



IN THE FIRST-TIER TRIBUNAL

Case No. CA/2013/0014

GENERAL REGULATORY CHAMBER

ON APPEAL/APPLICATION FROM:

Charity Commission decision reference: C-356462-2JFR

Dated: 17 December 2013

REGENTFORD LIMITED

Appellant

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

Determined on the Papers

Date of decision: 25th April 2014

Peter Hinchliffe (Tribunal Judge)

A'isha Khan (Member)

Manu Duggal (Member)

Subject matter: Appeal against decision of the Respondent to reject the Appellant's request that it be removed from the Register of Charities England (the "Register").

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is hereby dismissed

REASONS FOR DECISION

Background to the Appeal

1. The Appellant (“Regentford”) is a company incorporated on 24th July 1990. The evidence before the Tribunal indicated that its objects are (1) for the advancement of religion in accordance with the Orthodox Jewish Faith (2) the relief of poverty and (3) for such other purposes as are recognised by English law as charitable.
2. These objects are charitable and Regentford was registered with the Respondents (the “Commission”) on 10th January 1991.
3. On 29th June 2010 Regentford was dissolved and struck off the Register of Companies.
4. On 22nd September 2010 the Commission removed Regentford from the Register.
5. On 5th January 2011, Mr Anthony Markovic, previously a director of Regentford, submitted a Claim Form applying for Regentford to be restored to the Register of Companies.
6. On 18th January 2011 the High Court accepted this application on the basis of certain undertakings from Mr Markovic and ordered that Regentford be restored to the Register of Companies.
7. On 13th July 2011 the Commission wrote to Regentford in the following terms:

“It has come to the attention of the Charity Commission that the charity Regentford Limited, which was removed from the Central Register of Charities on 22nd September 2010, has been restored to the Register of Companies on 18th February 2011.

Furthermore, we understand that the reason for being restored is to undertake legal proceedings.

As a consequence of the charity being operational it has been restored to the Register of Charities”

8. Regentford wrote to the Commission on 19th June 2013 pointing out that it had no income and was not operating and did not envisage that it would re-commence operations in the future and requested that it be removed from the Register in accordance with section 34 of the Charities Act 2011 (the “Act”).

The Decision of the Commission

9. The Commission's decision was set out in their letter of 17th December 2013 to Regentford and stated that; "*its decision is that the charity will remain on the Register as it is not a charity which has ceased to exist or to operate*". The Commission stated that its decision was made under section 34 of the Act and the reasons for its decision were set out in more detail in some of the pleadings it had submitted in an earlier Tribunal case between Regentford and the Commission.

The Appeal

10. Regentford submitted an appeal against the Commission's decision on 17th December 2013 and repeated that it had no income and was not operating and did not envisage that that it would re-commence operations in the future. It said that a charity that was no longer functioning as a charity must be removed from the Register. It went on to state that the Commission had erred in basing its decision on the reasons set out in the earlier Tribunal proceedings as it had failed to take account of the submissions and information by Regentford after the date of those proceedings and in particular its letters of 16th January 2012 and 19th June 2013. In addition it pointed out that it only had one trustee and a quorum of three was required in order to carry out any business. Regentford pointed out that the provisions of section 34 are mandatory and the Commission has no discretion not to remove an entity from the Register when the conditions in section 34 are met.

11. Section 34 (1) of the Act reads as follows:

"34 Removal of charities from register

(1) The Commission must remove from the register –

(a) any institution which it no longer considers is a charity, and

(b) any charity which has ceased to exist or does not operate."

The Powers of the Tribunal

12. The powers of the Tribunal in relation to this Appeal are derived from the entry in the table in Schedule 6 to the Act in respect of a:

"Decision of the Commission under section 30 or 34 –

.....

(b) to remove or not to remove an institution for the register".

13. The Tribunal may dismiss the Appeal. If it allows the Appeal, the Tribunal has the following power:

"Power to quash the decision and (if appropriate)-

(a) *remit the matter to the Commission;*

(b) *direct the Commission to rectify the register.”*

14. Under section 319(4) of the Act the Tribunal is required to consider afresh the decision or order appealed against and may take into account evidence which was not available to the Commission.
15. Regentford and the Commission consented to the Appeal being determined without a hearing and the Tribunal was satisfied that it could properly determine the issues without a hearing. The Appeal has therefore been determined on the papers.

The Issues for the Tribunal to Determine

16. In order to determine the Appeal the Tribunal needs to assess, on the basis of the submissions and evidence of the parties, whether at the date of the decision Regentford had ceased to exist or did not operate.
17. The Tribunal found that as a matter of fact Regentford existed at the time of the decision. It was a properly constituted company with separate legal personality. Regentford did not submit any evidence or arguments to the contrary.
18. The Tribunal considered all of the evidence and the arguments from the parties on the issue of whether or not Regentford operated at the time of the decision. It was clear that Regentford was engaged in very limited activity at that time and that it had, for a number of reasons, few resources and little capability to act or to carry out the activities which would be expected of a normally functioning charity. However, for section 34(1)(b) to apply the Tribunal had to find that it did not operate at all. On the facts as they were presented to the Tribunal, Regentford was functioning to the extent of being able to carry out the litigation envisaged in the Order of the High Court of 18th February 2011, being able to appoint Mr Markovic as a trustee and administer his resignation and in February 2012 being able to accept the transfer of shares from Mr Markovic in a company that Mr Markovic and Regentford assert was always beneficially owned by Regentford. This very low level of activity and the very limited resources available to Regentford may be insufficient for it to continue as a viable charity, nevertheless, the Tribunal considered that it was sufficient to prevent the Commission from concluding that Regentford did not operate at the time of the decision. Therefore section 34(1)(b) of the Act did not apply and the Commission was not obliged to remove it from the Register.
19. In reaching this decision, the Tribunal considered the arguments of Regentford and came to the following conclusions:
 - The objects of Regentford make it a charity. It is not required that all of its activities must be directly related to the achievement of its primary charitable purpose for it to be operating as a charity. It was sufficient that it was operating or surviving at an administrative level for it to be operating to the extent required by section 34(1) of the Act.

- It was not necessary to form a view on the future of Regentford. Regentford invited the Tribunal to conclude that, in practical terms; it could never function effectively as a charity as it would never have any assets and had insufficient trustees. The Commission invited the Tribunal to conclude that the litigation in which Regentford was engaged must have some possibility, however remote, that Regentford may gain some funds in the future. Such funds must be charitable assets and must be expended in pursuance of the Regentford's charitable purposes. The Tribunal determined that Regentford was operating at a low level at the time of the decision and therefore section 34(1)(b) did not apply at that time.
- The undertakings given by Mr Markovic in order to secure the order of the High Court of 18th January 2011 that Regentford be restored to the Register of Companies did not preclude Regentford from pursuing its charitable purpose(s). These undertakings were given by Mr Markovic and did not act as a legal constraint on Regentford and the letter of 21st June 2013 from the Treasury Solicitors to Mr Markovic was consistent with this conclusion.
- A charity's ability to respond to a statutory inquiry, such as the Commission was conducting into Regentford's affairs, and its ability to pursue litigation with the Commission, could be relevant to the application of section 34(1)(b) in certain circumstances, but was not part of the Tribunal's reasoning in reaching this decision.
- A charity's inability to operate or carry out essential activities due either to the omissions of its trustees or the resignation of trustees, is unlikely to be decisive in deciding the issue of whether the Charity does or does not operate. This is particularly unlikely if this inability is either capable of being remedied and/or is intended, in whole or in part, to achieve the object of removing the charity for the Register. In this case the Tribunal restricted itself to considering whether the fact that there was only one trustee for Regentford and not the three required, meant that it did not operate and found that this was not the case.
- The Tribunal also considered Regentford's argument that the test in section 34(1)(b) was whether it could operate so as to advance the objects set out in section 3 of the Act and to do so in a manner that permitted it to provide a public benefit as required by section 4 of the Act. The Tribunal decided that Regentford's objects were charitable and its limited ability to act did not mean that it was not operating as a charity. The actions of pursuing the litigation, appointing a trustee and accepting the transfer of shares were, if carried out in good faith, compatible with the pursuing the charitable purposes of Regentford.

Decision

20. At the time of the Decision, the conditions set out in section 34 (1) of the Act did not apply in respect of Regentford and the Commission was not required to remove Regentford from the Register.

Signed:

**Peter Hinchliffe
Tribunal Judge**

Dated: 25th April 2014