

[OFFICIAL ENGLISH TRANSLATION]

Date: 20021016
Docket: 2000-1501(IT)I
2000-1500(IT)I

BETWEEN:

HODA MOURAD ATALLAH,
GABI ATALLAH,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

For the Appellants: the Appellants themselves
Counsel for the Respondent: Simon Crépin
Nathalie Lessard

REASONS FOR JUDGMENT

(reasons read at the hearing of June 7, 2002,
in Montréal, Quebec)

Chief Judge Garon, T.C.C.

[1] The two appellants appealed from the income tax assessments made with respect to each of them by the Minister of National Revenue for the 1992 taxation year. In each of those assessments, the Minister of National Revenue refused a tax credit for a charitable gift in relation to an amount of \$2,000 that each appellant

claims to have donated to l'Ordre Antonien libanais des maronites during the 1992 taxation year.

[2] Both appellants testified on their own behalf. The female appellant, Hoda Mourrad Atallah, came to Canada with her parents and their other children in 1976. She married the male appellant, Gabi Atallah, in Canada on August 7, 1982. The appellants have two daughters.

[3] The female appellant began by relating a tragedy that had taken place in her family on May 23, 1992. Her brother Maurice Mourad died at the age of 23 in a fire in the building in which he was living. A death certificate signed by the investigating coroner on May 25, 1992, was filed in Court. The death occurred 12 days after the appellant had given birth to her youngest daughter. Naturally, this death had a profound impact on the young man's parents and the other family members.

[4] The female appellant explained that the brother in question held a \$100,000 life insurance policy. Her parents received this amount two or three months after his death and gave the children \$8,000 each from the proceeds. Their four children thus received a total amount of \$32,000.

[5] Despite the appellants' efforts in the weeks prior to the hearing of these appeals, they were unable to obtain certain relevant bank statements and documentation relating to the payment of the proceeds of the life insurance policy.

[6] After indicating that her family had gone through an extremely difficult period in the months following Maurice Mourad's death, the appellant stated that she and her husband, the appellant, had decided to pay l'Ordre Antonien libanais des maronites \$4,000 in November 1992 for masses to be held in Maurice Mourad's memory. This amount was divided equally between the two appellants; according to the female appellant, each of them gave the organization \$2,000.

[7] The female appellant had explained earlier that after her brother's death, she and her husband had started practicing their Catholic faith much more intensively as a way of seeking comfort. She said that these donations totalling \$4,000 were the only ones for which the appellants had claimed a tax credit during the years prior to and after 1992. She nonetheless said that she and the male appellant had donated \$200 to \$300 to l'Ordre Antonien libanais des maronites each year but had not obtained any receipts or claimed a tax credit for those donations.

[8] The female appellant also testified that her parents had been informed immediately of the appellants' decision to give l'Ordre \$4,000. She had not been present when her husband had given the \$4,000 to one of the organization's priests in November 1992.

[9] The male appellant is a letter carrier and runs a small business as well. He stated he was largely in agreement with the female appellant's testimony. According to his testimony, he came to Canada from Lebanon with his parents in 1976. The civil war had broken out in that country in 1975.

[10] The male appellant stated that the \$8,000 the female appellant had received from her parents had been paid to the appellants by cheque and that the \$4,000 had been paid to l'Ordre in cash in \$100 denominations. The money had been put in an envelope. He could not remember which bank account the \$4,000 had come out of. At the time, he had a number of bank accounts, including a joint account with his wife. The two receipts had not been made out at the time the \$4,000 had been paid to one of the organization's priests but a few months later.

[11] The female appellant's father, Moussa Mourad, was called to testify at the appellant's proceedings. He confirmed that he and his wife had received \$100,000 as beneficiaries of a life insurance policy on Maurice Mourad and that they had given \$8,000 of that amount to each of their four children.

[12] The appellant's father also explained that a few weeks before the first anniversary of the death of his son Maurice, he had asked the male appellant to pay \$700 on his behalf to have an anniversary mass celebrated in his son's memory because, as he put it, he did not know how to write a cheque and did not have any money on him. A written declaration made by the appellant's father confirming the substance of his testimony was adduced.

[13] On the respondent's behalf, the Court heard two employees of the Canada Customs and Revenue Agency. One of them, Gaétan Ouellette, was an investigator with the special investigations unit and the other, Colette Langelier, was an officer with the tax avoidance division. According to their testimony, the scheme had been set up by l'Ordre. It was the wife of one of the organization's directors, a female doctor, who had reported the scheme to Revenue Canada in March 1994. She herself had participated in it for a number of years.

[14] In some cases, l'Ordre would issue a taxpayer a receipt indicating a financial donation equal to the amount the taxpayer had paid l'Ordre by cheque and would return approximately 80% of the amount of the cheque to the taxpayer in cash. In other cases, l'Ordre would issue a taxpayer a receipt indicating a cash donation when the taxpayer had donated only a minimal amount compared with the amount that appeared on the receipt. There were even cases in which taxpayers obtained tax receipts without paying anything.

[15] After this scheme was reported, Ms. Langelier began auditing l'Ordre's accounting records and bank statements starting in late September 1994. Her work was carried out during the fall of 1994. She concluded in particular that many of the taxpayers who had participated in the scheme had essentially purchased tax receipts from l'Ordre for an amount equivalent to 20% of the amount that appeared on the receipt. The amounts paid to l'Ordre in cash were not recorded in the organization's bank accounts.

[16] As a result of the auditor's report, the file was then assigned to the special investigations unit and search warrants were executed at the premises of l'Ordre and at its accountant's office.

[17] It should be noted that the documents seized included a printout from a computer owned by l'Ordre that provided information for 1993 using an electronic spreadsheet program called Biblio-Reç. The document in question indicated 356 cases involving 352 receipts and in each case the taxpayer's name is noted. The entries are numbered 1 to 356. The notation "cancelled" appears for four entries. The entries indicate the donor's name and telephone number, the number of the receipt, the amount of the donation, the amount returned to the donor, the amount paid, the balance payable, the net amount received by the clerks of l'Ordre, where applicable, the name of the intermediary who had put the taxpayer in contact with l'Ordre and the percentage of the actual donation compared with the amount that appeared on the receipt.

[18] The worksheets that were seized (Exhibit I-12, tab 9, at page 39) refer to a receipt bearing number 922 for a \$2,000 donation and a \$700 deposit. The receipt is dated December 31, 1992, and was issued in the male appellant's name. The receipt in question was in a receipt book, a copy of which was adduced in evidence.

[19] It is worth noting that 15 taxpayers were subject to criminal proceedings in cases in which the receipts indicated amounts of over \$100,000 during the period

from 1989 to 1995. The proceedings were launched under section 239 of the *Income Tax Act*.

[20] With the exception of four complaints that were abandoned, the other taxpayers pleaded guilty. The priests of l'Ordre who had been involved in the scheme having left Canada, no criminal action was brought against them.

[21] Close to 1,200 donors were assessed and the tax credits they had claimed for a charitable gift were refused. Some 100 taxpayers filed appeals with the Tax Court of Canada.

[22] The male appellant's father and brother also obtained receipts for charitable gifts and their receipts were numbered 919 and 920 respectively. Their receipts were for amounts of \$2,500 and \$2,000 and were also dated December 31, 1992.

[23] Two other taxpayers were called to testify at the respondent's proceedings. They both acknowledged they had obtained receipts from l'Ordre for amounts that were substantially higher than those that had actually been paid to it.

Analysis

[24] First, there was ample evidence that a scheme involving what was referred to at the time as the selling of charitable receipts had been set up by l'Ordre Antonien libanais des maronites. The scheme was in place from 1989 to 1995. Its existence was even acknowledged by one of the appellants. The deception in issue here was described in great detail during depositions before this Court by two Canada Customs and Revenue Agency employees.

[25] I must determine whether the appellants each donated \$2,000 to l'Ordre Antonien libanais des maronites during 1992.

[26] I refer first to the testimony of the female appellant's father, Moussa Mourad.

[27] Moussa Mourad stated that he had learned from one of the organization's priests that his daughter, the female appellant, and his son-in-law, the male appellant, had made a total of \$4,000 in donations shortly after the death of his son Maurice. He did not know whether the \$4,000 donation had been made before or after he and his wife had received \$100,000 in proceeds from a life insurance policy in Maurice's name. It is completely implausible that those donations

totalling \$4,000 would have been made before the appellants themselves had received \$8,000 from the female appellant's parents given the male appellant's testimony that, among other circumstances, the deceased's cousins were the ones who paid the expenses for Maurice Mourad's funeral.

[28] Moreover, Moussa Mourad's statement that he had been informed by one of l'Ordre's priests about the appellants' \$4,000 donation contradicts the appellants' testimony that they had informed the parents of the female appellant of their decision when the donation was made in order to bring them some comfort.

[29] Moussa Mourad also testified that he was the one who had asked the appellant to pay l'Ordre \$700 on his behalf in April 1993 on the first anniversary of his son's death. It seemed strange to me that he would remember specifically this \$700 donation nine years later when he was mistaken about the date of his son's death. He also remembered exactly how the \$700 had been divided, which he indicated as follows: \$200 to each of the two priests and \$400 to the church. I do not attach any weight to the calculation error made by this witness with respect to the breakdown of this \$700 total.

[30] Nor do I believe the statement of the female appellant's father that he had not actually discussed with either or both of the appellants the testimony he would be giving at the hearing of these appeals after he was recently informed that he would be called to testify. He remembered too easily some of the factual elements I have just noted.

[31] In short, I have some serious doubts about Moussa Mourad's testimony.

[32] I now come to the appellants' testimony in light of all of the evidence, both oral and documentary. The documentary evidence is particularly abundant. I will discuss only certain elements of the evidence that seem relevant to me.

[33] The entire situation relating to the \$2,000 donation that each of the appellants allegedly made in November 1992 to have a mass held in Maurice Moussad's memory seems rather unlikely to me in light of the following considerations:

1. First, it is surprising that the appellants would have paid the \$4,000 in cash. The appellants had an interest in having documentary evidence in hand and in paying the amount in question by cheque, the receipts for that amount not being

issued until a few months later. As well, we know it is unwise for anyone to carry such a substantial amount on them.

2. According to the income statement of l'Ordre (Centre communautaire St-Antoine Le Grand) for the period ended December 31, 1992, the total amount paid for masses in 1992 was only \$5,125. Based on the appellants' statements, their contribution would thus represent close to 80% of all contributions made to l'Ordre's community centre.

3. Objectively, the \$4,000 offering to have masses celebrated seems very high, irrespective of the observations made earlier, and the total number of masses was not specified.

4. L'Ordre did not record the amounts totalling \$4,000 that appeared on the receipts attributed to the appellants for masses. The income statements, including the one for 1992 (Exhibit I-19), indicated that l'Ordre had separate items for donations and for masses.

5. The appellants' habits with respect to charitable donations for the years prior to the year in issue were the complete opposite of those for 1992. See in particular the male appellant's tax returns for 1997, 1998, 1999 and 2000, in which the total amount of donations is less than \$100 for each year. In the female appellant's case, no amount is claimed for donations in her tax returns for those same years.

6. Receipt number 922 (Exhibit I-23) referring to a \$2,000 donation, allegedly made by the male appellant, is in the same receipt book as that of his father (receipt No. 919), his brother (receipt No. 920) and the female appellant (receipt No. 921). It can be seen that the numbers are consecutive. However, the male appellant testified that he did not know whether his father and his brother had participated in the scheme or whether they had donated \$2,500 and \$2,000 during that same year. The same receipt book contains a number of other false receipts, including those pertaining to donations made by Garbin Yessayan during 1991, 1992, 1993 and 1994. Mr. Yessayan confirmed during the hearing of these appeals that the amounts on the four receipts adduced during his testimony were inaccurate.

[34] With respect to the \$700 payment the male appellant allegedly made to l'Ordre in April 1993 to have an anniversary mass celebrated on behalf of Moussa Mourad, the female appellant's father, that claim also appears unlikely in more than one respect:

1. The appellants separated in April 1993. It seems implausible to me that Moussa Mourad would have asked the appellant, his daughter's former husband, to render that type of service for him even though the female appellant was then living with an aunt and uncle who were members of the male appellant's family.

2. The \$700 amount seems very high for an anniversary mass. This is surely an uncommon situation.

3. According to the income statement of l'Ordre (Centre communautaire St-Antoine Le Grand) for 1993, the total amount paid for masses was only \$2,617 (Exhibit I-19, tab 5). In other words, the \$700 amount apparently represents more than one quarter of the total amount paid for masses by everyone—parishioners and non-parishioners—who dealt with the community centre during 1993. This \$700 donation thus seems very high in light of the total offerings made for masses at this particular church.

With respect to the financial statements, the appellant was surprised that a certain amount of credibility was given to l'Ordre's financial statements. On this issue, it must be recalled that the evidence showed that the irregularities detected in l'Ordre's financial statements dealt particularly with the receipts.

4. L'Ordre's accountant associated the \$700 amount with the receipt given to the male appellant and showing an amount of \$2,000, as indicated on l'Ordre's worksheets, which were seized by the Minister of National Revenue: see Exhibit I-12, tab 9, at page 39. The same connection was made by Ms. Langelier, a Canada Customs and Revenue Agency employee, in her testimony before this Court.

5. The receipt relating to the \$700 donation should have been made not in the male appellant's name but in his father-in-law's name, since the male appellant stated that it was at his father-in-law's request that he had paid l'Ordre the \$700.

[35] From the whole of the evidence, I am satisfied that, unlike what they maintained, the appellants did not make a total of \$4,000 in donations in 1992. However, it does not seem unlikely to me that the appellants would instead have made a \$700 donation in April 1993 and obtained two receipts for a total of \$4,000. In any event, I do not need to determine whether the appellants made this \$700 donation to l'Ordre in 1993 since this appeal pertains only to 1992.

[36] Having regard to all the circumstances described above and their cumulative effect, the appellants' testimony does not seem credible to me, particularly on the

issue of the \$2,000 donation each of them is alleged to have made in November 1992.

[37] I have come to the conclusion that neither appellant donated \$2,000 to l'Ordre Antonien libanais des maronites during the 1992 taxation year. The appellants therefore made a misrepresentation to the Minister of National Revenue in filing their tax returns and in stating that they had made such donations. As a result, in the circumstances, the Minister of National Revenue had the right to issue reassessments after the normal assessment period provided for by subsection 152(4) of the *Income Tax Act*.

[38] The evidence also allows me to conclude that the respondent established the reprehensible nature of the appellants' conduct. They knowingly made false statements in reporting to the Minister of National Revenue that they had made a total of \$4,000 in donations to l'Ordre during 1992 when no such donations had been made. The Minister of National Revenue accordingly discharged the burden that was on him with respect to the assessment of penalties under subsection 163(2) of the *Income Tax Act*.

[39] For these reasons, the appeals are dismissed.

Signed at Ottawa, Canada, this 16th day of October 2002.

“Alban Garon”
C.J.T.C.C.

Translation certified true
on this 28th day of January 2004.

Sophie Debbané, Revisor

