

Federal Court



Cour fédérale

Date: 20200709

Docket: T-1137-19

Citation: 2020 FC 753

Ottawa, Ontario, July 9, 2020

PRESENT: Madam Justice Walker

BETWEEN:

JANICE (JAN) CARPENTER

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Ms. Janice Carpenter seeks the Court's review of a decision by the Minister of National Revenue (Minister) to refuse her request for relief from arrears interest that accrued from January 1, 2003 in respect of taxes and penalties owing for her 2000, 2001 and 2002 taxation years. The refusal is set forth in a letter from the Minister's delegate to Ms. Carpenter dated June 6, 2019 (Decision).

[2] Ms. Carpenter's request for relief was made pursuant to subsection 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) (*ITA*). The subsection is one of a number of taxpayer relief provisions in the *ITA* intended to moderate the application of its many rigid requirements. Broadly stated, these provisions permit the Minister to provide relief to taxpayers who, through personal misfortune or circumstances beyond their control, could not comply with their federal income tax obligations.

[3] Ms. Carpenter based her request on a series of personal challenges and losses from 1997 through 2012 that resulted in her failure to file tax returns for most of those years, including the 2000-2002 taxation years. This failure led to the assessment of significant taxes, penalties and interest that remained unpaid until late 2017.

[4] Ms. Carpenter submits that the Decision was unreasonable because the Minister failed to adequately consider her evidence and erred in rejecting delay and error by the Canada Revenue Agency (CRA) as material reasons for the long accumulation of arrears interest. The Respondent does not question Ms. Carpenter's personal misfortunes but argues that the Decision reflects a thorough consideration of those misfortunes and the CRA's many attempts to contact Ms. Carpenter to require her to attend to her obligations under the *ITA*. The Respondent submits that the refusal of Ms. Carpenter's request for relief was a reasonable exercise of the Minister's discretion and a fully justified outcome.

[5] I have carefully considered Ms. Carpenter's evidence and frank admission of her role in the imposition of penalties and interest by the Minister. While I acknowledge the immensely

difficult circumstances she faced during the decade in question, Ms. Carpenter has not persuaded me that there is a basis for the Court to intervene. The Minister's delegate reviewed the evidence in the record and explained her conclusions regarding each of Ms. Carpenter's arguments. I find no reviewable error in the delegate's analysis of the facts or in her application of the principles and guidelines that inform the Minister's exercise of discretion under subsection 220(3.1) of the *ITA*. The refusal of Ms. Carpenter's request for relief was a reasonable outcome in light of her failure to file tax returns for over ten years. The reasons for the refusal in the Decision are intelligible to the reader and justified. Accordingly, the application is dismissed.

[6] By way of preliminary matter and with the consent of the parties, the style of cause in this matter is amended to reflect the proper respondent, the Attorney General of Canada, in accordance with Rule 303(3) of the *Federal Courts Rules*, SOR/98-106 (*Rules*).

I. Overview

[7] Ms. Carpenter did not file tax returns for the 1999-2011 taxation years. Beginning in late 2001, the CRA mailed notices, warnings and requirements to pay to Ms. Carpenter, many of which she acknowledges receiving. Ms. Carpenter maintains that she was unable to appreciate the severity of her tax problems despite receipt of the CRA's notifications. On February 17, 2004, the Minister assessed Ms. Carpenter's 1999, 2000, 2001 and 2002 taxation years pursuant to subsection 152(7) of the *ITA*. Such assessments are commonly referred to as "arbitrary assessments" because they proceed on the Minister's initiative based on the CRA's own records and estimates. Notices of Assessment for each of the four years were issued and mailed on March 4, 2004. Ms. Carpenter did not receive the Notices of Assessment for 1999, 2000 and

2001 but did receive the Notice of Assessment in respect of 2002. The Notice of Assessment for 2002 reflected a previous account balance of more than \$68,900 and a current balance due of \$69,897.98.

[8] Ms. Carpenter filed her outstanding tax returns in March 2013. The returns filed reflected balances owing for the 1999-2002 and 2006-2008 taxation years. Ms. Carpenter did not pay the balances due at the time of filing but, ultimately, paid the full amount of her outstanding taxes, interest and penalties in November 2017 following the sale of her house.

[9] As part of her 2013 initiative to regulate her tax position, Ms. Carpenter attempted to obtain copies of the Notices of Assessment for the 1999, 2000 and 2001 taxation years to enable her to file Notices of Objection and resolve alleged errors in the Minister's 2004 assessments for those years. She instituted proceedings in the Tax Court of Canada (Tax Court) that were resolved on consent in the Federal Court of Appeal (FCA) in 2017. As part of their Consent to Judgment, Ms. Carpenter and the Minister noted that the Minister had provided the Notices of Assessment for the 1999-2001 taxation years to Ms. Carpenter and that she was now able to serve Notices of Objection for each of the three years. Ms. Carpenter's Objections were resolved in 2018 and Notices of Reassessment issued to her that resulted in substantial reductions in the amount of taxes, penalties and interest owing for the years in question.

[10] Also in 2013, Ms. Carpenter made a first request for the cancellation of late filing penalties and arrears interest accrued in respect of the 1999-2012 taxation years (First Relief Request). Her letter focused on the personal challenges and tragedies she faced through those

years, including the loss of her long-time employment in 1999 and resulting financial stresses, the illnesses and deaths of her parents, her sons' challenges, and the family's inability to secure full-time employment. She linked her adverse personal circumstances to her failure to file annual tax returns and requested the Minister's understanding and compassion.

[11] The Minister placed Ms. Carpenter's First Relief Request on hold by letter dated October 15, 2013 pending the expiry of all appeal periods for the years in question. In 2018, once her Objections were resolved, Ms. Carpenter retained the assistance of a lawyer, Mr. Grant, who wrote to the CRA in October and November 2018 to restart the relief request process.

[12] Mr. Grant's supplemental reasons and evidence in support of Ms. Carpenter's First Relief Request focused on the interest accrued from March 8, 2004 and the CRA's failure to notify Ms. Carpenter of its subsection 152(7) assessments for the 1999-2001 taxation years. He submitted that, as the Notices of Assessment for those years were not mailed to Ms. Carpenter, she was not made aware that she may owe tax, interest and penalties and was unable to take prompt steps to deal with her tax debt. Mr. Grant argued that the CRA's failure to inform Ms. Carpenter that amounts were owing for the 2000 and 2001 taxation years was a circumstance that warranted relief from interest and penalties.

[13] The First Relief Request was refused by a CRA officer in the Taxpayer Relief Centre on February 5, 2019 (First Review Decision). The First Review Decision narrowed Ms. Carpenter's

request for relief based in part on the ten-year limitation period set forth in subsection 220(3.1) of the *ITA*, as follows:

1. The taxation years 2003-2005 and 2009-2012, inclusive, were not reviewed because the CRA did not charge any penalties or interest in respect of those years.
2. Ms. Carpenter's request for relief from penalties for the 2000, 2001 and 2002 taxation years was not considered because the request was made more than ten years after the end of the calendar year in which the tax years ended.
3. Ms. Carpenter's request for relief from arrears interest for the 2000, 2001 and 2002 taxation years was limited to interest accumulating in the ten calendar years before the relief request was made.
4. Therefore, the First Review Decision considered only Ms. Carpenter's request for the cancellation of arrears interest that had accumulated since January 1, 2003 for the 2000-2002 and 2006-2008 taxation years.

[14] The CRA officer accepted that the adverse life events Ms. Carpenter had experienced were difficult but noted that the only supporting documentation provided related to her father's passing in January 2004. By that time, several annual tax returns were already past due and the returns for the 2006-2008 years were not due for another three years. The officer addressed Ms. Carpenter's unemployment but found that it did not prevent her from filing annual tax returns. Additionally, the relief request was not based on a separate claim of financial hardship. Finally, the officer concluded that the timeline of events did not indicate any CRA delay. Numerous requests, demands and collection actions were issued or taken to attempt to secure Ms. Carpenter's compliance with her obligation to file tax returns and pay the amounts assessed. Her argument that she did not receive the Notices of Assessment mailed in March 2004 did not explain why she did not file the required returns.

[15] On April 10, 2019, Mr. Grant submitted a second relief request on behalf of Ms. Carpenter (Second Relief Request). Ms. Carpenter requested relief for interest that accumulated from January 2003 on taxes and penalties owing for the 2000, 2001 and 2002 taxation years. The Second Relief Request was based on two grounds: (1) the extraordinary circumstances experienced by Ms. Carpenter and her family from 1997 to 2012 which prevented her from filing her tax returns until 2013; and (2) the CRA's failure to deliver to Ms. Carpenter Notices of Assessment following its 2004 arbitrary assessments for the 1999-2002 taxation years until March 8, 2017.

II. Decision under Review

[16] The Decision responds to the Second Relief Request. The Minister's delegate concluded that the extension of discretionary relief was not warranted due to extraordinary circumstances or CRA delay.

[17] The Minister's delegate addressed the personal misfortunes and emotional distress suffered by Ms. Carpenter but concluded that her circumstances from 1999 to 2013 did not prevent her from filing tax returns for the 2000-2002 taxation years. There was no causal connection between the adverse events and her ability to file tax returns because the events occurred prior and subsequent to the required filing dates. The delegate also stated that Ms. Carpenter's belief that she would not owe taxes for those years did not relieve her of the obligation to file tax returns. She remained responsible for filing correct and complete tax returns.

[18] The Minister's delegate then considered whether CRA delay had prevented Ms. Carpenter from addressing her tax situation until 2017. The delegate acknowledged Ms. Carpenter's statement that she did not receive the Notices of Assessment issued on March 8, 2004 for the 2000-2001 years but found that the CRA made repeated attempts between November 2001 and April 2005 to contact her regarding the missing tax returns and balances due. Further, the CRA collections department conducted two field visits to Ms. Carpenter's home in November 2005 and July 2006 and left cards requesting she contact them. The collections department also issued a letter in February 2009 informing her that a lien had been imposed on her property. The Minister's delegate could not determine that Ms. Carpenter was unaware of the outstanding returns and balances owing.

III. Issue and Standard of Review

[19] Ms. Carpenter makes a number of specific arguments challenging the Decision, all of which are directed at the breadth of the review undertaken by the Minister's delegate, the substance of her reasoning and the merits of the Decision. I address Ms. Carpenter's principal arguments in detail in my analysis but, in essence, the arguments question whether the Decision was reasonable.

[20] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*), the majority of the Supreme Court of Canada (SCC) established reasonableness as the presumptive standard of review of the merits of administrative decisions, subject to specific exceptions "only where required by a clear indication of legislative intent or by the rule of law" (*Vavilov* at para 10). There is no basis for departing from the presumptive standard of review in

this case (*Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 at para 27 (*Canada Post*)). A review of the Decision for reasonableness is also consistent with the pre-*Vavilov* jurisprudence regarding the review of a decision by the Minister under subsection 220(3.1) of the *ITA* (*Canada Revenue Agency v Telfer*, 2009 FCA 23 at para 24; *Chekosky v Canada (Revenue Agency)*, 2019 FC 841 at paras 39-40 (*Chekosky*)).

[21] The majority in *Vavilov* set out guidance for reviewing courts in the application of the reasonableness standard. I have applied that guidance in my review, exercising restraint but conducting a robust review of the Decision for justification and internal coherence (*Vavilov* at paras 12-15, 85-86, 99; see also *Canada Post* at paras 28-29). Such a review respects the distinct role of administrative decision makers (*Vavilov* at para 13) and emphasizes the importance of the reasons and justification given by the decision maker for their decision (*Vavilov* at paras 86, 95).

IV. Analysis

[22] At the outset, I commend Ms. Carpenter and Ms. Magok, Respondent's counsel, for the professionalism of their written submissions and oral presentation. I also acknowledge Ms. Carpenter's very difficult personal circumstances. I recognize that these words are of little comfort as I am dismissing the application. However, I assure Ms. Carpenter that I have carefully considered her submissions against the provisions of the *ITA* and the CRA's guidelines, the jurisprudence of the Court, and the scope of the review undertaken by the Minister's delegate in arriving at the Decision.

[23] In summary, I find that the Decision was reasonable. The Minister's delegate addressed Ms. Carpenter's evidence and personal circumstances in detail. The delegate reviewed the CRA's attempts to contact Ms. Carpenter in order to resolve her tax position and considered the 2018 determination that the Minister's 2004 assessments for the 1999-2001 taxation years were incorrect. The Minister's delegate made no factual errors in arriving at the Decision and set forth her conclusions in answer to each of Ms. Carpenter's arguments intelligibly and comprehensively. While harsh in Ms. Carpenter's view, the Decision is justified.

Overview of subsection 220(3.1) of the ITA

[24] I begin my analysis by setting out the legal framework for the Minister's discretion to cancel the arrears interest charged to Ms. Carpenter's account from January 1, 2003 until the date of payment of her account in November 2017.

[25] Subsection 220(3.1) permits the Minister to waive or cancel any penalty or interest otherwise payable under the *ITA*:

Waiver of penalty or interest

(3.1) The Minister may, on or before the day that is ten calendar years after the end of a taxation year of a taxpayer (or in the case of a partnership, a fiscal period of the partnership) or on application by the taxpayer or partnership on or before that day, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by the

Renonciation aux pénalités et aux intérêts

(3.1) Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin de l'année d'imposition d'un contribuable ou de l'exercice d'une société de personnes ou sur demande du contribuable ou de la société de personnes faite au plus tard ce jour-là, renoncer à tout ou partie d'un montant de pénalité ou d'intérêts payable par ailleurs par le contribuable

taxpayer or partnership in respect of that taxation year or fiscal period, and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.

ou la société de personnes en application de la présente loi pour cette année d'imposition ou cet exercice, ou l'annuler en tout ou en partie. Malgré les paragraphes 152(4) à (5), le ministre établit les cotisations voulues concernant les intérêts et pénalités payables par le contribuable ou la société de personnes pour tenir compte de pareille annulation.

[26] In determining whether to grant taxpayer relief pursuant to subsection 220(3.1), the Minister must take into account all relevant considerations and base her decision on the purpose of the provision, that of fairness (*Canada v Guindon*, 2013 FCA 153 at para 58). The CRA has developed administrative guidelines that inform the exercise of the Minister's broad discretion. Although the Minister may not fetter her discretion in making a subsection 220(3.1) decision, the guidelines set out in *Information Circular IC07-1 Taxpayer Relief Provisions* (the Circular) are a useful starting point. Paragraph 23 of the Circular outlines the circumstances that may warrant relief:

23. The minister of national revenue may grant relief from penalties and interest where the following types of situations exist and justify a taxpayer's inability to satisfy a tax obligation or requirement:

- a) extraordinary circumstances
- b) actions of the CRA
- c) inability to pay or financial hardship

[27] Paragraph 24 recognizes that a Minister's delegate may also grant relief if a taxpayer's circumstances do not fall within the categories listed in paragraph 23 of the Circular (see *Stemijon Investments Ltd. v Canada (Attorney General)*, 2011 FCA 299 at para 27).

[28] Ms. Carpenter highlights paragraphs 25 and 26 of the Circular and their explanations of the terms "extraordinary circumstances" and "actions of the CRA". She notes that persuasive extraordinary circumstances are those beyond the taxpayer's control and include serious illness and serious emotional or mental distress, such as death in the immediate family (para 25). She also notes that CRA assessment errors and processing delays that result in a taxpayer not being informed in a timely manner that an amount is owing may support the waiver or cancellation of interest (para 26).

Ms. Carpenter's submissions; jurisdictional question

[29] Ms. Carpenter submits that the Decision was not reasonable for the following reasons:

- (a) Extraordinary Circumstances: The Minister's delegate inadequately assessed Ms. Carpenter's extraordinary and devastating personal and financial circumstances from 1999 through 2012 and erred in concluding that there was no causal link between those circumstances and her failure to file income tax returns during that period.
- (b) CRA Delay: The Minister's delegate unreasonably concluded that Ms. Carpenter received timely notice of her outstanding tax balances even though she did not receive the 2004 Notices of Assessment for 1999, 2000 and 2001. She argues that the CRA's delay in providing her with the information she required to understand her adverse tax position supports the granting of relief.
- (c) CRA Assessment Error: The CRA's assessment errors resulted in significant taxes owing during the years in question and corrections were not made until 2018. As a matter of fairness, Ms. Carpenter should be relieved of the obligation to pay arrears interest on amounts that were ultimately found to be incorrectly assessed.

[30] Ms. Carpenter also submits that the Decision reflects an inconsistent approach by the Minister to the granting of relief. She references a 2018 report of the Office of the Auditor General of Canada to emphasize that the Minister and the CRA are required to consistently apply tax rules in their review of taxpayers' files. Ms. Carpenter relies on four prior cases in which the Court determined that the Minister or the CRA had unreasonably refused a taxpayer's request for relief. I will address Ms. Carpenter's authorities in my analysis of her submissions regarding exceptional circumstances.

[31] Ms. Carpenter's reliance on CRA error in the Minister's subsection 152(7) arbitrary assessments in 2004 raises a question regarding the jurisdiction of this Court. I agree with the Respondent that the Court has no jurisdiction to question the correctness of the 2004 tax assessments (*Chekosky* at para 33), nor does it have jurisdiction to grant the remedy requested by Ms. Carpenter in paragraph 3(a) of her Notice of Application.

[32] As I explained at the beginning of the hearing, my role in this application is to review the Decision and determine whether it was reasonable. I have no authority to delve into or alter Ms. Carpenter's income as assessed in 2004 for the 1999-2001 taxation years. It is the Tax Court that has exclusive jurisdiction to determine the correctness of CRA assessments and reassessments by virtue of subsection 152(8) and section 169 of the *ITA*, section 12 of the *Tax Court of Canada Act*, RSC 1985, c T-2, and sections 18.1 and 18.5 of the *Federal Courts Act*, RSC 1985, c F-7 (*Canada v Roitman*, 2006 FCA 266 at para 19 (*Roitman*)). Indeed, in this case, the Tax Court was involved in Ms. Carpenter's lengthy and successful attempts to have the 1999-2001 years reassessed.

[33] I asked Respondent's counsel to address whether the Court is permitted to take into account the evidence in the record that the Minister's 2004 assessments were corrected in 2018 and the amount of tax imposed on Ms. Carpenter for the years in question materially reduced. Counsel agreed that the eventual determination that the 2004 assessments were incorrect was a factor for the Minister's delegate to consider and, in turn, may form part of the Court's assessment of whether the Minister's delegate reasonably did so.

[34] Turning to paragraph 3(a) of the Notice of Application, the remedy available to Ms. Carpenter at the conclusion of the Court's review of the Decision is, at best, a return of the Second Relief Request to the Minister for reconsideration under subsection 220(3.1) (*Roitman* at para 20). In *Kapil v Canada (Revenue Agency)*, 2011 FC 1373, Justice Rennie, as he then was, set out the limited remedies the Court can grant in taxpayer relief cases (at para 20):

[20] As a matter of law, this Court does not have the jurisdiction to order the Minister to waive taxes, penalties, and arrears interest. The jurisdiction of the Court is limited to ordering the Minister to substantively reconsider his decisions not to waive the taxes and related interest and penalties. The applicant must understand, therefore, that even if this Court had found in his favour, he would not automatically be entitled to a waiver and refund of his money. This Court's review is confined to an analysis of whether the Minister's exercise of discretion in refusing the waiver requests was lawful, not to substitute its decision for that of the Minister: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339.

Analysis of the Decision

1. Extraordinary Circumstances

[35] There is no dispute between the parties regarding the personal tragedies and challenges

Ms. Carpenter faced between 1997 and 2013:

- 1997: Ms. Carpenter purchased a new home that could accommodate her elderly and unwell parents. The home required significant renovation.
- 1999: Ms. Carpenter lost her long-term banking job, receiving severance and a retiring allowance. The loss of employment resulted in significant financial distress for the family in the ensuing years.
- 1999-2004: Ms. Carpenter was unable to find work and started a business as a herbal consultant, in part because the products assisted one of her three sons who had a learning disability. A second son was also diagnosed with a learning disability. She terminated her business endeavour in 2004 to better assist her parents. Her father passed away the same year. The family's financial situation did not improve.
- 2004: Ms. Carpenter's youngest son was admitted to hospital after an attempted suicide.
- 2004: Notice of sale proceedings of her home began and she faced significant demands from creditors.
- 2005: Ms. Carpenter secured part-time employment at a bookstore which went bankrupt in 2008.
- 2007: Ms. Carpenter's mother-in-law passed away.
- 2008: Ms. Carpenter's husband lost his job, as did her two sons. Ms. Carpenter approached a tax accountant to prepare her outstanding tax returns but the cost was too great.
- 2009: Ms. Carpenter and her husband secured employment.
- 2010: Foreclosure procedures began on their home. Ms. Carpenter's husband lost his job.

- 2012: Ms. Carpenter’s father-in-law passed away. The same year, she met with an accountant and borrowed money from her mother to deal with her outstanding tax returns.

[36] The Minister’s delegate first considered Ms. Carpenter’s submission that the adverse circumstances set out above prevented her from filing her 2000-2002 tax returns until 2013.

[37] The Taxpayer Relief Fact Sheet (Fact Sheet) that underpins the Decision was prepared by the Minister’s delegate and makes clear the scope of her assessment of Ms. Carpenter’s circumstances. The Fact Sheet contains a detailed summary of the events recounted in the Second Relief Request. The Minister’s delegate set out the date of each event, its nature and its consequences, beginning in 1997 with the purchase of a new home, through Ms. Carpenter’s 1999 loss of stable employment and the financial stress that plagued the family for a number of years, and the deaths of her father (2004), mother-in-law (2007) and father-in-law (2012). There are no factual errors or material omissions in the delegate’s summary.

[38] The Fact Sheet required the Minister’s delegate to describe the circumstances that Ms. Carpenter stated had prevented her from meeting her tax obligations and to assess whether those circumstances were beyond her control. In this section, the delegate briefly recounted Ms. Carpenter’s personal circumstances and stated that, although they were beyond her control, “these events occurred prior and subsequent to the filing due dates for the 2000 to 2002 tax years”.

[39] In the Decision, the Minister's delegate concluded:

The request indicates extraordinary circumstances prevented you from filing the returns for the 2000, 2001 and 2002 tax years until 2013, due to emotional stress from the care and deaths of family members. While these circumstances are unfortunate, they occurred prior to and subsequent to the required filing due dates of the tax years mentioned above. I am unable to determine a causal connection between the extraordinary circumstances presented and the ability to file the returns by the due dates. Therefore, relief of the arrears interest charged to the above mentioned tax years is not warranted due to extraordinary circumstances.

[40] The language of 'causal connection' used by the Minister's delegate is another way of stating that the extraordinary circumstances suffered by a taxpayer must be such that they prevented the individual from complying with their tax obligations. The delegate's insistence on a connection between the event and Ms. Carpenter's non-compliance is consistent with the explanation of the taxpayer relief provisions set out in paragraph 8 of the Circular:

8. The legislation gives the CRA the ability to administer the income tax system fairly and reasonably. The CRA does this by helping taxpayers resolve issues that come up through no fault of the taxpayers and by allowing for a common-sense approach in dealing with taxpayers who, because of personal misfortune or circumstances beyond their control, could not comply with a legal requirement for income tax purposes.

(Emphasis added.)

[41] The Court has considered and endorsed the requirement of causal connection between the extraordinary circumstances suffered by a taxpayer and the inability to satisfy their tax obligations. In *Jenkins v Canada (Revenue)*, 2007 FC 295 (*Jenkins*) at paragraphs 17-18, the Court reviewed the Minister's assessment of a series of unfortunate events in Ms. Jenkins' life. As in Ms. Carpenter's case, the Minister acknowledged those events but noted that the majority occurred more than eight months after one tax return was due and more than one year and eight

months before it was actually filed. The same analysis applied to a subsequent late filed tax return. The Court concluded that the Minister's reasons for denying Ms. Jenkins' claim for relief from interest and penalties were reasonable because the events in question could not account for the taxpayer's failure to comply with her tax obligations.

[42] I find that the Minister's delegate made no reviewable error in her reliance on the absence of a causal connection between Ms. Carpenter's personal misfortunes and her failure to file tax returns. The periods between the events Ms. Carpenter relies on and the due dates for filing the 2000-2002 tax returns on April 30 of each following year are greater than those in *Jenkins*. Ms. Carpenter's loss of employment occurred in 1999, well before her tax return for 2000 was due and the next critical events occurred in 2004, long after she was required to file the 2002 tax return. Ms. Carpenter undoubtedly suffered financial stresses during the 1999-2004 years but she was repeatedly notified of her filing obligations by the CRA from 2001 onwards.

[43] Ms. Carpenter states that a contributing reason she did not file her tax returns as due was her belief that she owed no taxes. The Minister's delegate addressed this submission in the Decision and reasonably concluded that Ms. Carpenter's mistaken belief did not constitute a circumstance beyond her control. Under the Canadian self-assessment tax system, Ms. Carpenter remained responsible for filing her tax returns.

[44] Ms. Carpenter emphasizes the financial strain her family suffered from 1999 onwards. While she made no claim of financial hardship in the Second Relief Request because she had already paid the full amounts owing, she states that her family's financial circumstances

contributed to her emotional distress in 2000-2002 and induced a state of panic and denial. She was unable to think about filing her tax returns for the 2000-2002 period.

[45] The Minister's delegate noted each loss of employment suffered by the family, their issues with creditors, and the notice of sale and foreclosure proceedings in respect of the family home in her consideration of Ms. Carpenter's personal misfortunes in the Fact Sheet. The delegate again confirmed with Mr. Grant that the relief request was not based on financial hardship. In my view, the Minister's delegate was not required to separately consider financial challenges in the Decision. Her analysis of the financial misfortunes suffered by Ms. Carpenter as a contributing personal circumstance was reasonable.

[46] Ms. Carpenter relies on four cases in which the Court reviewed refusals by the Minister under subsection 220(3.1) of requests for relief from penalties and interest. She argues that the cases demonstrate that her circumstances warrant relief and that the Minister's denial of her request constitutes inconsistent treatment. Two of the cases (*Meier v Canada (Revenue Agency)*, 2011 FC 840; *LaFramboise v Canada (Canada Revenue Agency)*, 2008 FC 196) involved requests based primarily on financial hardship and the Minister's failure to engage with a taxpayer's ability to pay outstanding taxes interest and penalties. The third, *Robertson v Canada (Minister of National Revenue)*, 2003 FCT 16, does not assist Ms. Carpenter because the Court in that case found significant errors in the decision maker's analysis. There are no such errors in the analysis carried out by the Minister's delegate in Ms. Carpenter's case or in the Decision.

[47] In the fourth case, *Laflamme v Canada (National Revenue)*, 2008 FC 1403 (*Laflamme*), the Court found that a series of catastrophic events left Ms. Laflamme in a state of deep depression that rendered her unable to manage her affairs or to make necessary decisions in relation to her tax obligations in a timely manner. The Court concluded that the events were exceptional and justified Ms. Laflamme's delay in filing her annual tax returns between 2002 and 2005. The Respondent distinguishes *Laflamme* on the basis that the Court relied on a temporal connection between the tragedies the taxpayer suffered, her state of mind, and her failure to file tax returns to find that the Minister's decision was not reasonable.

[48] Here, the facts relied on by Ms. Carpenter occurred over a significantly longer period than was the case in *Laflamme*. The personal tragedies at the centre of the Court's concern in Ms. Laflamme's case occurred just prior to and as she was required to file tax returns. She required psychiatric care and the evidence in the record indicated her diagnosed depression continued over a significant period. Factually, Ms. Carpenter's circumstances differ from those that befell Ms. Laflamme in certain material respects. As a result, the Court's conclusion in *Laflamme* does not render the Decision unreasonable.

2. CRA Delay

[49] Ms. Carpenter submits that the CRA's failure to send Notices of Assessments for the 1999, 2000 and 2001 taxation years in March 2004 meant that she did not recognize the need to file tax returns for those years since she was unaware of her mounting tax debt. Consequently, she was unable to resolve her tax position for many years, allowing the significant accumulation

of arrears interest. Ms. Carpenter argues that the Minister's refusal of her Second Relief Request was unreasonable in light of the CRA's delay.

[50] Ms. Carpenter's submissions are not supported by the evidence in the record. It is clear that the CRA notified Ms. Carpenter in 2001 and 2002 of the requirement to file her tax returns. It is equally clear that she was aware of her significant balance owing from early March 2004 when she received the Notice of Assessment for the 2002 taxation year. Ms. Carpenter knew then that she owed in excess of \$69,000 in outstanding tax, penalties and interest.

[51] In the Decision, the Minister's delegate set out the series of requests and demands to file sent to Ms. Carpenter by the CRA:

- November 2001: Request to file 2000 tax return.
- November 2002: Request to file 2001 tax return.
- February and March 2002: Demands to file 2000 and 2001 tax returns.
- June 2004 and April 2005: Collections letters regarding the balance owing.
- November 2005 and July 2006: Collections department field visits to Ms. Carpenter's home and cards left requesting she contact the CRA.
- February 2009: Letter informing Ms. Carpenter that a lien had been placed on her property.

[52] Ms. Carpenter does not argue that the Minister's delegate made any factual errors in the list of actions the CRA took to inform her of her tax obligations. Ms. Carpenter states that she received many of the CRA's requests and demands but was distracted and stressed. She did not sense any urgency to address the CRA's correspondence because she thought the CRA had made an assessment error and that she did not need to file tax returns.

[53] I find that the Minister's delegate made no error in concluding that Ms. Carpenter's request for relief was not warranted due to CRA delay. First, the analysis of Ms. Carpenter's submissions against the CRA's actions from 2001 to 2004 by the Minister's delegate was comprehensive and accurate.

[54] Second, Ms. Carpenter's evidence contradicts her reliance on CRA delay as the reason for her inaction. Ms. Carpenter acknowledges receipt in March 2004 of the Notice of Assessment for the 2002 taxation year showing a balance owing of over \$69,000. She also received notices from the CRA informing her of the accumulation of interest on her tax debt in each of April and June 2004. Ms. Carpenter explains her failure to act on her belief that the CRA had made a calculation error and would unilaterally take action to correct her balance owing. She does not explain her failure to act on ignorance of her balance owing because of CRA delay. In other words, the fact that Ms. Carpenter did not receive the Notices of Assessment for the 1999-2001 taxation years was not the reason interest continued to accrue on her tax debt from 2004 to 2017.

3. CRA Assessment Error

[55] In her submissions to the Court, Ms. Carpenter relies on errors in the Minister's 2004 assessments of her 2000 and 2001 taxation years to argue that her request for relief should have been granted because she simply did not owe the amounts of tax on which she had been charged interest. She focuses on the accrual of interest between September 2013, when she began the objection process, and November 2017, when she paid her tax balance owing.

[56] The Respondent acknowledges the 2018 Notices of Reassessment that resulted in credits to Ms. Carpenter's account. The Respondent argues, however, that the assessment errors in 2004 did not negate the non-filing penalties and arrears interest levied against Ms. Carpenter as they derive from her failure to file accurate and timely tax returns.

[57] CRA assessment error was not raised as a ground for relief in the Second Relief Request, nor was the Minister asked to consider the September 2013-November 2017 period as distinct from the full period at issue (January 2003-November 2017). Mr. Grant referred to the 2018 reassessments and reductions in the tax, interest and penalties owing by Ms. Carpenter as part of his submissions regarding CRA delay. In the Fact Sheet, the Minister's delegate noted the fact that the 2004 assessments had been subject to correction in 2018. Ms. Carpenter now argues that more weight should have been given to the results of the objection process.

[58] Ms. Carpenter's submission that more weight should have been given to the ultimate resolution of her Objections is not a basis for the Court to intervene. The Minister's delegate based her refusal to grant relief on the two arguments made in the Second Relief Request: extraordinary personal circumstances and CRA delay. I find that the delegate made no error in focusing her reasons for the refusal and the Decision in this manner.

[59] I emphasize that Ms. Carpenter's failure to file her tax returns or to contact the CRA for over ten years resulted in the accrual of the arrears interest that is the subject of her request for relief. She was notified by the CRA from early 2001 of her non-compliant and worsening tax position. The CRA carried out the 2004 assessments because Ms. Carpenter filed no information

for the 1999-2002 tax years. Those assessments were based on the information available to the CRA in accordance with subsection 152(7) of the *ITA*.

[60] Ms. Carpenter took no action until 2013 when she began the objection process. There is no evidence or suggestion in the record that the CRA unduly delayed that process. As a result, there is no basis for the Court to conclude that the Minister's delegate overlooked a material fact or submission that warranted a fulsome analysis of the objection process or its result.

V. Conclusion

[61] The application for judicial review will be dismissed.

[62] The Respondent sought its costs in this matter in its written submissions but did not press the point at the hearing. In exercise of my discretion pursuant to Rule 400 of the *Rules* and having regard to all of the circumstances of this case, I will make no order as to costs.

JUDGMENT IN T-1137-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The style of cause is amended to reflect the Attorney General of Canada as the Respondent.
3. No costs are awarded.

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1137-19

STYLE OF CAUSE: JANICE (JAN) CARPENTER v MINISTER OF NATIONAL REVENUE

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN WHITBY, ONTARIO, TORONTO, ONTARIO AND OTTAWA, ONTARIO

DATE OF HEARING: JUNE 23, 2020

JUDGMENT AND REASONS: WALKER J.

DATED: JULY 9, 2020

APPEARANCES:

Janice (Jan) Carpenter

FOR THE APPLICANT
(ON HER OWN BEHALF)

Acinkoj Magok

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
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FOR THE RESPONDENT