

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE OF,)
)
STEVE STANTON ARNOLD,) OTA NO. 18043005
)
) APPELLANT.)
)
)
_____)

Transcript of Proceedings, taken at
355 South Grand Avenue, South Tower, 23rd Floor,
Los Angeles, California, 91401,
commencing at 10:50 a.m. and concluding
at 11:32 a.m. on Wednesday, August 21, 2019,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

APPEARANCES:

Panel Lead: Hon. JEFF ANGEJA

Panel Members: Hon. LINDA CHENG
Hon. RICHARD TAY

For the Appellant: STEVE S. ARNOLD
STEVEN J. DUBEN

For the Respondent: DEPARTMENT OF TAX and
FEE ADMINISTRATION
By: CHAD BACCHUS
STEPHEN SMITH
LISA RENATI

TAX COUNSEL
Legal Division
P.O. Box 1720
Rancho Cordova, CA 95741
916-845-2498

I N D E X

OPENING STATEMENT

	<u>PAGE</u>
Mr. Duben	9
Mr. Bacchus	16

E X H I B I T S

(Appellant's Exhibits were received at page 6.)

(Franchise Tax Board's Exhibits were received at 6.)

CLOSING STATEMENT

	<u>PAGE</u>
Mr. Arnold	22

Los Angeles, California; Wednesday, August 21, 2019

9:00 a.m.

ADMINISTRATIVE LAW JUDGE ANGEJA: We're now on the record in the Office of Tax Appeals Hearing for the appeal of Steve Arnold, Case No. 18043005. We're in Los Angeles, California. The date is Wednesday August 21st, 2019. The time is approximately 10:50.

My name is Jeff Angeja. I'm the lead Administrative Law Judge for this hearing. My co-panelist today are Linda Cheng and Richard Tay. Thank you, everybody, for attending and for the delay. We're trying to sort out a few scheduling issues.

Appellant, could you please identify yourself for the record.

MR. DUBEN: Steve Duben, CPA, representing the Appellant.

MR. ARNOLD: Steve Arnold.

ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. Thank you.

And for the Department, CDTFA, could you please introduce yourself?

MR. BACCHUS: Chad Bacchus.

MR. SMITH: Steven Smith.

MS. RENATI: And Lisa Renati.

ADMINISTRATIVE LAW JUDGE ANGEJA: All right.

Thank you.

And this appeal involves three issues which are whether Appellant is personally liable under Revenue and Taxation Code Section 6829 for the unpaid liabilities of Legends Home Furnishings, Inc. We'll refer to them as Legends. Second, whether any reduction is warranted to the measure of understated taxable sales; and third, whether Legends was negligent.

During our prehearing conferences, the parties agreed to the admission into evidence of Appellant's Exhibits 1 and 2, and CDTFA's Exhibits A through F. Neither party had any objection to the admission of those evidence -- sorry -- those exhibits into evidence.

I believe that's still the case?

MR. ARNOLD: Yes, it is.

MR. BACCHUS: Yes.

ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. And you guys had no objection. So I hereby admit those exhibits into evidence.

(Appellant's Exhibits 1-2 were received in evidence by the Administrative Law Judge.)***

(Department's Exhibits A-F were received in evidence by the

Administrative Law Judge.) ***

ADMINISTRATIVE LAW JUDGE ANGEJA: One small wrinkle, I did not create an exhibit hearing binder. Our PDF doesn't have your packet of the A through F. I know all of those exhibits are individually in our files.

Can you guys send that over to taxpayer as well as us this week when you get back into the office?

MR. BACCHUS: Yes.

ADMINISTRATIVE LAW JUDGE ANGEJA: Thank you. My error. And they're still in the record. It's just not going to be as convenient as it otherwise would have been. I apologize. Based on our prehearing conference, it's my understanding that Mr. Arnold will testify as a witness today. Is that still true?

MR. DUBEN: That's correct.

ADMINISTRATIVE LAW JUDGE ANGEJA: All right. So when we get to that spot, I'll swear you in here. And we agreed during the prehearing conference we would begin with Appellant's testimony and argument that would not exceed 30 minutes. CDTFA as well as the judges could ask questions. CDTFA would then make its presentation not to exceed 30 minutes. The parties could ask questions. And if necessary, we can allow a five-minute rebuttal for you to be able to have the last word as well as the first word.

And I note that during our prehearing conference, the parties stipulated to the following facts that Legends ceased business operations on or about July 24th, 2012. Legends collected sales tax reimbursement on all of its retail sales of tangible personal property during the audit period; and that Appellant was Legends' president, chief financial officer, sole director, and sole shareholder throughout Legends' entire existence. Okay. So that's still true, and that was stipulated.

So Mr. Arnold, let me swear you in. Will you please stand and raise your right hand.

STEVE STANTON ARNOLD,

produced as a witness, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

ADMINISTRATIVE LAW JUDGE ANGEJA: Thank you. All right.

Go ahead and begin. Either one of you can make your presentation. Mr. Arnold's testimony would be under oath.

MR. DUBEN: Thank you. Primarily we have the three issues at hand.

ADMINISTRATIVE LAW JUDGE ANGEJA: Can you turn on

your microphone so we can hear you.

MR. DUBEN: Oh, okay.

ADMINISTRATIVE LAW JUDGE ANGEJA: Sorry. Thank you.

MR. DUBEN: Here we go.

OPENING STATEMENT***

MR. DUBEN: The three issues dealing with the situation, primarily, whether Mr. Arnold is personally liable under the Revenue and Taxation Code 6829, and we're saying that he's not liable. There were extenuating circumstances at the time, that during the course of the issue under audit, Mr. Arnold was ill.

He had just suffered a major loss of a fire in the San Diego area. That affected his health. He was coming into his store maybe once or twice a week for a couple hours just to sign checks. He had an office manager and a bookkeeper that he was relying on. They were running the -- pretty much running the business.

They would prepare forms whenever they needed bills, and prepared checks. They would leave it for Mr. Arnold on his desk. He'd come in, take a look at them, and sign them. The checks with regard to the tax returns, they were being prepared from computer-generated documents recording all the sales and the sales tax that

was collected.

Sales tax returns were being prepared based on that. Then Mr. Arnold, again, unaware of the details going into it, relying on the people who prepared it, and it was coming off the computer generating total sales -- total sales tax. Those were prepared. He signed the forms, prepared the checks, and that was about it.

During the course of the issue -- during the course of the investigation, there were various documents presented to the State showing that Mr. Arnold was, you know, due to his illness was out of the office, wasn't present. There's no question that, yeah, he does own the company. He was the one signing the checks, but the responsibility being passed down to the lower level.

The other thing -- the other issue is the -- whether reduction is warranted. The alleged unreported income was based on various deposit analysis that the State performed. We don't dispute those analysis, but there was something as we were going through and determining why there was such a discrepancy from reported sales versus what we had reported on the -- what Mr. Arnold had reported on the tax returns compared to what the State had determined as unreported.

We went through and determined that there was unreported -- not unreported income -- nontaxable income

being received during the course of the time. There was a warehouse that Mr. Arnold was operating, and he was renting out space in that warehouse to various local -- various businesses in tow. He was also --

MR. ARNOLD: Doing deliveries.

MR. DUBEN: -- you know, running a delivery service there through that warehouse for, again, for other businesses in town and for ourselves.

MR. ARNOLD: They were doing fulfillments for different companies, like, Amazon.

MR. DUBEN: Also, Mr. Arnold is telling me they were doing fulfillment services for some of the fulfillment services like Amazon and --

MR. ARNOLD: Or other companies.

MR. DUBEN: You can come in, in a moment. The third item is about whether Legends was negligent. The negligence was based on a couple of items. Just from what I gather, it's based on the actions involved, the size of the potential tax. And there was an issue there that Legends had been audited once before, many years before. And, therefore, Mr. Arnold was, you know, knowledgeable of the workings of the tax law and everything.

It's my recollection from back at that time that the only issue that I recall from that audit -- and they were completely substantiated by the State as to what

those issues were -- but the primary issue was that at that time Mr. Arnold was delivering furniture to customers using his own truck and not charging sales tax on those delivery charges. It was determined that sales tax should have been charged on delivery when we were delivering the furniture using our own vehicle.

We agreed to that and changed the method of dealing with sales tax on deliveries, and then subsequently stopped using our own truck because it was too expensive to maintain. So we hired a delivery service to handle it. Therefore, the deliveries became nontaxable.

ADMINISTRATIVE LAW JUDGE ANGEJA: Okay.

MR. DUBEN: You want to --

MR. ARNOLD: It's just that all of this is just during the time that I was ill. I just gave this to our attorney and Mr. Duben, but we couldn't figure out where the money was that they're saying. They're showing the figure here, and our computer generates every sale. Nothing can take place without having to go through the computer, especially, the numbers, what they're talking about.

And we really couldn't figure it out. And I just left it up to everybody else to deal with it cause my health was more important at the time. And then we

realized that the question came up, is how delivery plus monies got put into the returns? And it goes into the top number. And at that point there is when we realized that the number that they're looking at, the dollars that are in the bank account and the dollars that are on the income returns are higher than what the sales tax returns were.

At that point is when we made the call to Mr. Duben and asked him how is that being reported. At that time is when we found out that it was put into the top figure and never broken down as untaxable. All the computer printouts, the software package is made for our industry. The number they talk about is just impossible when you have employees working for you, and you have a sales manager, store manager, and an office manager all watching out for you. It's just impossible that there could be sales that were taken or done outside the computer.

MR. DUBEN: We did -- we did prepare at the time, and I submitted it to the State. You know, we don't want to refer to it. We didn't call it an amended return. We prepared corrected state or federal income tax returns and sales tax returns. We did not change the whole revenue, but what we did was show the allocation of the nontaxable or non-subject to sales tax revenue from the original report showing that what we had was -- there was

reimbursed expenses that we were getting from various -- but we were collecting rent, delivery income, and storage fees that were showing -- reallocating the gross revenue that was showing on the corporate tax returns and also on the sales tax reports that were submitted.

The reply from the State at the time was these were amended returns that are being prepared after the audit was started. We tried to contend they were not considered as amended returns. We weren't looking for any refunds for anything. What we were looking for was to point out that there was revenue received by Legends that was not subject to sales tax.

MR. ARNOLD: My response at the time was -- is that when that lady said it's not -- you cannot amend when you are under audit, and the bottom line is trying to figure out what money is where. And, of course, I have a concern, you know. Was somebody doing something to my company, taking money, or what? And it just frustrates the crap out of me that someone says, "I'm sorry, you just" -- "once something is done, you can't do anything else."

And the bottom line is what we want to get to is the truth. And we found it, and we figured it out. We called and got letters from vendors that paid us. We called everybody we could. One company is out of --

completely out of business. So we tried to find employees that send checks to come here if they have to.

And to have someone say, "I'm sorry. We don't accept that once the audit starts," I'm sorry. I just don't find it being trying to be fair. Isn't that what we're supposed to do, is try to be fair and try to get the truth out? So if we have guidelines we follow, we guide ourselves. But, you know, to sit there and say we're not going to accept this because an audit already started -- I just don't understand it.

I'm here today to try to clear up everything. I just lost my son. I should be home singing Shiva, but instead we might bring out all of this stuff. We -- it just keeps coming back up in my mind that somebody says, "I'm sorry we don't accept it." But it's the truth, and you won't accept it?

We signed under perjury of law that this is correct. That's what we did. If the IRS want to come after me saying that we lied or something, welcome to it because we have proof. And the Board of Equalization didn't want to accept it. It just blows completely -- I'm just going to say it -- the shit out of me.

ADMINISTRATIVE LAW JUDGE ANGEJA: Does that conclude your presentation?

MR. DUBEN: At this time, yes.

ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. You'll have rebuttal.

CDTFA, go ahead and start.

OPENING STATEMENT***

MR. BACCHUS: A person maybe held personally liable for the unpaid sales and use tax liabilities of a corporation pursuant to Section 6829, if the following elements are satisfied:

The business of the corporation must be terminated. The corporation must have collected sales tax reimbursement on its sales of tangible personal property. The person must have been responsible for the sales and use tax matters of the corporation, which includes the filings of returns and the payment of tax. And the person's failure to pay the tax must have been willful.

I hear there's no dispute as to the first two elements. Both parties agree that Legends ceased business operations on July 24th, 2012, and that it collected sales tax reimbursement on its sales of tangible personal property.

As to the third element, responsible person means any person having control or supervision of/or who was charged with the responsibility for the filing of returns or the payment of tax, or who had a duty to act for the

corporation in complying with any provision of the sales and use tax law when the taxes became due.

Initially, we note that there's no dispute that Appellant was Legend's president and sole corporate officer at all times during the liability period. As Legends' president, Appellant had a general responsibility to file Legends' sales and use tax returns and pay the tax actions. Appellant's actions during the liability period also established that he was involved in Legends' compliance with the sales and use tax law.

For example, in Exhibit B, now just -- so we can -- I can clarify something. Exhibit B has many exhibits within it, and so I'm going to refer to each sub-exhibit as a tab. So in Exhibit B, Tab 7 and Exhibit D, Tab E, they provide copies of Legends' sales and use tax returns, which were signed by Appellant. And those were for the periods 4th Quarter 2007 through 1st Quarter 2009, and 3rd Quarter 2009.

Appellant electronically filed Legends' sales and use tax returns for 4th Quarter 2009 through 1st Quarter 2012 and also filed prepayment forms electronically for 2010, '11, and '12. Exhibit B, Tab 6, shows that Appellant communicated with the Department on December 11, 2007 and June 30th, 2011, regarding Legends' account status and outstanding liabilities.

And finally, Exhibit B, Tab 4, shows Appellant signed four Waiver of Limitation forms during Legends' audit. Appellant signing and electronically filing returns, his communications with the Department regarding Legends' account status, and the fact that Appellant signed waivers during the audit, show that he was directly involved in Legends' compliance with the sales and use tax law and the filing of sales and use tax returns.

Based on evidence, Appellant was a person responsible for handling Legends' sales and use tax matters, which included the filing of sales and use tax returns and the payment of tax when the taxes at issue became due. As to the 4th element, a person's failure is a -- failure to pay the taxes is willful if a person had knowledge that the taxes were not being paid and had the authority and ability to pay the taxes but failed to do so.

As to knowledge, Legends' tax liabilities originate from a sales and use tax re -- a sales and use tax audit, which determined Legends' underreported -- determined that Legends underreported its total sale. The Department determined the liability by analyzing Legends' bank account deposits. The Department found that during the period at issue, Legends deposited over \$4.3 million into its bank accounts but only reported total sales of

\$1.5 million, a difference of almost \$3 million or an average difference of almost \$240,000 per quarter.

At all times during the liability period, Appellant was Legends' sole corporate officer. There's no dispute that he had access to Legends' bank accounts, and Appellant signed or electronically submitted Legends' sales and use tax returns during the liability period. An almost \$3 million in the amount of money going into the bank accounts and what was being reported on sales and use tax returns cannot be explained away as a mere oversight.

While we empathize with Appellant's health issues that he was experiencing at the time, it is not reasonable for the sole corporate officer of a corporation who has access to the bank accounts, and who is submitting the sales and use tax returns to not notice an excess of almost \$3 million over a three-year period.

Therefore, the evidence shows that Appellant knew that bank deposits exceeded reported total sales. As to authority to pay the taxes, Appellant was Legends' president and sole corporate officer. Exhibit B, Tab 8, shows that Appellant signed five authorization agreements for electronic funds transfer with the Department.

Exhibit B, Tabs 18 and 20, show that Appellant signed checks issued to Legends' suppliers. And Exhibit B, Tab 6, shows that Appellant communicated with

the department on two separate occasions regarding Legends' account status, and both times indicated that he would pay the balance on the account.

Based on this evidence, Appellant had the authority to pay the taxes, and Appellant has presented no documentary evidence to dispute this. Finally, as to ability to pay the taxes, Legends had funds available to pay the taxes but instead used those funds to pay other creditors. Exhibit B provides a breakdown of funds available during liability period.

It shows that Legends had over \$4 million in bank deposits, paid almost \$900,000 in wages from 3rd Quarter 2007 through 3rd Quarter 2012. Paid \$400,000 in lease payments from 1st Quarter 2010 to 2nd Quarter 2012, and paid over \$200,000 to vendors during the period 3rd quarter 2007 through second quarter 2012.

This evidence shows that there were available funds to pay Legends' tax liability, but the funds were paid to other creditors instead. Appellant has presented no documentary evidence to dispute this evidence. Based on all the evidence provided, the Department has clearly met its burden of proving that Appellant is personally liable for Legends' unpaid sales tax liabilities.

As to the underlying audit, the Department conducted the sale and use tax audit. And pursuant to

audit working papers found in Exhibit C, the Department found Legends' bank deposits exceeded reported sales by almost \$3 million. While Appellant contends that some of those deposits constituted nontaxable rental receipts, there's been no evidence provided to us at any time to show -- to substantiate that claim.

Our information that we received from Appellant indicates that there was approximately \$73,500 per quarter of nontaxable rental receipts, which over the course of the audit equals a little over \$880,000. And even if we were to accept that those were nontaxable rental receipts, there's still an almost \$2 million difference in the amount of bank deposits to what was reported on sales and use tax returns, which is an average difference of more than \$165,00 per quarter. And there has never been an explanation provided for those -- for that remaining difference.

I'll quickly address the -- I know they're not technically amended returns that were filed on those returns. Appellant has subtracted the \$73,500 from total sales, which doesn't -- which doesn't get at the issue of excess bank deposits. It merely reduces the amount of taxable sales each quarter, which then increases the difference between what was the bank deposits.

So finally, as to the negligence penalty, the

Department imposed a penalty -- negligence penalty of \$24,008.24, based on Legend's failure to properly report its total sales, resulting in an underreporting rate of over 200 percent. Legends consistently underreported its total sales throughout the liability period, again, with no real explanation.

And as to this time, Appellant has not provided any evidence that its reporting methods were not negligent. And regarding the prior audit, we believe -- Department believes that even without the prior audit, even if we were to consider this a first-time audit, that the amount of underreporting is so great that the negligence penalty is still warranted in that case.

Thank you.

ADMINISTRATIVE LAW JUDGE ANGEJA: Does that conclude your presentation?

MR. BACCHUS: It does.

ADMINISTRATIVE LAW JUDGE ANGEJA: All right. I'll turn it back to Mr. Arnold for rebuttal.

CLOSING STATEMENT***

MR. ARNOLD: Yes. Let me see if I can kind of explain. First of all, evidence was given. We have three companies under there. There's a manufacturing company in Los Angeles. We paid their payroll. We paid their

invoices. If you look at the invoices, if you look at the purchase orders, it has to do with raw materials that we don't have in our company of sales.

What we did, because of the company in Los Angeles, we wanted to keep the dollars away from being mishandled. So my secretary set up a thing with them, and we had a ledger that showed we would pay their vendors. In return we would deduct the merchandise that was brought down.

That's what was given to them, the evidence, showing that, plus dollars that were invested that were to cover their expenses for new equipment. You pointing? I'm sorry.

ADMINISTRATIVE LAW JUDGE ANGEJA: I'll wait until you're done. I'm still trying to wrap my brain around that transaction and how that works.

MR. ARNOLD: How it works is this way. Let me see if I can make it any easier. We're a retail store in San Diego. We founded a company in Los Angeles that was in dire need of cash flow and management. So we made an investment into that company to buy controlling interest so they would manufacture all the merchandise for us, for our stores, reducing the overall cost of operating and expenses so we could sell at a lower price.

After about 6 months of operating that way, we

found out that there were multiple people being paid in that company that weren't really employed. There were supposed to be -- I think there was, like, 10 ladies that were sewing, and we only had 8. And it came to our attention -- my secretary brought to me that there's a problem there.

And so we decided to do an investigation, and we went ahead and found out that one of the owners that was up there had two people being paid, which was his mother and his sister, that never worked. At that point there, we took all operations away from them, and we said we would handle all payables and receivable. As their payroll needs to be done, we'd go ahead and pay them for that.

Our whole purpose was to generate a lower cost that we can go ahead and have up on any competition. We didn't care if the factory made a dollar as in here, as long as we covered all of their cost. The dollars that came in, these are from people that they would go ahead and sell wholesale to as well. And we have a letter from one of those people in Orange County, and that evidence was given to them.

They bought merchandise directly from the factory. We took the receivable, and we paid the bills for the factory. The second thing was the delivery

service. The delivery service was a company that had -- we had a lot of space, and we rented out half of the building to a company called Freedom Furniture. Freedom Furniture went ahead and paid us monthly for the storage as well as for deliveries.

We also collected from designers that would also sell products and then bring it to us, and we received their CODs. We have payables to show that we paid back the designers. And we have payables to show we paid the taxes for -- the wages for those employees.

As to saying that we did not have -- that we didn't give them evidence, he has the letters. We gave them the letters from the people that showed that. Only one company we couldn't get. All the merchandise -- when I got sick, all my reports and everything were generated by computer for our sales and nothing else to do with anything else. My office manager did all that. She generated it, and my wife would drive me down on Mondays, mostly, to sign whatever papers. She would put the file on my desk.

The \$3 million that the gentleman is talking about includes investments that we gave to the factory to help buy new equipment and things like that. And we paid them the copies of the receipts from my broker account that showed that we took that money out of there, and that

we loaned it to the company.

And we gave them all those things because I paid a ton of money for copies for it. So the gentleman is completely wrong saying they have no -- we haven't given them no evidence on that.

ADMINISTRATIVE LAW JUDGE ANGEJA: All right. Does that conclude your rebuttal?

MR. ARNOLD: I don't know.

ADMINISTRATIVE LAW JUDGE ANGEJA: All right. Well, you can still ask questions or comment as needed.

MR. ARNOLD: All tax returns were paid as they were put to me.

ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. So this is probably -- I'm getting feedback. This is probably the proper time to say whatever documents you provided to CDTEFA during the course of the audit or the appeal, we're a separate agency. So things like the letters or receipts from a withdrawal from an investment account, we don't have that in our file. I haven't seen it.

But also let me qualify this with what we need to see to try to help you and help us resolve this case. They've based their assessment on bank deposits. And so what we'd be looking to see is proof that bank deposits resulted from nonsales transactions. So you would want to be able to trace a deposit from a non-source.

I understand what you're -- or at least I think I understand what you're describing in terms of the manufacturer and paying your payroll, but those are payments out.

MR. ARNOLD: It was money coming into the account.

ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. But what we need to see, and what I'm explaining is we don't yet have in -- our record is a tracing of those types of nonsales deposits into a bank account. So you're going to gear your presentation or evidence to that.

MR. ARNOLD: All of that was given to them because they reduced it at one point saying, okay, we accept these investments from your account. We can see the transfer from your bank -- from my personal bank to my bank -- sorry -- to the business bank.

ADMINISTRATIVE LAW JUDGE ANGEJA: And I know you're -- CDTEFA, your brief talks about a net-bank deposit analysis. I'm assuming -- although I don't have all the details in my head. I'm assuming that you've made adjustments for nonsales transactions that you can verify?

MR. BACCHUS: Right.

ADMINISTRATIVE LAW JUDGE ANGEJA: My question is, for example, some of the items that you're saying were nonsales deposits was rent from the warehouse, for

instance. I haven't seen canceled checks or contracts. I'm not -- I'm trying to help you help us.

That's the type of evidence that we would be looking to, and we don't have that in the record. If they've got it, I don't -- we don't have it yet. But if you have it, whether or not you gave it to them, we would want to see that.

MR. ARNOLD: I have some.

ADMINISTRATIVE LAW JUDGE ANGEJA: So I'm trying to give you some guidance as to what you want to show if you could, or provide if you've got it, that we haven't seen yet.

MR. DUBEN: I believe that the auditor at the time was going through the bank deposits and was able to reconcile those transfers that came from, you know, Mr. Arnold's personal account or from his investment account.

It does not sound like numbers they are talking about, like, the \$4 million in deposits and \$1 million in sales or round number leaving \$3 million unaccounted for, took into account any of those transfers that they had previously seen and accepted.

ADMINISTRATIVE LAW JUDGE ANGEJA: Can you guys speak to that?

MS. RENATI: The amount of bank deposits is net

of delivery services, checks from the taxpayer's personal accounts, checks from Commonwealth Funds, all of those have been subtracted out from the bank deposit amounts.

ADMINISTRATIVE LAW JUDGE ANGEJA: All right. Okay. While you're looking, do my co-panelists have any questions.

I might have taken the wind out of their sails.

ADMINISTRATIVE LAW JUDGE CHENG: I have no questions.

ADMINISTRATIVE LAW JUDGE TAY: No.

ADMINISTRATIVE LAW JUDGE ANGEJA: So if you've got something that you want us to see that we've not seen, we can leave the record open to do that.

MR. ARNOLD: Well, I have invoicing from -- that we invoiced them 3 days and 10 hours, \$750.00. I have letters that they have that are from people that were purchasing from us and paying the dollars to us. I'm assuming they had all that because it was all given to them.

ADMINISTRATIVE LAW JUDGE ANGEJA: I don't know if you got the work papers here, and I don't want to drag today out. Is it possible to look at one or two of what he's pointing to so you could see if he's seen it before?

MR. BACCHUS: Sure.

MR. ARNOLD: There's the invoice.

ADMINISTRATIVE LAW JUDGE ANGEJA: If you're inclined, what I can do is -- this would drag it out, but I would rather have us get at the correct amount as best we can.

MR. ARNOLD: Yeah.

ADMINISTRATIVE LAW JUDGE ANGEJA: If you want, we could -- I don't know how much additional time I'd have to give for you to be able to -- 15 or 30 days to provide to them and us what you believe has been missing or neglected. That will give them time to respond.

MR. ARNOLD: Well, we've sent them all the letters from all of the people involved; ex-employees, my ex-office manager that talked about me not being there, the customers up in Orange County, sales reps. All that was sent.

ADMINISTRATIVE LAW JUDGE ANGEJA: Have you seen that sort of information?

MR. BACCHUS: Right. We have -- I believe we've seen all the letters. I believe they're in the exhibits.

ADMINISTRATIVE LAW JUDGE ANGEJA: Okay.

MR. BACCHUS: Whether in Appellant's exhibits or in ours. There's one thing I will say, and maybe this -- this particular invoice is not within the audit period. So Appellant would have to make sure the invoices are within the audit period.

MR. ARNOLD: That's just to show the invoice.

MR. BACCHUS: I understand.

MR. ARNOLD: I got sick and everything was turned over to the attorney, and I was going to have a lung removed. So I left everything in his hands. When we were going through papers, of course, we gathered what we could. And then I see invoices that I found that just shows the type of work that we did have.

ADMINISTRATIVE LAW JUDGE ANGEJA: So do you have documentation? First of all, how much documentation are we talking about, and has it already been provided?

MR. ARNOLD: This is all I -- this is all that I've got. The day I found out about my lung is the day -- when I left is the last day I was there, and I asked that they bring me over everything to get to the attorney for him to deal with.

ADMINISTRATIVE LAW JUDGE ANGEJA: Has all that been provided to --

MR. ARNOLD: Everything. I'm assuming it did. I paid a ton of money to the attorney. You know, this has gone on too far. I don't have the money anymore to pay attorney's fees.

MR. DUBEN: I believe we provided everything. I have to go back through our stack of paper, like they've got a big stack, and see what was and what wasn't. But

I'm pretty sure that what we provided them, they provided back to us. We've got copies of work papers and everything else.

ADMINISTRATIVE LAW JUDGE ANGEJA: So let's do this.

MR. ARNOLD: I had no control or no -- I had no supervision or no control. I came in. My wife would drive me in the morning. I signed papers, and we went back home.

ADMINISTRATIVE LAW JUDGE ANGEJA: I understand that.

MR. ARNOLD: And to hear that they're implying that I had full control of everything -- the main thing was people had their jobs. That's it.

ADMINISTRATIVE LAW JUDGE ANGEJA: I understand. So if we keep the record open for 30 days -- you may not need all that 30 days -- but I would like to make sure that you have the opportunity to give us what you want us to see. And it might be easier to give it, even if we've already got it, or you think we've already got it.

And then we'll transmit it to CDTFA for them to be able to respond to. You can have a response to that if necessary. But I want to make sure we've got everything you have to support your base before we start making a decision in this matter.

MR. DUBEN: Send whatever we find directly to you?

ADMINISTRATIVE LAW JUDGE ANGEJA: Claudia -- you've got that e-mail address?

MR. DUBEN: Yes, I do.

ADMINISTRATIVE LAW JUDGE ANGEJA: And a copy to them, but I don't want you to have to make photocopies of them. We'll digitize it. We'll make sure they've got a copy. It may be duplicative, but I would rather be abundantly cautious and make sure we have got everything.

MR. DUBEN: Well, we can find the PDF and send it electronically?

ADMINISTRATIVE LAW JUDGE ANGEJA: That would work too.

MR. DUBEN: But you can forward it from there too?

ADMINISTRATIVE LAW JUDGE ANGEJA: Yes, we would do that.

MR. ARNOLD: We wouldn't have to come back up here?

ADMINISTRATIVE LAW JUDGE ANGEJA: No. At this point, it would be based on the writing. We understand your arguments. I just want to make sure that some of the evidence that you're talking about is not in my record, and I would like to have that in the record.

MR. ARNOLD: Okay.

ADMINISTRATIVE LAW JUDGE ANGEJA: And please have it be within the audit period because we won't be able to rely on it to make adjustments if it's not from the audit period.

MR. DUBEN: Understood.

ADMINISTRATIVE LAW JUDGE ANGEJA: And, again, this was a bank deposits analysis, so you're going to ultimately want to be able to tie it to bank deposits. For example, the fact that there's an amended income tax return does not negate a bank deposit. That's what we need to know. You have to have the same audit method, otherwise it's apples and oranges.

MR. ARNOLD: The deposits were there that they came from different sources.

ADMINISTRATIVE LAW JUDGE ANGEJA: But we need to see the source documentation.

MR. DUBEN: They need to be able to analyze the deposits.

MR. ARNOLD: Okay.

ADMINISTRATIVE LAW JUDGE TAY: I just have one question for the Appellant. Can you just explain a little bit about how you went about making those investments into the factory equipment that you alluded to? Like, how you made that business decision to, you know, withdrawal funds

from your personal account and into the business?

MR. ARNOLD: It's pretty simple. I was sick. My banker called me and said that they needed to transfer X amount of dollars into the account. I called my secretary and asked her for what. And she would tell me that the factory needs new machines, materials, and things like that. And then I would call my banker and tell him it was perfectly fine to put the funds from my account into the Legends' account.

And then they would go ahead and do a transfer to the bank up in L.A., in Lynwood, and that would pay for the equipment. That would be new sewing machines, materials, things that we need. Machines -- we did our own frames, so we had machines that cut the lumber. We had a carpentry department that built everything. We made it from scratch.

So if somebody wanted a certain size, the factory would make it. So I would just tell the bank -- my banker at the time. I would say that's fine, after I called my secretary and asked what they were for.

ADMINISTRATIVE LAW JUDGE TAY: Okay. And the manufacturing company, that's a separate entity; is that correct?

MR. ARNOLD: Yes. It was called Legends Manufacturing, Inc. And that was all run by -- well, it

was two people until we found one that was stealing. Then after that time, one person, William Ramos.

ADMINISTRATIVE LAW JUDGE TAY: And the delivery service company, that's a separate entity as well?

MR. ARNOLD: Delivery service was Delivery Plus Services doing business -- or Legends Furniture doing business as Delivery Plus Service.

MR. DUBEN: This is the DBA at the time.

MR. ARNOLD: We bought that company from a group so we can also -- we were hoping to go ahead and have from one point to the customer's home without having a problem -- or not those extra expenses. During the good time where you can get the couch built in 7 days and goes directly to the warehouse, and the warehouse has -- they are a separate people there.

They handle all of everything. And the only thing they would do is the funds would then come back to us so we didn't have other people signing checks ever. So I didn't want the factory having a check account from a -- you know, signing things without having -- just small amounts of money in there for little things, you know, they needed more springs or whatever. So we just wanted to make sure that we had tried to get some control, and my secretary was excellent at that of controlling this.

ADMINISTRATIVE LAW JUDGE TAY: Thank you.

ADMINISTRATIVE LAW JUDGE ANGEJA: All right. So I'll close the hearing, not the record. I'll have an order confirming this, but I'll allow 30 days for you to provide additional evidence. Be over inclusive because if it's already in there, that's okay. We'll then give CDTFA 30 days to respond to that. I'll give you a response if necessary. I then issue an order closing the record, and then we would have 100 days from that date -- whatever date that will be -- in which to issue our opinion.

But otherwise, thank you for your time here today, and that'll close the record -- sorry -- close the hearing but not the record. Thank you.

(Proceedings adjourned at 11:32 a.m.)

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 17th day of September, 2019.

ERNALYN M. ALONZO
HEARING REPORTER