



Appeal number: CA/2014/0019

**FIRST-TIER TRIBUNAL (CHARITY)
GENERAL REGULATORY CHAMBER**

KATHLEEN ATHERTON

Appellant

and

**THE CHARITY COMMISSION FOR
ENGLAND AND WALES**

Respondent

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in Chambers on 17 December 2014

STRIKE OUT

1. The Respondent applied for a strike out of these proceedings on 25 November 2014, on the basis that they have no reasonable prospect of success under rule 8 (3) (c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2008.

2. The Appellant is entitled to an opportunity to make representations on a proposed strike out under rule 8 (4) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2008.

3. On 26 November 2014, I directed that the Appellant was to provide the Tribunal with her representations on the proposed strike out by 10 am on Monday 9 December 2014 and that no further steps in these proceedings were required to be taken by either party until I had ruled on the strike out application.

4. On 4 December, the Appellant's representative Mr Alman applied for a stay of the Respondent's application in order to have a "breathing space" in which to prepare his case. On 8 December he contacted the Tribunal to say that his mother was ill and he had to go to see her but would return to London on 11 December. He asked for the Tribunal not to make a decision before 16 January 2015. The Tribunal replied, asking him to provide his comments on the strike out application by 10 am on Monday 15 December 2014, but he has not done so and he has not communicated with the Tribunal since 8 December.

5. The Respondent opposes the application for a stay, pointing out that a delay in considering the strike out application would impact upon its ability to progress its inquiry into the charity concerned. It points out that it is open to the Appellant to instruct an alternative representative if Mr Alman is unavailable.

6. I assume that Mr Alman has discharged his obligations to the Tribunal as a representative in these proceedings, that he has kept the Appellant informed of developments in her appeal and that she has made an informed decision to retain him as her representative, notwithstanding his stated inability to progress her case at this time. The Appellant has not contacted the Tribunal directly.

7. Having taken into account the overriding objective and the requirement for the Tribunal to avoid delay so far as is compatible with the proper consideration of the issues, I do not consider it reasonable for Mr Alman to request a stay of over a month's duration before considering the Respondent's application. In the circumstances I have concluded that it would be fair and just to proceed to determine the Respondent's application now and in the absence of representations from the Appellant.

8. The Appellant's Notice of Appeal concerns an Order under s.52 of the Charities Act 2011, directing her to produce certain information to the Charity Commission concerning a charity known as Thrift Urban Housing Limited (1072534). When considering such an appeal, the Tribunal must, in accordance with s. 320 of the 2011 Act, consider whether the information or document required (a) relates to a charity and (b) is relevant to the discharge of the functions of the Charity Commission. Under s. 320 (3) of the 2011 Act, the Tribunal may allow such an appeal only if it is satisfied that conditions (a) or (b) are not satisfied. The Respondent's case is that the information required does relate to a charity, that the Order is directed to the Appellant as a charity trustee of that charity, and that the information requested is necessary for it to progress its on-going statutory inquiry into that charity.

9. The Respondent submits that the Appellant's grounds of appeal have no reasonable prospect of success because they do not address the narrow statutory grounds on which the Tribunal could allow an appeal against a s. 52 Order.

10. I note that the grounds of appeal submitted to the Tribunal do not suggest that conditions (a) or (b) are not satisfied. They refer the Tribunal to the grounds of appeal in respect of another case before the Tribunal (Thrift Urban Housing and Peter Alman) and suggest that the information required by the s. 52 Order has been requested by the Charity Commission for the purposes of entrapment, and that the Commission is knowingly trying to erode the principle of privilege against self-incrimination.

11. The Respondent has referred me to the Upper Tribunal’s decision in *HMRC v Fairford Group (in liquidation) and Fairford Partnership Limited (in liquidation)* [2014] UKUT 0329 (TCC), in which it is stated at [41] that

...an application to strike out in the FTT under rule 8 (3) (c) should be considered in a similar way to an application under CPR 3.4 in civil proceedings (whilst recognising that there is no equivalent jurisdiction in the First-tier to summary judgement under Part 24). The Tribunal must consider whether there is a realistic, as opposed to a fanciful (in the sense of it being entirely without substance) prospect of succeeding on the issue at a full hearing...The Tribunal must avoid conducting a “mini-trial”. As Lord Hope observed in *Three Rivers* the strike out procedure is to deal with cases that are not fit for a full hearing at all.

12. Applying this approach, I have concluded that the Appellant’s prospect of success in this appeal falls into the “fanciful” rather than “realistic” category of cases. Parliament has set narrow statutory criteria for allowing an appeal against an Order under s. 52 of the Charities Act 2011, and the Appellant has not raised an argument in relation to those criteria. I have concluded that it would not be a proportionate use of the Tribunal’s and the Respondent’s resources to allow the case to continue to a hearing in these circumstances. This appeal is, accordingly, now struck out.

13. There is no right to apply for reinstatement of an appeal that is struck out under rule 8 (3) (c), although there is a right to apply for permission to appeal to the Upper Tribunal within 28 days of the date appearing below.

ALISON MCKENNA

PRINCIPAL JUDGE

DATE: 17 December 2014

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