

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2023

IN THE MATTER OF SECTION 23 (2) OF THE IMMIGRATION (TRANSITION) ACT (2022 REVISION)

IN THE MATTER OF ORDER 55 OF THE GRAND COURT RULES



IN THE MATTER OF SECTION 23 OF THE BILL OF RIGHTS

IN THE MATTER OF AN APPLICATION FOR A RESIDENCY AND EMPLOYMENT RIGHTS CERTIFICATE
UNDER SECTION 37 (1) IMMIGRATION (TRANSITION) ACT (2022 REVISION).

FRANCIS OMAR CAMPOS

Appellant

-v-

IMMIGRATION APPEALS TRIBUNAL

1st Respondent

NOTICE OF
ORIGINATING MOTION

TAKE NOTICE that the Grand Court at the Law Courts, George Town, Grand Cayman will be moved on the _____ day of _____ 2023 at _____ a.m./p.m. or as soon thereafter as counsel can be heard, by counsel on behalf of the Appellant for an order in the following terms:

- i. The decision of the 1st Respondent dated 14 September 2023 was unreasonable and not in accordance with the Law. Therefore the matter should be remitted to the 1st Respondent to be reconsidered and decided according to the Law; and / or

- ii. The decision of the 1st Respondent dated 14 September 2023 amounts to a breach of the Appellant's Section 9 rights as protected by the Bill of Rights.
- iii. A declaration that Market Value Reports can be relied upon in seeking to justify the Market Value of an applicant's total investment in a local company.
- iv. A published declaration by the 1st Respondent what their policy is and their expectations are in regards to Market Value Report and confirmation that this policy is in accordance with the position of the Caymanians Status and Permanent Residency Board and the Director of WORC.

And for an order that the costs, of and incidental, to this Application be paid by the 1st Respondent.

AND FURTHER TAKE NOTICE that the grounds of this application are:

1. The Appellant has resided in the Cayman Islands since July 2008.
2. On 26 October 2023, the Immigration (Amendment) (Regulations) ("the Amendment Regulations") came into force. The Amendment Regulations introduced a new points scheme for Permanent Residence ("PR") application. At Factor 3 it confirmed that points would be awarded for ownership of businesses based upon "Total Investment" in comparison to the applicants total monthly income or salary.
3. Total Investment was defined as:
 - Purchase price of property plus stamp duty paid less total liabilities in residential property OR total payments (loan deposit plus interest payment plus principal repayment plus stamp duty paid) on residential mortgage for the last five (5) years whichever is higher.
 - **Market value of investments (stocks, bonds, etc.) in a locally licensed and operated solvent company** [emphasis added].
 - Investment in a privately owned locally licensed small business which is solvent.
 - Personal funds (i.e. not borrowed funds or funds received by way of gift) injected by the applicant to make improvements on property which was transferred as a gift. For the

avoidance of doubt, where there are no major improvements made to the property no points will be allocated. Proof of source of funds must be provided.

- 4. On 26 October 2013, the Chief Immigration Officer of the Cayman Islands and the Caymanian Status and Permanent Residency Board (“the Board”) stop considering and concluding PR submitted after 26 October 2013.
- 5. Prior to the 26 October 2013, the Immigration Regulations (2013 Revision) (“the 2013 Regulations”) merely stated that points for investment in a local company would be awarded in the following manner:

4. Financial Assessment	(Maximum 20)
<ul style="list-style-type: none"> a. Investment in property in the Islands b. Investment in a local company 	
<p><u>Explanation</u></p> <p>In assessing the investment made by an applicant under (a) or (b) the Board shall take into account the applicant’s investment relative to his actual means.</p>	

- 6. At no point in time prior to 26 October 2013 or since have policies been published by either the Chief Immigration Officer of the Cayman Islands, the Director of Workforce Opportunities & Residency Cayman (“WORC”), the Caymanian Status and Permanent Residency Board (“the Board”) or the Immigration Appeals Tribunal (“the 1st Respondent”) in regard to the determination of Factor 4 in the pre 2013 Regulations or Factor 3 in the Amended Regulations (and any further subsequent amendments).
- 7. Following on from a Judicial Review filed in the cases of G0224 / 2016 and G0077 of 2017 the Board granted two individual PR under the post 26 October 2013 points scheme on 17 May 2017.

It is believed that these individuals were the first individuals to be granted PR under the post 26 October 2013 points scheme.

8. On 23 June 2017, the Appellant applied for PR of the Cayman Islands. As part of his application, he stated that his then wife and children Zoe (DOB 23/10/07) and Casen (DOB 30/9/10) were his dependents. At this point in time, despite the post 2013 PR system being in effect for in excess of 3.5 years no substantive policies had been published in regard to the consideration and determination of applications for PR. In particular, no guidance had been published in regard to how it is that the Board or WORC would consider and determine the “market value” of a locally licensed and operated company.
9. When, the Appellant applied for PR, the relevant Regulations were Immigration Regulations (2017 Revision). The definition of Total Investment was the same as the Amended Regulations.
10. As part of his application, the Appellant declared a minority interest in the On the Rock Ltd T/A Rock Gorgeous Hair (“Rock Gorgeous”).
11. On 17 April 2018, the Appellant provided to the Chief Immigration Officer an update on his application. As part of this update a Valuation of the Business was provided by Richard Mottershead of Varcay Investments (“the 1st Varcay Report”) dated 19 March 2018. The 1st Varcay report showed:
 - The Appellant was a 20% shareholder in Rock Gorgeous.
 - The Appellant’s wife was a 20% shareholder in Rock Gorgeous.
 - A 20% shareholding in Rock Gorgeous was valued at CI\$227,000.
12. On 7 May 2018, the Board rejected the Appellant’s application for PR. The Appellant was awarded 93 points out and therefore did not cross the 110 threshold. In the Appeal Statement which was produced by the Board they stated in regards to Factor 3.

The Appellant declared investment in a locally licensed company, namely On the Rock Ltd. T/A Rock Gorgeous Hair. However, proof of investment that met the minimum requirement of CI\$50,000 was not provided. Accordingly, no points were awarded under this category.

13. The Appellant appealed the decision of 7 May 2018 and in Grounds of Appeal submitted on 20 September 2018, the Appellant advanced the following submissions:
 - The Board were unreasonable not to consider the update provided on 11 April 2018.
 - The Board had erred in regard to the points awarded for Factor 3.
 - The Board had erred in regard to the points awarded for Factor 4.
 - The Board had erred in regard to the points awarded for Factor 5.
 - The Board's decision was unreasonable as there were no policies in place.

14. In a decision dated 4 March 2020, the 1st Respondent accepted that the Board had erred in Law in regard to Factor 3 and therefore deferred the application pending a de novo hearing on a updated position from the Appellant.

15. Because of Covid 19, it was not until 24 August 2020, when the Appellant was in a position to provide up to date evidence to the Tribunal. As part of the up to date evidence which the Appellant provided he provided a letter from Richard Mottershead which confirmed the value of the Appellant's investment in Rock Gorgeous.

16. On 21 December 2020, the Tribunal deferred the de novo hearing and requesting, specifically, in regard to Factor 3.

The Tribunal deferred this matter and requested that the Appellant provide evidence of his investment in the company ON the rock Limited to support his statement of injecting CI\$75,000 by way of the bank drafts, bank transfers receipts etcetera. Along with evidence of how the Appellant acquired the additional 20% of the company.

17. On 27 January 2021, HSM Chambers on behalf of the Appellant wrote to the 1st Respondent. In this letter it is contended that the Tribunal were erring in their deliberations on the basis they

were not looking at the Market Value of the shares that the Appellant owned in the business. It was also suggested that if the Tribunal deal with the matter that the Appellant was only a 20% shareholder in the business as opposed to a 40% shareholder then that would make no material difference to the award of points.

18. On 3 December 2021, the 1st Respondent deferred the Appellant's application requesting that the Appellant provide evidence of his payments to his former wife for her share of On the Rock Ltd.

19. On 22 December 2021, it was confirmed to the 1st Respondent that:

Richard Mottershead qualified as an accountant with PricewaterhouseCoopers, London in 2004. His qualifications include a Higher National Diploma in International Business, Bachelor of Arts (Hons) Degree in Business Studies and is also now a Fellow Certified Chartered Accountant (UK).

Throughout his career Mr Mottershead has worked within the business restructuring industry that in part involved valuing and selling companies and assets in a competitive environment for the benefit of the estates in question.

Mr Mottershead founded Varcay Investments Limited in 2013, a company that was set up to provide liquidity solutions to holders of illiquid assets in the offshore restructuring community. In summary, this involves the following:

- *purchasing shares in private companies held in liquidating fund structures*
- *valuing and advising on businesses for sale*
- *advising on businesses where partners are looking to participate in the equity of a company*
- *buying claims in liquidating estates*
- *providing loans to funds and companies in distress*

Further information can be found on www.varcay.com

20. In a report dated 20 January 2022, Richard Mottershead valued the Appellant's shareholding in Rock Gorgeous at \$205,000 ("the 2nd Varcay Report"). This report was provided to the 1st Respondent on 21 January 2022.

21. On 26 January 2022, Kim Bullings, part of the 1st Respondent's administrative staff wrote to HSM Chambers and requested proof of payment to sums to the Appellant's former spouse.

22. In a response to Kim Bullings on 11 February 2022, HSM Chambers wrote to her and reiterated the Appellant's position that he was seeking points pursuant to Factor 3 based upon the Market Value of his shares rather than his out of pocket monetary investment. HSM Chambers also requested:
- i. A formal written policy between the IAT, the Director of WOR and the Board which deals with Market Value Reports and Factor 3.
23. Furthermore, reference was made to the case of *Thomas v IAT* Cause no 137 of 2021 which had been filed on 28 June 2021 and settled and remitted back to the 1st Respondent. The submissions advanced in that case were:
- i. The 1st Respondent was wrong to reject the Market Value report prepared by the Appellant's accountant.
 - ii. The lack of policies in regards to Factor 3 makes the decision arbitrary and opaque.
24. On the same day a letter confirming the Appellant's savings and income from employment were provided to the 1st Respondent.
25. On 4 January 2023, the 1st Respondent wrote to HSM Chambers and made reference to Factor 3 in which reference was made to "monetary investment" although no reference was made to the definition of "Total Investment" . The 1st Respondent therefore requested evidence of the monetary investment that the Appellant had invested in On the Rock Ltd.
26. In an affidavit dated 24 March 2023, the Appellant sought to provide evidence of his investment in the On the Rock Ltd, by showing items that he had purchased himself for the Company. However, he reiterated that his primary position was that the Tribunal should seek to rely upon the Market Value Report. The Appellant in particular stated that:
- i. The Tribunal are fettering their discretion by not accepting Market Value Reports.

- ii. The Tribunal have erred in seeking to rely upon the phrase “monetary investment” and have not referenced the notes section of Factor 3 and in particular the definition of “total investment”.
 - iii. The Market Value Report shows the monetary value of his shares and therefore it should be relied upon.
27. The Appellant also confirmed that he continued to repay his wife for the the value of shares transferred to him by her.
28. Lastly, the Appellant provided evidence that he had invested CI\$123,489 of his own money purchasing supplies and other goods for On the Rock Ltd.
29. In a decision dated 14 September 2023, the 1st Respondent rejected the Appellant’s application. The 1st Respondent scored the Appellant 103.5 points. If the Appellant had been awarded points based upon:
 - i. The Market value of 20% of the shares of On the Rock Ltd, he would have achieved more than 110 points.
 - ii. The Market value of 40% of the shares of On the Rock Ltd, he would have achieved more than 110 points.
 - iii. The value of his out of pocket expenses as claimed he would have achieved more than 110 points.
 - iv. An investment of more than CI\$50,000 he would have achieved more than 110 points.
30. It is the Appellant’s case that the 1st Respondent erred in concluding that the Appellant should not be awarded points for Factor Three. It is averred that the Appellant provided sufficient evidence that the Tribunal could be satisfied of his total investment in On the Rock Ltd and as such, the 1st Respondent’s decision is wrong in Law.
31. It is further averred that the 1st Respondent has misdirected themselves in regards to Factor three and specifically in regards to the meaning of “Total Investment” and “monetary investment”.

32. Furthermore, it is the Appellant’s case that the 1st Respondent’s decision is unreasonable on the basis that:

- i. The 1st Respondent fettered their discretion by not accepting either the 1st or 2nd Varcay Report.
- ii. No published policies have ever been provided by the 1st Respondent in regard to Market Value Reports to all Applicants for PR.
- iii. No published policies have ever been provided by either the Chief Immigration Officer of the Cayman Islands, the Director of WORC, the Caymanian Status and Permanent Residency Board and therefore there is no consistency between decision makers in regard to Factor 3.
- iv. Have presumably relied upon the legal advice of the Attorney General’s Chambers who are the Attorney’s for the Director of WORC, the Caymanian Status and Permanent Residency Board and the former Chief Immigration Officer of the Cayman Islands. It is therefore believed that there is the potential for a conflict of interests when relying upon the legal advice of the original decision maker’s attorneys.

Conclusion

33. It is contended that the 1st Respondent erred in Law and acted unreasonable. Accordingly, the decision of the Respondent should be set side and the orders requested be made so that the Appellant’s application can be reheard in accordance with the Law.

DATED: 11 October 2023

HSM CHAMBERS

HSM CHAMBERS

TO: The Clerk of the Court

And To: The Chairman
Immigration Appeals Tribunal

Government Administration Building
Elgin Ave,
George Town
Grand Cayman

And to: Attorney General of the Cayman Islands.