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NZCR X

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M.11/84

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BETWEEN:

RUDOLPH AANDEWIEL
of Hamilton, Company
Director

Appellant

A N D:

REGISTRAR OF COMPANIES
at Hamilton

Respondent

Offence: Failure to file annual returns (2)
Dealt With: 7 December 1983 At: Hamilton By: Millar DCJ
Sentence: \$300.00 with costs

Appeal Hearing: 16 February 1984

Oral Judgment: 16 February 1984

Counsel: P R Heath for appellant
C Q M Almao for respondent

Decision: APPEAL ALLOWED
Fines on each charge quashed
Ordered to pay Court costs and
solicitors fee only.

(ORAL) JUDGMENT OF BISSON, J.

This appellant was charged with an offence under the Companies Act 1955 because he, as a director of Export Trading Services (NZ) Limited, was responsible for that company's failure to deliver to the Registrar of Companies a duly completed annual return in respect of two years, namely 1981 and 1982. He did not appear because the Notice of Hearing was sent to the registered office of the company and not passed on to him. Consequently in his absence, after hearing formal proof, the learned District Court Judge entered a conviction and he was fined \$100.00 with Court costs \$20.00 and solicitor's fee \$25.00 in respect of the conviction and \$300.00 with Court costs \$20.00 and

Mr Heath, for the appellant, has submitted that these fines were excessive in circumstances which he makes known now to the Court, and which were not available to the learned District Court Judge owing to the non-appearance of the appellant. The company itself was also convicted of like offences and fined the same amounts in respect of the two charges. However, another of the directors of the company, who did appear and was represented and was able to make submissions, was convicted and simply ordered to pay Court costs and solicitor's fees.

The significant facts which are now made known to this Court and were not made known to the District court at the time this appellant's case was dealt with, are that this company had not traded for some time. Returns were made until 1980, and then it was intended that the company be wound-up or struck off the register. The company did have a professional accountant as secretary, and one would have expected the secretary, being a professional, to ensure that company returns were duly made. But it does not appear that the secretary has been prosecuted in the same way as the directors have. Be that as it may, there is a responsibility on directors, but in the circumstances of this particular case, the company itself having been fined and one of the other directors treated in the way already mentioned, there is such a gross disparity that the appeal must be allowed and the fines imposed are quashed, leaving the appellant to pay Court costs and solicitor's fee only.

W. Binney
Solicitors:
Stace Hammond & Co., Hamilton, for appellant
Group 3.11.84