

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
ROLANDO GARCIA,) OTA NO. 18011968
)
)
) APPELLANT.
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TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Tuesday, August 20, 2019

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
355 South Grand Avenue, South Tower, 23rd Floor,
Los Angeles, California, 91401,
commencing at 1:02 p.m. and concluding
at 2:16 p.m. on Tuesday, August 20, 2019,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: Hon. NGUYEN DANG
Panel Members: Hon. ANDREW KWEE
Hon. DOUGLAS BRAMHALL

For the Appellant: ROLANDO GARCIA
TIMOTHY CREYAUFMILLER

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE ADMINISTRATION
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<u>DEPARTMENT'S WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
(None Offered)				

<u>APPELLANT'S WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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1 Los Angeles, California; Tuesday, August 20, 2019

2 1:02 p.m.

3

4 ADMINISTRATIVE LAW JUDGE DANG: Good afternoon,
5 everyone. We're opening the record in the appeal of
6 Rolando Garcia before the Office of Tax Appeals. The
7 Case Number is 18011968. This hearing being convened in
8 Los Angeles on August 20th at 1:02 p.m. Today's case is
9 being heard and will be decided equally by a panel of
10 three judges.

11 My name is Nguyen Dang, and I'll be the lead
12 judge for purposes of conducting this hearing. Also, on
13 the panel with me today is Judge Douglas Bramhall to my
14 right, and Judge Andrew Kwee to my left.

15 At this time, will the parties please introduce
16 themselves for the record, beginning with the Appellant.

17 MR. CREYAUFMILLER: My name is Tim Creyaufmiller
18 appearing on behalf of the Appellant.

19 MR. GARCIA: My name is Rolando Garcia.

20 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

21 CDTFA?

22 MR. ALDRICH: I'm Josh Aldrich from the CDTFA's
23 legal department, together with Scott Claremon and Lisa
24 Renati.

25 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

1 The issue I have before us today is whether CDTFA
2 has established that Appellant is personally liable for
3 the unpaid tax liabilities of Caribbean BBQ Islands, Inc.,
4 for the period July 14, 2006, through September 30th,
5 2007.

6 Does that sound correct to you, Appellant?

7 MR. CREYAUFMILLER: That's correct.

8 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

9 And CDTFA?

10 MR. ALDRICH: Yes.

11 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

12 Prior to the hearing at the prehearing
13 conference, the parties had stated that they intended to
14 submit, as evidence in this matter, the exhibits attached
15 in their briefs. We've combined those exhibits into an
16 electronic file, which was sent to the parties prior to
17 this hearing.

18 Appellant, did you receive this file, and does it
19 look correct to you?

20 MR. CREYAUFMILLER: Yes, I did, and it looked
21 correct, Your Honor.

22 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.

23 And CDTFA, same questions.

24 MR. ALDRICH: Yes, we did, and it appears
25 correct.

1 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

2 And does anyone have any objections as this file
3 being admitted as evidence?

4 MR. CREYAUFMILLER: None from Appellant.

5 MR. ALDRICH: None from us either.

6 ADMINISTRATIVE LAW JUDGE DANG: Great. Thank
7 you.

8 Mr. Garcia, it's my understanding that you'll be
9 testifying today at this hearing?

10 MR. GARCIA: Yes.

11 ADMINISTRATIVE LAW JUDGE DANG: Would you have
12 any objection to being sworn in at this time prior to your
13 testimony?

14 MR. GARCIA: No.

15 ADMINISTRATIVE LAW JUDGE DANG: Okay. Please
16 stand. Raise your right hand.

17

18 ROLANDO GARCIA,

19 produced as a witness, and having been first duly sworn by
20 the Hearing Officer, was examined and testified as
21 follows:

22

23 ADMINISTRATIVE LAW JUDGE DANG: Thank you. You
24 may be seated.

25 As I mentioned at the prehearing conference,

1 CDTFA carries the burden in this case. So they will be
2 presenting first.

3 Mr. Aldrich, if you're ready, you have 15 minutes
4 for your presentation.

5

6 OPENING STATEMENT

7 MR. ALDRICH: Good afternoon. I'm Josh Aldrich
8 from the California Department of Tax and Fee
9 Administration's legal department. With me today are
10 Scott Claremon and Lisa Renati who will be representing
11 staff.

12 Remaining issues are whether Appellant is
13 personally liable as a responsible person for the unpaid
14 liabilities of Caribbean BBQ Islands, Inc., under Revenue
15 and Taxation Code, Sections 6829; whether Caribbean was
16 negligent and whether a finality penalty should be
17 imposed.

18 There are four elements required to impose
19 Section 6829 liability: The corporation was terminated;
20 the corporation collected tax reimbursement; the Appellant
21 was a responsible person for the corporation sales and use
22 tax matters; and the taxpayer willfully failed or caused
23 to be failed the taxes due from the corporation.

24 As explained here after, the Appellant is
25 personally liable for the unpaid Taxes within the meaning

1 of Section 6829. Regulation 1702.5 further clarify
2 Section 6829, including the four required elements:
3 Determination; collection of reimbursement; responsible
4 person; and willfulness.

5 1702.5(b) (3) provides an impertinent part that
6 termination of the business of a corporation includes
7 discontinuance or cessation of all the business activities
8 for which the corporation was required to hold a seller's
9 permit or certificate of registration for the collection
10 of sales and use tax. There's no dispute that the
11 corporation is terminated, but for reference, the Exhibits
12 Bates stamped at 125, 127, and 208 support this element.

13 Pursuant to 1702.5 (a) (1), Caribbean BBQ Island
14 or CBI collected tax reimbursement. CBI sold tangible
15 personal property or TPP, and the conduct of its business
16 and collected sales tax reimbursements on the sale price
17 of TPP. CBI failed to remit sales tax reimbursement when
18 due. The sales invoices, Bates stamped at 186 through
19 196, and the responsible person's questionnaire, Bates
20 stamped at 140 and 142, demonstrate that sales tax
21 reimbursement was collected.

22 A responsible person is defined by 1702.5(b) (1)
23 as a person with control or supervision of/or
24 responsibility for the filing of returns or the payment of
25 tax or who otherwise has a duty to act for the corporation

1 with respect to compliance with the sales and use tax law.
2 Responsible person includes an officer or other person who
3 is under the duty to act for the company and comply with
4 its sales and use tax obligations.

5 Appellant had a duty to act for the company in
6 ensuring that CBI paid its obligations, because he and his
7 wife, Mrs. Garcia, were the only two corporate officers
8 during the liability period. Likewise, they were the only
9 two authorized signatories on CBI's bank account. Not
10 only was Appellant a corporate officer, but he
11 consistently acted within that scope by filing corporate
12 documents, including sales tax returns, which are Bates
13 stamped 144 through 148.

14 Appellant admitted in the questionnaire, Bates
15 stamped at 140, that it was his duty to maintain financial
16 records. The exhibits, Bates stamped at 7, 25 through 32,
17 129, 130, 132 through 134, 140, 142, 211 through 218, 220,
18 228, and 239 also support a finding that Appellant was a
19 responsible person. Thus Appellant was a responsible
20 person within the meaning of 68.29.

21 Regulation 1702.5(b)(2) defines willfulness.
22 Responsible person must willfully pay or to cause to be
23 paid taxes from a corporation. Willfully failing to pay
24 or caused to be paid, means the failure was due to a
25 voluntary, conscience, and intentional course of action,

1 although, it may not be done with bad purpose or equal
2 motive. Willfulness can be established if a responsible
3 person has knowledge that the taxes were not being paid
4 the authority to pay the taxes, or cause them to be paid
5 if the taxes were not paid.

6 Appellant had the knowledge that taxes were being
7 collected and not being paid. Appellant signed the
8 seller's permit, wherein, he indicated 40 percent of the
9 sales would be taxable, Bates stamped at 129. Appellant
10 signed the sales and use tax returns, Bates stamped at 144
11 through 148, as he was aware of what CBI was reporting to
12 the Department.

13 During the liability period there's also
14 sales-related deposits of over \$2.2 million into CBI's
15 bank account. Appellant and his wife were the only two
16 authorized signatories for CBI's bank. For example, CBI
17 reported zero taxable sales in the first quarter of '07,
18 but made over \$250,000 in deposits for the same quarter.
19 We also note that there were significant discrepancies
20 between what was being reported on the sales and use tax
21 returns versus the FIT returns reported to the FTB.

22 In sum, the Appellant knew that the bank deposits
23 were 10 times greater than the reported tax during the
24 liability period, which is sufficient to establish that he
25 knew that the taxes were not being paid during the

1 liability period. Appellant previously conceded that he
2 had the authority to pay CBI's taxes to the Department.
3 There were funds available to pay the tax liability for
4 the entire period. CBI had total deposits of
5 \$2.8 million.

6 EDD indicates that wages were paid from 1st
7 Quarter of '07 through 1st Quarter of '08. We note that
8 in the 4th Quarter of 2007, which is after the liability
9 period, there were over \$360,000 worth of deposits. The
10 negligence penalty is warranted in this case because the
11 error ratio between the reported taxable sales and the
12 actual taxable sales was almost 8,000 percent, and the
13 business failed to maintain accurate books and records.

14 In summary, all four elements to impose a 6829
15 liability on the Appellant are present in this case.
16 Caribbean BBQ, Incorporated, was terminated. It collected
17 sales tax reimbursement and failed to remit the sales tax
18 reimbursement to the Department. Appellant was a
19 responsible person because he and his wife were the only
20 corporate officers during the liability period. He signed
21 the seller's permit. He signed the sales and use tax
22 returns. He participated in the audit.

23 Appellant and his wife had check writing -- had
24 the sole check-writing authority. And Appellant willfully
25 failed to pay the sales tax reimbursement when he had the

1 knowledge that there were sales-related deposits of over
2 2.2 million dollars while also knowing that they only
3 reported \$23,915 in taxable sales during the liability
4 period.

5 Accordingly, based on the evidence in the record,
6 Appellant is liable as a responsible person. Therefore,
7 we respectfully request you deny the appeal.

8 ADMINISTRATIVE LAW JUDGE DANG: Thank you. And
9 before we continue, I'd just like to mention, or I should
10 say, we state that the electronic exhibit file is being
11 entered into evidence.

12 (The electronic file of Exhibits
13 was received in evidence by the
14 Administrative Law Judge.)

15 ADMINISTRATIVE LAW JUDGE DANG: Let me ask my
16 panelist at this time, are there any questions.

17 Judge Bramhall, do you have any questions?

18 ADMINISTRATIVE LAW JUDGE BRAMHALL: No. Not
19 right now. Thank you.

20 ADMINISTRATIVE LAW JUDGE DANG: Judge Kwee?

21 ADMINISTRATIVE LAW JUDGE KWEE: I have questions,
22 but I'll wait until after the taxpayer's presentation.

23 ADMINISTRATIVE LAW JUDGE DANG: Okay. I just
24 have one brief question for CDTFA. Is there any evidence
25 in this case that Appellant was directly aware of the --

1 of either the corporation's sales and use tax reporting
2 responsibilities, or either of the tax that had been
3 collect by the corporation?

4 MR. ALDRICH: Well, in addition to the exhibits
5 referenced during the presentation, there was a police
6 report filed by Appellant. I think that was in
7 September of 2007. And prior to that, he had fired -- I'm
8 not sure how to pronounce this -- but Mr. Tariche or
9 Teriche -- or something like that -- and Mr. Simpson.

10 So no later of September of '07, petitioner would
11 have gone through his records and been able to determine
12 the outstanding tax obligations. He submitted a number, I
13 think it was 17 invoices, something like that, to the --
14 for the police report, which indicates they had gone
15 through his accounts.

16 ADMINISTRATIVE LAW JUDGE DANG: Okay. If I could
17 ask for just some clarification. When you say he reviewed
18 the records, are you saying that he reviewed, say, a tax
19 accrual account statement, or that he reviewed all of the
20 invoices that such he would have been aware that there
21 were tax charges on a substantial number of sales?

22 MR. CLAREMON: Well, again, the average that was
23 found in the audit was that 85 percent of sales were
24 taxable. So he certainly would have seen that on any
25 records he -- that on any records that he was examining

1 that something close to that average would occur, that 85
2 percent of sales tax or any invoices he's looking at or
3 any accrual accounts. Obviously, we don't have record of
4 what he looked at. But we do know that would have
5 occurred when this issue arose during this liability
6 period.

7 And as Mr. Aldrich also pointed out, his initial
8 estimate, when he opened this business, was at least
9 40 percent of sales would be taxable, and that's under by
10 half. But right there when he compares that with what
11 he's reporting with what's in the bank account, and he's
12 reporting essentially 1 percent of sales and taxable,
13 there's a significant discrepancy with just his low
14 estimate.

15 MR. ALDRICH: And if I may clarify?

16 ADMINISTRATIVE LAW JUDGE DANG: Certainly.

17 MR. ALDRICH: I made a mistake during my
18 presentation. The bank deposits were 100 times, not 10
19 times greater than the reported tax.

20 ADMINISTRATIVE LAW JUDGE DANG: As far as the
21 40 percent that you had just referenced, is that in the
22 record in a report?

23 MR. ALDRICH: Yes. It's on the seller's permit
24 on the bottom of the page, right-hand side.

25 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.

1 MR. CLAREMON: And that's based on the estimates
2 of taxable sales versus gross sales.

3 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.

4 ADMINISTRATIVE LAW JUDGE BRAMHALL: Let me just
5 follow up with some questions. Is it equally possible
6 that he was looking for theft as opposed to a thorough
7 investigation of each invoice and its contents? What I
8 heard -- so correct me if I misheard -- is that because
9 they looked at records, you're assuming that he looked at
10 them for sales tax purposes as opposed to for the police
11 report? As I read the police report -- as I read the
12 summary of exchange between he and the investigating
13 officers, he was focused on missing product, not taxes.

14 So that's how I read it, and now ---but I'm
15 hearing you say that he was reading it, and you're
16 assuming, for sales tax compliance purposes too. Is that
17 what you're asserting? That's all I'm asking.

18 MR. ALDRICH: Well, I wouldn't purport to know
19 what's in his mind at that time. However, if embezzlement
20 or theft were a concern, it seems credible to review your
21 accounts to make sure they're accurate, or to determine
22 what exactly is going on, is the point I was trying to
23 make.

24 ADMINISTRATIVE LAW JUDGE BRAMHALL: So I didn't
25 hear any direct evidence. That was your question; right?

1 ADMINISTRATIVE LAW JUDGE DANG: That was my
2 question.

3 ADMINISTRATIVE LAW JUDGE KWEE: Well, I guess
4 I'll ask a question too at this point. Just to clarify,
5 does CDTFA dispute at all that there was this -- that the
6 theft did occur? The embezzlement did occur around this
7 time frame of September of '07, or is this conceded?

8 MR. CLAREMON: I don't think we dispute it. We
9 don't -- since the audit and the liability is based on the
10 money that was in the bank account, that we don't think it
11 affects the liability of the corporation or of the
12 Appellant.

13 ADMINISTRATIVE LAW JUDGE KWEE: Okay. So as far
14 as the police report, it also mentioned that there were
15 phantom sales, which I guess my understanding was that
16 there were invoices for sales which did not occur. And I
17 understand that in looking at the 2 million in bank
18 deposits. The CDTFA applied an analysis of the invoices
19 which they determined a taxable ratio.

20 And I'm just wondering what efforts were taken to
21 ensure that the invoices examined reflected actual sales
22 as opposed to phantom sales or sales that did not occur
23 when determining the taxable ration?

24 MR. CLAREMON: I'm not sure if we have an answer
25 to that question.

1 ADMINISTRATIVE LAW JUDGE KWEE: Okay. So I guess
2 in other words, CDTFA isn't certain that the phantom sales
3 invoices were included in determining the taxable ratio?

4 MR. CLAREMON: Yeah. I'm not -- we're not sure.

5 ADMINISTRATIVE LAW JUDGE KWEE: Okay. I did have
6 one additional follow-up question at this point. So if
7 the taxpayer discovered the embezzlement in September
8 of '07 or August of '07, around that time period, that
9 period appears to be -- or the liability period issue
10 appears to have ended, you know, shortly thereafter,
11 December 31st of '07. I'm wondering if any analyses were
12 done of the bank accounts to determine the ability to pay.

13 Like, how much money was flowing through the bank
14 accounts after the period that embezzlement was discovered
15 and, you know, by the time the audit-period closed, was
16 the 2 million in bank receipts, was that, prior to the
17 discovery of embezzlement, or do you know how much it was
18 before or after? Or is that something that CDTFA has
19 considered in connection with the ability to pay?

20 MR. ALDRICH: So there was 300 -- over \$360,000
21 in deposits after that. So that was the 4th Quarter of
22 '07. They did analyze each quarter for the bank deposits
23 regarding ability to pay.

24 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.

25 MR. CLAREMON: I mean, the one thing we can point

1 out is that the Appellant did assist the audit staff in
2 the audit. So we don't have any specific information as
3 to whether phantom deposits got in, but presumably the
4 Appellant would have been aware when they were picking
5 sample audit -- sample invoices to pick of that issue.

6 ADMINISTRATIVE LAW JUDGE DANG: Is there anything
7 further from CDTFA?

8 MR. ALDRICH: Not at this time.

9 ADMINISTRATIVE LAW JUDGE DANG: Okay. Panelist?
10 Okay. Thank you.

11 Mr. Creyaufmiller, if you're ready to begin your
12 presentation, you have 15, minutes.

13 MR. CREYAUFMILLER: Yes. Thank you very much,
14 Your Honor.

15

16 OPENING STATEMENT

17 BY MR. CREYAUFMILLER: My name is Timothy
18 Creyaufmiller. I represent the Appellant, Rolando Garcia,
19 in this matter. First off, I want to incorporate the
20 Appellant's brief into the statements, just in case I miss
21 anything.

22 I want to make clear that the Board's position
23 and brief that's been submitted to this panel was,
24 essentially, they incorporated the 24014 decision, which
25 was prior to clarifications by the Department with regard

1 to defining a responsible person. I believe that happened
2 in 2016. However, they are incorporating that same
3 information without actually applying it in this
4 particular instance.

5 As is this Court is aware, the personal liability
6 of Iliana Garcia, who was the president of the company,
7 and for the same company, has been dismissed in its
8 entirety after determination by the Department that such
9 liability was not appropriate under Revenue and Taxation
10 Code Section 6829. I understand she held the position as
11 the president of the company, signed on the seller's
12 application, and signed all of the check.

13 In fact, the only check that is in evidence with
14 regards to the sales tax was actually signed solely by
15 Ms. Garcia. It's our position that for the same reasons
16 she's found not responsible, Mr. Garcia is not
17 responsible.

18 The position of Mr. Garcia and Ms. Garcia has
19 always been, while they are officers of a corporation, it
20 was essentially being run by Peter Tariche and Ray Simpson
21 who kept the books, prepared the sales tax documents and
22 all of the deposits. It was later determined that these
23 individuals had committed fraud, and the -- on Appellant.
24 They were found guilty of embezzlement and fraud.

25 In fact, Mr. Simpson was sentenced to jail for

1 three years, and Mr. Tariche for approximately six months.
2 There was a third defendant also, who I believe got off
3 with probation because he paid back, like, \$3,000 that he
4 had taken.

5 It's important to understand that the Garcias are
6 the American story. They're immigrants from Cuba. They
7 came to the United States in 1995 without knowing any
8 English and came to California. Mr. Garcia started as a
9 box boy in a grocery store. Within a year he was able to
10 drive the truck for that grocery store. And within
11 another year, he able to start his own truck and start his
12 own trucking business.

13 Now, at the time this occurred, he had
14 approximately 10 trucks. But he relied on professionals,
15 accountants, bookkeepers, people who knew the business as
16 far as the financial side to take care of it. Mr. Garcia,
17 especially at that time, had very limited ability to read
18 English. He needed people to explain things to him.

19 And most of all, he went into business or did
20 things with people whom he trusted. In this particular
21 instance, he trusted Mr. Tariche, and he trusted
22 Mr. Simpson because he knew them. He had worked with
23 Mr. Tariche as one of his truckers for a few years. And
24 Mr. Simpson actually indicated that he was a paralegal and
25 had done some work for Roly's Trucking on occasion and

1 helped him out.

2 So those two individuals were essentially running
3 the company. Now, this company started in 2006 with
4 Mr. Garcia, essentially, providing the financing for the
5 company but did very little -- had very little involvement
6 in it because he was running his trucking company at that
7 time. At that time he was starting to build his company,
8 and he trusted these individual to run the company for
9 him.

10 If you look at the investigation report by the
11 police, which starts with Exhibit J on page 149, there it
12 includes interviews with numerous witnesses as well as the
13 Appellant herein. And in those interviews, it's just
14 clear from every one of those witnesses that Tariche and
15 Simpson were running the company. They had control over
16 the books and records. And Simpson prepared the documents
17 from Mr. Garcia's signature, including sales tax reports.

18 Now, it's important to understand what -- as far
19 as 1702.5 talks about a responsible person under the
20 regulation, and they cite in their brief several instances
21 on which they base the responsible -- Mr. Garcia's
22 responsible person. He says he's listed on the
23 application as assigned the seller's permit. Well, that
24 was also signed by Iliana Garcia and signed by Peter
25 Tariche.

1 He is a CFO listed on a statement of information
2 for 2006, which was prepared by Mr. Simpson. Mr. Garcia
3 would be more than honest with you, and tell you that the
4 last thing he would need to be in a company would be a
5 CFO. His ability to understand finance and numbers and
6 how those things all work is extremely limited.

7 Understand also that Iliana Garcia and
8 Mr. Tariche are listed in that same document, and Ray
9 Simpson was listed as an agent for service of process. On
10 the statement of 2007 signed by Iliana Garcia as president
11 and again, it continues with Mr. Simpson as agents for
12 service of process.

13 In the auto report, the Department lists him as
14 secretary with Mr. Tariche as the vice president. All of
15 these things are basically saying that because he has this
16 title that he is, therefore, liable. As Section B of
17 1702.5 specifically indicates, just because you have that
18 title, in it of itself is sufficient evidence that they're
19 a responsible person.

20 The next thing they claim is that Mr. Garcia
21 maintains the records based upon the questionnaire that's
22 submitted. Well, that's somewhat misleading because if
23 you're asking someone, do you maintain the records? Well,
24 yeah, I have the records. So they're preserving the
25 records, but I don't know how that means they are a

1 responsible person. It could be they are in my
2 possession. I have the records, but I don't know how that
3 means they're a responsible person. It could be they are
4 in my possession. I have the records because it's now
5 2009. Of course I'm going to hold the records because the
6 other people were found guilty of embezzlement. I'm going
7 to keep whatever records I have.

8 It indicates also that Mr. Garcia signed a tax
9 return -- a sales tax returns for a portion of 2006 and
10 2007. And Mr. Garcia is going to testify here today. And
11 as a surprise to me when I showed him the actual
12 documentation, because he had not seen that before, that
13 most of those signatures are forged. Those are not his
14 signatures. All that documentation was prepared by
15 Mr. Simpson, and he signed on the bulk of those.

16 He will indicate that there was a couple that he
17 signed on, but, again, when he's provided with the
18 documentation, he doesn't know -- he's never done a
19 business in which there's a sales tax. He has no idea
20 what this document is, and what it's supposed to be
21 prepared for. He relies on people who have knowledge of
22 that, and that was Mr. Tariche and Mr. Simpson. He's
23 provided a document to sign, and he signs it because it's
24 represented to him by people he trusted that this is what
25 you need to sign.

1 It's also clear to indicate that there's no
2 evidence here that he signed on any of the checks for the
3 payments of any of the sales tax. The only check that
4 they have is a \$200 check, and that is signed by Iliana
5 Garcia.

6 ADMINISTRATIVE LAW JUDGE DANG:

7 Mr. Creyaufmiller?

8 MR. CREYAUFMILLER: Yes.

9 ADMINISTRATIVE LAW JUDGE DANG: If I could just
10 interrupt you briefly. You had mentioned that the returns
11 were not signed by Mr. Garcia, but I'm wondering if we
12 have evidence in the record of Mr. Garcia's actual
13 signature, if you will stipulate to any document which he
14 has signed for a comparison?

15 MR. CREYAUFMILLER: Yes, actually there is a --
16 if I may, there's a -- if you look -- unfortunately, I
17 don't have the number, but it's one of the last numbers.
18 It's the statement he filed. It's about 10 pages from the
19 bottom. There's a 104 at the bottom. There's a signature
20 on June 5, 2014, and it has his signatures on it. It's
21 his letter of --

22 ADMINISTRATIVE LAW JUDGE DANG: I'm sorry. Can
23 you give me the page number once again?

24 MR. CREYAUFMILLER: Well, it says 104 at the
25 bottom. Unfortunately, the documents I have copied here

1 don't have the Exhibit number -- I mean, the exact actual
2 page number, but it's one of the very last documents
3 contained in -- let's see -- exhibit -- it's -- it states
4 Exhibit 5. It's a letter received dated June 3, 2014,
5 dated June 5, 2014, and the signature it is page 106, 105,
6 then 104 has his signature on it. And again, it's
7 probably 10 pages back from the bottom.

8 ADMINISTRATIVE LAW JUDGE DANG: We're having some
9 difficulty locating this document. CDTFA are you able to
10 locate this document?

11 MR. ALDRICH: I'm trying but --

12 MR. CREYAUFMILLER: It's one of the last few
13 documents.

14 MS. RENATI: Bates stamp 479.

15 MR. ALDRICH: Yeah, it has both.

16 ADMINISTRATIVE LAW JUDGE DANG: Thank you.
17 Great. Thank you.

18 MR. CREYAUFMILLER: Okay. The other factors
19 which they include finding him a responsible person is
20 that both Iliana Garcia and Rolando Garcia signed checks.
21 Again, the only check that's involved here that shows any
22 tax payment is actually signed solely by Iliana Garcia.

23 They say that Mr. Garcia signed a waiver of
24 statute of limitations as secretary of the company. I
25 don't know how that's -- that's relevant here because he

1 just -- he was requested to sign any waiver, and he signs
2 a waiver. And he was involved in a closeout. Well, the
3 people who should have been involved in a closeout were in
4 jail. So obviously, as an officer of the company, he's
5 going to be involved somewhat in the close out. It's just
6 the natural course of action.

7 It seems to me here that they're really only
8 relying on the fact that Mr. Garcia is an officer of the
9 company, full responsibility as set forth in 1702.5(b)(1)
10 responsible person. Just because he has that label does
11 not mean he's the responsible person.

12 More importantly, again, with regard to the
13 issues that are raised, we don't dispute that the company
14 was terminated, nor do we dispute there was some tax
15 collected. We're only talking about responsible person
16 and willfulness. Second area is the willfulness itself.
17 Now, it requires under 172.5(b)(2), the failure to pay has
18 to be a result of voluntary, conscious, and intentional
19 course of action on the part of Mr. Garcia, and to
20 determine to have found that on or after the date the
21 taxes became due, the responsible person had actual
22 knowledge that taxes that were due were not paid. And
23 here there's no evidence of that.

24 There's a claim that somehow because he was
25 looking at invoices to determine what was stolen, also

1 means he's going to look and see whether there was the
2 sales tax paid. Understand, this company -- the large
3 portion of this company actually did wholesales. They
4 sold everything wholesale, so there would be no taxes
5 involved in the sales at all.

6 So for a -- a lay person not knowing what was
7 sales tax and what was not, it would be impossible for him
8 to determine, just based on what's deposited in the bank
9 account, as to what was and is not subject to sales tax.
10 And also, he's relying on people who supposedly have
11 expertise on this to tell him what needs to be paid, and
12 what doesn't need to be paid.

13 And it should be noted that we're not aware,
14 other than the 17 invoices, that there were any other
15 invoices recovered. Because what happened is Mr. Tariche
16 had control over that documentation. That documentation
17 has been missing. There are bank statements, and there's
18 other documentation. But I went on where any invoices
19 existed and that were turned over to the government that
20 I'm aware of at this point in time, and I haven't seen
21 anything in any exhibits that were produced.

22 Additionally, Mr. Garcia was not aware of any
23 taxes or any issues until this actual audit took place.
24 Look, the company had already been closed out. There's no
25 issue with regard to the payment until its closeout. In

1 fact, the government here has already indicated that
2 Mr. Garcia is not responsible for the last quarter of
3 2007.

4 So they found, even though there was \$300,000
5 deposited in that time period, whatever needed to be paid
6 or whatever sales tax was owed had been paid and/or
7 Mr. Garcia was not responsible for that payment. So our
8 position that there's no evidence there was any
9 intentional, voluntary, conscious failure to pay tax
10 returns. Mr. Garcia simply did not know they were due
11 until he was told they were due from the Department
12 itself.

13 And based upon that, we find that he's not a
14 responsible person for whom -- from whom taxes are due and
15 owing, under Section 6289, and that Appellant prevail on
16 this appeal.

17 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you
18 for your presentation. At this time, if you're ready to
19 begin with Mr. Garcia with his testimony, you may. Will
20 you be directing questions to Mr. Garcia?

21 MR. CREYAUFMILLER: Yes.

22 ADMINISTRATIVE LAW JUDGE DANG: Okay. You may
23 begin.

24 ///

25 ///

1 DIRECT EXAMINATION

2 BY MR. CREYAUFMILLER:

3 Q Okay. Mr. Garcia --

4 A Yes.

5 Q -- where were you born?

6 A Cuba.

7 Q And what level of schooling did you complete?

8 A High school.

9 Q Now, when did you immigrate to the United States?

10 A September of 1995.

11 Q And you immigrated with your family?

12 A With my wife.

13 Q And what was your occupation when you came to the
14 United States?

15 A I was, like, stocking shelves at the Spanish
16 supermarket.

17 Q Okay. And you came to California about that same
18 time?

19 A Yeah.

20 Q Okay. And about how much English did you know at
21 that time?

22 A None.

23 Q And how did you learn English?

24 A Basically, I went, actually, for about two or
25 three months to school and the, you know, I kind of

1 dropped after that. I was working too many hours in the
2 supermarket. So I learned English on the street.

3 Q Okay. And you speak fairly well now. Did you
4 have the same command of the English language back in
5 2006?

6 A Absolutely not.

7 Q Okay. Did you have any accounting experience?

8 A Absolutely not.

9 Q When you did start Roly's Trucking. That's your
10 trucking company?

11 A I started driving trucks in 1997.

12 Q And as of 2006 how many trucks did you have?

13 A It was 8 -- 8 trucks, something like that; 12
14 trucks, maybe.

15 Q And during that time period, did you prepare any
16 of Roly's Trucking financial documents?

17 A No.

18 Q Who did that?

19 A It was, actually, the guy, I think, Simpson
20 helping me with Roly's Trucking and my accounting firm.

21 Q Okay. And then why were they doing the financial
22 documentation?

23 A Well, you know, I didn't have no knowledge about
24 it at all. So I have to rely on somebody to help me to do
25 that.

1 Q Okay. Now, you're familiar with Caribbean BBQ's,
2 Inc.; is that correct?

3 A Absolutely.

4 Q And how are you familiar with that company?

5 A That was the nightmare of my life, you know. So
6 anyway, you know.

7 Q Okay. Well, how did it become formed?

8 A Well, in 2006, I think it was, I went to buy the
9 BBQ item for my house. And then at that time I actually,
10 you know, meeting the owner up there, you know. He went
11 to me his interest to sell it, you know, that inventory
12 and all of that. He was explaining with his wife
13 something like that, I think it was.

14 So any anyway, I have equity in my house that I
15 have purchase in 2000, you know. Then in 2005, '06, you
16 know, there was a lot of equity. You know, the houses
17 were pretty value, you know. So anyway, I got a line of
18 credit from my house, and, you know, make an investment.
19 In other words, to purchase that business.

20 But before I did that, actually, I consult with
21 Mr. Tariche, you know, Peter Tariche who was actually
22 working for me as a driver at that time. And he have
23 knowledge of a retailer and all of that, and he used to
24 have another bar. And then he offered me. He said, "Hey,
25 I can help you. I can run, actually, the business for

1 you. I think you can do really well." So anyway, that
2 was my motivation. Same with Simpson. He say, "I can do
3 all of the paperwork. I mean, we can really do well with
4 this."

5 At that time I'm renting a warehouse, and then I
6 have room available in my warehouse to relocate or put a
7 business there. I thought it was a great investment on
8 it. And these guys were, you know, very knowledgeable and
9 smart people, you know, and trustworthy for me at that
10 time. Then they would run the business of it.

11 And then, you know, that's what motivate me to
12 borrow against, actually, against my house on a line of
13 credit and go and invest to that, and, you know, bring
14 the, you know, the business into my building and to,
15 actually, the building I was renting. And that's
16 basically how it start.

17 Simpson actually formed the corporation and did
18 all the documents. Honestly, all I did was just to sign
19 it. I didn't know how to read. I mean, you know, I was
20 trusting them, actually, and they would do all the
21 documents. And, you know, Simpson I knew since late
22 1990s, and for me, you know, he was a trustworthy person
23 on him. And then I thought, actually, I have a great
24 thing. Good people.

25 Q Okay. Now, you said Simpson prepared the

1 documents. What do you mean? He prepared what?

2 A He actually formed the corporation, and he did
3 all of the documents and everything; all the legal stuff,
4 and everything.

5 Q Okay. And who ran that company?

6 A Actually, Tariche and Simpson.

7 Q Okay. And what was your role in the company
8 itself? What did you do?

9 A Well, realty, I just used to go there and, you
10 know, once a week, once every other week. Mainly over the
11 weekends because I was really busy with my trucking
12 business. And then, you know, just check in and see, you
13 know, how things are going. Are you doing okay, you know?

14 So the first year is going to be some losses,
15 but, you know, this is a good business. And then I kind
16 of trust, actually, what they're telling me.

17 Q Okay. Now, you said you went there. At some
18 point in time, did they move out of your warehouse?

19 A Actually, within two or three months of, you
20 know, we kind of realized, you know, what they are saying.
21 They are coming to me and say, "Hey, look, you know, this
22 warehouse is no place for this in the middle of nowhere in
23 the City of Industry. We need to find a location on the
24 freeway. Something where people can see the product.
25 It's a really good product, you know." Which it was a

1 really good product.

2 And so then, you know, Tariche found a location
3 in Santa Fe Spring, you know, on the 5 Freeway, you know,
4 right by Carmenita. And it was, you know, a great
5 location. I said wow, you know. That's good. Hey, you
6 have to put some money in there, but, you know, it will be
7 great, you know. 200,000 cars everyday driving by, you
8 know. We can do really well.

9 Q So who prepared the corporate documentation, you
10 know, the tax document and so forth for the company?

11 A Simpson.

12 Q Okay. Let me show you what's marked as page 144,
13 and ask you to take a look at this document. It says
14 sales use return. It says January through March of 2007,
15 dated 7/30/2007. Is that your signature?

16 A No. That's not my signature.

17 Q Okay. Do you recall ever seeing this document?

18 A No, that's not my handwriting either. This
19 actually looks like the report Simpson used to do.

20 Q Okay. Let me have you take a look at the next
21 page, which is 145, and it's for April through June 2007.
22 It's dated 9/1/2007. Is that your signature?

23 A No. I don't think so that's my signature.

24 Right.

25 Q Do you recall ever seeing this report?

1 A I don't recall it, to be honest with you. No.

2 Q Do you recognize the handwriting on here?

3 A That's Simpson handwriting, yeah.

4 Q Okay. Let me show you 146. Again, it's for the
5 same period as the first document. It's dated
6 April 30, 2007. Is that your signature?

7 A No. I don't think so that's my signature. I
8 don't think so.

9 Q Do you recall seeing this document?

10 A No, I don't recall seeing that document.

11 Q Okay. And is that also Mr. Simpson's
12 handwriting?

13 A Yes, it's his handwriting. Yeah.

14 Q Okay. Let me show you the next in order, which
15 would be 147. Do you recall seeing this? Is this your
16 signature on the document?

17 A No, that's not my signature.

18 Q And it's dated December 22, 2006. Do you recall
19 ever seeing this document?

20 A No. That's Simpson's handwriting.

21 Q Okay. Let me show the next document, 148. This
22 one is dated 1/31/2007. Is that your signature?

23 A This looks like my signature, yes.

24 Q Okay. Do you recall signing this document?

25 A I don't recall, actually, but I know Simpson

1 report on it. It could be that I had signed it.
2 Actually, this is his handwriting. Could be he give it to
3 me, and then I sign it, actually.

4 Q Okay. Do you recall whether he explained
5 anything as far as what he calculated or how this was
6 calculated?

7 A No. That was his job, actually.

8 Q Do you know how to calculate a sales tax or
9 prepare a document of this type?

10 A Absolutely not.

11 Q Is that why you were relying on Mr. Simpson to
12 prepare it?

13 A Yes.

14 ADMINISTRATIVE LAW JUDGE KWEE: I'm sorry. What
15 was the document that you said that was your signature,
16 where you did admit it was your signature?

17 MR. CREYAUFMILLER: 148.

18 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.

19 BY MR. CREYAUFMILLER:

20 Q At the time of any of these sales tax returns
21 were prepared, were you aware that the returns
22 were reporting -- under reporting sales or paying less
23 sales tax than what was required?

24 A Absolutely not.

25 Q Now, did the company itself do anything other

1 than retail business?

2 A Wholesale, actually, but that was the majority of
3 the business, actually.

4 Q Okay. So who are your clients for wholesale
5 with?

6 A Retailers, actually. People who used to sell
7 those BBQ islands to the public on it. You know, we
8 wholesale it to them.

9 Q Okay. So was your understanding is that when you
10 sold property -- I mean, sold products as wholesale that
11 you weren't paying sales tax on?

12 A Yeah. I knew the wholesale we would not,
13 actually, not getting taxed.

14 Q Did you ever look at the bank accounts for the
15 company?

16 A No, no.

17 Q Is there any way to look at the bank account to
18 determine, out of the money that's deposited, what was for
19 wholesale and what was for retail?

20 A Oh, no. Absolutely not.

21 Q Did there come a point in time when you became
22 aware that there were some problems with the company?

23 A I think --

24 Q Is that a yes?

25 A Yes, actually.

1 Q And when was that?

2 A I think in the summer of 2007, I think it was.

3 Q And what happened?

4 A Actually, my -- actually, my niece's husband
5 called me on Saturday and asked me to borrow a tile
6 cutter, that he was doing a job. And then -- a side job
7 outside of the company. He was an employee of the
8 company. And then I asked him -- I say, "Yeah, yeah. You
9 know, no problem. Go get it, actually. But what are you
10 doing?"

11 And then he said, "Oh, I'm doing a job, a side
12 job here, you know," he, actually, and my nephew.

13 And I said, "Really. What are you doing?"

14 So he said, "Oh, I'm doing a -- I'm putting tile
15 on an island, in a BBQ island."

16 And then Peter had sold -- Mr. Tariche, actually,
17 right. So, you know, I was like, "For the customer, you
18 know?"

19 He say, "Yeah, yeah. It's a customer."

20 "Where is it?"

21 "Somewhere in Santa Monica."

22 And I said, "Hold on a second. How that happen?
23 Are you saying you're going to be putting tile, actually,
24 on the island that we have sold? We sold the frame?"

25 He say, "Yeah, yeah, yeah. The customer coming

1 to talk to me and asked me, you know, if I could do this
2 over the weekend."

3 And then -- and then I asked him, "But Peter
4 knows about that? Because, you know, that's our business.
5 We're supposed to, you know, put the tile, basically, sell
6 the, you know, finished product, you know."

7 He say, "Oh, yeah. You know, he's the one who
8 sold it, and I think he send it to me."

9 And then I said, "Really?" So that didn't make
10 no sense on it, you know. I said you know, something is
11 cut up. Awkward. Bad. So I told him, "Okay. Just send
12 me the address of the guy and then, actually you know,
13 don't say anything. Just go ahead and do the job."

14 Then, actually, you know -- then, actually, I
15 started looking into, you know -- and then I ask my wife,
16 "Hey, can we check, actually, on the bank account, you
17 know, see what was deposit on it." And then, you know,
18 she check the deposit they were making, actually, the day
19 before. You know, this sounded very suspicious on it.

20 Then, you know, then I went to the office. And
21 then I started looking for, you know, what was done the
22 day before, you know, to see papers on it. And then it
23 was like, you know, nothing was found out there. So any
24 way I decided to go to Santa Monica to see the customer.
25 Then I go to Santa Monica and got there. And then I just

1 introduced myself as another worker, and then talked to
2 the owner of it.

3 And, you know, he started, you know, bragging
4 about what a great deal he got, you know, from Peter and
5 all that, and that he paid in cash, you know, all that
6 stuff. And then I was playing dumb, you know, asking
7 questions. "Oh, what a great deal. So well, how much did
8 you pay for this, you know? \$10,000?"

9 And then he said, "Oh, no, no, you know. I paid,
10 like, \$2,000 or \$3,000. Something like that. Something
11 ridiculous, you know, cheap on it."

12 So then I said but wait a minute. This is not
13 making sense, but I don't tell him anything, you know, on
14 it. I say, "Well, was it Peter?"

15 He say, "Yeah. Peter is the one who did the, you
16 know, deal on it. And then, you know, yeah. And then
17 yeah, he's the owner of the company."

18 Oh, wow. Okay. So anyway, I went back and then,
19 you know, make a phone call to Peter and asking, "Hey, you
20 know, what did do yesterday, all the deposit, and all of
21 that stuff?" And that wasn't part of it. He never said
22 anything about it.

23 So then, actually, I went to my wife, "oh, this
24 is bad, honey." So then, actually, then we just basically
25 went to the office and, you know, said, you know what?

1 This guy is stealing from us. I started looking at stuff
2 on it, and got into his office. And now getting into his
3 office, I think we started finding, actually, invoices
4 that were hiding on his drawer in his office. He got his
5 office locked.

6 And then you know, now, we started looking and
7 finding. Hey wait a minute. None of this has actually
8 been reported. So these guys are actually stealing from
9 us. And then I started making phone calls to, you know,
10 those clients and go visiting those clients and find that
11 these guys were paying it. They was getting checks and in
12 trouble with checks, and checks are blank putting it under
13 his name.

14 And it was, like, wow, you know. It was
15 unbelievable. I could not believe it, actually. Then
16 from there, basically you know, I say we need to go to the
17 police. And then I called the police and making a report.
18 And from there started finding, you know a mess.
19 Actually, these guys were stealing right and left from us.

20 So we trusted him, and he was actually, you know,
21 just ripping us off. And then, you know, the sad part for
22 us -- for me is he's a Cuban too, and it's a guy that I
23 trust. He drove for me, actually, a truck for about a
24 year or so. And he was a really good guy, you know and,
25 you know, I trust.

1 And he come and offer me, I have a lot of
2 experience on this. I can run this business. Man, this
3 is a great product. It can be doing real well. And then,
4 you know, here we go, you know.

5 Q Okay. So did the police tend to do an
6 investigation on this?

7 A Of course, they did.

8 Q And were these individuals ultimately convicted?

9 A Yeah. Absolutely. Yeah.

10 Q Okay. Now, at the time you went and started
11 looking through these invoices, were you also in your mind
12 to look to see whether or not sales tax had been -- the
13 proper sales tax had been paid?

14 A Well, honestly, no because we were focused on
15 finding, actually, the theft of what had happened on it.
16 We didn't have no clue on it. Then, you know, we start
17 finding, you know, that Raymond was also involved, a part
18 of it. And then also Oscar was involved on it.

19 They were, actually, basically all three of them.
20 They were getting the check and splitting it three ways.
21 Tariche was cashing the check, then writing checks to the
22 other two guys or writing to one of the guys. The guy
23 that was doing the sale was getting 50 percent.

24 And then whatever they were collecting on it, and
25 they were, actually, splitting the money. Which all of

1 this was basically found, actually, as, you know, the
2 police started, you know, getting to Tariche's bank
3 account and all of that stuff.

4 Q Now, did you ultimately fire these individuals?

5 A Oh, yeah. Absolutely.

6 Q And this was approximately when? In the summer
7 of 2007?

8 A In the summer of 2007, yeah.

9 Q Okay. Now, was the company also dissolved?

10 A Yes, actually.

11 Q Do you recall approximately when that was?

12 A By the end of 2007, I think it was.

13 Q Okay. And when did you first become aware that
14 there were sales tax that were owed but had not been paid?

15 A When the audit come in, actually, and we did all
16 audit. And then the auditor basically brought it to my
17 attention. And then we started to look and see. Oh, no
18 way. This is a big deal. I mean, I cooperated with them
19 and helped them and said, "Hey look. This is everything I
20 found here that I have."

21 Q Okay. Now, at the time you became aware that
22 there were sales tax due for the company, did you have the
23 ability to pay those taxes?

24 A No. I was actually broke.

25 Q Did you ever voluntarily fail to pay any sales

1 tax owed by the company?

2 A No.

3 Q Did you ever consciously fail to pay any sales
4 tax owed by the company?

5 A No.

6 Q Did you ever intentionally fail to pay any sales
7 tax owed by the company?

8 A No.

9 Q Now, approximately, how much did you invest into
10 this company that you lost?

11 A Well, you know, I got probably 3 or \$400,000 out
12 of the equity of my house. It's something like that,
13 maybe \$500,000.

14 Q And you lost all of that money?

15 A I lost all of that, actually, yeah.

16 MR. CREYAUFMILLER: I have no further questions.

17 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

18 CDTF, do you have any questions for Mr. Garcia?

19 MR. CLAREMON: Can we request, like, a 10-minute
20 recess to review his testimony before we determine?

21 ADMINISTRATIVE LAW JUDGE DANG: Sure. Let's
22 reconvene in 10 minutes.

23 (There is a pause in the proceedings.)

24 ADMINISTRATIVE LAW JUDGE DANG: Okay. We're back
25 on the record now.

1 CDTF, do you have any questions for Mr. Garcia?

2 MR. ALDRICH: No, we do not.

3 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.

4 Co-panelist, do you have any questions for the
5 witness?

6 ADMINISTRATIVE LAW JUDGE BRAMHALL: No.

7 ADMINISTRATIVE LAW JUDGE KWEE: Yes, thank you.

8 I was just trying to get my mind around what was going on
9 with the bank scenario. So I have a couple of questions
10 about that. Who had access to the bank account where this
11 money went through?

12 THE WITNESS: I was a signature on the bank
13 account and my wife. So we were signing, but in reality,
14 the checks were made and created by Simpson. So on -- all
15 we were doing is, actually, really signing, you know, the
16 checks, actually, to pay to, actually, to say.

17 So Simpson provided, you know, the checks and then
18 said, "Okay. Here you go. Sign it." And that's what I
19 did, actually. And then my wife did it.

20 ADMINISTRATIVE LAW JUDGE KWEE: Okay. And was
21 there any dispute whether or not Simpson or -- I forgot
22 how to pronounce the other person -- but anyone other than
23 your wife signed the checks for the corporate bank
24 account?

25 THE WITNESS: Ask me again?

1 ADMINISTRATIVE LAW JUDGE KWEE: Oh, did anyone
2 other than you or your wife ever sign those checks?

3 THE WITNESS: No. We were, actually, the only
4 signature person on the bank account. So we have
5 authority to sign the checks.

6 ADMINISTRATIVE LAW JUDGE KWEE: Okay. And I'm
7 just trying to get an idea of how much money was, I guess,
8 embezzled from the corporation.

9 THE WITNESS: The detective could prove was
10 actually, like, over \$200,000.

11 ADMINISTRATIVE LAW JUDGE KWEE: Okay. And as far
12 as the Department's analysis, I think they were saying
13 that when they were looking at the account, there was
14 around 2.7 million, but if that, maybe like half -- a
15 little lower, half a million was loans. So then they did
16 an analysis based on, I guess, the remaining 2 million and
17 determined those to be related to sales.

18 Do you have any dispute about the way they did
19 that, or the way they determine the amount of sales based
20 on bank deposits?

21 THE WITNESS: I don't recall.

22 What do you think about that?

23 MR. CREYAUFMILLER: Well, I mean, we don't know
24 how they came up with that amount. And the thing is, that
25 2 million dollars is over a period of time. So I mean, 2

1 million dollars was deposited but what went out at that
2 same time period, because there was overdrawn constantly
3 on the account.

4 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Let me ask
5 you this.

6 THE WITNESS: And let me also just point to you,
7 Judge. Those, actually, majority of that for my
8 understanding was actually wholesale, you know, revenues
9 we can call it. Nontaxable revenues I can say.

10 ADMINISTRATIVE LAW JUDGE KWEE: Okay. And that
11 bank account, was that only being used by this business or
12 was that bank account used by more than one business?

13 THE WITNESS: No. By that business only.

14 ADMINISTRATIVE LAW JUDGE KWEE: Okay. And so
15 there were no, like, personal, like, expenditures from
16 that bank account?

17 THE WITNESS: No. And then I also, I want to
18 actually ensure you guys. I never got any salary from
19 that company. I never got any compensation or nothing on
20 it. Honestly, you know, that company all it did was
21 actually sucked my money. And then, you know, there were
22 Tariche who was telling me, "Hey, look. It's the first
23 year. You're going to lose money. You need to know that,
24 you know. You're not going to do well because it's a new
25 business and all of that."

1 Then, you know, he got me, actually, basically,
2 like, you know, brainwashed, we can call it, you know,
3 with that on it. And I was actually putting money and
4 putting money and putting money in it. And, you know,
5 we're gonna do well. This is a good product. Then it's
6 basically what really happened on it.

7 MR. CREYAUFMILLER: Can I ask follow-up questions
8 from what you just asked of the witness?

9 ADMINISTRATIVE LAW JUDGE DANG: Yes. Go ahead.

10 BY MR. CREYAUFMILLER:

11 Q Mr. Garcia, did you ever sign any checks that
12 were not actually paying out to vendors but actually ended
13 up going into, like, Mr. Tariche's pocket or someone
14 else's pocket?

15 A Yes.

16 Q How did that come about?

17 A Well, Tariche was actually -- they create,
18 actually, a false vendor. And then, you know, were
19 actually creating false invoices. And then, you know,
20 here, those things are common and they give me the checks
21 to be signed for vendors.

22 And then, you know, I was signing the check, and
23 the check was actually ending into Tariche's bank account.
24 And that was, actually, found and discovered by the
25 police, you know, when they went to his bank account and

1 all of his records on it. And here we go. This guy -- I
2 was signing checks, then it was going to this guy's bank
3 account, fake, actually, invoices or vendor.

4 ADMINISTRATIVE LAW JUDGE KWEE: Okay. And did
5 you ever review the bank accounts, or how often would you
6 review the bank accounts for your corporation?

7 THE WITNESS: Honestly, you know, I -- I don't
8 know, actually. Honestly, I don't even have a pin on the
9 bank account. All I was doing, really, was signing on the
10 bank account. And then I thought I was under the
11 impression on those days, okay. If I have the check, I
12 should have control of the signature. You know, I think
13 things are going to be fine, you know.

14 And I'm trusting these people. And then but I
15 didn't -- I didn't actually check the balance of the bank
16 account or, you know, what is in the bank account, where
17 it coming from and all of that.

18 ADMINISTRATIVE LAW JUDGE KWEE: So then who would
19 be responsible for making sure that checks didn't bounce
20 if no one was --

21 THE WITNESS: Tariche and Simpson. They were
22 actually the guys that were running the business. They
23 were in control on it.

24 ADMINISTRATIVE LAW JUDGE KWEE: Oh, so those
25 people also had access to view the bank accounts?

1 THE WITNESS: Well, you know, they would have
2 access to look into the statements and all of that stuff.
3 They were receiving the mail and then, you know, they were
4 actually running the company, you know. That's the
5 reality. Then I trust them. I thought they were
6 professionals and, you know, good people.

7 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.
8 That's all I have.

9 THE WITNESS: Thank you, Judge.

10 ADMINISTRATIVE LAW JUDGE DANG: Thank you. I
11 don't have any questions.

12 At this time, CDTFA, if you're prepared for your
13 closing, you have 10 minutes.

14

15 CLOSING STATEMENT

16 MR. ALDRICH: Appellant participated in the
17 closeout audit. Appellant participated in the appeals
18 process, even through to today. However, today was the
19 first time that he's alleged that his signatures were
20 forgeries. On page 395 is petitioner's opening brief. It
21 states that the mere fact that "R.G." signed on those
22 returns, does not mean that he was aware the taxes had
23 been under reported.

24 Furthermore, he's raised the issue of a
25 wholesaler versus retailer. The audit showed that

1 85 percent of the sales were retail. And this was based
2 off of 155 invoices provided by Appellant and -- which
3 directly contradicts the fact that the majority -- his
4 claim that the majority of the business was wholesale.

5 We're asked to believe that Appellant's purchase
6 and subsequent \$500,000 HELOC on his home was left,
7 unattended, which doesn't seem credible.

8 And that concludes.

9 ADMINISTRATIVE LAW JUDGE DANG: Thank you. Just
10 one brief question. Could you clarify what you said at
11 the last part about the HELOC?

12 MR. ALDRICH: So the fact that he purchased it
13 using a home equity line of credit, subsequently infused
14 another \$500,000, and then let the business go without any
15 oversight doesn't seem credible.

16 MR. CLAREMON: And we would add, particularly in
17 light of his signature on these documents and not on just
18 all these checks and on the sales tax returns and on the
19 Secretary of State filings.

20 MR. ALDRICH: The seller's application.

21 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.

22 Panel members, do you have any questions for
23 CDTFA?

24 ADMINISTRATIVE LAW JUDGE KWEE: I did have one
25 follow-up question. When I was looking at the decision

1 and recommendation, I thought there was some reference to
2 the taxpayer had been unwilling to provide documentation,
3 and then some other reference to there being substantial
4 records provided to the police department.

5 And I'm wondering if those were ultimately
6 provided to CDTFA? And if so, if they were taken into
7 consideration when doing the taxable ratio analysis.

8 MR. ALDRICH: So there was some delay in getting
9 records from the Appellant. They're in the audit work
10 paper notes, that timeline. But our initial requests for
11 the substantiating documents was delayed because of the --
12 well, Appellant attributed the delay due to the
13 investigation.

14 But additional documents were provided by
15 Appellant, even though he claimed that his Outlook and
16 computer system crashed shortly before the audit started.
17 But those -- the documents provided by Appellant were used
18 by the auditor to remove things, like, not taxable sales,
19 interstate sales.

20 MR. CLAREMON: And taxable sales for which
21 reimbursement was not collected.

22 MR. ALDRICH: Right.

23 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.

24 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

25 Mr. Creyaufmiller, you have 10 minutes for your closing.

1 MR. CREYAUFMILLER: Yes, very quickly.

2

3 OPENING STATEMENT

4 MR. CREYAUFMILLER: I believe I went over this
5 all in my opening. But I want to make it clear that my
6 client trusted these individuals, and the documentation
7 shows that. And listen, if he thought something was
8 wrong, as he did when he found the problem with the
9 company, he immediately went to the police.

10 If he had known there were issues with the sales
11 tax, he would have done something about it earlier. The
12 only time he found out, it was after the audit -- two
13 years after the audit. I think its improper to be saying
14 the fact I'm cooperating with you with regard to this
15 audit, the fact that I'm doing things that you're asking
16 me to do in relationship to this audit is -- somehow makes
17 me now the responsible person. I'm trying to help you.

18 And for whatever reason that should be counted
19 against him, I think is clearly improper. But here's
20 mostly important is that -- and I want to answer the
21 statement they made. How come he -- he never indicated
22 that these were forged before. I will indicate to the
23 Court, the first time he saw this documentation was this
24 morning when I was going over his testimony with him
25 because it was not provided to him.

1 It was provided to the previous counsel, and it
2 was provided to me. But Mr. Garcia had never seen this
3 actual documentation until this morning. So that's why
4 that the issue arose at this late date.

5 ADMINISTRATIVE LAW JUDGE DANG: Let me just
6 interrupt you for a second. Would you like to have
7 Mr. Garcia testify as to those statements so that we can
8 consider that as evidence in this matter, since he's under
9 oath and you are not?

10 MR. CREYAUFMILLER: Sure that's fine.

11 BY MR. CREYAUFMILLER:

12 Q And if I may, Mr. Garcia, when is the first time
13 you saw these sales documents -- sales reports you
14 testified to earlier?

15 A This morning.

16 Q This morning?

17 A This morning.

18 Q Okay. And prior to that, had you remember seeing
19 copies of that?

20 A No, I don't remember seeing that before.

21 MR. CREYAUFMILLER: Thank you.

22 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.

23 MR. CREYAUFMILLER: Again, the burden is on the
24 Respondent in this action to show that there was a
25 voluntary failure to pay, a conscious failure to pay, and

1 intentional failure to pay. And none of those elements
2 are shown here. All of the documentation prepared was
3 prepared by other individual. And a number of those were
4 forged by that individual.

5 And the first indication, as he testified to
6 without dispute, that he was aware of any sales tax
7 obligation was when the audit came about with regard to
8 the company. And based upon that, we believe that
9 Mr. Garcia, like his wife, is not a responsible person in
10 this matter.

11 ADMINISTRATIVE LAW JUDGE DANG: Does that
12 conclude your closing?

13 MR. CREYAUFMILLER: Yes, it does.

14 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.
15 Panel members, do you have any final questions
16 for Appellant?

17 ADMINISTRATIVE LAW JUDGE KWEE: No. Thank you.

18 ADMINISTRATIVE LAW JUDGE BRAMHALL: No.

19 ADMINISTRATIVE LAW JUDGE DANG: Thank you,
20 everyone, for your presentations today. This hearing is
21 now adjourned. The record in the appeal is closed, and
22 this appeal will be submitted for decision.

23 We generally endeavor to get our written
24 decisions out within 100 days from today, just in case you
25 were curious.

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All right. Thank you, everyone.

Off the record.

(Proceedings adjourned at 2:16 p.m.)

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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 16th day of September, 2019.

ERNALYN M. ALONZO
HEARING REPORTER