



**IN THE FIRST TIER TRIBUNAL (CHARITY)
GENERAL REGULATORY CHAMBER**

**Appeal No.
CA/2014/0011
CRR/2014/0007**

BETWEEN:

THRIFT URBAN HOUSING LIMITED

Appellant

- and -

**THE CHARITY COMMISSION FOR ENGLAND AND
WALES**

Respondent

TRIBUNAL: TRIBUNAL JUDGE PETER HINCHLIFFE

DECISION ON APPLICATION FOR PERMISSION TO APPEAL

DECISION

The request for an extension of time to submit the application for permission to appeal is refused.

REASONS

1. The Appellant in these appeals apply for permission to appeal against the decision of the First-tier Tribunal (Charity) dated 15th May 2015 and issued to the parties on 18th May 2015. In the application for permission to appeal to the Upper Tribunal received by the Tribunal on 14th July 2015 the Appellant explained the scope of their appeal and set out the grounds of appeal that they wish to pursue. The Appellant also sought leave to appeal out of time and requested an extension of time for the submission of the appeal

2. I have considered in accordance with Rules 43 and 44 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 whether to review the decision in this appeal but decided not to undertake a review as I am not satisfied that there was an error of law in the decision.
3. By virtue of Rules 42(2) and 42(5) an application for permission to appeal to the Upper Tribunal must be sent or delivered to the Tribunal so that it is received no later than 28 days after the Tribunal sent the written reasons for the decision to the person making the application. The application must identify the alleged error or errors of law in the decision and state the result the party making the application is seeking.
4. The Appellant acknowledges that the application has been submitted more than 28 days after the date on which the written reasons for the decision of the Tribunal had been sent to and received by them. The written reasons of the decision were received by the Appellant on 18th May 2015 after the outcome of the decision had first been notified to the parties on 17th April 2015.
5. The Appellant explained in their application that the delay had arisen for the following reasons:
 - (i) A decision of all of the trustees of the Appellant was required to submit the application and this took some time.
 - (ii) The consent of the Respondents to the release of the Appellant's funds in order to pay for legal advice was not given until 16th June 2015 and not communicated to Counsel for the Appellant until 18th June 2015.
 - (iii) Counsel for the Appellant had misunderstood the deadline for submitting the application in the light of correspondence from the Respondent.
 - (iv) Counsel for the Appellant was unable to start work before the Respondent had agreed to release the funds required to pay his fees. This was because the trustees of the Appellant lacked the funds to pay such fees and Counsel's experience at the earlier stages of this case was that the Appellant had had great difficulty in obtaining the release of funds from the Respondent in order to pay legal fees.
6. I have considered the application for an extension of time for the submission of the application and have taken account of the submissions of the Respondent and the Appellant on these issues. I have decided that it should not be granted for the following reasons:
 - (i) Some delay in securing a decision from all of the trustees of the Appellant is understandable; however a delay of over three weeks before seeking authority to spend the Appellant's funds on legal advice has not been justified by reference to any particular difficulty or problem that the trustees had to overcome before such decision could be made.
 - (ii) In the decision the Tribunal expressed its concern over the power that the Respondent has been given to control the Appellant's ability to obtain and pay for legal advice when it is seeking to challenge the Respondent and stated that;
"in the interest of ensuring that these proceedings are determined fairly and justly it is appropriate to exercise considerable care in order to ensure that the Appellants are not disadvantaged by the exercise by the Commission of the power that it has been given over the conduct of their case."

The Respondent stated that they did not receive a request for the release of funds to pay Counsel for the Appellant until 10th June 2015. The release of funds was authorised on 16th June 2015. Counsel for the Appellant does not dispute these dates and acknowledges that;

“It was not contended that the Respondent had unnecessarily delayed the funding of the appeal”

In the circumstances and allowing for the care that needs to be taken to ensure that the Appellant is not disadvantaged by the Respondent’s ability to control their access to their legal advisers, the delay of six days attributable to the Respondent has played only a small part in delaying the submission of the application.

- (iii) Counsel for the Appellant has confirmed that he misread correspondence from the Respondent and had confused the 42 day timescale for appealing from the Respondent’s most recent decision with the 28 days required to appeal against the Tribunal’s decision. Counsel argues that the Appellant should not be penalised for his error. I accept that it could be unjust for a party to lose the ability to appeal against a decision solely due to the shortcomings of their professional adviser. However, in this case the delay does not appear to be solely attributable to the professional advice that the Appellant was given. The signed application for permission to appeal was submitted 56 days after the decision had been received.

- (iv) I have considered what the consequences will be of either refusing, or agreeing, to extend the time for submitting the application. The Tribunal’s decision relates to a review of the decision by the Respondent to open an inquiry into the Appellant under section 46 of the Charities Act 2011 and an appeal against the decision by the Respondent to issue an order under section 76 (3) (d) of the Charities Act 2011 requiring the Appellant’s bank not to part with any property of the Appellant without the Respondent’s consent. The inquiry by the Respondent has continued whilst these proceedings took place and the order has remained in force during this time. The order is subject to periodic review by the Respondent. I note that if the extension of time is not granted, the Appellant will continue to be able to respond to the issues and concerns that are raised in the course of the inquiry and it will continue to be able to argue that the order should not continue in place and such arguments must be considered by the Respondent at their periodic review of the order. I find that the Appellant is not likely to suffer irrevocable prejudice if the extension of time and consent for the permission to appeal are not granted. If an extension of time is granted and either the Upper Tribunal or I were to grant permission to appeal, the Respondent will still be able to continue the inquiry and maintain the order in place whilst an appeal is in progress. I find that the Respondent is also not likely to suffer irrevocable prejudice if an extension of time is granted. It is highly likely that were any appeal to proceed it would consider many of the same factual and legal issues that have arisen, or which will arise, in the course of the inquiry. The Appellant retains the right to pursue a legal challenge to any conclusion that the Respondent may come to at the end of the inquiry. I conclude that, in all of the circumstances of this case, it is in the best interests of both parties and in the public interest for the inquiry to be completed as soon as is practical.

- 7. Having considered the application for permission to appeal, the request for an extension of time, the submissions of both parties and all of the circumstances of these appeals, I conclude that the request for an extension of time in which to submit the application for permission to appeal should be refused and that there is no adequate basis for concluding that it is necessary to depart from the 28 day deadline set out in

the Tribunal rules. As a consequence of this decision and pursuant to Rule 42 (3) (e), I do not admit the application for permission to appeal.

Tribunal Judge

Peter Hinchliffe

Dated 28th July 2015

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