

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

BEFORE THE OFFICE OF TAX APPEALS  
JEFF ANGEJA, PANEL LEAD  
KENNY GAST AND MICHAEL GEARY, PANEL MEMBERS

In the Matter of )  
 )  
ADOLFO REYES DELGADO )  
 )  
Appellant, )  
 )  
 ) No. 18042570  
Office of Tax Appeals )  
State of California )  
Respondent )  
 )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
Van Nuys, California  
Monday, October 22, 2018

Reported by:  
SUSAN GALLAGHER  
Hearing Reporter

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

BEFORE THE OFFICE OF TAX APPEALS  
JEFF ANGEJA, PANEL LEAD  
KENNY GAST AND MICHAEL GEARY, PANEL MEMBERS

In the Matter of )  
ADOLFO REYES DELGADO )  
Appellant, )  
Office of Tax Appeals ) No. 18042570  
State of California )  
Respondent )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS, taken at  
California State Building Offices, Van Nuys  
6150 Van Nuys Boulevard, Van Nuys,  
California, Monday, October 22, 2018, commencing at  
11:25 a.m. and concluding at 11:51 p.m. on Monday,  
October 23, 2018, heard basically  
GRANT THOMPSON, PANEL LEAD,  
LINDA CHENG, PANEL MEMBER  
DOUG BRAMHALL, PANEL MEMBER

Reported by SUSAN GALLAGHER.

Reported by:  
SUSAN GALLAGHER  
Hearing Reporter

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES:

FOR THE DEPARTMENT OF  
TAX AND FEE  
ADMINISTRATION:

BY: PAMELA BERGIN  
ROBERT TUCKER AND KIM WILSON  
LEGAL DIVISION  
450 N Street, MIC:82  
PO BOX 942879  
Sacramento, California 94279-0082

FOR THE APPELLANT:

RALPH DEL CASTILLO  
REPRESENTATIVE



1 Van Nuys, California, Monday, October 22, 2018

1:25 a.m.

2  
3 JUDGE ANGEJA: We'll go on the record if everybody's ready  
4 to start early. So we'll start ten minutes early, and perhaps  
5 finish sooner. We're now on the record with the Office of Tax  
6 Appeals oral hearing No. 18042570, and before we proceed we have  
7 an interpreter --

8 COURT REPORTER: Excuse me, sir. When the interpreter is  
9 speaking into the microphone, I can't hear --

10 JUDGE ANGEJA: Yeah. So let's -- we're obviously using an  
11 interpreter.

12 I'd like to qualify and swear the interpreter.

13 Could you please state your name for the record.

14 MS. RUDY: Maryann Rudy, R-U, D as in David, Y.

15 JUDGE ANGEJA: Can you please tell us your qualifications  
16 for the record.

17 MS. RUDY: Yes. I have over 20 years translating. I did a  
18 one year class at UCLA for Spanish interpreters. I then became  
19 an administrative hearing interpreter, and I have been working  
20 ever since.

21 JUDGE ANGEJA: All right. Thank you. And we've been at  
22 briefing before the hearing. Mr. Delgado have an opportunity to  
23 speak with Miss Rudy. Is Mr. Delgado comfortable with your  
24 translating?

25 MS. RUDY: Yes.

1 JUDGE ANGEJA: So please raise your right hand.

2 MARYANN RUDY,

3 Was first duly sworn to interpret the English language to  
4 the Spanish language and the Spanish language to the English  
5 language to the best of her ability.

6 THE INTERPRETER: Yes, I do.

7 THE COURT: All right. Thank you. So we are in Van Nuys,  
8 California. The date is Monday, October 22nd, 2018. The time is  
9 approximately 11:25. I'm Jeff Angeja. I am the lead  
10 administrative law judge for the hearing. My fellow co-panelists  
11 today are Michael Geary and Ken Gast. And then the California  
12 Department of Tax and Fee Administration. I'll be referring to  
13 you guys as Department. Can you please identify yourselves for  
14 the record.

15 MS. BERGEN: Sure. Pamela Bergen with the department, and  
16 we have Kimberly Wilson and Robert Tucker also from the  
17 department.

18 JUDGE ANGEJA: Mr. Castillo?

19 THE WITNESS: Ralph Del Castillo.

20 JUDGE ANGEJA: And you brought with you today the taxpayer  
21 for the record?

22 THE WITNESS: Yes.

23 JUDGE ANGEJA: And for now my understanding is that  
24 Mr. Delgado is not going to testify, but if either my  
25 co-panelists or the department has questions for him, we can

1 swear him in.

2 This appeal involves appellants alleged distribution of  
3 untaxed cigarettes in California. There are State issues for us  
4 to decide. The first is whether appellant made unreported  
5 taxable distributions of \$739,960 unstamped cigarettes in  
6 California. Second is whether appellant paid a court ordered  
7 restitution, satisfied any remaining civil liabilities he might  
8 have had. Third is whether the departmental penalty is supported  
9 by clear and convincing evidence.

10 And then the last three are whether appellant had  
11 established reasonable cause to relieve the three penalties for  
12 failure to secure a license, failure to file, and the collection  
13 cost for recovery. And we will two prehearing conferences in  
14 this matter.

15 And the parties have provided documents for exhibits, and  
16 they are without objection. So we will admit them into the  
17 record for evidence. Those would be the Department's Exhibits A  
18 through G that were provided with the prehearing conference  
19 statement, and Exhibit H that was provided on October 16th. The  
20 appellant had no objection.

21 (Department's Exhibits A through G admitted into evidence.)

22 The appellants Exhibits 1 through 12 that he provided after  
23 the second prehearing conference, and the department has no  
24 objection to those. So those are now on the record.

25 ///

1 (Appellant's Exhibits 1 through 12 admitted into evidence.)

2 JUDGE ANGEJA: As I've said during our prehearing  
3 conference, there's two basic parts of the hearing, that evidence  
4 and arguments. We've already got the evidence into the record.

5 So today we have the arguments. We'll begin with  
6 Mr. Delgado's testimony and argument, which is not to exceed  
7 15 minutes.

8 The Department will be allowed to ask questions if they  
9 wish, as well as the panel judges. The Department will make  
10 their arguments, also not to exceed 15 minutes, and the  
11 appellant, as well as co-panelists, will be allowed to ask  
12 questions if they wish to. Then, Mr. Castillo, your client will  
13 have approximately ten minutes to respond if you'd like.

14 And with that, we'll skip the swearing because we don't have  
15 testimony. We have arguments.

16 So I'll turn it over to you.

17 MR. CASTILLO: On November the 8th of 2013, the Court  
18 ordered three provisions for Mr. Delgado: 178 days in jail;  
19 restitution to be paid to the State of California in the amount  
20 of \$32,195; the amount of \$40,000 was seized, and that money was  
21 to be used to pay that 32,195.

22 We got a notice -- Mr. Delgado got a notice dated March 29,  
23 2016, in the amount of 61,315.70. Then he got another notice  
24 dated April 19, 2017, in the amount of 30,945. Then he got  
25 another notice on 4/30/2017 in amount of 21,233.07. He got

1 another notice April 13th, 2017, in the amount of 21,222.10.  
2 Then he got another notice dated May 9, 2018, in the amount of  
3 17,155.28.

4 Later there was a letter that we sent May 30th briefly  
5 summarizing the sequence of events. There was another letter  
6 dated August 1, 2017, addressed to the Appeals Division,  
7 disagreeing with the count of cigarette cartons. Previously we  
8 had been in contact with Mr. Juan A. Vuong, V-U-O-N-G, CPA, for  
9 the tax counsel. He had advised us that we could be present for  
10 the count of the cigarettes.

11 However, when the count came, we were not advised, and we  
12 were not able to attend the count. Later in September of 5,  
13 2017, we got a letter that on November 10, 2016, we had been  
14 advised by Mr. Vuong that we would be excluded from the group  
15 that counts cigarette cartons. However, later we got another  
16 letter saying that Mr. Vuong was not able to pursue the case. So  
17 he got -- somehow he got taken off the case.

18 The main point that I'm -- that we're contending is that the  
19 court ordered 32,185 to be paid. Had that money been taken out  
20 at that time, that would have avoided all these penalties and  
21 whatever other things that they have done.

22 I feel that if they had taken the money 32,185, that would  
23 have taken care of the account, and the case could have been  
24 closed.

25 Item No. 12, I have a brief summary of events, as I

1 previously provided to the State. That's it.

2 JUDGE ANGEJA: Those are your exhibits that you've already  
3 provided, 1 through 12?

4 MR. CASTILLO: Yes, sir.

5 JUDGE ANGEJA: Okay. I have a feeling we're going to need  
6 to swear in Mr. Delgado, but I'll hold off for now.

7 Department, would you like to state your case?

8 MS. BERGIN: Please.

9 In 2013, Mr. Delgado became the subject of an investigation  
10 by the Los Angeles County Sheriffs Department and this  
11 department, formally the Board of Equalization, which ultimately  
12 led to a criminal conviction when Mr. Delgado pled no contest to  
13 one count of Section 30474-A of the Revenue and Taxation Code,  
14 which is a misdemeanor, and it's for possession of unstamped  
15 cigarettes for the purpose of sale.

16 At the time of the plea, Mr. Delgado further admitted to the  
17 special allegations that he possessed the unstamped cigarettes  
18 with the intent to defeat or evade the tax liability that's  
19 greater than \$25,000. In doing so, Mr. Delgado's conviction was  
20 enhanced from a misdemeanor to a felony pursuant to Revenue and  
21 Taxation Code Section 30480. In California the legal effect of  
22 the no contest plea to a crime punishable as a felony is the same  
23 as a guilty plea for all purposes.

24 And a no contest plea to a crime punishable as a felony is  
25 an admission to all of the elements of the crime charged against

1 the person in a subsequent civil action, and that is exactly the  
2 situation that we have here.

3 Mr. Delgado pled no contest to a charge that became a felony  
4 due to the amount of the tax liability. It was punishable as  
5 such.

6 Mr. Delgado admitted that he possessed the unstamped  
7 cigarettes with the intent to defeat or evade a tax liability,  
8 and the Court took his admission and found it to be true.

9 As the Department's Exhibit A shows, Mr. Delgado was  
10 represented by counsel. He had a Spanish interpreter. He was  
11 advised of the nature of the charges against him and the  
12 consequences of his plea, and the Court found his admission to be  
13 true and found him guilty of the felony.

14 Mr. Delgado has never contested any of this during the  
15 appeal of the civil tax liability. The Department used  
16 Mr. Delgado's plea and the evidence obtained during the criminal  
17 investigation to conduct a civil audit, which led to the tax  
18 liabilities here.

19 As the Department's Exhibits D, E, F, and G clearly show,  
20 739,9667 of unstamped cigarettes were found in Mr. Delgado's  
21 possession. Mr. Delgado has never contested that he made  
22 distributions of unstamped cigarettes, but argued that the total  
23 of the number of sticks that he possessed was only 440,000. To  
24 date, Mr. Delgado has not provided any evidence to support his  
25 contention that he distributed only 440,000 cigarettes.

1           Now, to the liability here, it included a tax fraud penalty,  
2 failure to secure license penalty, failure to file penalty, and a  
3 collection cost recovery fee. The basis for the fraud penalty is  
4 Mr. Delgado's plea, and he has never contested the truth of the  
5 matters admitted by his plea. Mr. Delgado has admitted that he  
6 possessed unstamped cigarettes for the purpose of selling them  
7 and with the intent to evade a tax liability, and he has admitted  
8 to not obtaining a license or filing a return.

9           The evidence is clear that Mr. Delgado knew that he was --  
10 he possessed unstamped cigarettes, knew that he had the filing  
11 and reporting requirements, knew that he had an obligation to pay  
12 the tax, and he has admitted that he intentionally did not pay  
13 taxes. The Department has clearly met its burden to show fraud,  
14 and Mr. Delgado has provided no evidence to dispute it.

15           As to the failure to secure a license penalty, Mr. Delgado  
16 has never disputed that he did not possess a license. In fact,  
17 at the first prehearing conference held for this matter,  
18 Mr. Delgado admitted in the presence of Mr. Angeja and myself  
19 that he never had a distributor's license. He has offered no  
20 cause why this penalty should be relieved.

21           As to the failure to file penalty, again, Mr. Delgado has  
22 never disputed this issue. At the first prehearing conference,  
23 he also admitted that he had never filed a return, and, again,  
24 this is in my presence and the presence of Mr. Angeja. He has  
25 never offered any cause for why this penalty should be relieved.

1           Finally, as to the collection of the cost recovery fee, that  
2 fee is imposed on anyone who fails to pay an amount of tax,  
3 interest, penalty, or other amount due and payable. As our  
4 Exhibit H shows, Mr. Delgado was noticed in December 2015 that a  
5 collection fee would be imposed if he didn't pay the fee in full  
6 or enter into a payment plan. And in March 2016 the fee was, in  
7 fact, imposed. Mr. Delgado has never disputed that he owes this  
8 fee.

9           Now, as to the liability that remains as an issue, as the  
10 Department's Exhibit A showed in November 2013, Mr. Delgado was  
11 ordered to pay restitution to the Department as Department's  
12 Exhibit B showed that a court's order to distribute the funds was  
13 not made until February 2017, which is when the Sheriffs  
14 Department released the funds and sent them to the Department.  
15 The Department applied the entire amount to Mr. Delgado's  
16 liability. That was a check for \$35,882.

17           The funds were applied as follows: \$32,195 was applied to  
18 the tax. \$965.82 was applied to the interest for the period  
19 between when the return was due and the date when the restitution  
20 order was made by the Court. So that's May 2013 till November  
21 2013. And the remaining \$2,721.18 was applied to the penalty.  
22 This also accounts for an adjustment of \$6.74 that was  
23 recommended by the appeal bureau's decision, which resulted in  
24 \$10.97 total adjusted, that \$6.74 in tax, 0.18 in interest, \$4.05  
25 in penalties.

1 All of the interest after the date of the restitution  
2 ordered, so that's everything after November 2013 when the order  
3 was made, was cancelled once the funds were actually received in  
4 February 2017. Finally, as the amount of liability had been  
5 adjusted to below \$50,000, the collection fee was reduced to  
6 \$570.

7 So what remains at issue today is \$16,585.28 in penalties  
8 and \$570 for the collection fees, for a total of \$17,155.28.  
9 This information is reflected in Department's Exhibit C.

10 Finally, other than the stick count, the only issue that  
11 Mr. Delgado has ever contested in this appeal was the question of  
12 whether the criminal restitution order fully satisfied the civil  
13 liability that the Department had assessed against him.

14 As I've shown in my prehearing conference briefs, there is  
15 ample authority establishing that restitution in a criminal  
16 matter does not preclude a civil tax liability related to the  
17 same underlying wrongful act. As the victims in this case, the  
18 Department merely covered both restitution and civil judgment so  
19 long as the restitution amount paid is applied to the civil  
20 liability first.

21 Again, the Department has applied the entire restitution  
22 amount towards Mr. Delgado's tax liability, but he does remain  
23 liable for the penalties and the collection fees. Based on all  
24 of the evidence provided in briefing and the two prehearing  
25 conferences and today, we request that this appeal be denied.

1 Thank you.

2 JUDGE ANGEJA: Mr. Castillo, do you have any questions?

3 That's a lot to digest.

4 MR. CASTILLO: Like I said, the main point of the contention  
5 that --

6 JUDGE ANGEJA: Let me -- just for clarification, I just want  
7 to know if you have questions first.

8 MR. CASTILLO: No.

9 JUDGE ANGEJA: I want to see if Mr. Delgado has questions.

10 THE WITNESS: I have a question with regards to the  
11 interests that are being charged. Because that money wasn't paid  
12 when it was ordered so it's not my fault that the sheriff  
13 retained that money and didn't pay it sooner.

14 JUDGE ANGEJA: You want to go ahead and explain?

15 MS. BERGIN: Sure. And I absolutely agree. It's not  
16 Mr. Delgado's Fault, and for that reason, there is no interest on  
17 this case from the date when the restitution was order was made  
18 in November 2013. That was all cancelled. There is no  
19 outstanding interest due.

20 THE WITNESS: So the penalties that you're imposing, is that  
21 because I didn't have a license, or what are the penalties for?

22 MS. BERGIN: That's correct. There was no license. There  
23 was no filing or reporting of taxes, and there's the collection  
24 fee because the amount wasn't paid in full.

25 THE WITNESS: But that merchandise wasn't out for sale. It

1 was in a storage.

2 JUDGE ANGEJA: So let me swear him in. Just because that  
3 way information that he may provide can be part of the record.

4 Mr. Delgado, please raise your right hand.

5 ALDOFO REYES DELGADO,

6 Called as a witness, and having been first duly sworn by the  
7 hearing officer, was examined and testified as follows:

8 JUDGE ANGEJA: Okay. And please speak into the microphone  
9 for you.

10 So he was about to explain, you were saying the merchandise  
11 wasn't for sale.

12 THE WITNESS: It was put away in a storage area, not in the  
13 store.

14 JUDGE ANGEJA: I'm going to treat this as part of the  
15 rebuttal, and we can have questions when we're done. Did you  
16 want to address the additional penalties?

17 THE WITNESS: Yes.

18 JUDGE ANGEJA: Go ahead.

19 THE WITNESS: That's why I questioned the penalties.  
20 Because they were stored in a warehouse or storage area. They  
21 were not out to be sold. So why should I pay those penalties?

22 JUDGE ANGEJA: We'll have -- I have a few questions I want  
23 to hold on to till the end.

24 Did you have anything else to add?

25 THE WITNESS: No, that's all.

1 JUDGE ANGEJA: All right. I want to start -- more simply to  
2 begin with because you talked faster than I could write, and I  
3 know from Exhibit C that the numbers have been adjusted, but I  
4 don't know how to read Exhibit C. So can you -- the appeals  
5 bureau's decision reduced the tax by a little bit. And I think  
6 you said you took those adjustments into account. But I don't  
7 know in my notes what the penalty is and the remaining tax.

8 And we have the question -- it was -- I don't have this  
9 added.

10 MR. GAST: I have the number as being 3,687, but that was  
11 just my rough math. I haven't seen this yet. I think she would  
12 be in a better position to explain.

13 JUDGE ANGEJA: I just want to have it clear for our record,  
14 100 percent of what was paid was applied, and I know what I was  
15 initially seeing was some of the statements of accounts didn't  
16 show the penalties as having been adjusted. I think you had  
17 responded that you reduced -- one was by \$2.00. One was by 4.  
18 At the risk of being overly simple, can you tell me what this  
19 penalty has been reduced to?

20 MS. BERGIN: Sure. If you -- what each penalty has been  
21 reduced to?

22 JUDGE ANGEJA: If that's possible.

23 MS. BERGIN: I can try to do that math.

24 Okay. So is that the failure to secure? Okay. So for the  
25 two 25 percent penalties, each one has been adjusted to 8047 --

1 oh, sorry. It was reduced by \$1.69 for each.

2 JUDGE ANGEJA: So 8047 what?

3 MS. BERGIN: That was the measure. So then it was reduced  
4 by \$1.69.

5 JUDGE ANGEJA: The amounts that are indicated on the Exhibit  
6 C are the two penalties. I believe what it says is one is now  
7 8,049 and one is 8,048.75?

8 MS. BERGIN: Correct.

9 JUDGE ANGEJA: Here's my question. Those are the amounts  
10 that were initially determined? So there's a reduction then.

11 MS. BERGIN: Right. So you can see under that same penalty  
12 line, there's a minus \$10.79.

13 JUDGE ANGEJA: Okay. Let me put it to you this way, the new  
14 tax amount, and I can apply the percentages to that.

15 MS. BERGIN: There is no tax that's owed.

16 JUDGE ANGEJA: No. The DNR reduced it.

17 MS. BERGIN: It was 32,188.

18 JUDGE ANGEJA: All right. I can apply the math to that. It  
19 would be helpful, I think, for the parties if you could please  
20 define what the distribution is for the tobacco tax.

21 MS. BERGIN: Sure. So in California the distribution  
22 includes the sale of untaxed cigarettes. In this state the use  
23 for consumption of untaxed cigarettes in this state or putting  
24 cigarettes in a vending machine -- which is not an issue here --  
25 use or consumption is defined in California under Revenue and

1 Taxation Code Section 3009 that includes the exercise of any  
2 right or power over cigarettes incident to the ownership thereof.  
3 So in this case, other than to, like, distribute them for the  
4 purposes of sale. So in this case Mr. Delgado was not a licensed  
5 distributor as he's admitted, yet he possessed untaxed  
6 cigarettes. Whether it was in his home or in his storage  
7 facility or store makes no difference. He was considered making  
8 distributions under California law. And, in fact, he admitted to  
9 possessing the cigarettes for the purpose of sale in his criminal  
10 cases.

11 JUDGE ANGEJA: So that answers his question regarding when  
12 he said the penalties -- he just had it stored, and I don't know  
13 if he has any response or a question.

14 THE WITNESS: No, nothing.

15 JUDGE ANGEJA: Okay. I had one quick question. What was  
16 the purpose you bought the cigarettes and had them in storage?  
17 What were you going to do with them? Now that we've got that  
18 explained in the record.

19 THE WITNESS: Theoretically, I was going to get a permit if  
20 I could, or just sell them outside of the country because they  
21 were cigarettes that should have been sold outside of the  
22 country.

23 JUDGE ANGEJA: And how come you didn't get a permit?

24 THE WITNESS: Because they weren't giving it to me. City  
25 Hall in Los Angeles did not give me the permit because they said

1 that I had to have a store to sell the cigarettes.

2 JUDGE ANGEJA: I have a question for Department. It's not  
3 City Hall that provides that. It was CDTFA. It was a state  
4 permit.

5 MS. BERGIN: Correct. So the CDTFA, the Department would  
6 provide a retail or distributor's license. In this state there  
7 would have been a distributor's license had Mr. Delgado applied.  
8 We have no record that he ever applied for a distributor's  
9 license, and it was never denied because he never applied for one  
10 through our department.

11 THE WITNESS: I asked City Hall if I could get a permit, and  
12 they said "no" because I don't have a store. But they are the  
13 people in charge of giving permits.

14 JUDGE GEARY: Okay. So I have a few questions. At both  
15 prehearing conferences, Mr. Delgado did not concede the amount of  
16 cigarettes that were untaxed and found in the sheriff's  
17 possession, and Mr. Delgado has not addressed that today. So I'd  
18 like to know -- I have two questions.

19 One, is there any evidence that it was less than the 400 --  
20 and I had it memorized. Excuse me a second. 739,960? And in  
21 both prehearing conferences you said it's about 220,000. Is  
22 there any evidence to support that? Because I don't have it in  
23 the record.

24 MR. CASTILLO: I haven't really asked him, but he told me  
25 that it was around 440,000.

1 JUDGE GEARY: All right. 440. Okay. And we've got a plea  
2 to at least a misdemeanor that includes fraud. I would like to  
3 hear him address what -- how we reconcile that plea with --

4 Let me ask it this way. If he's saying the number is  
5 440,000 instead of the 740,000 --

6 My concern is to contend that the number is 440,000 is still  
7 essentially an admission. So I'd like to find out the specific  
8 response to the Department's position that he admitted to the  
9 fraud both by the plea and by the number of cigarettes that he  
10 says that it actually was instead of what they said it was.

11 THE WITNESS: I don't know exactly if that is the right  
12 amount, but it certainly is not the amount that the government  
13 says.

14 JUDGE ANGEJA: We had asked the parties to be prepared to  
15 address whether that plea was to a misdemeanor or to a felony.  
16 Rather than go through the legalities of that here, my question  
17 will be in the event that we find it is a misdemeanor and not a  
18 felony -- in other words, if you're not able to rely on the plea  
19 bargain, what other evidence do you have to support the fact that  
20 it's fraud? And you have the burden of proof on that by clear  
21 and convincing evidence.

22 MS. BERGIN: Sure. I think, first, that I have proven that  
23 it was a felony. That was the order by the judge. I'm not sure  
24 how we get away from that. But in the event you somehow find  
25 that it wasn't a felony that he pled to, Mr. Delgado has admitted

1 in his Appeals Bureau Conference that he knew that he owed a tax,  
2 that he knew that he had to obtain a license to have the  
3 cigarettes, that he did not obtain a license because it was going  
4 to be too expensive to get a license and he would have had to pay  
5 too much tax if did have a license.

6 So to me that very clearly shows that he possessed the  
7 unstamped cigarettes with the knowledge that there was a  
8 reporting and a tax payment obligation, that he purposefully and  
9 willfully disregarded that obligation, and that he intentionally  
10 did not pay that tax, and he did so knowing that he owed it,  
11 which is the fraud. And, again, he has provided nothing to  
12 dispute any of these allegations today.

13 JUDGE ANGEJA: So the panel doesn't have any more questions.  
14 Does Mr. Delgado or Castillo have any questions?

15 THE WITNESS: No.

16 MR. CASTILLO: No.

17 JUDGE ANGEJA: Department, do you have any questions for  
18 Mr. Delgado?

19 MS. BERGIN: No.

20 JUDGE ANGEJA: Then I believe it's appropriate to close the  
21 record and conclude this hearing.

22

23 (Hearing concluded at 1:59 p.m.)

24

25

## REPORTER'S CERTIFICATION

I, the undersigned, a Hearing Reporter for the State of  
California, do hereby certify:

That the foregoing proceedings were taken before  
me at the time and place herein set forth; that any  
witnesses in the foregoing proceedings, prior to  
testifying, were duly sworn; that a record of the  
proceedings was made by me using machine shorthand, which  
was thereafter transcribed under my direction; that the  
foregoing transcript is a true record of the testimony  
given.

Further, that if the foregoing pertains to the  
original transcript of a deposition in a federal case,  
before completion of the proceedings, review of the  
transcript [] was [] was not requested.

I further certify I am neither financially  
interested in the action nor a relative or employee of any  
attorney or party to this action.

IN WITNESS WHEREOF, I have this date subscribed  
my name.

Dated: November 19, 2018



Susan Balla