



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

Appeal number: CA/2017/0004

DR MO JOHNSON

Appellant

- and -

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

**Tribunal: Judge Alison McKenna
Sitting in Chambers on 1 December 2017**

RULING

Upon the Tribunal having struck out this appeal on 26 October 2017

Upon the Tribunal receiving an application from the Appellant on 24 November 2017 for reinstatement of the appeal pursuant to rule 8 (5) and/or for the strike out to be set aside under rule 41 (1) (a) and (b) and (2) (a) and (d)

IT IS DIRECTED as follows:

1. All applications are refused.

REASONS

1. The rule 8(5) application is misconceived. It applies only where a strike out is made under rules 8 (1) or 8 (3) (a). In this case the strike out was made under rules 8 (2) (a), 8 (3) (b) and 8 (3) (c).

2. A Notice of Appeal was filed on 26 April 2017. It was an appeal against the Respondent's production order under s. 52 of the Charities Act 2011. The Grounds of Appeal failed to specify the statutory grounds for such an appeal. The Tribunal made case management directions on 26 April, 3 August, 25 August, 8 September, 11 September, and 18 October. It also wrote to the Appellant's lawyer on 13 October to ask if he was still acting, as he had not responded to earlier e mails. The Tribunal found on 26 October that it had no jurisdiction to determine the appeal, that the appeal had no reasonable prospect of success, and that the Appellant had failed to co-operate with the Tribunal to such an extent that it could not fairly and justly determine the appeal.
3. Rule 41 of the Tribunal's Rules allows a Decision, or part of it, to be set aside where it is in the interests of justice to do so and one of the criteria in rule 41 (2) (a) to (d) are met. The criteria focus on procedural irregularities. The procedural irregularity relied on here is the Tribunal's alleged failure to serve on the Appellant its Directions of 8 September.
4. The Appellant provided the Tribunal in the Notice of Appeal under rule 13 with its charity e mail address, beginning "info". The Tribunal was entitled under rule 13 (5) to use this address for all further correspondence. The Appellant later appointed a lawyer who, when he eventually complied with rule 11(2) by providing the Tribunal with his contact details on 4 September (having been directed to do so by 25 August), used a second charity email address beginning with "legal". The lawyer, Mr da Rocha, attended a telephone directions hearing on 25 August and told me he was a qualified solicitor and was employed as the Appellant's in-house lawyer. He did not amend the contact details of the Appellant for the purposes of rule 13. He agreed to amend the grounds of appeal and to discuss case progression directions with the Respondent.
5. Mr da Rocha later applied for, and was granted on 11 September, an extension of time in which to provide the amended grounds of appeal. These were due by 15 September but have only now been provided, alongside the application for reinstatement. I refuse to admit them. Several other deadlines in the Directions of 8 September were missed, so that the Tribunal wrote to Mr da Rocha directly on 13 October to ask him if he was still acting for the Appellant. There was no reply. On 18 October, the Appellant was asked (in e mails sent to both charity e mail addresses) to show cause why the appeal should not be struck out. Again, there was no reply. On 26 October, the appeal was struck out.
6. I note that the Tribunal's Directions of 8 September were sent to the "info" e mail but the file shows that they were not also copied to the "legal" e mail, although all the other communications I have mentioned above were, as a matter of courtesy, sent to both email addresses. The Directions of 8 September consisted of an agreed set of directions aimed at bringing this matter to an early hearing. It follows that the Appellant's solicitor, having co-drafted and agreed to all the dates included in the Directions, was fully aware of them. As an employed in-house lawyer, I would in any event expect him to be able to access and be aware of communications sent to the Appellant's general charity e mail address. Notwithstanding the Tribunal's oversight, I find that the Directions of 8 September were nevertheless duly served on the Appellant in accordance with rule 13.
7. The Appellant has filed a witness statement signed by Mr Johnson on 24 November in which it is said that there has been a strain to his physical and mental integrity caused by

8. I do not accept that the Tribunal's failure to copy the 8 September Directions to the "legal" e mail address in addition to the "info" e mail address amounts to a procedural irregularity which requires the strike out to be set aside in the interests of justice. I refuse to set aside my ruling of 26 October.
9. For these reasons, this appeal remains struck out and will not proceed any further.

(Signed)

1 December 2017

Alison McKenna

Principal Judge

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