the Minister under section 29 is to request a review under section 25, such an application is, in effect, an application for relief from forfeiture.

[20] This is a complete answer to the Applicant's argument on this point. The Notice clearly set out the basis for the determination that subsection 12(1) had been contravened, and explained the nature of the information that the Applicant needed to provide in order to obtain relief from

forfeiture, namely information as the legitimate source of the funds. This is entirely consistent with the jurisprudence.

[21] The Notice was sent to the Applicant by registered mail. Pursuant to section 31 of the *Act*, service by registered mail to the Applicant's last known address is sufficient (see *928412 Ontario Limited v Canada* (1997), 130 FTR 168 (TD)). The Respondent also sent the Notice by ordinary mail, and attempted to contact the Applicant by telephone at the number he provided in his online appeal form. This was more than sufficient to meet the requirements of fairness in the circumstances of this case.

[22] Furthermore, the final decision explains why the forfeiture was maintained, and why no additional factors were considered, given the absence of further information from the Applicant as to the source of funds. This also cannot amount to a denial of procedural fairness. The Respondent's efforts to give the Applicant notice of the case he had to meet, and to respond to it, were not successful, because the Applicant did not make arrangements to monitor the mail address he gave on his online appeal form, nor did he reach the Officers by telephone. The Respondent cannot be faulted for this breakdown in communication.

[23] For these reasons, I reject the Applicant's arguments that there was a denial of procedural fairness.

B. *Was the decision reasonable?*

[24] The Applicant originally submitted several arguments on this issue, relating mainly to the Respondent's rationale for not overturning the forfeiture decision. These arguments were abandoned during the oral argument, and I would simply observe that the submissions are also

contradicted by the applicable jurisprudence, which makes clear that the Minister's decision under section 29 is not a reassessment of the Officer's decision to make the seizure: see, for example, *Guillaume v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 143 at para 32 [*Guillaume*].

[25] The Applicant also argued that the "reasons" for the decision (set out in the Notice) are inadequate in that they fail to indicate why the Respondent did not exercise the discretion to provide relief from forfeiture under subsection 29(1). Although the Applicant advanced this as a breach of procedural fairness, the jurisprudence makes clear that inadequacy of reasons is to be considered in the context of assessing the reasonableness of the decision.

[26] The Applicant's argument on this point must be rejected, because it is contradicted by the relevant jurisprudence, which finds that the Minister is under no obligation to provide reasons for the decision under subsection 29(1): see *Tourki v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 746 at para 17.

[27] The Notice clearly states that in order to obtain relief from forfeiture, the Applicant needed to demonstrate a legitimate source of the funds that were seized. This is consistent with the jurisprudence in regard to subsection 29(1) decisions: see *Sellathurai*, paras 49-50; *Walsh v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 883 at para 29 [*Walsh*]. As noted in *Walsh* at para 29, the onus was on the Applicant to "demonstrate that the seized currency came from a legitimate source. In other words, the Applicant failed to provide a reasonable explanation, supported by verifiable evidence, of the source of the seized currency" (see also *Guillaume* at paras 39-40).

[28] As noted above, the Applicant did not meet this onus because he never received the Notice, nor is there any evidence that he made contact with the Respondent's officials by telephone. I have already found that this did not amount to a breach of procedural fairness, because the statutory requirement for service set out in section 31 was complied with, and indeed exceeded. This cannot render the decision unreasonable.

[29] I find that the reasons explain how the decision was reached, including the relevant factors and considerations, in a manner which is transparent and intelligible: see the discussion of the principles regarding sufficiency of reasons in *Canada (Citizenship and Immigration) v Adeola*, 2018 FC 1222 at paras 32-34. I further find the reasoning in the decision to be consistent with the governing jurisprudence, as noted above. I therefore reject the Applicant's argument that the decision is not reasonable.

IV. Conclusion

[30] Based on the foregoing analysis, the application for judicial review is dismissed.

[31] The Respondent sought its costs in the amount of $1,350, based on the middle column of the Tariff, and the Applicant agreed that this amount was appropriate if I dismissed the application for judicial review. I find that the amount claimed is reasonable in the circumstances, and in exercise of my discretion under Rule 400, I will order the Applicant to pay to the Respondent lump sum costs in the amount of $1,350, inclusive of disbursements.

JUDGMENT in T-1563-18

THIS COURT'S JUDGMENT is that:

1. The present application is dismissed.

2. The Applicant is to pay to the Respondent lump sum costs in the amount of $1,350, inclusive of disbursements.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Amit Vig	FOR THE APPLICANT
Olivia Furlong	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Amit R. Vig Law Office Barrister and Solicitor Calgary, Alberta	FOR THE APPLICANT
Attorney General of Canada Calgary, Alberta	FOR THE RESPONDENT