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STAR INVESTIGATION

A web of temp agencies. Millions in tax refunds. Inside a ‘murky’ arrangement pitting the CRA against one of the GTA’s most notorious factories

Lawyers for Fiera Foods, which has produced baked goods for Tim Hortons, Walmart and others, say the industrial bakery complied with all tax laws.



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Sat., Feb. 18, 2023timer12 min. read

Fiera Foods is pitted in a high-stakes dispute against the Canada Revenue Agency, which found the industrial baker falsely claimed millions in tax credits. The company appealed these findings and denies wrongdoing.



When a friend told her of a chance to work at a sprawling industrial bakery in North York, Iryna Rybalko went straight to the factory doorstep — turning up at 10 p.m. There, she recalls, a security guard summoned a supervisor. An hour later, she was on the shop floor.

It was 2013, and Rybalko had just become one of hundreds of temporary help agency workers to cycle through Fiera Foods, whose factory floors have produced baked goods for Dunkin' Donuts, Tim Hortons and Walmart.

The purchase of Rybalko's labour from a temp agency would form part of Fiera's claim for millions of dollars in tax refunds from the federal government.

The only catch: She had never contacted, visited, or spoken to anyone from a temp agency.

Rybalko's recent testimony in tax court is part of the federal government's evidence against Fiera, who the Canada Revenue Agency found falsely claimed \$5.7 million in tax credits based of its purchase of temporary labour between 2011 and 2014.

Fiera has appealed those findings, leading to a high-stakes case pitting North America's largest croissant manufacturer against the federal tax agency. The three-week trial has shone a spotlight on Canadian industry's growing use of temporary labour — and the lucrative tax credits it can generate.

Fiera denies any wrongdoing.

A 'murky' business arrangement that raised 'red flags'

Fiera's setup, according to the CRA, involved an opaque web of 13 temp agencies, middle men, cash chequing joints, and hundreds of temp workers — some of whom earned less than minimum wage and appeared to know next to nothing about the agencies that apparently employed them.

The CRA describes many of the temp agencies Fiera worked with as fly-by-night phantoms. Most did not appear to have real offices: they were registered to UPS mailboxes or highrise residential buildings. In some cases, the agencies incorporated just days before signing written contracts with Fiera.

Despite supplying Fiera with millions of dollars' worth of labour, the agencies sometimes reported no corporate earnings, remitted little to no HST, and only had a handful of temp workers officially on their books.

And despite being critical to Fiera's operations, the factory rarely interacted with its agency partners — instead operating through three intermediaries in what Crown lawyers called a "murky" business arrangement raising numerous "red flags."

A corporate cash back

The arrangement was, for Fiera, the basis for millions in input tax credit claims — sort of a corporate cash back from government coffers.

A temporary help agency sells workers' labour to a company, billing the client for hourly wages, statutory entitlements, sales tax, and a markup for the agency.

The temp agency must then remit the sales tax to the government. Their client, on the other hand, can recover that tax through input tax credits. These are sought-after refunds because they amount to a 13-per-cent discount on the goods and services used to make products, said Dean Blachford, an Ottawa-based tax lawyer.

If a temp agency doesn't remit the sales tax to the government, the client would be getting refunds on taxes that were never paid.

Generally speaking, input tax credit claims can arouse suspicion from the CRA when they are poorly documented, described inaccurately, or when auditors suspect the transaction is fraudulent: either the supplier or purchaser is fake, or the parties have colluded to generate false tax invoices to claim refunds.

"Industries that have a prevalence of vulnerable and marginalized workers are particularly ripe for these schemes," said Blachford.

In Fiera's case, the CRA found the temp agencies were not capable of providing enough workers to satiate Fiera's voracious demand for casual staff. Underpinning the finding is a critical principle: If these workers were not truly provided by the 13 temp agencies, then Fiera cannot claim tax credits based on its relationships with them.

On top of denying its tax credits, the CRA slapped the company with a \$1.4-million fine for gross negligence.

Fiera says it complied with 'all applicable tax laws'

Fiera's lawyers told the tax court, "We're not involved in any shenanigans."

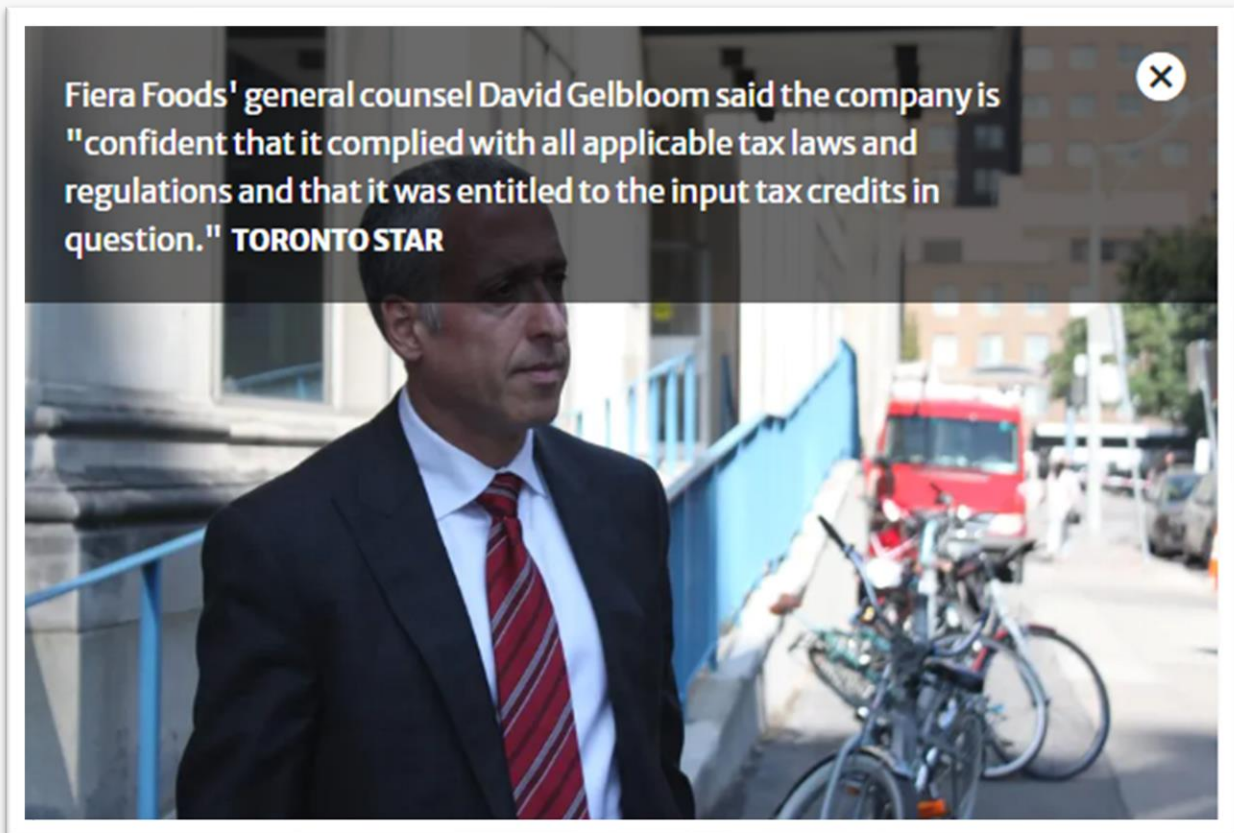
Fiera's legal team, which includes Al Meghji — described as the "Wayne Gretzky of tax litigators" — say the case is "extraordinarily simple." Fiera Foods needed temporary labour, signed contracts with temp agencies, carefully documented its purchases, and paid the required sales tax. The factory then claimed tax credits in good faith.

Fiera’s lawyers emphasized repeatedly in court that the factory was not responsible for its partner agencies’ failure to remit taxes — and noted that the CRA never found any evidence of collusion between the agencies and the bakery.

Fiera has accused the Crown of mounting a case against it based largely on “insinuation.”

In a statement to the Star, Fiera Foods’ general counsel David Gelbloom said the company is “confident that it complied with all applicable tax laws and regulations and that it was entitled to the input tax credits in question.”

“Fiera Foods has always fully cooperated with the Canada Revenue Agency in its review of temporary placement agencies. In fact, the Canada Revenue Agency thanked Fiera Foods for its co-operation and confirmed that it was not the subject of a criminal investigation.”



The industrial bakery believes “every member of our team, whether temporary or permanent, deserves living wages and safe working conditions,”

added Gelbloom. “This is a commitment we make to them, and one we keep.”

The federal tax court has yet to issue a ruling on the factory’s tax appeal. The Star sought to review exhibits entered into evidence during this trial, but has so far been denied access.

Government lawyers have not accused Fiera Foods of colluding with others to rig its tax credit claims; nor did the Crown offer any precise theories on who actually supplied the factory with hundreds of workers, if not the temp agencies in question.

Instead, the Crown focused on backing up the CRA’s key audit finding: that it was impossible for 13 elusive agencies with seemingly little genuine business activity to have provided Fiera with \$44-million worth of labour.

Because the burden of proof is reversed in tax court, it’s up to Fiera to convince a judge that the CRA’s findings were wrong.

Fiera’s reputation for plentiful, if difficult, work

Fiera Foods has long been known in Toronto’s newcomer circles as a source of plentiful, if difficult, work. By 2016, labour inspectors had slapped its facilities with safety order after order, and two temps had died in terrible circumstances. One was crushed inside a dough mixer, the other run over by a truck.

In September of that year, a third worker died: Amina Diaby, a 23-year-old recent immigrant. Two weeks into her new temp job, her head scarf got sucked into an improperly guarded machine, strangling her. Since then, two more temp agency workers have died at Fiera-affiliated facilities across the GTA.

Amina Diaby was two weeks into her new temp job at Fiera Foods in 2016 when her headscarf was sucked into an improperly guarded machine, strangling her. **SUPPLIED**



Diaby's death was the catalyst for a 2017 Star investigation, which saw an undercover reporter work at Fiera Foods through a temporary help agency for one month.

That agency is not amongst the 13 named in Fiera's tax case. But it shared many similarities with the suppliers described in court: Its official address was an empty unit in a strip mall. It paid cash wages at a payday lender. Its workers received no T4s or pay stubs.

By the time the Star went undercover, that pattern had already caught the attention of federal tax authorities. In 2013, an audit of Fiera's HST returns had uncovered an "abnormally" high number of relationships with tax-delinquent temporary help agencies, according to sworn testimony from government auditors this November.

No wrongdoing was identified in this initial audit and the factory's tax credit claims at the time were allowed. While there was "no solid evidence" of collusion, the CRA believed Fiera's relationship with the temp agencies warranted further scrutiny, setting off a chain of additional audits now under dispute in tax court.

Central to that dispute is the question of whether Fiera can accurately document the vast amounts of labour procured from a web of 13 temporary help agencies — and whether those agencies were truly capable of what government lawyers called the "Herculean" task of delivering hundreds of workers to the shop floor.

As is typical of the industry, jobs at the bakery were "difficult, tedious, low paying and repetitive," lawyers for Fiera told the court. Given the "largely unpleasant" work environment, the company had to "order" up to two dozen temps to account for no-shows or people who simply walked out mid-shift.



Workers at Fiera Foods' Marmora St. plant work shoulder-to-shoulder to shape and pack raw pastry dough. The footage was taken in 2017 by an undercover Toronto Star reporter.

To get those workers, Fiera relied heavily on a network of temp agencies; the majority of the factory's roughly 1,000-strong workforce was temporary between 2011 to 2014. As required by law, the factory checked its labour suppliers were in good standing at the workers' compensation board and were HST registrants, the company's chief financial officer Mahendra Bungaroo testified.

But Fiera didn't deal directly with the agencies or visit their premises. Instead, the company dealt with them through three intermediaries: Igor Morozov, Souren Sarkissov and Alex Zeinalov.

These intermediaries ensured a reliable supply of temporary workers, according to Bungaroo. Some of these workers stayed at the factory for years as temp agency employees. One worker who testified on behalf of Fiera said he had worked as a temp at the company since 2008, and had finally been made permanent around six weeks prior to appearing on the stand.

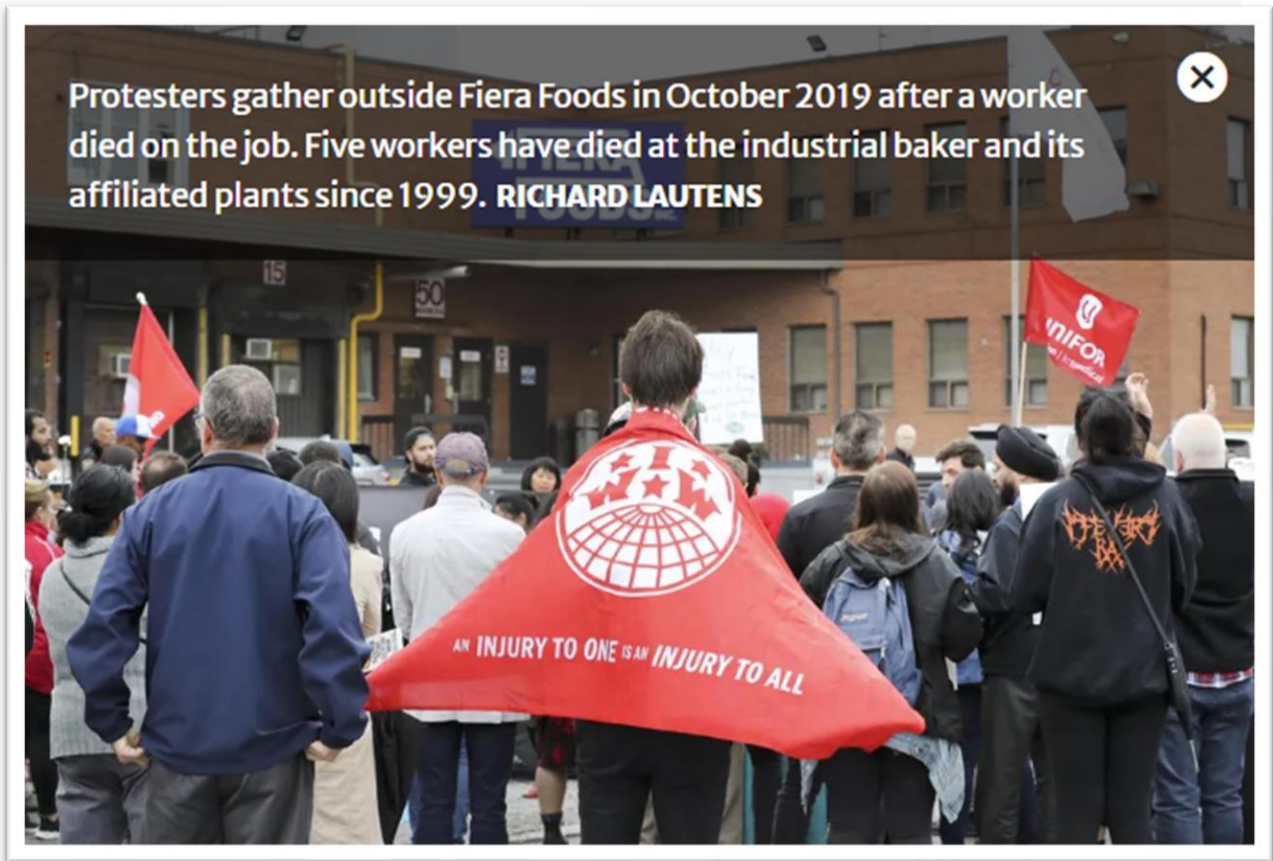
During their time at Fiera, workers often cycled through multiple agencies, payroll records showed. In a given week, a group of hundreds of temps would be entered in Fiera's system as employees of one agency; days later, the same group would show up as employees of an entirely different agency.

Fiera "never questioned or verified" why the temp agencies would constantly "pop-up and disappear" yet were still able to send the same workers to the factory, the CRA's submissions say.

Several workers who took the stand had no knowledge of their agency changing — and sometimes, had little knowledge of being hired by an agency at all.

One worker told the court he ended up at Fiera shortly after arriving in Canada from the Middle East in 2011. Since he did not yet have a valid work permit, a friend recommended a "cash" job at the industrial bakery. The man said he showed up at the factory asking for work, and never personally spoke to a temp agency.

Several workers recalled signing up with a temp agency at an office prior to starting work at Fiera. But others only dealt with unidentified individuals who sent them to Fiera over the phone, and were unable to name the agencies that apparently employed them.



The three middlemen

Meanwhile, Fiera billed the 13 labour suppliers at rates that were not “commercially realistic” since they fell below Ontario’s “minimum hourly payroll costs,” government court submissions claim.

In the eyes of tax authorities, that “raised the risk level” of Fiera’s file: it didn’t make “economic sense” for legitimate agencies to do business on these terms, one auditor testified. Nor did it make sense, the Crown argued, for there to be no written record of how billing rates were negotiated; Fiera’s contracts with the agencies were silent on that matter.

On Fridays at noon, the three middlemen — Sarkissov, Zeinalov and Morozov — would show up at the factory to pick up cheques for the temp agencies, Bungaroo testified. These middlemen would also ensure workers were paid: either by bringing cash to the factory, sending employees to payday lenders, or handing out prepaid cards.

Sarkissov, Zeinalov and Morozov do not appear on incorporation records for any of the 13 agencies.

Instead, the agencies' listed directors were typically individuals who either didn't have social insurance numbers, or didn't have any declared income other than social assistance payments, the CRA's investigations found.

The vast majority of Fiera's cheques to the 13 temp agencies were processed through cash chequing joints, according to the CRA.

The Star had previously contacted the listed director of one of the 13 agencies, who said he was approached in a billiards hall by someone named "Vladimir" and asked to set up a temp agency. The man said he had no further knowledge of the temp agency's business dealings with Fiera.

None of the agencies' listed directors, nor the three middlemen, appeared as witnesses in the trial.

Morozov and Zeinalov did not respond to the Star's request for comment. Sarkissov told the Star he was not asked to testify and had no "direct knowledge" of what was said in court.

"Hence, I am really not in a position to provide any comments until I read the judge's decision," he said.

Both Sarkissov and Zeinalov have provided workers to Fiera or affiliated plants through other temp agencies whose relationship with the factory are not at issue in this case, according to court records, incorporation records and Ministry of Labour files obtained by the Star.

The Crown stopped short of saying who exactly provided vast quantities of temporary labour to Fiera, if not the 13 agencies. But, its submissions say, the facts "suggest" the three middlemen were the ones truly behind the dealings.

Fiera also demonstrated a "systemic pattern of shortfalls" in the documentation produced to justify its tax credit claims, Crown lawyers argued.

Temp agencies 'stole a lot of money from Her Majesty'

Fiera provided the court with hundreds of payroll records it says substantiate its “orders” from the 13 agencies, noting that it meticulously documented the hours worked by temps and their agency of origin.

Contrary to the CRA’s audit findings, Fiera claims these agencies did have staff and physical offices “separate and apart” from the UPS mailboxes where they were officially registered, and that workers were aware they were agency hires. Moreover, Fiera’s court submissions add, it wouldn’t make sense for the factory to pay the agencies “millions of dollars for nothing.”



The 13 agencies “stole a lot of money from Her Majesty,” the company’s lawyers acknowledged in court. But Fiera should not be held responsible for that, and did “not directly or indirectly hold an interest” in the temp agencies it did business with, its submissions say.

“The fact that someone else was a bad actor ... should be wholly irrelevant to us,” Fiera’s lawyers told the court.

Fiera has not done business with any of the 13 agencies in question for “many years,” general counsel Gelbloom told the Star in a statement.

“We have taken important steps to strengthen accountability for all our temporary placement agency partners, with rigorous oversight that includes routine audits and documentation reviews. It is our expectation that our partner agencies live up to their respective legal and contractual obligations and we take steps as part of our work together to ensure this is the case.”

Fiera’s history of sparring with the CRA

This is not Fiera’s first brush with tax authorities. The company has previously appealed CRA assessments that denied it \$25 million in business expense deductions based on purchasing temporary labour. The CRA settled with Fiera and allowed the bulk of the deductions.

Fiera also recently appealed another CRA reassessment that found the factory improperly deducted millions of dollars in temp agency expenses from its income between 2014 and 2015. The appeal has yet to reach trial.

Asked about its enforcement efforts in the temp agency sector generally, a spokesperson for the CRA said the organization could not release “specific information related to its review strategies, as releasing this information could jeopardize our compliance activities.”

But, the spokesperson said, tax authorities may prioritize cases for a number of reasons including when they involve the underground economy.

Whatever the outcome of Fiera’s current case, the verdict is likely to be appealed to the federal court. The outcome could ultimately help clarify the rules of engagement with labour suppliers, said Blachford, spelling out the “minimum standard of diligence” the government expects.

While Fiera’s lawyers acknowledged some features of its case were “unusual,” they argued in court that its business arrangements made sense in the context of relying on “casual labour” sourced largely from immigrant communities.

But the factory’s extensive — and costly — reliance on those “casual” workers is exactly why Fiera should have asked more questions about the agencies supplying them, the Crown countered.

“This is not a case of a few thousand dollars,” government lawyers said. “It’s six figures a month.”



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