



TC03299

Appeal number: TC/2013/06804

PENALTIES – late payment of self-assessment tax – was there a time to pay agreement in place – no – was there a reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ROBERT BRIGGS

Appellant

- and -

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

**TRIBUNAL: JUDGE LADY JUDITH MITTING
JOHN WILSON**

Sitting in Manchester on 17 January 2014

Roland Pickup, Chartered Accountant, for the Appellant

**Anthony J O'Grady, instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

DECISION

1. The Appellant was appealing against an assessment to a penalty in the sum of
5 £3,365 imposed by Notice dated 19 March 2013 for the late payment of his self-
assessment tax in the period 2011-12.

2. The Appellant did not appear so we heard no oral evidence but submissions
were made on his behalf by his accountant, Mr Roland Pickup.

3. Mr Briggs filed his Return, within time, on 24 January 2013. The Return
10 reported an income tax liability of £5,979.20 but as this was covered by previous
payments on account there was no outstanding liability. The Return also reported a
capital gain in the sum of £67,751.64, which said sum was still outstanding as at 31
January 2013. The Respondents offset against the CGT liability a small payment held
15 on account of £432.54, together with interest credits of £1.03, and as at the default
date of 3 March 2013 there remained outstanding the sum of £67,318.07. The non-
payment of this amount gave rise to the penalty, at the prescribed rate of 5%, which is
in issue before us.

4. By letter dated 30 January 2013, Mr Pickup wrote to the Respondents in the
following terms:

20 “My client is unable to make settlement of the amount due in the foreseeable
short term. Mr Briggs has been forced, under pressure from his bankers
(NatWest) to sell properties from his portfolio to reduce his borrowing facilities.

The properties sold have generated the capital gain shown on the return but the
bank, after initially saying maybe consideration would be given to release funds
25 for capital gains purposes, have taken all the funds from the sales to reduce
borrowings.

It was never my client’s intention to sell the properties, as this has also resulted
in a very substantial reduction in his income (see 2011 and 2012 tax return
comparisons). Further property disposals have been made in the current tax
30 year (one at a loss and one with a gain) further reducing available income.

In this situation my client has decided to put the remainder of his portfolio on
the market to generate sufficient funds to discharge the outstanding tax
liabilities. Some of these properties have loans with lenders other than NatWest
and will therefore release sufficient equity to pay the tax.

35 My client is continuing discussions with NatWest to ascertain if he can persuade
them to release, on the basis of his present income, £10,000 per annum to
contribute towards the outstanding tax situation, possibly on the basis of a
monthly payment of approximately £830. This would help cover interest costs
until the required property sales are achieved.

5 In the circumstances, would you be prepared to hold over the tax for say three months to allow the relevant sales to be progressed and negotiations with the bankers to continue? Once an appropriate signed contract is received for a sale, consideration could be given to providing a solicitor's undertaking to pay HMRC from the sale proceeds."

10 5. The Respondents replied by letter dated 20 February 2013 refusing to suspend the collection process but inviting Mr Briggs to make any voluntary payments or to contact the Respondents "to arrange a time to pay arrangement". As by 3 March 2013 there was no time to pay agreement in place and payment had not been received, the Respondents raised the penalty under appeal. Mr Pickup appealed to the Respondents against the imposition of the penalty by letter dated 4 April 2013, giving the grounds of the appeal as "... my client provided the information relating to the non-payment of the tax in my letter of 30 January 2013 ...". The appeal was rejected by letter dated 18 April 2013 on the grounds that Mr Briggs had given no reasonable excuse for non-
15 payment.

6. Mr Pickup requested a review of this appeal decision, the appeal being rejected by letter dated 4 September 2013. This letter of 4 September 2013 contained the following paragraph:

20 "I acknowledge that your agent contacted our Debt Management unit on 30 January 2013 and that you suggested a payment plan. However this was not accepted and this was stated clearly in our letter 20 February 2013. An acceptable payment plan was not in place within 30 days of the due date."

25 7. We were referred by Mr O'Grady to the Respondents' log of telephone communications between Mr Briggs/Mr Pickup and HMRC, the relevant ones of which we set out here:

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|----|-------------------|---|
| 30 | 19 February 2013: | HMRC advised Mr Pickup that Mr Briggs could contact them to make a TTP offer. |
| 35 | 1 March 2013: | Mr Pickup was told that no formal TTP could be agreed as no firm date had been put when the remaining amount could be paid off. Mr Pickup asked to speak to someone more senior who rang back later the same day and confirmed that for precisely the same reason no TTP could be agreed. |
| 40 | 27 March 2013: | Mr Pickup asked if a TTP at £500 per month would be acceptable and he was advised not. |
| 45 | 9/10 May 2013 | A TTP of £700 per month was agreed for 3 months and would then be reviewed. |

The Appellant's Case

8. The correspondence sets out no relevant background whatsoever and this was gleaned from Mr Pickup after questioning. We were told that Mr Briggs had a portfolio of approximately 15 properties. One was entirely free of charge; 4 or 5 were subject to an overall charge to National Westminster Bank by way of security against a borrowing facility and the remainder were individually mortgaged to individual lenders. Mr Pickup told us that Mr Briggs owed the Bank approximately £1.4 million. He initially told us that two properties were sold in the 2011/12 tax year, one at a profit one at a loss. However, it transpired that in fact, the one which we were told had been sold at a profit had in fact been sold to a company controlled by Mr Briggs, no cash payment for it being made. The value of this property was credited to Mr Briggs' loan account which was thereby extinguished. The second property sold during that year realised £242,000, with the entire proceeds going to the Bank pursuant to its charge. This property was the one sold at a loss. Two further properties were sold in 2012/13, one at a profit and one at a loss but generating an overall capital loss. The Bank again took the entire proceeds. The remaining properties in the Portfolio were put on the market in 2013.

9. Mr Pickup put forward a threefold case for Mr Briggs. First, he argued that there was in fact a TTP agreement in place by 3 March 2013. Secondly, if the Tribunal found that there had not been, then in any event Mr Briggs had a reasonable excuse for non-payment. Thirdly, the Respondents had acted contrary to their commitments under the Taxpayers' Charter.

10. In support of his argument that a TTP was in place, Mr Pickup argued that his letter of 30 January contained a clear offer of a TPP and by their letter of 4 September 2013, the Respondents acknowledged that this letter did "suggest a payment plan". This admission by the Respondents that a payment plan had been offered by the letter of 30 January was in clear contradiction to the Respondents' letter of 20 February in which they invited him to apply for a TTP plan.

11. In support of his argument that there was a reasonable excuse for non-payment, Mr Pickup stressed the efforts which Mr Briggs had made to pay the tax in question and that it was very much against his will that he was being forced by the Bank to sell his portfolio of properties. Mr Pickup contended that the Bank had led Mr Briggs to believe that they might release some of the sale proceeds from the charge in order that Mr Briggs could meet his CGT liability but they had in fact refused to do so. This meant that the insufficiency of funds which Mr Briggs was suffering was caused by an event outside his control, namely the refusal by the Bank to release the sale proceeds.

12. Mr Pickup referred us to section 4 of the Taxpayers' Charter which committed the Respondents to treating customers even-handedly and considering their financial difficulties. The Respondents, contended Mr Pickup, had given no thought to the financial difficulties which Mr Briggs was suffering. Had they given these any thought they would have agreed a TTP and it was unreasonable of them not to have done. Further section 9 of the Taxpayers' Charter committed the Respondents to doing all they could to reduce the costs of dealing with individual taxpayers. Here he

pointed to the costs incurred by the Respondents in all the telephone conversations going backwards and forwards before the TTP was eventually agreed.

13. Mr Pickup also argued that the Respondents just did not know what they were doing and that whilst he was attempting to negotiate a TTP, his client had a visit, out of the blue, by a Debt Collection agent requesting the immediate payment of the monies. When questioned it appeared that this agent had no idea of the background to the case or what was passing between Mr Pickup and HMRC.

Conclusions

14. Dealing first with the TTP, we find as a fact that there was no TTP in place until 10 May 2013. We accept that the terms of Mr Pickup's letter of 30 January constituted an offer to enter into a TTP but it is totally clear that this offer was never accepted by the Respondents. This much is clear from the correspondence but is made even clearer by the terms of the telephone conversions when Mr Pickup is repeatedly told that a TTP could be applied for. The telephone conversations read as a negotiation of sorts and on 10 May, agreement was finally reached for payments of £700 per month, to be reviewed within three months. As an aside, we would record that we were told that this TTP had been adhered to by Mr Briggs who had now sold a property and the net proceeds were on their way to the Respondents.

15. We also reject the contention that Mr Briggs has a reasonable excuse for non-payment. It cannot be overlooked that the charge to capital gains tax arose on a transaction designed by Mr Briggs to relieve him of the personal tax consequences of an outstanding loan to the company which he controlled. We cannot, on the evidence in front of us, accept that Mr Briggs had been let down by his Bank. There was no evidence to support the argument that the Bank had agreed or even offered to consider releasing the sale proceeds to pay the Respondents. Mr Pickup agreed when it was put to him that in fact in relation to the Bank charged properties there would be no equity until the final property had been sold after which the Bank would be repaid in full. There is no reason why the Bank, which was owed £1.4 million, should have released any monies over which it had a charge.

16. We also take Mr O'Grady's point that Mr Briggs would have known by April 2012 the approximate amount of the capital gain and the tax liability on it and yet we were told that the individually charged properties were not in fact put on the market until March 2013. We do not find that Mr Briggs had in fact done all that he could to make the payment.

17. We reject the argument that the Respondents acted contrary to the Taxpayers' Charter, not that this is in fact any defence to a penalty but we will address it in any event. There is no evidence before us in the conduct of the Respondents that they did not treat Mr Briggs even-handedly with other taxpayers. They clearly did have thoughts for his financial difficulties as witness the fact that they did enter into a TTP in May 2013. It is unfortunate that Mr Briggs was visited by a Debt Collector. It appears to us to be a case of the debt management unit not knowing what other departments were doing. This happens in large organisations and is not under any

circumstances to be excused but it does not have any effect on Mr Briggs' liability to the penalty.

18. In summary we find that there was no time to pay agreement in place and Mr Briggs does not have a reasonable excuse for non-payment. The appeal is dismissed.

5 19. 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
10 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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JUDGE LADY JUDITH MITTING
TRIBUNAL JUDGE

RELEASE DATE: 6 February 2014

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