

**FST FILE #P152-2001
Decision No. U0152-2001-1**

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent (a "Notice") by the Superintendent of Financial Services (the "Superintendent") with respect to an application for withdrawal of money from a life income fund, a locked-in retirement account or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act.

REASONS

1. The Applicant in this matter made an application to the Superintendent, on the basis of financial hardship, for access to funds associated with a locked-in account of which she was the owner. The particular ground of financial hardship on which the Applicant relied was that set out in paragraph 2 of subsection 87(1) of Regulation 909 (the "Regulation"), adopted pursuant to the Act, namely that her husband had received "a written demand in respect of a default on a debt that is secured against [her] principal residence and [she] could face eviction if the debt remains unpaid." The written demand that was alleged to fit this description was contained in a letter dated January 16, 2001 from the Canada Customs and Revenue Agency (the "Agency") to the Applicant's husband giving "final notice" of an income tax debt of approximately \$33,000 that, if not paid or the subject of a notice of objection, would result in "legal collection action, such as garnishing your income and directing the sheriff to seize and sell your assets." The Applicant maintained that, having regard to the income and assets of her spouse, the only way that the debt could be fully satisfied would be through the seizure and sale of their principal residence.
2. The Superintendent proposed to refuse the application, by a Notice dated February 15, 2001, on the grounds that the letter from the Agency did not indicate that the income tax debt

was secured against the principal residence of the Applicant and that she could face eviction if the debt were to remain unpaid.

3. The Applicant made a Request for a Hearing by this Tribunal in respect of the Superintendent's proposal set out in that Notice. In the meantime, the Agency agreed to hold off taking action to enforce the income tax debt pending the outcome of the Request for Hearing.

4. Under the *Income Tax Act* (Canada), an income tax debt is not secured, in specific terms, against any of the assets of the debtor. If the Minister of National Revenue certifies the debt as an unpaid amount under the Act, the debt becomes enforceable as a judgment debt if and when the certificate is registered with the Federal Court of Canada (s. 223(2) and (3) of that Act). The court document evidencing that registration may then be filed or recorded, in accordance with the law of a province, for the purpose of creating a charge or lien on the debtor's property in the same way as a judgment debt may be filed or recorded for that purpose (s. 223(5) of that Act).

5. Given the Agency's option of causing these steps to be taken, so as to create a charge or lien on the principal residence of the Applicant, can the Agency's letter of January 16, 2001 be said to represent a demand in respect of a default on a debt secured against the Applicant's principal residence and can she be said to be subject to eviction if the debt remains unpaid? That is the question for this Tribunal. The Applicant's position is that this question should be answered in the affirmative and that the Applicant should not have to wait until a lien or charge is recorded against her personal residence before she can apply successfully for access to the funds in her locked-in account. By that time, she maintained, her credit rating and, therefore, the viability of the new business that she and her husband have started from their principal residence would be threatened.

6. I am of the view that the ground of financial hardship on which the Applicant relies in this case contemplates the *current* existence of security against an individual's principal residence and an *imminent* threat of eviction from such a residence. The income tax debt to

which the January 16 letter from the Agency relates is not now secured against the Applicant's principal residence. The possibility, or even the probability, that at some stage it may be does not qualify it as a debt secured against that residence for the purposes of the Regulation.

7. Unfortunately for the Applicant, this Tribunal does not have the authority to relieve against the harshness resulting from the limited scope of the grounds of financial hardship, set out in the Regulation, by expanding those grounds or creating exceptions in appropriate cases.

8. I must, therefore, affirm the Superintendent's Notice dated February 15, 2001.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice, dated February 15, 2001, directed to the Applicant.

Dated at Toronto, this 10th day of May, 2001.

"Colin H.H. McNairn"

Colin H. H. McNairn

Vice Chair

Financial Services Tribunal