



TC06188

Appeal number: TC/2017/01862

***PENALTY – HMRC barred from further participation in the appeal –
whether to give summary judgment – yes – appeal allowed***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

WHITEHILL PELHAM LIMITED

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE & CUSTOMS**

Respondents

TRIBUNAL: JUDGE Barbara Mosedale

Decided on the papers

DECISION

1. On 22 February 2017 Ensors Accountants LLP submitted an appeal on behalf of
5 Whitehill Pelham Limited against a £500 penalty imposed under s 98(1)(b) Taxes
Management Act 1970 for late submission of an employment intermediary return for
the quarter ended 5 October 2016.

2. The appeal was categorised as paper and duly notified to HMRC on 18 April
2017 by email to the address to which the Tribunal sends all correspondence to
10 HMRC. HMRC was directed to provide their statement of case within 42 days.

3. The 42 days for the statement of case expired on 30 May 2017 and on 8 June the
Tribunal wrote to HMRC to require the statement of case (with an application for it to
be admitted late) within 14 days. Again the email was sent to HMRC's usual email
address. The Tribunal did not receive a reply.

4. On 10 August 2017, Judge Morgan issued a direction under Rule 8(3)(a) which
15 stated that unless HMRC confirmed no later than 24 August that they intended to
defend the appeal, they might be barred. This was again sent to HMRC at their usual
email correspondence address. No reply was received.

5. On 7 September 2017, Judge Dean barred HMRC from taking any further part
20 in the proceedings. This order was again sent to HMRC at their usual email
correspondence address and no response has been received. On the same day, the
appellant was asked if it had any representations it wished to make on whether the
appeal should be summarily determined in its favour. It seems the appellant did not
have any such representations, as no reply was received.

6. It now falls to me to determine the appeal in the absence of any representations
25 from either party.

Summary determination?

7. Barring a respondent raises an issue which does not arise when an appellant is
struck out. That is because the appeal is brought, and must be proved, by the
30 appellant. So appellants are struck out and not simply barred from participation in the
appeal because it amounts to the same: an appellant unable to participate in its appeal
cannot prove its case. The same is not true for respondents: even if a respondent does
not participate in an appeal, an appellant may fail to prove its case.

8. Rule 8(8) of the Tribunal Procedure (First Tier Tribunal) (Tax Chamber) Rules
35 provides:

If a respondent has been barred from taking further part in proceedings
under this rule and that bar has not been lifted, the Tribunal need not
consider any response or other submissions made by that respondent,
and may summarily determine any or all issues against that respondent.

9. In other words, when HMRC is barred, the appellant may still be required to prove its case, or the Tribunal may simply allow the appeal ('summarily determine') without consideration of whether the appellant has proved its case.

5 10. So the question which arises when HMRC are barred, which does not arise when an appellant is struck out, is whether the appellant should still be required to prove its case or whether its appeal should simply be summarily allowed.

11. I have to decide that question without the benefit of any representations on the right course of action to take. HMRC have not been asked for their representations as they have been barred; the appellant has not chosen to make any.

10 12. Reasoning from first principles, it seems to me that where the respondent has chosen not even to respond to the appeal, as here, summary judgment in favour of the appellant is indicated. The failure to indicate that HMRC even wished to defend the appeal, let alone the failure to provide grounds on which they intended to resist the appeal, indicate that they have accepted the appeal as well-founded. The Tribunal
15 should proceed on that basis and simply allow the appeal.

13. Had grounds of defence been provided, it might have been appropriate to require the appellant to prove its appeal. That is not the case here.

14. An analogy with the courts could be usefully drawn: a plaintiff which serves a claim which receives no defence is entitled to summary judgment.

20 15. In conclusion, in the absence of any defence or grounds of defence, it is in accordance with justice to award the appellant summary judgment. This appeal is therefore allowed.

Concluding comments

25 16. Even if I am wrong to consider summary judgment appropriate in this case, I have read the appellant's grounds of appeal and am satisfied that, in the absence of any defence, it has a reasonable excuse for its default. In particular, its unchallenged evidence is that its accountants repeatedly tried to file the report before the deadline but were unable to do so because HMRC's website was unavailable; they filed it as
30 soon as HMRC's website was operational, which was shortly after the deadline. The appeal would therefore be allowed under s 118(2) Taxes Management Act 1970 in any event.

35 17. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to

“Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)”
which accompanies and forms part of this decision notice.

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**BARBARA MOSEDALE
TRIBUNAL JUDGE**

RELEASE DATE: 30 OCTOBER 2017

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