



TC06448

Appeal number: TC/2016/04173

INHERITANCE TAX – personal representative distributing assets of estate to beneficiary on basis that beneficiary would discharge IHT liability – appeal on basis that PR no longer has assets of estate - liability of personal representative – appeal struck out – s200 Inheritance Tax Act 1984 – Rule 8, Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**GLYNE T HARRIS AS PERSONAL REPRESENTATIVE Appellant
OF HELENA NORMA MCDONALD (DECEASED)
- and -**

**THE COMMISSIONERS FOR HER MAJESTY’S Respondents
REVENUE & CUSTOMS**

TRIBUNAL: JUDGE ALEKSANDER

Sitting in public at Taylor House, London on 10 November 2017

Simon Bracegirdle, an officer for HM Revenue & Customs, for the Respondents

The appellant did not attend and was not represented

DECISION

1. Mr Harris was appointed as personal representative of the late Helena McDonald by letters of administration issued in the High Court on 12 June 2013.

5 2. On 28 April 2013, Mr Harris filed IHT400 – an inheritance tax account – with HMRC. On 16 April 2014, HMRC opened an enquiry into the account and on 7 October 2015 issued an inheritance tax determination on the basis that the value transferred on Helena McDonald’s death was £1,178,196.92 and that the inheritance tax payable was £341,278.76.

10 3. Mr Harris requested a statutory review of the determination, and the conclusions of the review were communicated to Mr Harris in a letter dated 20 July 2016. It is against this review decision that Mr Harris has appealed.

4. HMRC have applied for Mr Harris’s appeal to be struck out on the grounds that it has no reasonable prospect of success.

15 **Procedure**

5. Simon Bracegirdle represented HMRC at the hearing.

6. Mr Harris did not attend and was not represented at the hearing. Nevertheless I was satisfied that he had been notified of the hearing and that it was in the interests of justice to proceed with the hearing. A hearing of HMRC’s application took place on
20 23 May 2017, which was not attended by Mr Harris. Judge Morgan issued directions following the hearing giving Mr Harris a further opportunity to make representations on HMRC’s strike-out application at a further hearing to be arranged. The parties were directed to provide dates to avoid, and Mr Harris was warned that any application for postponement of the hearing on grounds of non-availability was not likely to succeed.

25 7. HMRC’s strike-out application was relisted for 10 November 2017, and notice of the hearing was sent to the parties on 7 October 2017. Nonetheless on 11 October 2017, Mr Harris made an application for a further postponement. Directions were issued by Judge Kempster on 3 November 2017 declining the postponement application on the basis that Mr Harris had already been given a second opportunity to attend and present
30 his case, and that it would not be fair or just further to delay resolution of HMRC’s application. Judge Kempster noted that any written submissions received by the Tribunal would be put before me.

8. I was satisfied that Mr Harris had received notice of the hearing date, as he had responded to the notice by applying to postpone the hearing.

35 9. Although no written submissions were made by Mr Harris, the Tribunal’s file included Mr Harris’s correspondence with HMRC setting out the basis of his appeal. Accordingly, given the fact that I had before me Mr Harris’s grounds of appeal, and in the light of the directions previously given, I decided that it was in the interests of justice to proceed in his absence.

10. I originally issued my decision notice in summary form, but following a request made on behalf of Mr Harris, I now issue a full decision.

Liability of personal representatives for inheritance tax

5 11. Section 4, Inheritance Tax Act 1984 (“IHTA”) provides that inheritance tax is charged on the death of an individual as if, immediately before the death, the individual had made a transfer of value equal to the value of his estate immediately before his death.

10 12. Section 200, IHTA provides that, with limited exceptions (none of which are relevant in this case) the deceased’s personal representatives are liable for the inheritance tax arising on the deemed transfer on death.

15 13. Section 216, IHTA requires the personal representatives to deliver an inheritance tax return and pay any inheritance tax due before the court issues the grant of representation to them. However, where the estate includes land, the inheritance tax arising in respect of that land can be paid in ten equal annual instalments (s227 IHTA) – save that if the land is sold, any unpaid instalments (together with accrued interest) then become immediately payable.

Background facts

14. The background facts are not in dispute and I find them to be as follows.

20 15. Mr Harris was appointed as personal representative of the late Helena McDonald by letters of administration issued in the High Court on 12 June 2013.

25 16. On 28 April 2013, Mr Harris filed IHT400 – an inheritance tax return – with HMRC. On 16 April 2014, HMRC opened an enquiry into the account and on 7 October 2015 issued an inheritance tax determination on the basis that the value transferred on Helena McDonald’s death was £1,178,196.92 and that the inheritance tax payable was £341,278.76.

17. Mr Harris requested a statutory review of the determination, and the conclusions of the review were communicated to Mr Harris in a letter dated 20 July 2016, which upheld the determination. It is against this review decision that Mr Harris appeals.

30 18. The grounds of his appeal are that, in essence, Mr Harris does not have the funds to be able to pay the inheritance tax. It would appear from the grounds set out in Mr Harris’s notice of appeal (and in other correspondence on the Tribunal’s file), that Mr Harris released a substantial amount (possibly all) of the estate’s funds to Whitfield Harewood (the deceased’s brother and a beneficiary of the estate), on the understanding that Mr Harewood would pay the estate’s bills and taxes. Although the circumstances
35 are not entirely clear, it may be that this occurred following the sale of the deceased’s home, and the proceeds were then given to Mr Harewood. Mr Harewood subsequently travelled to Barbados (where he lives) and has not discharged the outstanding inheritance tax. Mr Harris has not been able to make contact with Mr Harewood.

Striking out

19. HMRC have applied for Mr Harris's appeal to be struck out under Rule 8 of the Tribunal's rules, on the grounds that it has no reasonable prospect of success.

20. Rule 8 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 provides as follows:

8 Striking out a party's case

(1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that failure by a party to comply with the direction would lead to the striking out of the proceedings or that part of them.

(2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—

(a) does not have jurisdiction in relation to the proceedings or that part of them; and

(b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

(3) The Tribunal may strike out the whole or a part of the proceedings if—

(a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;

(b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or

(c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

(4) The Tribunal may not strike out the whole or a part of the proceedings under paragraphs (2) or (3)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

[...]

21. From this it can be seen that a strike out under Rule 8(3)(c) (no reasonable prospect of success), as is the case here, involves the exercise of the Tribunal's discretion. In addition, Mr Harris must be given an opportunity to make representations. This was done in this case by giving Mr Harris the opportunity to address the Tribunal, although in the end he did not appear. However I did have the benefit of reading the correspondence on the Tribunal file which set out Mr Harris's grounds for his appeal.

22. Nowhere in the correspondence does Mr Harris challenge the amount of the inheritance tax determination, or that it was properly issued to him in his capacity as administrator of the estate.

23. Section 200, IHTA is clear. It is the personal representatives of the deceased (in this case, Mr Harris as administrator), who have the obligation to account for any inheritance tax arising in respect of the deemed transfer on death.

5 24. It is no defence to any inheritance tax determination that Mr Harris may have transferred the assets of the estate to a beneficiary on the basis that the beneficiary would be responsible for payment of the inheritance tax due. Nor is it a defence that Mr Harris was ignorant of his obligations, as a personal representative, to pay the inheritance tax owing.

10 25. Inevitably it follows (and I find) that Mr Harris's appeal has no reasonable prospects of success.

Conclusion

26. I therefore exercise the discretion under Rule 8(3)(c) to strike out Mr Harris's appeal.

15 27. 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
20 and forms part of this decision notice.

**NICHOLAS ALEKSANDER
TRIBUNAL JUDGE**

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RELEASE DATE: 17 APRIL 2018