Docket: 2014-18(EI)APP
2014-17(CPP)APP

BETWEEN:

BREATHE E-Z HOMES LTD.,

Applicant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Application heard on March 6, 2014 at Toronto, Ontario

Before: The Honourable Mr. Justice Randall S. Bocock

Appearances:

Counsel for the Applicant:	Dale Barrett
Counsel for the Respondent:	Roxanne Wong

COST ORDER

WHEREAS an Order issued on April 24, 2014, allowing the Applicant's applications to extend the time for filing an appeal with this Court;

AND WHEREAS the Court requested submissions on the issue of the sum of costs to be awarded against the Applicant's counsel personally;

NOW THEREFORE THIS COURT ORDERS THAT:

1. In accordance with the reasons attached, the Respondent shall be entitled to costs thrown away in these successful applications before the Tax Court of Canada in the amount of $743.34, payable within 30 days by the Applicant's counsel personally.

Signed at Ottawa, Ontario, this 19th day of June 2014.

"R.S. Bocock"

Bocock J.

Citation: 2014 TCC 201
Date: 20140619
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2014-17(CPP)APP

BETWEEN:

BREATHE E-Z HOMES LTD.,

Applicant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR COST ORDER

Bocock J.

[1] By Order dated April 25, 2014, this Court allowed two applications for extensions of time to file notices of appeal under the *Employment Insurance Act*, SC 1996, c 23 and the *Canada Pension Plan*, RSC 1985 c C-8.

[2] A cursory review of the Reasons for Order of the same date reveals a litany of errors committed and/or steps omitted by the Applicant's counsel. In summary, the following mistakes were made:

a. failing to notice that the June 13, 2013, confirmation letter of the Minister responded to a previously filed notice of objection;

b. missing the "as of right" deadline of September 11, 2014, to file a Notice of Appeal (or for that matter even a notice of objection);

c. erroneously filing a request for extension to file an objection with the CRA received on October 24, 2013, rather than filing an extension and notice of appeal with the Tax Court of Canada.

d. failing to heed the gratuitous phone call to legal counsel's office from the CRA employee on October 30, 2013, and the previous reminders of legal counsel's own client;

e. missing the "discretionary extension" deadline of December 10, 2013; and lastly,

f. failing to report to the Applicant the various actions, filings and, regrettably, omissions committed along the way which reporting may have led to additional warnings by the Applicant regarding the above-noted mistakes.

[3] These errors gave rise to the need for these applications. The Respondent rightfully opposed the applications. Applicant's counsel had no choice, but to bring the applications to attempt to seek the Court's discretion to rectify the manifest and multi-faceted errors and omissions committed by him and his staff.

[4] The Respondent requests costs in accordance with the tariff, plus a nominal sum for these submissions on the issue of costs. In submissions, Applicant's counsel has focused almost entirely on the erroneous assumption and mistake of fact related to the superfluous Notice of Objection and Request to Extend erroneously filed with the CRA on October 24, 2013 (paragraph 2(*c*) above). The submissions ignore the more telling, negligent and good practice omissions: failure to heed the client's prior warnings in early September, missing the original "as of right" appeal period, failure to heed the gratuitous and collegial warning of the CRA of October 31, 2014 and the failure to properly inform his client of the omissions and remedial action needed until only two weeks before the applications were heard.

[5] By simply focusing on the single October 24th error and omission he committed, Applicant's counsel contends that rectification of this "technical defect" ought to have been agreed to in advance by the Respondent, thereby obviating the need for the application hearing.

[6] Re-examination of the original order of this Court reveals broader reasons than those narrowly defined by Applicant's counsel. The aggregate "technical" defaults committed required this Court to reserve its judgment, review all authorities and provide the highest and best value to the Applicant's facts in the applications. Such a process was not related to correcting a single technical default; in the absence of such detailed and nuanced factual findings, there would have been no jurisdiction to issue the extension order. Jurisdiction is not technical or nuanced. It is a fundamental and elemental principle of natural justice. In the

Court's view, the Respondent could not have consented in this matter prior to the Court's hearing and its findings of fact. Applicant counsel's litany of omissions were not "technical". Factually, they lacked due diligence, proper following of systems and best practices and, most importantly, communications with the Applicant (now Appellant).

[7] Simplistically, one might have difficulty with ordering costs against Applicant's counsel, preferring to believe such cost awards relating to errors, omissions and conduct are more fittingly and fairly assessed against the Respondent where warranted, given the Crown's enhanced authority and resources. This Court does not ascribe to that small and unbalanced view. Applicant's counsel, in his own application notice, referenced and willingly admitted his office's multiple omissions and during his argument before the Court pleaded that the Applicant should not be penalized for errors and omission not of his own choosing or making and which the Applicant himself did his best to avoid, despite his counsel. This Court agrees. Just as Respondent's counsel owes a duty to the Court and taxpayers to review matters thoroughly and be wary of easy traps, lazy habits and avoidable errors, so to does Applicant's counsel albeit in reserve. The awarding of costs in these applications is designed to address the unnecessary and avoidable deployment of resources all round in what ought to have been a simple filing by Applicant's counsel.

[8] This Court has jurisdiction to make this order for the costs in favour of the Respondent: *De Costa v R*, 2008 TCC 136. It likely could have been convinced to depart from the Tariff and to award enhanced costs. Given the Respondent's more constrained submissions, it will not do so. In breaching the objective standard of care in the review of the file, non-use of proper office systems and the pasture of open client communications, Applicant's counsel is required to pay such reasonable costs. The errors and omissions giving rise to the necessity of the applications were exclusively and unequivocally those of Applicant's counsel or of those in law for whose actions Applicant's counsel is responsible. On that basis, costs are payable personally by Applicant's counsel to the Respondent in the amount of $743.43.

Signed at Ottawa, Ontario, this 19th day of June 2014.

"R.S. Bocock"

Bocock J.

CITATION:	2014 TCC 201
COURT FILE NO.:	2014-18(EI)APP 2014-17(CPP)APP
STYLE OF CAUSE:	BREATHE E-Z HOMES LTD. AND M.N.R.
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	March 6, 2014
REASONS FOR ORDER BY:	The Honourable Mr. Justice Randall S. Bocock
DATE OF ORDER:	June 19, 2014

APPEARANCES:

Counsel for the Applicant:	Dale Barrett
Counsel for the Respondent:	Roxanne Wong

COUNSEL OF RECORD:

For the Applicant:

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Firm:	Barrett Tax Law

For the Respondent:	William F. Pentney Deputy Attorney General of Canada Ottawa, Canada