



**TC02788**

**Appeal number: TC/2012/10549**

*VAT – Security – Was the decision to require security reasonably arrived at  
– yes – Appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SATORI MARTIAL ARTS LIMITED T/A NIRVANA FITNESS      Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S      Respondents  
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE MICHAEL TILDESLEY OBE  
HELEN MYERSCOUGH ACA**

**Sitting in public at The Tribunal Service, The Old Bakery, 115 Queens Road,  
Norwich on 13 May 2013**

**The Appellant did not appear**

**Mrs Cheryl Payne Dwyer of the Appeals and Reviews Unit for HMRC**

## DECISION

### The Appeal

1. The Appellant appealed against a Notice of Requirement to give Security in the sum of £18,900 issued on 15 May 2012 which was upheld on review on 29 October 2012.
2. The grounds of Appeal were:
  - (1) The Appellant was a completely new business and should be treated as completely independent from the previous businesses.
  - (2) The amount of the security was excessive, and the Appellant was not in a position to pay the security required.
  - (3) By the time the Appeal was heard, the outstanding tax would be paid.

### The Hearing

3. The Appellant did not appear. The Tribunal granted HMRC's application to proceed in the Appellant's absence in accordance with rule 33 of the Tribunal Rules 2009. The Tribunal was satisfied that the Appellant had been duly notified of the hearing and that it was in the interests of justice to proceed. In respect of the latter the Tribunal took account of the nature of the proceedings involving a risk to the protection of the Revenue, HMRC was in a position to proceed, and no explanation had been forthcoming from the Appellant for its failure to attend.
4. Mr Max Houghton gave evidence for HMRC. Mr Houghton was the Officer who issued the Notice of Security on the Appellant. The Tribunal read the witness statement of Mr Robert Lamb, the review officer. No objections had been received from the Appellant regarding the admission of Mr Lamb's statement. A bundle of documents was admitted in evidence
5. On 14 May 2013 Mr Christopher Broadley informed the Tribunal Office that he had every intention of attending the hearing but missed it due to an oversight for which he apologised. Mr Broadley requested the Tribunal to take account of the following circumstances when making its decision on the requirement for a security. Mr Broadley stated that the Appellant was completely up to date with its VAT payments, and that the Appellant should be able to make all its VAT payments in the future. Mr Broadley had recently been made bankrupt. The bank that held the charge on the Appellant's property and business intended to sell them as a going concern. Mr Broadley confirmed that the Appellant was in a position to meet its liabilities going forward. Mr Broadley considered that the imposition of a security might deter any potential purchasers of the business.
6. Mr Houghton at the hearing confirmed that the Appellant was up to date with its VAT liabilities. He also expressed surprise that Mr Broadley had not attended the hearing, which corroborated Mr Broadley's account of it being an oversight on his part.

## The Issues

7. HMRC stated that the Appellant was continuing the business previously run by a succession of earlier companies under the effective control of the Broadley family and which had built up considerable VAT debts. HMRC formed the view that the pattern of VAT debts was likely to continue with the Appellant which in turn would pose a serious risk to the protection of the revenue.

8. The Tribunal's jurisdiction on appeals against security notices is limited to deciding whether Mr Houghton acted reasonably in imposing the security on the Appellant for the protection of the Revenue. In this respect the Tribunal examines Mr Houghton's actions against those of a reasonable panel of Commissioners, namely whether Mr Houghton took into account some irrelevant matter or disregarded something to which he should have given weight when requiring the security. The Tribunal can only have regard to the facts and matters which existed at the time when Mr Houghton made his decision, namely the 15 May 2012.

9. The consequences of the restrictions on the Tribunal's jurisdiction are twofold. First the Tribunal cannot substitute its own decision for that of Mr Houghton. Second the Tribunal is not entitled to look at the circumstances that existed after 15 May 2012 (see *Commissioners for Customs & Excise v Peachtree* 1994 STC 947).

10. The decision of Lord Grantchester in *Rosebronze Ltd* VAT Decision No 1668 is also instructive with his pronouncement that the taxpayer's inability to provide a security or the fact that employees may be made redundant were not relevant to the reasonableness of the decision to require a security:

“In my judgment, the question for my determination on this appeal is simply whether the Appellant has shown that the disputed decision of the Commissioners to require the security in the sum of £22, 000 was unreasonable, or that the officer concerned failed to take something into account which he should have considered, or took something into account which he should not have done. In my opinion, the Appellant has not shown that the decision was in any way unreasonable. On the evidence before me I consider that the decision was eminently reasonable. I would have come to the same decision myself on such facts. In coming to such conclusions I would mention that I have taken into consideration the probability that the Appellant and its officers will be unable to provide the required security and that this may result in some fourteen or so of its employees being unemployed. But such considerations do not, in my view, require or persuade me to allow this appeal. The power conferred by Parliament on the Commissioners is expressed to be exercisable by them 'for the protection of the revenue', with the result that the Commissioners must act thereunder with that purpose in mind. I can only allow an appeal against a decision of the Commissioners to act thereunder if it is one which no reasonable body of Commissioners could reach”.

## Legislation

11. Paragraph 4(2), Schedule 11, of the Value Added Tax Act 1994 sets out the law in relation to the requirement for a security and provides that

- 5 “If they think it is necessary for the protection of the revenue, the Commissioners may require a taxable person, as a condition of his supplying or being supplied with goods or services under a taxable supply, to give security, or further security, for the payment of any VAT that is or may become due from –
- 10 a) the taxable person, or
- b) any person by whom or to whom relevant goods or services are supplied.”

## The Facts Known at the time of the Security Notice

12. The Appellant traded under the name of Nirvana Fitness carrying on the business of running a fitness club from premises at 60 Pinbush Road, Lowestoft, Suffolk. The Appellant was incorporated on 26 May 2011, and registered for VAT with effect from 2 February 2012. Mr Christopher Broadley (DOB 19/12/56) and Mr Christian Broadley (DOB 23/03/76) were appointed directors of the company on 25 May 2011 and 26 November 2011 respectively. Mr Christopher Broadley resigned as a director on 30 January 2012. Mr Houghton confirmed that Christian was the son of Mr Christopher Broadley. Further Mr Houghton’s dealings with the Appellant were with Mr Christopher Broadley even though he had resigned his position as a director.

13. The previous companies at 60 Pinbush Road, Lowestoft and their details are set out in the table below:

Trader	Type of Business	Address	Directors	Liability (£)	Additional Information
Nirvana Fitness Ltd	11/11/08 to 10/01/11 Gym and Fitness club	60 Pinbush Road, Lowestoft, Suffolk NR33 7NL	Christopher Broadley	50,000.00	Compulsory registered for VAT from 3 December 2010. PAYE debt of £50K
South Coast First Limited	01/07/06 Activities of Sports Clubs	60 Pinbush Road, Lowestoft, Suffolk NR33 7NL	Christopher & Christian Broadley. Company Sec: Debra Joanne Broadley	75,676.16	
Mayfields Marketing Services Ltd	24/06/10 to 11/05/11 Fitness Club	60 Pinbush Road, Lowestoft,	Christopher Broadley	Liquidation Claim 5,186.00	A debt of £40K VAT & £14K PAYE

14. The Appellant traded from the same premises as Nirvana Fitness Limited, South Coast First Limited and Mayfields Marketing Services Limited and engaged in the same business of fitness clubs. The Appellant had the same telephone number and the same accountants as Nirvana Fitness Limited. All the companies were under the control of the Broadley family.

15. Nirvana Fitness Limited, South Coast First Limited and Mayfields Marketing Services Limited had all accumulated VAT debts totalling in the region of £225,000, and had all failed to comply with their VAT obligations in submitting returns or failing to register in the case of Nirvana Fitness Limited. The Appellant's first VAT return was due on 31 May 2012.

16. The partnership of Mr Christopher Broadley and Mrs Debra Broadley owned 60 Pinbush Road, the premises from which the Appellant and the previous companies traded. The partnership derived its trading income from rental of business premises. The partnership registered for VAT on 17 November 2005 and claimed a refund of VAT on the construction of 60 Pinbush Road. The partnership failed to account correctly for VAT on income received and its VAT returns for periods 10/08, 01/09, 04/09, 27 months to 01/12, 04/12, 07/12 and 10/12 were outstanding. As at 15 May 2012 the partnership had a VAT debt totalling £41,918.43.

### **Reasons**

17. Mr Houghton decided that the Appellant posed a substantial risk to the protection of the revenue. It traded from the same premises carrying on the same business as Nirvana Fitness Limited, South Coast First Limited and Mayfields Marketing Services Limited. Those three companies consistently failed to meet their obligations in respect of VAT and had substantial VAT and PAYE debts on cessation of business.

18. Mr Houghton was satisfied that the Appellant and the three previous companies were run by the Broadley family with Mr Christopher Broadley taking the lead. Mr Houghton considered the change in the directorship of the Appellant from Mr Christopher Broadley to Mr Christian Broadley immaterial. Mr Christian Broadley had been a director of South Coast Limited and was the son of Mr Christopher Broadley. Mr Houghton was of the view that the change in directors was an attempt to distance Mr Christopher Broadley from the financial control of the business.

19. Mr Houghton took into account that the Appellant rented the property from the partnership of Christopher Broadley and Debra Broadley, which also had failed to meet its VAT obligations.

20. Mr Houghton fixed the amount of security by reference to the 05/11 and 08/11 VAT returns for Nirvana Fitness Limited. Mr Houghton considered this reasonable because the Appellant was effectively carrying on the same business at Nirvana Fitness Limited, and the Appellant at that stage had not made sufficient VAT returns.

21. The Tribunal considers that Mr Houghton was correct in giving weight to the above facts when imposing the security. In our view they were relevant in assessing the Appellant's risk to the protection of the revenue. The Tribunal finds no evidence that Mr Houghton took into account some irrelevant matter or disregarded something to which he should have given weight in coming to his decision on the 15 May 2012. The Tribunal is satisfied with Mr Houghton's rationale for using the VAT returns of Nirvana Fitness Limited for calculating the amount of the security, which in the Tribunal's view was reasonable and reflected the degree of risk posed by the Appellant to the Revenue.

22. The Tribunal finds that there was no substance to the Appellant's assertion that it was a completely new business, all the evidence pointed in the opposite direction. The effect of the security notice on a potential sale of the business had no relevance to the issue of the protection of the Revenue.

23. The Tribunal is not entitled to take into account the Appellant's compliance record after the 15 May 2012. The Tribunal is required to consider reasonableness on the facts known to Mr Houghton on 15 May 2012. The Appellant, however, is not without remedy. The Appellant after satisfying the security requirement may make a fresh application to HMRC to reconsider the matter on the grounds of new facts, which was confirmed by Mr Justice Dyson in *Peachtree*:

"I do not accept that the conclusion that I have reached offends common sense. If after a requirement has been made under para 5(2) fresh material comes to light or into existence which the taxpayer considers justifies a modification of the requirement, the taxpayer may ask the commissioners to reconsider the matter. The commissioners have a duty to reconsider in the light of the fresh material in those circumstances. The taxpayer can appeal the commissioners' decision following the reconsideration. In my view, this is the correct way of bringing the fresh material into play. A taxpayer may appeal several decisions taken at different times in the light of material available from time to time. It may sometimes be possible for all such appeals to be heard by the same value added tax tribunal at the same time. That will, no doubt, often be a sensible course to adopt. This may seem somewhat cumbersome; it is certainly not nonsensical. Be that as it may, questions of administrative and practical convenience cannot determine the matter when principle clearly points the way".

**Decision**

24. For the reasons set out above the Tribunal decides that the issue of the Notice of Security dated 15 May 2012 on the Appellant was reasonable. The Tribunal, therefore, dismisses the Appeal

25. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to

“Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)”  
which accompanies and forms part of this decision notice.

5

**MICHAEL TILDESLEY OBE  
TRIBUNAL JUDGE**

**RELEASE DATE: 19 July 2013**

10