



**TC03647**

**Appeal number: TC/2013/03435**

**VAT – security – new company- sole shareholder formerly a partner in same  
business – another partner declared bankrupt**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MOAT VENTURES LTD**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ALASTAIR J RANKIN  
MISS PATRICIA GORDON**

**Sitting in public at Tribunals Unit, 3<sup>rd</sup> floor, Bedford House, 16-22 Bedford  
Street, Belfast, BT2 7DS on 21 May 2014**

**No appearance for the Appellant company.**

**Ms Siobhan Brown for the Respondents**

1. Mr Edward McMahon a Higher Officer based in Custom House, Belfast gave oral evidence on behalf of the Respondents (HMRC). He informed the Tribunal that there had been delays and non-payment of VAT by the partnership which owned the bar known as Grace Neill's. Four partners were originally registered – Hans William Neill Arthur, Hans Michael James Arthur, Ashleigh Arthur and Sonya Arthur. HMRC received a notice dated 24 February 2012 that there were now only two partners - Hans William Neill Arthur and Hans Michael James Arthur.
2. Hans William Neill Arthur was declared bankrupt in August or September 2012 owing HMRC £157,323.55.
3. The Appellant company applied to be registered for VAT with effect from 15 July 2012. Sonya Arthur is the sole shareholder of the company.
4. Due to the trading name and address of the new business being the same as the former partnership's business and due to the owner of the new company having recently been a partner in the former business Mr McMahon came to the conclusion that it was appropriate to require the Appellant company to provide security for the protection of HMRC. The amount of the security was calculated based on the estimated turnover figure provided by the Appellant company.
5. On 14 November 2012 Mr McMahon signed a Notice of Requirement to Give Security under Paragraph 4(2) of Schedule 11 to the Value Added Tax Act 1994. When Mr McMahon signed this Notice he was not aware that Hans William Neill Arthur was acting as manager of the bar.
6. Mr William Ellison, accountant, on behalf of the Appellant company by letter dated 12 December 2012 requested HMRC to carry out a review of the decision to issue the Notice.
7. Mr Paul Johnstone, Reviewing Officer of HMRC based in London, then gave oral evidence concerning his review of the decision. He informed the Tribunal that as well as reading all the information available to Mr McMahon, he had read the attendance note prepared by Officer Savage and Officer McLaughlin following their visit to Grace Neill's on 14 November 2012 when they delivered the Notice which was in a sealed envelope. Messrs Savage and McLaughlin spoke to a man who identified himself as Hans William Neill Arthur and who confirmed that he had permission from his daughter, Sonya Arthur, to open all mail addressed to the company.
8. During a telephone conversation between Mr McMahon and Mr Ellison on 20 November 2012 Mr Ellison confirmed that Hans William Neill Arthur was the manager of the business.
9. Mr Johnstone by letter dated 19 April 2013 informed the Appellant company that following his review he was maintaining the Notice. Mr Ellison on behalf of the Appellant company submitted a Notice of Appeal dated 14 May 2013.
10. The grounds for appeal as stated in the Notice of Appeal are that the restaurant had been trading for over 200 years and that during the period 2001 to 2011 it was operated as a partnership. In early 2012 due to the economic conditions and the previous harsh winter the partnership became insolvent and the partners became

personally bankrupt. The lease was taken over by the Appellant company. Due to his experience, local knowledge and because he is a familiar figure in the town, the company employed Hans William Neill Arthur as manager. HMRC appear to have taken this continuity, of name and manager, as some sort of evidence that this constitutes a conspiracy to defraud the Revenue. Mr Ellison contended that this was not the case and that the Appellant company is determined to succeed in a difficult economic situation. It had so far paid its obligations to HMRC for VAT and PAYE and intended to do so. The payment of a security deposit in excess of £30,000.00 will ensure that the business is unable to continue.

11. Following the decision in *Customs and Excise Commissioners v Peachtree Enterprises Ltd* [1994] STC 74 the Tribunal notes that it must limit itself to considering the facts and matters which were known to HMRC as at 14 November 2012. The Tribunal has no power to exercise a fresh discretion.

12. The Tribunal finds that HMRC acted reasonably when deciding to issue the Notice and did not take into account any irrelevant matter or disregard something to which they should have given weight. The fact that Sonya Arthur ceased to be a partner when the partnership owed HMRC over £67,000.00 and that the remaining partners were declared bankrupt shortly thereafter owing HMRC over £157,000.00 and that the trading name and address were the same were sufficient grounds for Mr McMahan to think it necessary to require security in accordance with paragraphs 4(2)(a) and (e) of Schedule 11 of the Value Added Tax Act 1994.

13. The Tribunal also finds that the amount of the required security was reasonable as it was calculated in accordance with HMRC's standard practice based on estimated income provided by the Appellant company

14. Accordingly the appeal is dismissed.

15. The Tribunal notes that Mr Johnstone, when carrying out his review, was entitled to take into consideration information which came into the possession of HMRC as a result of the service of the Notice. If this information had been favourable to the Appellant company, it would have been open to Mr Johnstone to cancel the Notice. However as the information supported the concerns of Mr McMahan, he was correct in maintaining it.

16. 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.

**ALASTAIR J RANKIN**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 27 May 2014**