

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
MAHNAZ DANESH and IMAD MAZBOUDI,) OTA NO. 18011311
)
 APPELLANT.)
)
_____)

TRANSCRIPT OF PROCEEDINGS

Van Nuys, California

Thursday, January 24, 2019

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
6150 Van Nuys Blvd., Van Nuys, California, 91401,
commencing at 10:55 a.m. and concluding
at 11:22 a.m. on Thursday, January 24, 2019,
reported by Ernalyne M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: Hon. ANDREW KWEE

Panel Members: Hon. AMANDA VASSIGH
Hon. KENNY GAST

For the Appellant: Mahnaz Danesh, Taxpayer
Imad Mazboudi, Taxpayer

For the Respondent: State of California
Franchise Tax Board
By: CIRO IMMORDINO
NATASHA PAGE

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I N D E X

OPENING STATEMENT

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1 Van Nuys, California; Thursday, January 24, 2019

2 10:55 a.m.

3
4 ADMINISTRATIVE LAW JUDGE KWEE: We're ready to go
5 on the record.

6 We are opening the record in the appeal of Danesh
7 and Mazboudi before the Office of Tax Appeal. The OTA
8 Case No. is 18011311. Today's date is Thursday,
9 January 24th, 2019, and the time is approximately 10:55.

10 This hearing is being convened in Van Nuys,
11 California. For the evidentiary records, will the parties
12 at the table please state their names and who they are
13 representing, starting with the Appellant, the taxpayers.

14 MS. DANESH: Mahnaz Danesh.

15 MR. MAZBOUDI: Imad Mazboudi.

16 ADMINISTRATIVE LAW JUDGE KWEE: And for the
17 Franchise Tax Board?

18 MR. IMMORDINO: Ciro Immordino and Natasha Page
19 on behalf of the Franchise Tax Board.

20 ADMINISTRATIVE LAW JUDGE KWEE: Thank you.

21 Today's hearing is being heard by a panel of
22 three administrative law judges. My name is Andrew Kwee,
23 and I will be the lead judge. Judge Amanda Vassigh and
24 Judge Kenneth Gast are the other members of this tax
25 appeals panel.

1 All three judges will meet after the hearing and
2 produce a written decision as equal participants.
3 Although, the lead judge will conduct the hearing, any
4 judge on this panel may questions or otherwise participate
5 in order to ensure that we have all the information that
6 we need to decide this appeal.

7 The exhibit index in front of you are identified
8 as Exhibits 1 through 8 for the taxpayers. We also have
9 Exhibit 9, which is the documents that were submitted
10 today. And Exhibits A through K for the Franchise Tax
11 Board. These are all the exhibits that the parties have
12 submitted today.

13 Does FTB have any objections to any of the
14 exhibits identified in the exhibit index?

15 MR. IMMORDINO: No, we do not.

16 ADMINISTRATIVE LAW JUDGE KWEE: Great. And the
17 taxpayer, do you have any objections to any of the
18 exhibits listed on the index?

19 MR. MAZBOUDI: No.

20 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Great. So
21 I will be admitting all the exhibits that are submitted by
22 the parties. That is Exhibits 1 through 9 for the
23 taxpayers and A through K for the Franchise Tax Board.
24 These documents are admitted and entered into the
25 evidentiary record.

1 (Appellants' Exhibits 1-9 were received
2 in evidence by the Administrative Law Judge.)

3 (Respondent's Exhibits A-K were received
4 in evidence by the Administrative Law Judge.)

5 ADMINISTRATIVE LAW JUDGE KWEE: This is a single
6 issue appeal today. The issue in this appeal is whether
7 Appellants established entitlement to a \$829,527 reduction
8 in taxable income for the 2012 tax year based on
9 qualifying for like kind exchange treatment under 1031.

10 During the appeals process, FTB conceded a
11 \$39,477 reduction to taxable income on a separate issue.
12 And the refund allowable is identified -- oh, I'm sorry.
13 For the Franchise Tax Board I forgot to mark your exhibit
14 as an exhibit. I believe this would be Exhibit L.

15 MR. IMMORDINO: That's correct.

16 ADMINISTRATIVE LAW JUDGE KWEE: So and the
17 taxpayer you don't have -- you didn't have an objection?

18 MR. MAZBOUDI: No.

19 ADMINISTRATIVE LAW JUDGE KWEE: Okay. I'm also
20 admitting Exhibit L, which is the Franchise Tax Board's
21 calculation of the concession.

22 (Respondent's Exhibit L was received
23 in evidence by the Administrative Law Judge.)

24 ADMINISTRATIVE LAW JUDGE KWEE: So again the
25 Franchise Tax Board had conceded a \$39,477 reduction to

1 taxable income as calculated on Exhibit L, which was just
2 admitted. And this amount is no longer at issue.

3 Do the parties agree that I have summarized the
4 issue that we are discussing correctly and the concession
5 correctly?

6 MR. MAZBOUDI: Yes.

7 MR. IMMORDINO: Yes.

8 ADMINISTRATIVE LAW JUDGE KWEE: Great. So we
9 then are ready to proceed with the taxpayer's, Appellants'
10 presentation in this appeal. But before we start, since
11 you'll be providing evidence and testimony, I'm going to
12 briefly ask you to swear and affirm.

13

14

IMAD MAZBOUDI,

15 produced as a witness by and on behalf of himself, and
16 having been first duly sworn by the Administrative Law
17 Judge, was examined and testified as follows:

18

19 ADMINISTRATIVE LAW JUDGE KWEE: And Ms. Danesh.

20

21

MAHNAZ DANESH,

22 produced as a witness by and on behalf of herself, and
23 having been first duly sworn by the Administrative Law
24 Judge, was examined and testified as follows:

25

///

1 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.
2 So you may proceed with your presentation and testimony.

3 MR. MAZBOUDI: Okay. Well, per last sheet of the
4 spread sheet that we submitted, or one of them, is
5 basically the cost based on the share of market value.
6 And that, basically, she did not make any money when the
7 partnership with her brother. That she can give you
8 background about it as well.

9 That it was just all the paper trail was hidden
10 from her by her brother. And that's basically what
11 Dr. Mily did. Is he, by requesting that the rest return
12 for the corporation, that she was able to come up with
13 these numbers. So basically, she will give better, like,
14 what the scenario that's happened to get to lead to this
15 point that they got separated from her brother basically.

16 MS. DANESH: Well, I would like to explain a
17 little bit more about the agreement we had. It's not very
18 complicated. I -- personally, myself, I don't understand
19 what the lawyer wrote it done. And everything based on
20 the trust I had towards my brother, so as my attorney, so
21 as my account. I signed all the paper.

22 But then when I look at it later on, I see so
23 many things after when I hit the problem. I realize there
24 are so many things that they put it on the paper was
25 wrong. Including the money that they are -- what they put

1 on the agreement, the agreement that we had. They put a
2 lot of things like I received money, which I never did.

3 We were owing \$1,600,000 on the building that I
4 was going to receive. \$400,000, which we already paid the
5 tax on that, was coming to me from the other corporation
6 that we sold previously before any of these things
7 happened. That was part of it that they put into that
8 agreement, which that confusing everybody.

9 That has nothing to do with this case. But
10 because that money was -- my brother was keeping it,
11 hiding it in order not to give it to me, they had to bring
12 it into that case. That's the \$400,000 that they put it
13 there. The rest of them it was about six corporation that
14 I had to give my share to him due to my health problem. I
15 had to settle before we get to the court.

16 Actually, I give my partnership from six
17 corporation, which was one-third to him in order to get
18 two-third of each share over one corporation. Actually, I
19 did not receive any money. I did not gain anything from
20 that. As a matter of fact, I lost because I give him six
21 corporations, my partnership, and I only got two-third of
22 his share of partnership, and I give him \$400,000 on the
23 top of that.

24 I did all these things because -- because of the
25 health issue I had, and I could not continue anymore.

1 That's one part that they put everything so conflicted in
2 there that nobody could understand what's going on in
3 that -- in that agreement.

4 And then the money the \$400,000 plus that I
5 borrowed from the bank myself to pay him, and also the
6 money that we were owing towards to the building to free
7 the building from his name, because it was the name on it.

8 He borrowed the money against the building,
9 \$1,600,000. And then I had to borrow again money under my
10 name to pay off the -- the building that we were owing --
11 the loan that we were owing in order to put everything
12 under my name. So what they put in there was also very
13 complicated, but, you know, the money that we have to give
14 and the money we have.

15 This back and forth is confusing even myself, and
16 it showing that I receive money that, as a matter of fact,
17 I did not receive any money. Everything go -- went
18 towards to the loan that we are owing, and that I had to
19 borrow money myself.

20 Maybe I have to have more paperwork to proving
21 that, you know, that I was partner with him from day one.
22 But because I trusted him so much, everything was under
23 his name. He did everything and kept everything at his
24 house. When I was asking the letter that I was giving you
25 copy, I was asking him. My attorney was asking him. Even

1 on the --

2 MR. MAZBOUDI: The letter is dated 2011.

3 MS. DANESH: From 2010 actually, I was asking him
4 for all the documents that I needed. And he refused to
5 give it to me until we were ready to make the agreement.
6 And then he said after we make the agreement, I'm going to
7 give you all the paperwork. As you see, one of these
8 letters my attorney send it to his attorney and himself, I
9 guess.

10 Even at that he refused to pay and to give me all
11 this information. So half of my -- half of my life,
12 actually, I was working with him. At the end I didn't get
13 anything. He betrayed me because everything was under his
14 name. He cheated on me, and everything is gone. The only
15 thing, like I said, I got is just this. I pay him
16 \$400,000, pay the loan, and borrow a million dollars on
17 the building.

18 So it was actually giving him my partnership and
19 then getting that two-third. So there was no money back
20 and forth, you know, giving or taking. It's just to clear
21 the building so we can -- every one of us can go on with
22 our life.

23 MR. MAZBOUDI: Basically, she didn't profit from
24 the transaction, one. Two, he was trying to destroy her
25 to put all the main burden of whatever game that he was

1 playing from day one on her.

2 MS. DANESH: That's why he had two-third
3 partnership, and I had one-third. That was another story
4 that we got to that point, which is I don't think
5 necessary to take your time and explain what the situation
6 was.

7 But the bottom line is he cheated on me. I lost
8 a lot of money, and right now this is the situation. And
9 I went back to my attorney, and I asked him what were the
10 mistake that he done. He admitted so many things he
11 should have done, and he didn't, including the taxes. It
12 should have been clear before I sign.

13 But he said it's too late, and he's gone.
14 There's nothing I can do. You know, I'm just stuck. I
15 don't have anything in my hand more than what I have, that
16 I could -- we could get from him. And the rest is with
17 him, and he told -- on the letter says that he destroyed
18 them after I signed everything.

19 He said I don't have anything. I just destroyed
20 everything. I don't have it. So here I am with all these
21 problems.

22 MR. MAZBOUDI: That's why we went back down to
23 the spread sheet of the cost and fair market value.
24 Either way it shows that she didn't make it.

25 MS. DANESH: And yeah, this we got it from the

1 taxes that I had. Otherwise, I wouldn't even have these
2 numbers in my hand.

3 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.
4 Would you -- do you have anything further that you would
5 like to add before I go to questions?

6 MS. DANESH: No.

7 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Does the
8 Franchise Tax Board have any questions for the Appellants?

9 MR. IMMORDINO: We do not.

10 ADMINISTRATIVE LAW JUDGE KWEE: Okay. I would
11 like to get some quick clarifications. At the time of the
12 settlement agreement, were the entities were they
13 partnerships, corporations, LLC's? What type of entities
14 were they?

15 MR. MAZBOUDI: Corporation.

16 ADMINISTRATIVE LAW JUDGE KWEE: And the property
17 that you're claiming was exchanged, is that real property
18 that was held by the corporation or real property that was
19 held by an individual?

20 MR. MAZBOUDI: Corporation. Property by the
21 corporation.

22 ADMINISTRATIVE LAW JUDGE KWEE: Okay.

23 MS. DANESH: It was all together. I believe it
24 was six.

25 MR. MAZBOUDI: The thing is they were partners to

1 start with, but verbal partner until that letter start
2 coming that she had issue with him. And she brought it up
3 that let's put it on paper so in case anything happen to
4 you, that I can prove that I'm partner.

5 MS. DANESH: Because he's married.

6 MR. MAZBOUDI: And then he decided to --

7 MS. DANESH: Destroy it.

8 MR. MAZBOUDI: -- say I don't owe you anything.

9 ADMINISTRATIVE LAW JUDGE KWEE: Okay. So
10 originally this started out as a different entity, but
11 during the time period at issue you had incorporated and
12 transferred ownership?

13 MR. MAZBOUDI: Correct. She started the
14 business. She put the money in. He was working, and then
15 basically they grew to get to this.

16 ADMINISTRATIVE LAW JUDGE KWEE: Okay.

17 MS. DANESH: Yeah. It start with one, which I
18 put the money first. Then he has all the paperwork.
19 Everything was under his name. Any time I ask him, he
20 said, "You don't trust me?"

21 And I said, "Yeah, I trust you."

22 ADMINISTRATIVE LAW JUDGE KWEE: So when you did
23 the six corporations for one corporation transaction was
24 that -- were you transferring the shares -- your shares in
25 the six corporations to your brother in exchange for his

1 shares?

2 MS. DANESH: It wasn't share. Actually, it was a
3 partnership. That's another issue that the attorneys
4 proved it wrong, because it was all partnership. It
5 wasn't any share. It wasn't -- that's another big issue
6 they put there. And I was so naive I didn't even know
7 what was going on.

8 ADMINISTRATIVE LAW JUDGE KWEE: Okay. So I guess
9 I'm just not quite understanding. So the entities were
10 formed as corporations. How does the partnership aspect
11 fit in?

12 MR. MAZBOUDI: Well, it was formed as a business
13 and verbal partnership. You're my sister. Whatever is
14 mine is yours. No problem. Move on. They kept on
15 growing. They were using that business to start another
16 business, which he was pretty much doing everything and
17 pushing her back. And everything was under his name.
18 Then she figure out that my name is not on the taxes. My
19 name is not -- who am I? And --

20 MS. DANESH: That's how it started, the fight.

21 MR. MAZBOUDI: And then he was doing the
22 corporation in the back behind the scene, and she's
23 working. She's doing whatever need to be done with the
24 business, and then so he backstabbed her and say no, I
25 don't owe you anything. And people get involved, and he

1 came up with the shares basically, yes.

2 ADMINISTRATIVE LAW JUDGE KWEE: Okay. I think I
3 understand. So your arrangement with your brother was
4 sort of like a verbal partnership, but he was --

5 MR. MAZBOUDI: Yes.

6 MS. DANESH: In our culture is different, you
7 know. It's just we're supposed to be like a chain.

8 ADMINISTRATIVE LAW JUDGE KWEE: Did -- Amanda,
9 did you have any questions to ask?

10 ADMINISTRATIVE LAW JUDGE VASSIGH: No. Thank
11 you.

12 ADMINISTRATIVE LAW JUDGE KWEE: Kenny, did you
13 have any questions?

14 ADMINISTRATIVE LAW JUDGE GAST: Just the -- turn
15 to the transaction at issue, the 1031. You're saying that
16 you exchanged two-thirds of the shares or --

17 MR. MAZBOUDI: One-third was her. Two-third was
18 his.

19 ADMINISTRATIVE LAW JUDGE GAST: Okay.

20 MR. MAZBOUDI: So she got two-third from Haster,
21 and she basically turn in everything else --

22 MS. DANESH: Well, as a matter of fact, it should
23 be 50-50 as my mother also testified the position they had
24 it in the attorney's office. But he cheated on that part
25 too.

1 MR. MAZBOUDI: Yeah. So basically, yeah, she
2 gave everything else to just pay that part --

3 ADMINISTRATIVE LAW JUDGE GAST: That was part of
4 the settlement agreement?

5 MR. MAZBOUDI: Right.

6 ADMINISTRATIVE LAW JUDGE GAST: Okay. And Haster
7 legally owned real estate?

8 MR. MAZBOUDI: Right.

9 ADMINISTRATIVE LAW JUDGE GAST: One piece of
10 property?

11 MR. MAZBOUDI: Right. Yeah. He basically put
12 her behind the scene to, I guess, improve his life. Now,
13 he's out in the docks. I don't know.

14 ADMINISTRATIVE LAW JUDGE GAST: Thank you.

15 ADMINISTRATIVE LAW JUDGE KWEE: I think at this
16 point we'll let the Franchise Tax Board do their opening
17 presentation.

18

19 OPENING STATEMENT

20 MR. IMMORDINO: You know first, we're very
21 sympathetic to all the conflict that you had to go
22 through, and unfortunately this appeal is guided by the
23 law and the results that are required by the tax code.

24 This appeal, you know, the issue is whether
25 Appellants are entitled to defer paying from their

1 disposition of stock in five different corporations under
2 the provisions of Internal Revenue Code Section 1031,
3 which is also known as a like kind exchange.

4 As I will discuss, the law does not allow
5 deferral in this appeal for two separate and independent
6 reasons. The first is the types of property transferred
7 are specifically excluded from like kind exchange
8 treatment. And the second is that the Appellant received
9 cash in excess of their gain, which would not allow any
10 like kind exchange deferral.

11 I think the place to start is that gain from the
12 disposition of property is taxable. For most taxpayers
13 they pay tax when they have gain from the disposition of
14 property. Section 1031 is an exception to this rule. But
15 Section 1031 only allows deferral if specific requirements
16 are met.

17 These requirements include the limitation that a
18 like kind exchange cannot involve certain types of
19 property, such as stock or a chose of action. A chose of
20 action is essentially the right to sue someone. As I will
21 discuss, the transactions in this appeal deal with stock
22 and choses of action, and so are specifically excluded
23 from like kind exchange treatment.

24 A separate limitation in a like kind exchange is
25 that a gain must be recognized to the extent taxpayers

1 receive cash in exchange. This goes to the concept that a
2 like kind exchange allows taxpayers to defer gain
3 recognition, or they've not liquidated their investment
4 and have merely changed the form of their investment from
5 one like kind property to another.

6 However, once a taxpayer receives cash or other
7 property, the basis for deferral is gone since the
8 taxpayer has now liquidated their investment. For this
9 reason, Section 1031 requires taxpayers to recognize gain
10 to the extent they receive cash or other property in an
11 exchange.

12 As I will discuss, the Appellants received cash
13 in excess of a gain, so they are not allowed to defer gain
14 under Section 1031. So in this appeal, Ms. Danesh and her
15 brother were shareholders of six corporations. Because
16 Ms. Danesh owned one-third of the stock in each
17 corporation, she had no control over the corporations.

18 In 2011 Ms. Danesh filed two lawsuits seeking
19 involuntary dissolution of one corporation and core
20 intervention for the other five corporations in order to
21 resolve conflicts with her brother.

22 In 2012 a resolution of all these conflicts was
23 reached and memorialized in a settlement agreement. The
24 settlement agreement contains three key terms. For the
25 release of all claims, the Appellant received her

1 brother's two-thirds of the stock of Haster Plaza, Inc.

2 The second term -- or key term -- is that for the
3 transfer of one-third of the Appellant's stock in Calvada
4 Development, Inc., the Appellant received approximately
5 \$400,000.

6 The third key term is that for a transfer of
7 one-third of her stock in the remaining four corporations,
8 the Appellant received approximately \$1,000,000.
9 Approximately four months later, Ms. Danesh appeared
10 before a judge and confirmed her agreement with the terms
11 of the settlement.

12 This was not an exchange of real property. The
13 Appellant did not own real property. The Appellant owned
14 stock in the corporations. The corporations are separate
15 taxpayers, and it is the corporation who own the real
16 property. The law does not allow the Appellant to be
17 treated as exchanging another taxpayer's property.

18 Further, the courts from the tax court in Mason
19 the Presidential Board of Equalization decision of Sierra
20 Pacific, the 9th Circuit case of Baxter and the Halperin
21 Corp., all make it clear to the terms of the settlement
22 agreement that govern this appeal. And per the settlement
23 agreement, this appeal deals with the transfer of stock
24 and choses in action, which are specifically excluded from
25 like kind exchange treatment.

1 And regardless, even if a like kind exchange were
2 found to have occurred, gain could not be deferred through
3 a like kind exchange since the amount of cash received
4 would require all the gain to be recognized regardless.

5 It's taxpayer's burden to prove their case in
6 this appeal for the reasons stated, but they've not met
7 their burden.

8 I'd like to address the gain worksheet. The
9 version I have in the -- in Appellant's new exhibit, the
10 last page is that Excel document in their exhibit. In
11 their Exhibit No. 9, but also it's in Exhibit No. 7.
12 It's, I think, the fourth page. And the Appellant assert
13 they made no gain on the property and submitted a schedule
14 showing the fair market value of the properties.

15 However, the taxation is not based on what the
16 potential fair market value of the properties was.
17 Taxation is based on what they received. And in this
18 appeal they received 1.4 million for these properties, and
19 so that's what their taxation is based on.

20 I also note that we discussed in briefing the
21 cost -- basis on information they provided was not cost
22 basis information of their stock in the corporations,
23 which they reported on Schedule D when they filed their
24 tax returns. And so again, that's not relevant.

25 But the most important thing is that the fair

1 market value spreadsheet really doesn't -- isn't very
2 relevant to this appeal. It's relevant to how much money
3 they got. An example I can give is that if you have a
4 Blue Book which values a car for \$500, but you get paid
5 \$1,000 for that car, you're going to get taxed based on
6 the \$1,000 you received.

7 And then regarding the receipt of the money, you
8 know, I want to point out that Exhibit E shows the check
9 and the letter from the Appellant's attorneys, which show
10 that the money was in fact, you know, received.

11 And that's all I have. Thank you very much.

12 ADMINISTRATIVE LAW JUDGE KWEE: Clarification in
13 the Exhibit E you were referring to. Was that showing
14 that they received \$1,400,000? Because I think their
15 testimony was that they actually paid money, not received
16 money.

17 MR. IMMORDINO: Yeah. If you look, this is the
18 check on -- if you go to page 3 of 3 on Exhibit E, you
19 will see a check for \$806,000. And the letter from the
20 Appellants' attorneys mention that the other \$600,000 went
21 to the -- went to pay down a loan on the Haster Plaza
22 property.

23 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Would the
24 panel like to ask any questions of Franchise Tax Board?

25 ADMINISTRATIVE LAW JUDGE VASSIGH: No questions.

1 MR. MAZBOUDI: Let me clarify on just one thing.
2 On the \$1,400,000, it was transferred to her. Again, it's
3 all about his plan to destroy her. That it was supposed
4 to be paid for the \$1,600,000 million owed, which it was a
5 balloon. It was already due at the time of the
6 transaction. That's why she got the money because to pay
7 off the loan.

8 ADMINISTRATIVE LAW JUDGE KWEE: Oh, it's like --
9 no reduction?

10 MR. MAZBOUDI: That's the thing, is attorneys
11 they worked together, and she was basically bottom line,
12 the loser. It's because one, her house. It just keep on
13 dragging. The attorneys are racking up the fees, so she
14 just couldn't take it anymore. And she was cut off
15 basically from the business. So there was no money --
16 income coming to the house at the time because he was
17 controlling, again, everything.

18 MS. DANESH: Also my husband deployed at that
19 time, so I was all by myself. I didn't know what they are
20 doing. I don't know their language of the law. I don't
21 know they were having meeting after meeting, the attorneys
22 together. I don't know what they've done, but my attorney
23 said you get this money, pay the loan.

24 I said okay. You guys -- why don't you guys do
25 it? And then my brother was telling them we keep

1 \$600,000. For what? I don't know. Until now I don't
2 know why they kept it. And then they said when we go to
3 the escrow, whatever, \$600,000, \$800,000, everything, you
4 just put it in the escrow so we can pay the loan. So it's
5 going to free of up his name.

6 And then I borrowed \$1,000,000 against the
7 building from that \$1,000,000. I had to pay him \$400,000.
8 I had to pay attorney. So all this I think the whole
9 thing was gained. And they put -- the way they put it on
10 them -- on this agreement, even until now that I'm reading
11 it I don't understand. I don't know what is done.

12 MR. MAZBOUDI: It was all his benefit.

13 MS. DANESH: I don't know what attorneys done
14 together. After everything, I was so naive. I didn't
15 know anything about tax, law, nothing, because he was --
16 he was the one who was taking care of everything, and he
17 wouldn't let me know anything.

18 And probably the back of his mind he knew one day
19 maybe I wake up or somebody teach me something, and then
20 he was covering himself 100 percent. Even the two-third
21 that he put in there, that is partnership. That was gone.
22 Because from day one it should be 50-50.

23 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Would you
24 like to make any closing statement at this time?

25 MR. IMMORDINO: Can I respond to that?

1 ADMINISTRATIVE LAW JUDGE KWEE: We'll let you
2 have your closing statement after they're finished in just
3 a minute.

4

5 CLOSING STATEMENT

6 MS. DANESH: Yeah. Well, the bottom line no
7 money was involved. Everything went to the loan, to the
8 bank.

9 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.
10 So I'll turn to the Franchise Tax Board to address any
11 issues and make a closing statement.

12

13 CLOSING STATEMENT

14 MR. IMMORDINO: So you know, about the \$600,000
15 that went to the bank, it's clear under both the Internal
16 Revenue Code that money going down to pay down a debt is
17 treated as income. That's under 1001, that when you
18 have -- that's under Internal Revenue Code Section 1001,
19 when you have an amount of liability go down or
20 something go somewhere on your behalf, you know.

21 Really, this is a corporation's liability so it
22 would probably be treated as a contribution on behalf of
23 the corporation. But it went on the Appellant's behalf to
24 the corporation, and that's income to her. That's very
25 clear under the law.

1 Also if you're entertaining the idea of a 1031,
2 the 1031 law is very clear under Treasure Regulation
3 Sections 1.1031(b)(1) and 1.1031(d)(2). The regulations
4 are very clear that paying down liability constitutes
5 liability boot and would also be taxable same as cash in a
6 1031.

7 So under either route, that \$600,000 would be
8 taxable. I also note that on Appellant's tax return, on
9 \$1,000,000 of the \$1,400,000 was reported on the tax
10 return. So \$400,000 of this amount didn't make its way to
11 the tax return. That's an issue I wanted to address on
12 the, you know, production issue that you had brought up.

13 The other thing is that the terms of the
14 settlement agreement were very clear. Because there's so
15 much conflict, the Appellant and her brother had to go
16 back to the court. And the judge very specifically asked
17 both of them to agree to the terms. Do you agree to the
18 terms? And both of them, you know, agreed to the modified
19 term. In our exhibits, exhibit --

20 MR. IMMORDINO: In FTB's Exhibit D, you know,
21 there's that discussion with the judge, you know, walked
22 through with the Appellant and, you know, made sure she
23 agreed. Also the attorney showed that they stayed
24 involved in that settlement.

25 They had the judge stay involved in the

1 settlement until it was concluded. So based on the facts
2 we have, the law is clear that there is gain in this
3 appeal, and does not qualify for like kind exchange
4 treatment for any other deferral.

5 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.
6 I think we're ready to conclude this appeal. Is the panel
7 ready to close?

8 ADMINISTRATIVE LAW JUDGE GAST: Yeah.

9 ADMINISTRATIVE LAW JUDGE KWEE: Okay. This case
10 is submitted on January 24th, 2019. The record is now
11 closed. Thank you everyone for coming in today. The
12 judges will be meeting and deciding the case later on, and
13 we'll send written decision to the parties in the next
14 100 days.

15 Today's hearing in this appeal of Danesh and
16 Mazboudi is now closed, and we'll take a brief recess
17 before we go onto the next matter. Thank you.

18 (Proceedings adjourned at 11:22)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 15th day of February, 2019.

ERNALYN M. ALONZO
HEARING REPORTER