

Docket: 2007-3710(IT)G

BETWEEN:

MARTHA LAWRENCE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard on February 8, 2010, at Winnipeg, Manitoba

By: The Honourable Justice C.H. McArthur

Appearances:

For the Appellant:                   The Appellant herself  
Counsel for the Respondent:       Melissa Danish

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**JUDGMENT**

The appeals from reassessments made under the *Income Tax Act* for the 2000, 2001, 2002 and 2003 taxation years are dismissed, with costs.

Signed at Ottawa, Canada, this 23rd day of September, 2010.

“C.H. McArthur”

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McArthur J.

Citation: 2010 TCC 480  
Date: 20100923  
Docket: 2007-3710(IT)G

BETWEEN:

MARTHA LAWRENCE,

Appellant,

and

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Respondent.

### **AMENDED REASONS FOR JUDGMENT**

#### **McArthur J.**

[1] These appeals are from reassessments of the Minister of National Revenue using the net worth method and adding to the Appellant's income the amounts of \$11,663.50, 10,969.19, \$190,997.63 and \$70,211.04 for the 2000, 2001, 2002 and 2003 taxation years, respectively. To these amounts, the Minister added interest and penalties pursuant to subsection 163(2) of the *Income Tax Act*.

[2] The unusual facts as presented by the Appellant and her husband and by the Minister's auditor are difficult to unravel and accept. No doubt the witness' memories were selective. I am left with the task of discerning the actual historical past. These appeals revolve around their facts.

#### **Brief Facts**

[3] The Appellant was involved with a Ms. Ann Didur ("Ann"), who appears to have been carrying on a scam or modified Ponzie scheme. She collected money from various people ostensibly for investment in penny stocks through a lawyer in Las Vegas, Nevada. For unknown reasons, she was unable to have her own bank

account and convinced or conned the Appellant to permit her to use the Appellant's bank account. With Ann, the Appellant and her husband met the lawyer involved in Las Vegas, Mr. Drange, who apparently convinced, at least the Appellant, of the legitimacy of the business. At the outset, some apparent profits were paid to the duped investors, but subsequently, they received no returns. The Canadian police authorities commenced an investigation. During this period, Ann committed suicide and there was no further evidence about the Las Vegas attorney.

[4] An edited version of the Minister's assumptions of fact is as follows. Throughout the relevant period, the Appellant was married to Virden Lawrence and they maintained joint bank accounts and lines of credit with their son. During the period, the Appellant had financial dealings with Ann which included many deposits to the Appellant's bank accounts. Ann, in fact, did her substantial banking through the Appellant's bank. For inexplicable reasons, Ann was unable to have her own banking facilities. That alone should have raised a serious red flag in the face of the Appellant.

[5] The Appellant made numerous bank deposits, most of which were paid out of her accounts, apparently to Ann. The Appellant did not include these deposits in her income tax returns. It is beyond my comprehension that there was no paper trail of any description to document the flow of over \$200,000 in and out of the Appellant's bank account other than the bank records obtained by the Minister. Set out in the Reply to the Notice of Appeal are the following assumptions:

- (j) the understated income in each year was determined by the net worth method ...
- (k) the Appellant received amounts from her financial relationship with Ann Didur of \$11,663.50 in 2000, \$10,969.19 in 2001, \$190,997.63 in 2002 and \$70,211.04 in 2003.

As well, the assumptions the Minister made in determining the Appellant's liability for the penalties under subsection 163(2) of the *Act* are:

- (a) ...

- (b) the Appellant has been involved in investment business ventures since at least 1998;
- (c) the Appellant previously had ownership in a Laundromat business;
- (d) the Appellant had experience in financing a business;
- (e) the Appellant had experience in investment transactions;
- (f) substantial amounts were flowing through the Bank Account and the Appellant's credit cards;
- (g) the Appellant did not maintain any books or records;
- (h) the Appellant was responsible for transferring funds between accounts and making withdrawals of cash from the Bank Accounts;
- (i) the Appellant was aware of her financial situation at a given time;
- (j) the Appellant should have known income was understated in the years under appeal as known personal expenditures amounted not less than \$76,900.34 in 2000, \$64,612.45 in 2001, \$210,071.61 in 2002 and \$94,231.75 in 2003.
- (k) the unreported income of \$11,663.50, in 2000, \$10,969.19 in 2001, \$190,997.63 in 2002 and \$70,211.04 in 2003 are material amounts.

[6] At pages 16, 19 and 20 of the transcript, the Appellant stated the following:

It got to the point where we were just really, really needing more money, so we said to give us our money back, just our money back, that's all we want. She says, well, no, because it's all tied up in the penny stock and it will all, you'll get it all back.

However, she didn't, she wanted – she said there was lots of opportunities to be made so she approached Terry Bell, who is one of my witnesses, and asked him if he wanted to put some money in, which he did and he through him, he was - - other people were investing through him because they wanted to get a good return back, which was supposedly going to be the return.

In the meantime though, I have to say before this started, we met the lawyer in the States who she was investing with, Mr. Drange was his name, and

he told us everything was fine. We went down to the States to meet him. Ann Didut took us down there. She wanted us to meet him. He said everything was fine. He said it was hitting the floor and we'd be fine.

Okay, so these people, all these other people put money in with, Terry's acquaintances, through my account. I took the money out and gave it to Ann Didur to invest.

He has since then paid all these people back all this money, because Ann Didur, I guess it's almost three years ago, took her life because the lawyer in the States took the money and he said there wasn't - - he shafted all of us, in other words. I don't know another way to put it. He took all our money and we got nothing.

And that's all, really that's all I can say at this point. So everybody's out their money. We are and we put in \$367,000. We got nothing back. She gave us a few dollars here and there over the time, but never anything to amount to what we put in.<sup>1</sup>

[7] Terry Bell testified. He is a successful businessman (herbalist) who advanced over \$100,000 to the Appellant for Ann's scheme. He stated, in part:

So I had this \$1,500. I give her another \$1,500 which is \$3,000, and that was the game. It started going a little bigger, the plot that Ann Didut kept coming back, she would come back with a bigger pot each time, but at the same time she would tell me the story of how she give Martha, put money in and Martha knew all about this and I felt, well, Martha's credibility was very good with us.

... boy, was I stupid, she can't have a bank account because the banks have suspended her bank account. So could I give it to Martha to put in the bank and Martha would go to the bank, which one of them she did right away, the CIBC in Selkirk. So I followed her there because I had to see if she was doing this, went to the bank, would get the money and then come back out with the money and give it to Ann, and it kept happening like that.

Finally, I even hired a private detective because she would see me following right? She was getting pretty smart. She was smart to start with. And the detective followed her and found out, she said she was going back to the lawyer to give the money. Well, the detective found out that she didn't go to the lawyer she just went to Sobeys, over to another place and then back home.

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<sup>1</sup> Transcript, pages 16, 19 and 20.

But did I believe that Martha kept that money? No, I know that because little things that went back and forth to find out if she did. She'd go right into the bank. I had another lady follow her, go into the bank where she was going and I would drive away and she would stand there, her name and Wanda, and she'd come out and get into the car and give all of the money over to Ann Didur in the car and they would sit in there and count it.

And one of the guys that followed her too was, his name was Marcel, and he said if this is a scam, it's a hell of a good one. Well, that's what it was.

But, like I say, I'm laughing, why am I - - why am I so stupid to keep on, because I'd invested some money and I thought by investing a little more I'd get at least my money back. I wouldn't be such a fool.

And I'm not meaning to laugh. I just thought, boy am I stupid. I'm just nervous.<sup>2</sup>

[8] Also, the Appellant's husband, Virden Lawrence, testified in part as follows:

... And I think we started with a couple thousand dollars and then we'd get a couple of dollars back, and then she would want more money and it started escalating.<sup>3</sup>

And then I started, her and my wife started carrying on with this investing, what was supposed to be investing what wound up to be a fraudulent thing, an she met some of these people, most of these people, I don't know. I just know Terry well.

And it just kept escalating and once I found out how much money we were in for, then we tried to find a way to get some money back, trying to get information from her and trying to get some documentation where the money went, and obviously we didn't get anywhere with that.

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<sup>2</sup> Transcript, pages 169, 170, 171 and 171.

<sup>3</sup> There was no evidence as to what amount they got back from Ann nor is there evidence of the Appellant reporting these amounts in her return.



subsection 152(4) of the *Act*. There was no challenge raised by the Appellant. In any event, there was sufficient evidence advanced through the Minister's auditor, Mr. Kozyra, together with the cross-examination of the Appellant, to open the statute-barred years of 2000 and 2001. Simple negligence is sufficient as opposed to gross negligence required to impose subsection 163(2) penalties. The Appellant would agree that she was negligent.

[12] She took thousands of dollars into and out of her bank account without identifying records of any kind other than the banks. Subsection 152(7) is the Minister's authority to use the net worth method of assessing, which is a last resort. Simply put, the Minister compares a taxpayer's net worth at the beginning of the year with his or her net worth at the end of that year. The amount of increase, if any after adjustment, is assumed to be the taxpayer's income. Presently, Mr. Kozyra obtained and carefully reviewed bank records of the Appellant, her husband and her son Parish, along with credit card information.

[13] The Appellant testified that money from investors was deposited to her account and would go to Ann the same day or shortly thereafter. This scenario did not happen with regularity. There is an instance when \$60,000 was deposited to her account, but it is difficult to follow when it was paid out. The Appellant explained that Ann gave her a cheque for \$15,000 that bounced and the Appellant deducted the \$15,000 from investment money she received. But this was months after the \$60,000 was deposited to her account. Earlier we had been told that Ann had no banking privileges.

[14] There is very little substantial evidence before me that corroborates the Appellant's testimony to satisfy her onus to counter the Minister's assumption that the unidentified deposits were paid to her by investors and were turned over promptly to Ann. The Appellant provided some bank drafts made payable to Ann, which are of little value since they deal with 1998 and 1999. The money in question was deposited in the Appellant's personal bank account and commingled with her own funds with no apparent attempt to keep them separate and identifiable. This is particularly surprising given that she was an experienced bookkeeper, her husband an experienced small business owner. She has an obligation under section 30 of the *Act* to keep proper books and records. Presently we have none.



[15] In cross-examination counsel for the Minister asked the Appellant to identify the amounts deposited to her personal bank account of approximately \$343,000 over the four-years in issue. She replied that she could not, but added that it is obvious that it was people's investments through my account.

[16] The funds were commingled with her personal funds and she stated that she did not know what was hers and what were the investors. She had no records. Mr. Bell was not sure what happened to the money he advanced to the Appellant for investment through Ann. His suspicions were alerted to the point where he followed the Appellant and Ann and witnessed what appeared to be a turnover of money from the Appellant. He also had a private investigator follow the two ladies. Although his investigations were limited, his evidence was consistent with that of the Appellant, and he trusted her believing that Ann would pay a 10-fold return on money advanced. She was not the first to be taken in by a get-rich scheme. With hindsight, as incompetent and fairytale like it appears, I do not doubt that some of her story is accurate. The problem is trying to sort out fact from fiction.

[17] The Appellant's husband's evidence was of little assistance. He stated that his wife looked after the banking.

[18] The Appellant agreed with the Minister's assumption of the facts, but for 11(g), (j) and 12(j). The Appellant stated that Ann destroyed most of the documentation.

11(g) in reporting her income for the 2000, 2001, 2002 and 2003 years the Appellant failed to include all of the income she received in those years;

...

11(j) the Appellant received amounts from her financial relationship with Ann Didur of \$11,663.50 in 2000, \$10,969.190 in 2001, \$190,997.63 in 2002 and \$70,211.04 in 2003.

...

12(j) the Appellant should have known income was understated in the years under appeal as known personal expenditures amounted not less than \$76,900.34 in 2000, \$64,612.45 in 2001, \$210,071.61 in 2002 and \$94,231.75 in 2003;

These statements are dealt with in these reasons.

[19] I have no difficulty concluding that the Minister was justified in assessing pursuant to subsection 152(7) and using the net worth method given the Appellant's lack of records and documentation explaining the more than \$300,000 that passed through her account over the relevant years.

[20] The Appellant and her husband are presently in their mid 60s. The Appellant's evidence, either as admitted or as I interpret it, includes the following. She, Mr. Bell and others were attracted, if not mesmerized, by the promise of Ann that they would obtain a 10-fold return on their investments. Nathan Grange was the US lawyer. The Appellant and her husband met him in Las Vegas. Ann paid their way.

[21] As stated Appellant's credibility was enhanced by a) her husband; b) Terry Bell; c) the fact that she and her husband are all but financially destitute; d) they lost their home; and e) the letter of Ann. I accept that Ann was very convincing. The Appellant stated "You had to know Ann". She had seen penny stock certificates which Ann kept. If the penny stocks were purchased with the Appellant's money it remains a mystery why the Appellant could not have possession of the certificate.

[22] The conclusion Mr. Kozyra came to after his careful analysis is that even if we accepted the Appellant's explanation that she paid out all the money at issue to Ann, there remained \$120,000 unexplained dollars in her account for her personal living expenses. The Appellant's answer was that she could not explain this nor could she follow Mr. Kozyra's evidence. Accepting Mr. Kozyra's evidence, although at times it was difficult to follow, I have little else to go by, and he and his colleagues concluded that \$120,000 of the mystery deposits was used by the Appellant and her husband for their personal expenditures and was not paid out to Ann for investment purposes. This leads me to conclude that she was being paid for banking efforts.

[23] The Appellant's primary position is the following, taken from her Notice of Appeal:

All monies that were deposited to our bank account were withdrawn the same day and given to Ann Didur for investment purposes in penny stock in the U.S.A.

I find as a fact that not all monies deposited to her account were withdrawn the same day and no money was invested in penny stock.

[24] The Appellant's general evidence, her lack of specifics with respect to the deposits and withdrawals from her bank account together with the lack of any bookkeeping is bewildering. What we are left with is that the Appellant entered into a get rich scheme with a friend, Ann, now deceased, and a US lawyer who remains a mystery. I accept that Ann and/or the lawyer swindled the Appellant and others of an amount that remained unknown. The Appellant's position is that she was simply a conduit or banker for Ann and when she received money she immediately turned it over to Ann. The evidence refutes this. First, \$120,000 of the unexplained deposits remained in her account and was converted to her personal use. Secondly, if she was simply Ann's banker, why did she go with her husband to visit the U.S. attorney in Las Vegas. Thirdly, Mr. Kozyra clearly established that much of the unexplained money that was not turned over within a few days as she stated. For months, some of the money was not paid out and some (\$120,000) not at all. While I am sure that some of the amount assessed is legitimately not properly added to the Appellant's income, we are left with no means to calculate what this amounts to. There are too many inconsistencies in the Appellant's evidence to accept that she was an innocent participant without compensation. I am not prepared to guess what may be accurate.

[25] The Appellant was a bookkeeper most of her working days, yet she kept no records or other documentation. She also commingled investment trust funds with her and her husband's personal funds and did not know what belonged to whom. I do not believe the man on the street (the reasonable man) would accept the Appellant's tale. I have no doubt that the Appellant's evidence was a combination of fact and fiction. Her memory was selective and did not always coincide with the historical past.

[26] As to penalties, the Appellant has not discharged her onus of establishing that the Minister's assumptions in paragraph 12 of the Reply were incorrect. She had experience in record keeping and surely knew the importance of separating other people's money from her personal funds.

[27] In conclusion I find:

16. ... that the Appellant failed to include in her income the amounts of \$11,663.50 in 2000, \$10,969.19 in 2001, \$190,997.63 in 2002 and \$70,211.04 in 2003.
17. In the filing of her income tax returns for the 2000, 2001, 2002 and 2003 years, the Appellant knowingly, or in the alternative under circumstances amounting to gross negligence, in carrying out a duty or obligation imposed under the Act, made or participated in, assented to or acquiesced in the making of false statements or omissions, as a result of which the tax that would have been payable assessed were less than the taxes in fact payable, within the meaning of subsection 163(2) of the *Act*. ... that the penalties pursuant to subsection 163(2) of the *Act* have been properly assessed.
18. ... that in filing her income tax returns for the 2000 and 2001 years, the Appellant made misrepresentations that were attributable to neglect, carelessness or wilful default, by not including the amounts of \$11,663.50 in 2000 and \$10,969.19 in 2001. Therefore the Minister was entitled to reassess the Appellant beyond her normal reassessment period pursuant to subsection 152(4) of the *Act*.<sup>5</sup>

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<sup>5</sup> Taken from the Reply to the Notice of Appeal.

[28] The appeals are dismissed, with costs.

Signed at Ottawa, Canada, this **4th** day of **January, 2011**.

“C.H. McArthur”

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McArthur J.

CITATION: 2010 TCC 480

COURT FILE NO.: 2007-3710(IT)G

STYLE OF CAUSE: MARTHA LAWRENCE and  
HER MAJESTY THE QUEEN

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: February 8, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice C.H. McArthur

DATE OF JUDGMENT: September 23, 2010

DATE OF AMENDED  
REASONS FOR JUDGMENT: January 4, 2011

APPEARANCES:

For the Appellant:	The Appellant herself
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