

HE MOHAMED SUPERANNUATION FUND

QUESTION ON DEPENDANCY FOR ZULEKHA MOHAMMED

Dr Mohamed passed away 22.9.2018

Zulekha is the trustee of the estate and the sole beneficiary of the Superannuation Funds

The question is whether Zulekha was either a Financial Dependent or had an interdependency relationship and therefore does not have tax withheld from the death benefits payment.

Facts:

Zulekha and her husband migrated to Australia in 1987. Dr Ali was her sponsor and provided the financial assistance for her to migrate.

Zulekha and her husband lived in Nowra. Zulekha did not work and they rented their home. The couple opened a restaurant in April 1999. Zulekha helped run this until approximately April 2000. The husband died in 1999 and Zulekha received Centrelink benefits and rent assistance to cover rent and living costs.

First evidence we have on file of financial support from Dr Ali was \$650 on 16.3.2017. Peter Owens has confirmed that financial assistance commenced from when her husband died in 1999. Monthly support of \$650-\$670 per month continued until death in September 2018.

Dr Ali retired from medical practice in August 2017 and sold all properties at this time. He lived in rented premises at 2B Dent Street Merewether at the time.

Soon after retirement Dr Ali had a fall and broke his leg. The injury was significant and was not healing. He was admitted to hospital and stayed there until he was moved into a retirement home in Toronto on 9 October 2017.

Zulekha moved from Nowra to Merewether at the time of Dr Ali's fall so that she could look after him. Once he was admitted to the nursing home in Toronto she needed to move from Merewether as she did not have a car/licence and had trouble getting to Toronto.

A house was purchased in Awaba Road Toronto in May 2018 in walking distance to the nursing home. Zulekha then visited and sat with Dr Ali on a daily basis. Dr Ali paid for the house and significant renovations to the kitchen/bathroom. He also covered all expenses relating to the property including lawn mowing, rates etc.

The aim was for Dr Ali to recover and live in the house at Awaba with Zulekha and for her to look after Dr Ali on a permanent basis. This did not eventuate as Dr Ali's health declined until he eventually passed away September 2018.

The house was left to Zulekha in his will.

Balance of Fund 30.6.2021 – Payable to Zulekha:

Taxable	\$838,066.53
Untaxed	\$0
Tax free	\$0

Tax implications if not dependent:

- Taxable element taxed at 15% (tax offset reduces the maximum tax rate to 15%)
- Untaxed element taxed at 30%
- Add medicare at 2% as paid to individual

Interdependency:

1. Close personal relationship
2. Live together
3. One provides the other with financial support
4. One provides the other with domestic support

There are exceptions to points 2 to 4 where there is a physical/mental/psychological disability preventing from occurring or temporarily living apart for other reasons (eg in jail etc).

Case law suggests that financial dependency will exist when a person relies on another for support to meet their "normal standard of living"

Dependence hinges on whether the support is crucial to meet current actual expenditure rather than survival needs.

The mere receipt of support is not enough, there must be reliance on that support.

Many ATO binding rulings indicate that ATO would only consider financial dependency to exist where a person regularly contributes to at least half of the cost of another person's daily necessities of food, clothing & shelter.

Was there an interdependency relationship?

Possibility this occurs in this instance. Although Dr Ali was forced to live elsewhere, there was the intention that there would be domestic support and they would live together. Zulekha did however, continue to provide emotional support and looked after all other needs. She had access to Dr Ali's accounts and used these accounts to pay for expenses relating to Dr Alia and the property at Toronto.

Financial support was evident in allowance plus purchase of house, payment for renovations and payment of living costs.

Zulekha received pension payments but did not pay any rent or house maintenance costs. She also did not contribute to the purchase of the house.

Financial Dependency

1. At least half of food/clothing/shelter
2. Would withdrawal of that support have a material impact on ability to live normal life
 - There must be a reliance on the support. It must be essential for living and not just show that it exists.
 - Also look at duration, ownership, use and acquisition of property, degree of shared life and is it convenience or necessity.

Was there a financial dependency?

Commenced 1999

Monthly allowance paid

Was this at least half of food/clothing/shelter. Certainly once she moved to Merewether and then Toronto, rent was covered 100%.

Withdrawal of support would have left her homeless once she relinquished house in Nowra.

Zulehka's only form of income was aged pension. Approximately \$400 per week in 2018.

Opinion

Facts suggest the intention was for an interdependent relationship, albeit for the decline in health that lead to Dr Ali's death. It could be argued that a relationship existed anyway and that the exception for physical disability that prevented them from living together.

At worst, there appears to have been a Financial Dependency that likely commenced in 1999 and continued until the date of death in 2018. Whilst it was unlikely covering 50% of her living costs from 1999 to 2017, the facts suggest Dr Ali was responsible for significantly more than this from September 2017 to September 2018 and would have continued to do so if not for his death in September 2018.

Jillian Dwyer

From: Peter Owens <Peter@epowens.com.au>
Sent: Thursday, 30 June 2022 10:30 AM
To: Jillian Dwyer
Subject: RE: Zulekhabegum Ebrahim Mohamed

Hi Jillian

Further to our telephone discussion last Friday I have spoken with Zulekha and I can respond as follows:

- 1 Zulekha lived in Nowra for approximately 23 years from 1995 to 2018, when she moved to Toronto.
- 2 During the whole period she lived in Nowra she only lived in the one rented house.
- 3 She did not own a property in Nowra.
- 4 Her husband Leslie died on 10 May 1999.
- 5 At that time Zuleckha was about to turn 60 years old.
- 6 They had opened a restaurant in Bomaderry on 9 April 1999
- 7 Leslie died about 1 month after the restaurant opened.
- 8 Zulekha continued to run the restaurant for about 12 months after her husband died.
- 9 After that time she did not work.
- 10 Her brother Ali commenced assisting her financially after her husband's death.
- 11 At that time Zulekha would not have been eligible for the age pension.
- 12 Ali's financial assistance continued until he died in 2018.
- 13 This continued after Zulekha became eligible for the age pension and rent assistance.
- 14 In relation to expenses other than lawn mowing at Toronto we would need to check.
- 15 The intention had been for Ali to live at the property with Zulekha if he became well enough to leave aged care at Kilpatrick Court at Toronto.
- 16 This didn't happen and he died not long after the purchase was completed.
- 17 The house was in Ali's name and I expect he met expenses such as Council rates, Water rates etc.

Hoping this information helps you.

Kind regards
Peter

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From: Jillian Dwyer <JillianD@visionaryadvisors.com.au>
Sent: Friday, 24 June 2022 10:20 AM
To: Peter Owens <Peter@epowens.com.au>
Subject: FW: Zulekhabegum Ebrahim Mohamed

Good morning Peter,

I am aiming to finalise the Super Fund prior to 30 June but have a few more questions I am hoping you might be able to answer.

- Can you advise whether Zulekha owned her house in Nowra prior to moving to Newcastle or was she renting?
- If she owned the property, what happened to it or the funds from its sale once she moved to Newcastle?
- Your notes indicated that Ali was covering lawn mowing costs for the Toronto property. Was he also paying other expenses?
- When did the monthly allowance commence? The first record I have is 16 March 2017.

- Did Zulekha have other income/source of funds other than her pension?

I will give you a call this morning to discuss this.

Regards

Jillian Dwyer

Manager

Request a call-back - please visit www.visionaryadvisors.com.au and click the 'Contact' page to make a call-back or a "zoom" appointment.



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From: Peter Owens <peter.owens@reidlaw.com.au>
Sent: Monday, 21 February 2022 12:14 PM
To: Jillian Dwyer <JillianD@visionaryadvisors.com.au>
Cc: Phillip Keating <phillipk@visionaryadvisors.com.au>
Subject: Zulekhabegum Ebrahim Mohamed

Hi Jillian

The following facts are relevant for you:

- 1 Haiderali Ebrahim Mohamed ("Ali") died on 22/09/2018.
- 2 Probate 2018/00306015 of his Will dated 21/12/2012 was granted on 29/11/2018 to Zulekhabegum Ebrahim Mohamed ("Zulekha").
- 3 Apart from a specific bequest to Rosa Jennifer Rimmer ("Jenny"), Zelekha was the sole residual beneficiary of the Estate.
- 4 Zulekha was also the sole surviving trustee of the SMSF called H E Mohamed Superannuation Fund, and as legal personal representative of Ali was able to stand in his shoes as a trustee also.

210 AWABA ROAD, TORONTO NSW:

- 1 This property was an asset in the Estate and appears listed in the Inventory of Property annexed to the Probate.
- 2 It comprises Lot 2 DP24813.
- 3 It's estimated value for Probate purposes as at the date of death of Ali was \$390,000.
- 4 It forms a part of the residuary estate to which Zulekha is entitled under the Will.

HAIDERALI EBRAHIM MOHAMED:

- 1 Ali was born on 24/08/1931.
- 2 Ali migrated to Australia from Uganda in the 1970s and settled in Newcastle.
- 3 He was not married on his arrival in Australia, and never married here.
- 4 He had 3 brothers, and Zulekha was his only sister.
- 5 Ali lived in Newcastle until his death on 22/09/2018 – aged 87.
- 6 Ali conducted a GP medical practice at Adamstown and Kotara NSW.
- 7 Ali only looked to retire from his medical practice in 2017, completing the sale of his practice and premises at Kotara on 08/08/2017.
- 8 Around this same time Ali had a serious fall and severely injured his leg.
- 9 At this time he lived in a rented double story residence at 2B Dent Street, Merewether NSW.
- 10 Ali was unable to come home to live in the double story residence.

- 11 On 09/10/2017 Ali moved into Room 233 Anglican Care Kilpatrick Court at 152 Brighton Avenue Toronto NSW, where he remained until his death on 22/09/2018.
- 12 A copy of the Resident Agreement is attached.

ZULEKHA:

- 1 Zulekha is the only sister of Ali.
- 2 Ali assisted her to migrate to Australia from Kenya in 1987.
- 3 Zulekha became an Australian citizen on 10/11/1993.
- 4 Zulekha's husband Abdul Tharani (known as Leslie Gatke) died at Nowra NSW on 10/05/1999.
- 5 At the time of her husband's death Zulekha was living with him at 3 Grant Street, Nowra NSW.
- 6 Zulekha remained living at this address in Nowra until she moved to live in Toronto NSW during the period of Ali's illness.
- 7 During all these years Ali provided financial assistance to Zulekha.
- 8 Zulekha received a full Age Pension (Centrelink Reference: 208 260 319K) until 28/11/2019 – coinciding with the grant of Probate and confirmation of her entitlement as residual beneficiary of Ali's Estate.

PURCHASE OF 210 AWABA ROAD, TORONTO NSW:

- 1 Following Ali's fall and hospitalisation Zulekha travelled to Newcastle to assist with Ali's care.
- 2 At first she was living in Ali's rented residence at 2B Dent Street, Merewether NSW.
- 3 However, following Ali's admission to Anglican Care Kilpatrick Court at Toronto NSW it was decided that Zulekha would move to Toronto permanently.
- 4 Ali decided to purchase a house in his name, using his own cash funds, in which Zulekha could live.
- 5 This was the residence at 210 Awaba Road, Toronto.
- 6 The purchase process spanned a period from April 2018 and with the purchase being completed on 04/07/2018.
- 7 Peter Owens, solicitor with McDonald Johnson Lawyers of 14 Watt Street , Newcastle NSW acted for Ali on the purchase of this property.
- 8 Funds for the purchase were transferred by Ali to the Trust Account of McDonald Johnson Lawyers to facilitate completion of the purchase on 04/07/2018.
- 9 Attached is a copy of the Real Estate Agent's Sales Advice, the front page of the draft contract for sale and copies of some relevant PEXA documentation.
- 10 The original file for the purchase will be held under the control of DWF Lawyers now of Brisbane which firm purchased McDonald Johnson Lawyers with effect from 01/12/2019.

FINANCIAL ASSISTANCE FOR ZULEKHA BY ALI:

- 1 Ali had sponsored Zulekha and her husband to Australia in 1987/1988.
- 2 Over the years since the death of Zelekha's husband in 1999 Ali regularly provided financial support.
- 3 Ultimately, following Ali's fall and hospitalization, this resulted in the purchase of the property at 210 Awaba Road, Toronto NSW – completed on 04/07/2018.
- 4 He provided regular financial assistance to Zulekha during the period up to his death.
- 5 This also included renovations to the house, meeting the cost of lawn mowing and so on.
- 6 There was a Westpac Bank Account from which the monthly allowance was paid. The cheque book and Bank Statements have been provided.
- 7 Financial assistance stopped following Ali's death on 22/09/2018 as the Westpac Account could not be operated.
- 8 Zulekha became ineligible for the Age Pension following the grant of Probate on 29/11/2018.

Trusting this summary will be of assistance to you.

I first met Ali in the 1970s when he became my family GP.

When I became a solicitor in 1980 I commenced acting for Ali as his solicitor.

Ali cared for my father during a protracted illness from September 1985 until my father's death in 2008, visiting him at home fortnightly over this whole time.

He confided in me.

Accordingly, I have an unusually detailed knowledge of his affairs

I have known Zulekha during her time living in Australia, and especially since her move back to Newcastle/Toronto in 2017.

Kind regards,
Peter

Peter Owens
Senior Consultant

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