

LINDA CHENG, HEARING JUDGE

In the Matter of the Appeal of:)
)
SALVACION Y. TORRE,) OTA No. 18010827
)
Appellant.)
)

TRANSCRIPT OF PROCEEDINGS, taken at
PBC - Wells Fargo Center, 355 South Grand Avenue,
Suite 2450, Los Angeles, California,
commencing at 2:28 p.m. on Tuesday,
March 19, 2019, heard before LINDA CHENG,
Hearing Judge, reported by Lisa V. Berryhill,
CSR No. 7926, a Certified Shorthand Reporter
in and for the State of California.

1 APPEARANCES:

2 PANEL LEAD: LINDA CHENG

3 PANEL MEMBERS: SARA HOSEY
4 DOUGLAS BRAMHALL

5 For the APPELLANT: LILI SITJAR
6

7 For the RESPONDENT: STATE OF CALIFORNIA
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1 Los Angeles, California; Tuesday, March 19, 2019

2 2:28 p.m.

3
4
5 JUDGE CHENG: We're opening the record in the
6 appeal of Salvacion Y. Torre, before the Office of Tax
7 Appeals. Case number is OTA No. 18010827. This hearing
8 is being convened in L.A. on March 19, 2019, at 2:30 p.m.
9 Today's case is being heard and decided equally by a panel
10 of three judges. My name is Linda Cheng and I will be
11 acting as the lead judge for the purpose of conducting
12 this hearing. Also on the panel with me today are Doug
13 Bramhall and Sara Hosey.

14 Will the parties please introduce yourselves.

15 MS. SITJAR: I am Lili Sitjar and I'm the
16 representative of Salvacion Torre.

17 MR. PAIRIS: I'm Eli Pairis. I was a tax
18 preparer on this.

19 JUDGE CHENG: Mr. Pairis, are you here as a
20 witness or as the representative of Appellant?

21 MR. PAIRIS: Witness.

22 MS. SITJAR: No. We discussed things -- because
23 he was the tax preparer, answering the audit before,
24 that's why his name is on the name that I was
25 representing. That's why I brought him here, to say that

1 this one came from him when he responded to the audit
2 before I came in. It was Eli Pairis responding to the
3 Franchise Tax Board regarding Salvacion Torres.

4 JUDGE CHENG: So just as the representative?

5 MS. SITJAR: As representative, yes.

6 JUDGE CHENG: In that capacity, not to testify?

7 MS. SITJAR: Not to testify.

8 JUDGE CHENG: Very well.

9 MR. GEMMINGEN: This is our first understanding
10 that the taxpayer was going to bring a witness and that
11 was not disclosed during the pre-hearing conference.

12 JUDGE CHENG: He's not here as a witness.

13 MR. GEMMINGEN: He said he was a witness.

14 JUDGE CHENG: He's not going to testify today.

15 MS. SITJAR: It's not his knowledge that --
16 because his name is here on the paperwork, from the
17 Franchise Tax Board, to acknowledge that he's the one --
18 he received this one because I just saw the paper.

19 JUDGE ANGEJA: I understand but he's not going
20 to testify to anything today; right?

21 MS. SITJAR: Not to testify. It's not needed.

22 JUDGE CHENG: Okay.

23 Respondent?

24 MR. GEMMINGEN: David Gemmingen for Franchise
25 Tax Board.

1 MR. TAY: Richard Tay, for Franchise Tax Board.

2 JUDGE CHENG: Okay. So the issues on appeal are
3 the following -- No. 1, whether taxpayer has established
4 that she is entitled to deduct a loss pertaining to the
5 short sale of real property for the 2014 tax year; No. 2,
6 whether taxpayer properly recorded cancellation of debt
7 income for the 2014 tax year and No. 3, whether taxpayer
8 correctly calculated her basis on the real property at
9 issue.

10 And as I stated in my order, issues No. 2 and 3
11 should only be discussed to the extent that taxpayer is
12 entitled to deduct a loss. Okay.

13 Prior to the hearing the parties have stated
14 that they're submitting as evidenced the exhibits attached
15 to the briefs. All of these documents were combined into
16 an exhibit file which has been sent to the parties. FTB's
17 exhibits are marked as A through K and taxpayers exhibits
18 are marked as 1 through 6.

19 Now, today taxpayer brought several documents
20 which will -- with the exclusion of one item -- will be
21 admitted into evidence as Exhibit 7, subject to relevancy
22 objections by the FTB. So that will be the evidence on
23 record.

24 So Ms. Sitjar, you are representing the
25 Appellant and you bear the burden of proof here; so you

1 will begin and as we've discussed, you will have up to 30
2 minutes to make your presentation.

3
4 OPENING STATEMENT

5 MS. SITJAR: Yes, Your Honor. I'm just -- I'm
6 not a lawyer but I'm just, you know, trying to answer the
7 questions based on how I understand, how we put the
8 numbers on when we do our own taxes as well. We base on
9 the numbers that was given to us and submit this to us by
10 the lender.

11 When we receive numbers like cancellation debt,
12 we base on the ruling of whatever IRS was given to us on
13 how to calculate the information that we have to enter and
14 I was just curious to -- I know they know more because
15 they've been experienced but I'm just being a taxpayer as
16 well and if I -- if I'm doing my taxes, I put myself on
17 Salvacion Torre's position.

18 When she has property that was short sale and
19 she was told by her realtor at the time to do -- to help
20 her out, to facilitate also, to help out, to short sale in
21 order for her not to -- to avoid -- in order for her to
22 avoid any more tax consequences. That was her information
23 that was -- I was told by her. And the number that was --
24 the question was how we were able to calculate -- how she
25 was able to calculate the schedule D or the losses.

1 The given number by the acquisition, by the
2 1099-A that was given to us, was totally different from
3 the Franchise Tax Board response to the protest that we
4 had based on the number and the evidence they were saying
5 that the bank reported the principal (inaudible) --

6 THE COURT REPORTER: I'm sorry. I didn't
7 understand that. Could you please repeat it?

8 MS. SITJAR: According to this (inaudible) that
9 was awarded already to the Franchise Tax Board. That's
10 why the response on June 30 of 2017 --

11 THE COURT REPORTER: Please say that again.

12 MS. SITJAR: According to this evidence that I
13 just admitted, that was awarded already to the Franchise
14 Tax Board. That's why -- this is the response on June 30,
15 on 2017, that according to them, the public records
16 indicate about the sale, that the taxpayer abandoned the
17 property on June 6, 2014, as evidence on 1099 acquisition
18 about the unsecured property issued by the Seneca Mortgage
19 report to the principal outstanding balance of 548,728 and
20 a fair market value of 432,000.

21 But the 1099-A that was given to her was totally
22 different from the number that was given by the Franchise
23 Tax Board. And we based only on the number that was
24 presented to us, which is the balance of 190,246 and the
25 fair market value of 199,000. We didn't know that we have

1 to go to the Riverside county to confirm what was given
2 when we do our tax. So that's why I brought this one too,
3 to answer -- to be able to get an answer why we have to do
4 the extent of really have to go to the county to ask for
5 the real numbers.

6 And based on the calculation too, I get also the
7 credit from the credit report that I just admitted right
8 now that the Seneca had reported that it was open on May
9 2007 to get the original cost of the amount. It was open
10 on May of 2007.

11 MR. GEMMINGEN: Excuse me. I'd like to make an
12 objection right now because the loan that was foreclosed
13 on was not Seneca. It was a Flagstaff loan. So we object
14 to the relevance of this particular discussion.

15 MS. SITJAR: But the 2014 -- she didn't receive
16 anything from the -- what was the --

17 MR. GEMMINGEN: Flagstaff is the loan that
18 created the calculation debt income, not Seneca --

19 MS. SITJAR: It was transferred from Seneca to
20 Flagstaff or Flagstaff to Seneca. I don't know. But she
21 didn't receive anything from Flagstaff. She got the
22 information from Seneca. The 2014 taxes was information
23 from the numbers, from the figures that was given based on
24 the paperwork that was given to her. Not by Flagstaff.

25 The question, where did she get the number of

1 532,800 -- it's from the balance that was reported by
2 Seneca Mortgage as well. And if you can see on the credit
3 report, it's only Salvacion Torre's paying for the monthly
4 from May 2007 up to July of 2014. And the reason why I
5 sent the email -- I know it's not accepted -- just to
6 prove that realtor is the one discussing with the tenants
7 at the time, living at the time there was a closing or
8 short sale of the property.

9 They were evicted by the realtor and she's not
10 around to -- to present today or to do testimony, but if
11 needed, we will try to locate her to testify that she's
12 the one who was talking to -- helping out Salvacion Torre
13 because she's a 77-year-old woman. So somebody is helping
14 her out as well as I'm the other one helping her out too.
15 So she's helping Salvacion Torre to evict people living on
16 the property at the time that it was under foreclosure.
17 She can testify if she was needed to come and we were just
18 discussing where the number come from.

19 And we base it on the computation on those
20 numbers from the Seneca given to her on the tax year 2014.

21 JUDGE CHENG: I'm going to stop you for a second
22 here. So what is this printout tending to show, that she
23 paid the mortgage?

24 MS. SITJAR: No. She's the one -- because they
25 were saying she's only like one third of paying the

1 mortgage and the owner of the property is only one third
2 because there are three on the title of the property,
3 because of the son and the wife of the son was there; so
4 they're trying to say that one third of the loan was owned
5 by the son but actually it's only Torre 100 percent who's
6 paying the mortgage and she's the one on the borrower.

7 JUDGE CHENG: Where does it show that she was
8 the only person on here? Where does it show that she was
9 the --

10 MS. SITJAR: It's because she was the only one
11 given also this abandonment of the 1099-A and this one,
12 the amount of the loan is 538,000 originally, which is the
13 high balance. So it's -- and the Seneca Mortgage, the
14 high balance was just the original amount of the loan,
15 which is 532,800. This is part of the. . .

16 JUDGE BRAMHALL: Just a question on your 1099-A,
17 where you're saying the balance of 190 -- that's principal
18 only. Are you including the accrued interest that's also
19 outstanding on this loan?

20 MS. SITJAR: Balance of principal,
21 outstanding -- usually when we do our taxes, we only --
22 when we have a property that's in foreclosure or short
23 sale, we base it on how much the calculation based from
24 the lender, how much the principal was owed. Because the
25 principal -- she was paying since 2007, paying monthly

1 mortgage amortization. So what was left on the 548
2 balance actually was -- she owed only 190,000 for the
3 property. That was -- originally, if she pays off up to
4 now for 30 years, the balance goes up to 900,000, if they
5 didn't forgive him, forgive or. . .

6 And that's all how we base that calculation and
7 the depreciation also. That's why I gave the copy for
8 the depreciation on the property. I think that's all I
9 can. . .

10 JUDGE ANGEJA: Did you want to address the
11 other issues, because I think you were talking about the
12 calculation of her basis. Did you want to address the
13 other two issues?

14 MS. SITJAR: If she is -- she can -- if she's --
15 she is entitled to deduct the loss pertaining to the short
16 sale of real property for 2014. Is that the question?

17 JUDGE CHENG: The loss.

18 MS. SITJAR: Yeah. She has established based on
19 the owner 1099 that I was given entirely on her only. So
20 she has to report also -- she is the only one to report
21 that she has the loss based on this 1099-A.

22 JUDGE CHENG: Okay.

23 MS. SITJAR: And on the -- and on the financial
24 report, that she's the one paying for the mortgage 100
25 percent. She owes the -- and she's the one taking care on

1 the property. So she has -- it's appreciated.

2 JUDGE CHENG: Okay. And what about the
3 cancellation of debt income? Did you want to address
4 that?

5 MS. SITJAR: Yeah. The one that I submitted,
6 the calculation, for the calculated for cancellation of
7 debt? I gave the worksheet also.

8 JUDGE CHENG: The worksheet?

9 MS. SITJAR: Yes. That was report that --
10 worksheet is the one supporting the schedule D for the
11 losses on the -- how did she come up on the losses and
12 also, if it's based on the cancelled debt (inaudible),
13 this is the one that's included also on the 2014. If it
14 is not properly reported, can I ask -- can we ask to
15 submit a form and she can make a -- make an amendment to
16 show how to -- that she will -- that she reported it but
17 it's not properly -- probably not properly been reported
18 to their system, you know, if they want. But the numbers
19 that was given is based on the canceled debt worksheet
20 which has been added supposedly on the 2014 tax report.

21 JUDGE CHENG: Are you saying that this is a new
22 worksheet that you filled out or was it to calculate what
23 was filed --

24 MS. SITJAR: To calculate what was filed, this
25 supposedly be attached. And I just can't find it on the

1 exhibit that was given. I didn't see that but -- because
2 this has to be kept, her own -- you know, because when I
3 asked how did she come up with the numbers from the Seneca
4 and it was -- in order to come up from the schedule D,
5 this was to be inputted on the software -- new report and
6 calculate your 1040 tax report. So this calculation was
7 given. If it is not seen by the Franchise Tax Board, then
8 I can formally submit it.

9 JUDGE CHENG: Do you have a copy of the 1040?

10 MS. SITJAR: The 1040 that was -- it's the same
11 1040, same one that was given to me that was submitted to
12 the IRS, to the Franchise Tax Board, except that it wasn't
13 showing a cancellation that the board -- I don't have it
14 right now but I can submit it if given time.

15 JUDGE CHENG: Okay. Well, you know what? Let's
16 let the FTB make its presentation first and then we'll
17 continue with the questions.

18
19 OPENING STATEMENT

20 MR. TAY: Thank you, Judge. This appeal centers
21 on the short sale of Appellant's second home in 2014.
22 Appellant received her ownership interest in the home, one
23 third, in 2007 and two thirds in 2013, as a gift from her
24 son. Appellant claimed a business loss deduction;
25 although she was not entitled to the tax benefits of such

1 a deduction.

2 Respondent's assessment for the 2014 taxable
3 year denied Appellant's deduction for the alleged business
4 loss she took on her original tax return. In 2014
5 Appellant sold her second home, which she owned as a
6 personal asset, in a short sale. In her 2014 tax return,
7 Appellant misreported the result of that sale and
8 erroneously took a business loss deduction. Appellant
9 erred that she was not entitled to take a deduction,
10 failed to report income that would have offset her
11 purported loss and reported an inflated basis, which in
12 turn inflated her alleged loss.

13 Now, there are three independent reasons why
14 Respondent's assessment is proper. First, Appellant's
15 sale of her second home in Corona, California was a sale
16 of a personal asset and so any loss she incurred would
17 have been a personal loss, which is not deductible.

18 Second, Appellant's recognized \$212,000 of
19 cancellation of debt income as a result of the short sale,
20 which Appellant admitted at the pre-hearing conference.
21 However, Appellant alleged during the pre-hearing
22 conference she included her cancellation of debt income on
23 her 2014 income tax return, which she did not; however,
24 the inclusion of Appellant's cancellation of debt income
25 offsets any loss she may have incurred on the sale of her

1 home.

2 And finally, Appellant miscalculated her basis
3 by adding the balance of a refinance loan to her basis and
4 so inflated her purported loss on the sale of her second
5 home.

6 These are three independent reasons which I will
7 discuss more fully that are well supported by facts and
8 law to find in favor of Respondent. If the Office of Tax
9 Appeals agrees with Respondent on any one, Appellant is
10 not entitled to the deduction she originally claimed.

11 First, Appellant's sale of her second home in
12 Corona, California was the sale of a personal asset and so
13 not deductible under IRC Sections 1231 and 165. The
14 requirements for deductibility under the law are clear.
15 The Corona home must have been properly used in
16 Appellant's trade or business for a loss incurred in a
17 transaction engaged in for profit.

18 The law is well established that the deduction
19 is not allowable under IRC section 165(a) for a loss
20 suffered on the sale of a personal residence. Here
21 Appellant does not meet either requirement. Appellant
22 herself was in the medical profession and did not use her
23 Corona home in her line of work. Appellant's son used the
24 Corona home as his primary residence and ultimately gifted
25 the property to Appellant. The evidence points to the

1 fact that the house was not used in any other trade or
2 business but was always used as a personal residence.

3 Moreover, the Corona home was never used as a
4 rental and certainly was not used as a rental up to the
5 date it was sold, as is required by treasury regulation
6 section 1.165-9. The treasury regulation states that a
7 personal residence properly converted to income producing
8 property as a rental must be used as a rental up to the
9 time of the sale of the property.

10 However, Appellant never reported rental income
11 on her 2014 income tax return or for any other year she
12 owned the property. Appellant provided a purported rental
13 agreement from 2014; however, the rental agreement is of
14 dubious origin because it is incomplete and unreliable.
15 The document provided was only one of three pages, was not
16 executed and was purportedly executed after she received a
17 notice of default, which was recorded in April 2013.
18 Purported rental agreement began just one month before the
19 forced sale of the property, which means that Appellant
20 alleges that she rented the property knowing she would
21 lose the home in just one month.

22 Additionally, the purported monthly rental
23 amount was \$500, which is approximately 1/6 of the fair
24 market rental value. The partial, unexecuted and frankly
25 questionable rental agreement is not good evidence to show

1 that Appellant used the Corona home for anything other
2 than a personal asset and at best, the rental agreement
3 was a last-minute attempt to characterize her second home
4 as business property and really is without substance.

5 Additionally, Appellant's use of the home does
6 not show that Appellant converted into income producing
7 property for the five-factor test that the tax court set
8 forth. The home was used as a personal residence, was
9 never converted out of personal use, as shown earlier, and
10 did not receive offers to retro-sell unless one accepts
11 that she began renting it after notice of default was
12 received and just one month before the foreclosure sale.
13 As such, Appellant has not shown that the Corona home was
14 a business or an income producing asset and so she is not
15 entitled to take any deduction on the disposition of her
16 second home because it was a personal asset.

17 The second reason Respondent's assessment is
18 correct is that Appellant recognized but did not report
19 approximately \$212,000 of cancellation of debt income as a
20 result of the sale of the Corona home. In 2014 the
21 lender, Flagstaff Bank, forgave \$212,000 at or around the
22 time Appellant sold the Corona home in a short sale. The
23 trustee deed upon sale contains the outstanding loan
24 amount of approximately \$611,000 and a sales price of
25 \$399,000.

1 Appellant's representative admitted during the
2 pre-hearing conference that Appellant recognized
3 cancellation of debt income in 2014 and should have
4 reported such income on her 2014 income tax return.
5 Indeed, Appellant received the 1099-A, and so it is clear
6 from the evidence and Appellant's own admission that
7 Appellant recognized and should have reported cancellation
8 of debt income on her 2014 income tax return.

9 Although Appellant has submitted the canceled
10 debt worksheet today, her self-serving, self-generated
11 document does not support her position. As "Roberts vs.
12 Commissioner" in the tax court case said, "Such a document
13 should not be relied on for the truth of what is
14 represented on that self-serving document."

15 Additionally, the documents that she provided
16 were for a loan issued by Seneca Mortgage servicing and
17 not the loan that generated the cancellation of debt
18 income, which is a loan issued by Flagstaff Bank.

19 Despite her recognition of and duty to report
20 her cancellation of debt income, a review of the
21 Appellant's 2014 return shows that she failed to report
22 such income. Appellant's federal income tax return --
23 which is I believe Exhibit G, that's attached to
24 respondents opening brief -- shows only \$821 reported as
25 other income on line 21 of the first page.

1 Additionally, Appellant's IRS form 4797 does not
2 report any cancellation of debt income, which shows that
3 Appellant omitted the cancellation of debt income she
4 recognized in 2014. The facts in law showed that
5 Appellant should have reported such income. Appellant's
6 unreported cancellation of debt income exceeds any
7 purported loss she incurred on the sale of her Corona home
8 and consequently, Respondent's assessment should be
9 upheld.

10 Finally, Respondent's assessment should be
11 upheld because Appellant inflated her basis in her Corona
12 home. It is uncontroverted that the Appellant received
13 the Corona home as a family gift. The basis rules found
14 in IRC section 1015 state that the recipient's basis is
15 the donor's basis or the fair market value at the time of
16 the gift, whichever is less.

17 Here, Appellant received ownership interest in
18 the property as gifts in 2007 and 2013. In 2007 Appellant
19 received a one third ownership interest. The property was
20 valued at \$555,000. So Appellant's basis and her one
21 third interest was \$185,000. In 2013 Appellant received a
22 two thirds ownership interest. The property was valued at
23 \$363,930. So her basis in two thirds of the property was
24 \$242,620.

25 Thus Appellant's total basis minus the 5 percent

1 she purportedly gifted in her ownership interest in the
2 property was \$407,930, which is less than Appellant's
3 reported basis of \$548,729, upon calculating her basis by
4 using the amount of her refinancing of the Corona home;
5 however, including the refinance amount in her basis is
6 contrary to law. Thus Appellant's calculation is wrong
7 because Appellant should have used the basis rules for
8 gifts, as Respondent did, to correctly calculate her
9 basis.

10 For loss purposes, Helen's correct basis amount
11 minus the amount she received from the short sale result
12 in a deficit of approximately \$9,000. So even if the OTA
13 does not agree with Respondent's position in the first two
14 reasons to uphold its complete denial of Appellant's loss
15 deduction, Appellant's loss is limited to approximately
16 \$9,000 and not the \$130,000 she originally reported.

17 In conclusion, Appellant's claimed loss on her
18 2014 income tax return suffers from three defects. First,
19 Appellant is not entitled to deduct a loss from the sale
20 of a personal asset, her second home. Second, Appellant
21 did not report cancellation of debt income, which exceeded
22 and offset any loss she recognized on the sale of her
23 Corona home. And third, Appellant inflated her basis far
24 in excess of her or actual basis.

25 Each of these reasons is a well supported,

1 independent and separate grounds upon which Respondent's
2 assessment can be upheld.

3 In response to Appellant's presentation,
4 Respondent sympathizes with whatever confusion that may
5 have led to Appellant's mistakes in the original filing of
6 her return but the facts in law show that Respondent's
7 assessment should be upheld. Thank you.

8 JUDGE CHENG: Thank you.

9 Questions, panel?

10 MS. SITJAR: Can I ask a question?

11 JUDGE CHENG: One second. Do we have questions
12 right now?

13 JUDGE BRAMHALL: I think I do.

14 Your cancellation debt worksheet -- you're
15 showing that you're reporting zero cancellation of debt
16 income on the basis of an insolvency of \$589,000?

17 MS. SITJAR: It came from the calculation from
18 the cost of property, including it prevents from 538,000.

19 JUDGE BRAMHALL: Maybe you didn't understand my
20 question. Let me try again. Okay.

21 MS. SITJAR: Sorry.

22 JUDGE BRAMHALL: What this worksheet shows is
23 that the taxpayer reported zero of the cancellation debt.

24 MS. SITJAR: Yes, sir.

25 JUDGE BRAMHALL: And the basis for doing so was

1 even though there was recognized cancellation of debt of
2 this income, there's an exception for insolvency. And
3 you're claiming insolvency on this form of \$589,000.

4 MS. SITJAR: Yes.

5 JUDGE BRAMHALL: What evidence do you have that
6 the taxpayer was insolvent?

7 MS. SITJAR: At the time -- there's no 500,000
8 on her account showing that she sold the property that she
9 received any -- any proceeds from the sale or from the --
10 according to them, like a short sale of the property. She
11 has no -- she has no -- she has a lot of debts when it
12 comes to one of the. . .

13 JUDGE BRAMHALL: What evidence have you
14 submitted to show me that?

15 MS. SITJAR: Only the calculation right now that
16 I've sent, I have --

17 JUDGE BRAMHALL: Thank you.

18 MS. SITJAR: -- based on this one.

19 JUDGE BRAMHALL: That's good. Thank you.

20 MS. SITJAR: I sent to them all the bank
21 statement during the time of the audit in 2017.

22 I have a question too. Sorry.

23 JUDGE BRAMHALL: That answered my question.

24 JUDGE CHENG: You'll have some time on rebuttal.

25 No questions?

1 MS. HOSEY: No. Thank you.

2 JUDGE CHENG: Okay. We're ready to go to
3 closing statements and you may begin.

4 MS. SITJAR: Thank you. Based on what they
5 said on the exhibit or their statement that she is a
6 doctor, a medical practitioner -- I don't think that being
7 a medical practitioner stops you from doing a business of
8 having a rental property. And a gift -- it's not a gift.
9 It's an inter -- what do you call that? It's intra-family
10 transfer, refers to the transfer of ownership with a
11 family member.

12 Actually, it's not a gift from the son to the
13 mom. It's the title itself and the deed is only to get
14 refinancing. They're trying to find out who can do a
15 better rate at the time but the ownership still prevails
16 that it was her because -- hers. That's all I can say. I
17 mean she didn't sell it. She just have to -- it's being
18 foreclosed; so the only option that was given to her is to
19 short sell it, not to make proceeds out of it.

20 And regarding to the renting it like 500, it's
21 only to protect -- she agreed on it because nobody wants
22 to stay with it at the time that they were being harassed
23 by the family -- from the other people who's doing the
24 foreclose and stuff but somebody is staying there for 500
25 (inaudible) in order for her property not to be vandalized

1 and stuff because she had experienced that her property
2 has been vandalized when one of the tenants left and they
3 took all the -- it's in the police report. She had it.
4 But I didn't know that it will matter here but that's the
5 reason why she allows the \$500 -- to protect the property.

6 And the numbers were calculated and stuff. It's
7 just based on the -- this is the only paperwork that she
8 received. She didn't receive Flagstaff or cancellation of
9 debt or any debt in the tax year -- we're talking about
10 tax year 2014 -- she only received 1099-A -- and that's
11 anything from Flagstaff -- it's only from Seneca, saying
12 that whatever she owes, the balance is 190, not the
13 \$548,000.

14 She didn't know that every time you have to
15 calculate your tax, you have to find out the real basis
16 and you have to go through the county of what number to go
17 against. They tried to call Seneca but there's no contact
18 number that they can call regarding this -- and she said
19 that too on the letter, that she tried to contact the
20 Seneca Mortgage regarding this 1099-A. And she didn't
21 receive anything from Flagstaff back at the time; so
22 that's why we just have this number on this paper -- on
23 2014. That's all I can say.

24 JUDGE CHENG: Any closing statement, FTB?

25 MR. TAY: Just a couple things, Judge Cheng. I

1 just want to clarify that although the Appellant focus is
2 on the 1099-A, we believe the trustee deed of sale is the
3 best evidence, the more reliable document that contains
4 figures that were -- actually came into being as a
5 consequence of the short sale.

6 The second thing is that the Corona home was not
7 used as a rental. Appellant did not provide any evidence
8 of tenants living in that home and never reported any
9 income -- rental income for any amount that she allegedly
10 received as rent, for any year that she owned the home.

11 MR. GEMMINGEN: One item. You excluded the
12 email from evidence -- opposing side did comment on it --
13 and I'd just like to note there's no reference to the
14 Lemon Grass property itself, nothing tying this to the
15 Lemon Grass property.

16 JUDGE CHENG: Appellant, you have the
17 opportunity for rebuttal, if any.

18 MS. SITJAR: For that she can -- if you need --
19 I don't know if you have more time for that email. She's
20 a realtor of that property on the Lemon Grass. So that's
21 why she gave it to me, to prove, to say that she's saying
22 the truth, that it was Vicky who was trying to supervise
23 and asking those tenants to leave the property because of
24 the short sale at the time. That's why I just brought up
25 that email. As I told you, I'm not a lawyer. Next time

1 I'll be better.

2 JUDGE CHENG: Again, just for the record, the
3 email is not coming in because it's not signed. We don't
4 know, you know, the source of it; so it's not coming in as
5 evidence and in fact, we are out of time. Because we've
6 been -- we've had a lot of time -- you've had
7 opportunities to submit documentation to support your
8 case and so we will be closing the record as of today and
9 this -- this case submitted and the panel will convene and
10 discuss and we will strive to issue a decision within 100
11 days. Thank you for coming and for your presentation.
12 And this hearing is adjourned. I thank you.

13 (Proceedings concluded at 3:08 p.m.)
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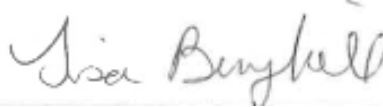
1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF LOS ANGELES)

4 I, Lisa V. Berryhill, C.S.R. No. 7926, in and for the
5 State of California, do hereby certify:

6 That the foregoing 28-page Hearing was taken down by
7 me in shorthand at the time and place therein named, and
8 thereafter reduced to typewriting under my direction, and
9 the same is a true, correct and complete transcript of
10 said proceedings;

11 I further certify that I am not interested in
12 the event of the action.

13 Witness my hand this _____ day of
14 _____, 2018.

15
16 
17 _____

18 LISA V. BERRYHILL, CSR NO. 7926
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