



TC01919

Appeal number: TC/2009/10366

VAT PENALTY - section 60 Value Added Tax 1994 penalty- appellant's dishonest repayment claim of £60,038 – no invoices or other evidence to justify repayment – costs awarded against the appellant arising from her failure to respond to correspondence from the respondents or to attend the hearing.

**FIRST-TIER TRIBUNAL
TAX**

STELLA WALKER

Appellant

- and -

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

Respondents

**TRIBUNAL: DAVID S PORTER (TRIBUNAL JUDGE)
ANN E CHRISTIAN (MEMBER)**

Sitting in public at City Exchange, Leeds on 6 March 2012

No one appearing for the Appellant

Mr Josh Shields, of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. The Appellant, Miss Walker, appeals against a penalty of £60,038 raised by the Respondents (HMRC) on 4 February 2008 arising from her purchase of a supercar, an aeroplane and a piano acquired for the purposes of her business “Dreams in Reality”. She had not been able to produce appropriate invoices to justify the purchases but had asked for time to do so. HMRC say that Miss Walker never acquired the supercar, aeroplane and piano and that her repayment claim was dishonest.

2. Josh Shields (Mr Shields) appeared on behalf of HMRC and produced a bundle of HMRC’s evidence for the Tribunal. No one appeared for Miss Walker.

Preliminary matters

3. Having heard Mr Shields, of counsel, for HMRC and no one appearing for Miss Walker the Tribunal decided to hear the matter in the absence of Miss Walker. Miss Walker had indicated an unwillingness to attend due to ill-health. She had provided a statement of fitness for work from 31 January 2012 to 31 January 2013 which indicated that she was unable to work due to depression. HMRC wrote to Miss Walker on 29 February 2012 indicating that the Tribunal, in a letter dated 24 January 2012, had asked for a medical certificate confirming Miss Walker’s medical condition. As only the statement of fitness had been provided in response, the Tribunal required evidence of Miss Walker’s impaired state of mind or other condition at the time of the repayment claim in April 2007. The Tribunal were referred to a letter dated 19 March 2009 signed by Will Day, an officer from HMRC, outlining in excess of 20 attempts that had been made by HMRC to contact Miss Walker. On the one occasion, when she had responded, she had not provided any meaningful answers.

4. Judge Porter asked the Clerk to telephone Miss Walker using the telephone number on the Notice of Appeal. The Clerk had attempted to phone Miss Walker, but she advised that there was no response. In the light of the above, the Tribunal decided to hear the case under Rule 33 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the Rules) being satisfied that Miss Walker was aware of the hearing coming on today and that reasonable steps had been taken to ensure that she attended.

5. At the request of HMRC the Tribunal also decided, in the light of the correspondence, Miss Walker had capacity to deal with her VAT affairs as she, or those looking after her, had had sufficient warning to be able to provide the appropriate information as to her capacity, if they had so wished.

The facts

6. In a letter dated 18 January 2007, responding to a request from HMRC to her further application to register the business Miss Walker stated:-

“For the last thirty two years I have been employed by numerous companies in the catering industry, the hotel trade and latterly retail sales in a managerial capacity. In recent years I have been heavily involved in organising wedding fayres and wedding clothes hire...As a consequence of my employment I saw an opportunity in the market place to offer people their dream of a lifetime on their one and only special day and came

up with the idea of Dreams in Reality, ... I formed the idea of Dreams in Reality back in September 2005 and have been working in my own time since then, obtaining information and data on all the relevant services and companies I need to utilise and assist me.....I have made numerous purchases over the last fourteen months which include an exotic super car, a luxury six seater touring aircraft and a grand piano. Shortly I will add another super car, I believe a Ferrari 360 Spyder would be best for my needs as I have numerous requests for the use of one and this will be more in line with the business model in the future....I made my first taxable supply on 14 January 2007, value added tax was not charged as I am not registered for Value Added tax. .. “ She considered that her turnover for the first year would hopefully be around £150,000

7. In her notice of appeal dated 2 April 2009, however, and in a letter dated 7 May 2009 to Mr Day, the Local Compliance officer in Sheffield, Miss Walker indicated that having married in 2000 she had suffered an abusive relationship with her husband such that she had moved out of the matrimonial home to a small property in Ashby, near Scunthorpe. Her husband had traced her to that address and the police had been unable to assist her as there was no evidence of verbal abuse or physical damage. It appears that she lost her job at a department store in Scunthorpe in October 2006, in circumstances in which she did not obtain a good reference. We infer from that that the abuse had affected her ability to work properly.

8. As she had had difficulty obtaining employment, she decided to set up her own business “Dreams in Reality”. She had sought advice from Mr Peter Baker, an accountant, who had helped her to register for VAT on line. Mr Baker had all the paper work but unfortunately died shortly after her first VAT return and she had been unable to retrieve her paper work. She subsequently instructed Turner Warren, accountants, in Scunthorpe but they had done nothing nor responded to HMRC’s letters. From the information in the bundle, the business provided a “Luxury Spa day package” at the cost of £375. The business also appears to have provided transport in chauffeur driven supercars and flights in her aircraft or helicopter. The business was registered for VAT on 1 September 2005.

9. On 28 May 2007 Miss Walker submitted her first and only VAT Return for the period 04/07 in which she sought a repayment of £60,038. No information as to the super car, aeroplane and piano has been produced in the form of invoices or otherwise to HMRC. Nor have any year end accounts been provided. As a result HMRC refused the reclaim on 14 December 2007 and amended the return to zero. On 4 February 2008 HMRC issued a dishonesty penalty, under section 60 (2) (D) in the sum of £60,038 equal to the amount of VAT evaded, on the basis that Miss Walker had dishonestly sought to reclaim VAT to which she was not entitled.

The decision

10. Miss Walker has produced no evidence to justify the repayment. In fact the letter of 18 January 2007 appears to bear no relation to her subsequent account relating to the setting up of her business. We observe that a VAT repayment of £60,038 represents purchases of £343,074 ($£60,038 * 100 / 17.5$). It appears from the letter of the 18 January 2007 that Miss Walker was fully aware of what she was trying to achieve, although she does not seem to have appreciated that she was already registered for VAT. The subsequent references to the way she set up the business bear no relationship to her earlier letter. She reveals a depressive

state of health; that she had been working in a department store; and no evidence has been produced to show how she had raised the money to purchase the car, aeroplane and piano. She has indicated that she had only been trading for 14 months and it is not credible that she could have raised sufficient money, not only to purchase the car, aeroplane and piano but also to run them and make a reasonable living for herself. As she appears only to have purchased the super car, aeroplane and piano, at some considerable cost, we would have thought that she would have little difficulty in obtaining copies of the invoices. They are, after all, not items regularly purchased by small business. We have therefore concluded that the purchases never occurred and that the repayment claim was dishonest and that the penalty must stand.

11. HMRC asked that costs be awarded against Miss Walker under Rule 10 (1) (b) of the Rules on the basis that Miss Walker had acted unreasonably in bringing, and defending the proceedings. We note that the appeal had been commenced under the old Rules (The Value Added Tax Tribunal Rules 1986) in circumstances in which Miss Walker would have expected that no costs would be awarded against her, if she lost the appeal, as she has. The Rules came into effect in 2009 and this case has been heard today in 2012. In normal circumstances there would be no opportunity to award costs under the new rules unless the case was a complex case, which it is not. We refer to the decision of His Honour Mr Justice Warren in the Upper Tribunal decision of *The Commissioners for her Majesty's Revenue and Customs v Atlantic Electronics Limited* FTC/29/2011 in relation to the matters to be considered when deciding the appropriate costs regime. We have decided, however, that we can award costs against Miss Walker under Rule 10 of the Rules because of the consistent failure by Miss Walker to answer appropriate requests from HMRC and her decision not to attend the hearing today.

12. We direct that the Respondents submit their application for costs, if they intend to do so, to the Tribunal and to the Appellant within 28 days from the release of the decision. The Appellant shall reply within 48 days of the release of the decision, with the Respondents right to reply within 70 days of the release of the decision. The tribunal will decide the costs on the basis of written representations.

13. 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.

TRIBUNAL JUDGE
RELEASE DATE: 27 March 2012

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