

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
ROBERT VICTOR MIROLLA,) OTA NO. 18011851
)
 APPELLANT.)
)
)

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Wednesday, September 18, 2019

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE OF,)
)
ROBERT VICTOR MIROLLA,) OTA NO. 18011851
)
) APPELLANT.)
)
)
_____)

Transcript of Proceedings, taken at
355 S. Grand Ave. 23rd Floor, Los Angeles,
California, 91401, commencing at 11:16 a.m.
and concluding at 12:22 p.m. on Wednesday,
September 18, 2019, reported by
Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

1 APPEARANCES:
2
3 Panel Lead: ALJ: JEFF ANGEJA
4
5 Panel Members: ALJ: ANDREW KWEE
6 ALJ: NGUYEN DANG
7
8 For the Appellant: DAVE BOWMAN
9
10 For the Respondent: STATE OF CALIFORNIA
11 DEPARTMENT OF TAX AND
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(CDTFA's Exhibits were received at 8.)

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1 Los Angeles, California; Wednesday, September 18, 2019

2 11:16 a.m.

3

4 ADMINISTRATIVE LAW JUDGE ANGEJA: We're now on
5 the record in the Office of Tax Appeals oral hearing for
6 the appeal of Robert Victor Mirolla, Case Number 18011851.
7 We're in Los Angeles, California. The date is Wednesday,
8 September 18th, 2019. And it's 11:16.

9 My name is Jeff Angeja. I'm the lead
10 Administrative Law Judge for the hearing. My fellow
11 co-panelists today are Andrew Kwee and Nguyen Dang.

12 ADMINISTRATIVE LAW JUDGE DANG: Good morning.

13 ADMINISTRATIVE LAW JUDGE ANGEJA: Good morning.

14 And for Appellant, could you please introduce
15 yourself for the record?

16 MR. BOWMAN: Dave Bowman.

17 ADMINISTRATIVE LAW JUDGE ANGEJA: All right. And
18 for CDTFA?

19 MS. HE: Mengjun He for CDTFA.

20 MS. SILVA: Monica Silva for CDTFA.

21 MS. RENATI: Lisa Renati for CDTFA.

22 ADMINISTRATIVE LAW JUDGE ANGEJA: All right. And
23 we were asked during the break to remind people to speak
24 slowly. I think I'm the biggest offender of that, so I
25 think they're talking to me. But I'll pass it onto you

1 guys, so that we can make sure that we're now outpacing
2 the court reporter.

3 We have four issues in this appeal which are:
4 Whether the notice of determination issued to Appellant
5 was timely; whether Appellant is liable under Revenue and
6 Taxation Code Section 6829 for the unpaid liabilities of
7 Associated of Los Angeles, Inc.; three, whether the relief
8 of penalties asserted against -- the acronym for the
9 corporation, ALA -- whether the relief of those penalties
10 is warranted; and last, whether relief of interest is
11 warranted.

12 And then during our prehearing conferences, the
13 parties agreed to the admission into evidence of
14 Appellant's Exhibits 1 through 5, CDTFA's Exhibits A
15 through D. Neither party had any objection to the
16 admission of those exhibits. I believe that's still
17 correct. Please tell me if it's not.

18 And then we received an additional exhibit from
19 Appellant that we're proposing to introduce as Exhibit 6.
20 I don't think there's an objection. It relates to the
21 amount that's currently outstanding. I'm hoping CDTFA can
22 explain whatever the actual amount outstanding is.

23 It's a collection issue. It doesn't really
24 affect the legal issue. So I know it's relevant, but it's
25 not something that's going to factor into the issues

1 before us. But we would be admitting that evidence if
2 CDTFA has no objection to that exhibit. And I would like
3 it explained, before we leave here, what the actual amount
4 due is because there's a discrepancy between that
5 Exhibit 6 and what you guys show by a few thousand that I
6 couldn't figure out.

7 MS. SILVA: We have no objection to the admission
8 of the evidence.

9 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. So we'll
10 have that as Exhibit 6.

11 MS. SILVA: But with respect to discussion of the
12 liability, we're still in the process of trying to
13 determine the exact amount as of this time. But we
14 definitely acknowledge that the Notice of Determination is
15 the higher amount, that there have been adjustments.

16 And so we definitely know that the Notice of
17 Determination is not the amount right now. But given some
18 system issues that we have at CDTFA, we're not able to
19 come up with the exact amount today. But we are in the
20 process of making that determination.

21 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. And I
22 know you can contact them at any point to get the exact
23 figure. But, again, we don't need it today to be able to
24 resolve what we need to do. Okay.

25 So I will admit Exhibits A through D and

1 Appellant's 1 through 6 into evidence.

2 (Appellant's Exhibits 1-6 were received
3 in evidence by the administrative Law Judge.)

4 (Department's Exhibits A-D were received in
5 evidence by the Administrative Law Judge.)

6 ADMINISTRATIVE LAW JUDGE ANGEJA: And then based
7 on our prehearing conference and my September 9th order,
8 we have no witness testimony for today. I believe that's
9 still correct. And so as we agreed, we'll begin with
10 Appellant's testimony and argument, which should not
11 exceed 30 minutes.

12 CDTFA can then ask questions if they wish, as can
13 the panel. CDTFA will then make its presentation, not to
14 exceed 20 minutes. And Appellant or the judges can ask
15 questions. And then Appellant gets a five minute
16 rebuttal. And then I'll read this into record.

17 There were certain stipulations that the parties
18 had reached in our prehearing conference. First, it was
19 that ALA began doing business in California in January
20 1968. Second, was that ALA filed for bankruptcy
21 protection under Chapter 11 on April 2nd, 2010. Third,
22 was that ALA filed a sales and use tax return for the
23 third quarter of 2010 on September 1st, 2010, which it
24 marked as final.

25 Fourth, is that ALA collected sales tax

1 reimbursement on all of its retail sales of tangible
2 personal property during the audit period. And fifth, is
3 that Appellant was the person responsible for ALA's sales
4 and use tax compliance during the audit period, which is
5 not a conclusion that he's liable under Section 6829.
6 That specifically relates to Element 3. I know I
7 explained that during the prehearing conference.

8 Is that correct, what I've read that was defined
9 that those were stipulations? Okay. With that, I'd like
10 to turn it over to Mr. Bowman and let you have your
11 presentation.

12

13 OPENING STATEMENT

14 MR. BOWMAN: Good morning. Okay. Just a brief
15 timeline of what brought us to this point. Mr. Mirolla
16 bought the company, Association of Los Angeles, in 2005.
17 And the company was located in Los Angeles, and they
18 occupied a building that he had owned, and the company was
19 renting it from him. They were a distributor of
20 electronic components.

21 During this time, they had a very large City of
22 Los Angeles contract. And the significance of that is
23 that it consumed a lot of resources that the company had a
24 very low margin on this contract. And they were bound by
25 the contract all the way through bankruptcy to come due on

1 that as far as purchasing additional inventory, even after
2 the bankruptcy filing, to continue that contract.

3 Money became tight. And then in January 2010
4 they decided to file bankruptcy. April 2nd is the filing
5 date for the bankruptcy. And starting in the second
6 quarter of 2009, they started getting behind on their
7 sales tax. The sales tax returns were filed. They were
8 all filed timely, and the sales tax -- they were getting
9 estimates, payments made, but they did not pay all the
10 sales tax.

11 In February of 2010, they entered into an
12 installment agreement, and that was \$10,000 a week. And
13 that ceased right before they filed bankruptcy. One note
14 during this timeline is that some of the money that came
15 in after bankruptcy was the recapture of the 90-day
16 payments prior to the filing of the bankruptcy. So not
17 all the money that came into the bank account was resolved
18 of accounts receivable or sales.

19 And then finally, one of the biggest things is
20 that June 4th, 2010, a competitor bought the assets, and
21 the assets were defined as inventory and accounts
22 receivable. And I'll talk a little bit more about that
23 under willfulness. As we all know -- and I'll just repeat
24 this for the sake of repeating it -- Section 17025,
25 there's three parts to the willfulness: There's

1 knowledge; there's authority; and there is funds
2 available.

3 And we're not disputing at all the knowledge.
4 Mr. Mirolla had the knowledge, of course. He was running
5 the business, and he was responsible for making those.
6 However, we are contending that he did have quite a few
7 issues with authority and then the funds available once
8 the bankruptcy started.

9 And this was a huge issue for him because he kept
10 being told that this would -- the sales tax would get
11 paid, and it was, like, close to \$464,000, I believe. And
12 the bankruptcy team kept telling him don't worry about it.
13 It will get paid. It will get paid. Of course at that
14 time, he had no idea what the ramifications of that were
15 that brings us to today.

16 And the other issue is the Notice of
17 Determination. And on the Notice of Determination, we
18 contend that it was not timely filed. And the reason for
19 that was because on Exhibit C, page 37, the Chapter 11
20 Case Status Report, the court date was June 9, 2010. It
21 describes Mr. Mirolla's immediate goal to keep the doors
22 open until the sale can be consummated, thereby, capturing
23 the Going Concern Value for the creditors of the estate.

24 This document is in the CDTFA's exhibits. And
25 we're trying to demonstrate that not all of these things

1 or not one of these things by themselves can stand on
2 their own. But when we look at all of these things as a
3 whole, that the Notice of Determination, in our opinion,
4 just doesn't hold. And it really should have been the
5 prior quarter that the Notice of Determination should have
6 been issued.

7 The second item is that the 6829 does not mention
8 that written notice is required for termination of a
9 corporation. And the reason that we're bringing that up
10 is because this has come up before in a couple of the
11 appeals cases, that the notice to the Board of
12 Equalization at that time was given to them when they
13 received the September 2010 sales tax return, and it was
14 handwritten on the top and it said, "Final."

15 And this is also in the call logs that the Board
16 of Equalization agent received this as the final sales tax
17 return. However, we're contending that's not the actual
18 notice, and that the corporation really ceased in June of
19 2010 when it sold all its assets to Steven's Engineering,
20 which is a competitor.

21 So it is our belief -- and as a CPA that I see
22 companies all the time, and I'm out there with them and I
23 work with them -- that if a company sells all their
24 assets, their accounts receivable and their inventory,
25 they're done. It's a sinking ship, and it's just a matter

1 of time that they're going to be closing their doors.

2 Chapter 11 doesn't define that as the final
3 liquidation of the corporation because, obviously, the
4 Chapter 11 is to try to reorganize them. But during that
5 process of Chapter 11, the bankruptcy attorney was trying
6 to bring and sell assets to payoff all the debts. So as a
7 result, the company did sell the assets. The sale
8 agreement was right around 1.2 million. There was a lot
9 of stipulations in the sale agreement, so it ended up
10 \$664,000. And that particular amount, we can't trace that
11 exact amount, but we can trace the \$567,000, which I'll
12 talk about in the willfulness.

13 Under Notice of Determination, under the phone
14 calls on Exhibit C, page 404 and page 406, the Board of
15 Equalization was given notice that there was a bankruptcy.
16 And then the phone calls, it clearly says that the agent
17 didn't get the bankruptcy documents from the taxpayer.
18 They actually went on PACER and got it from PACER. So she
19 was very -- she was very active with it. The Board of
20 Equalization agent, when you look at these calls, was very
21 good. And she did a really good job documenting
22 everything.

23 And in our Exhibit 5, page 7 of 19 -- this is not
24 in the CDTFA exhibits -- but this is where it describes
25 that the BK information was retrieved from the PACER. So

1 we're contending under the Notice of Determination that
2 not any one of these items is going to be able to prove
3 that the Notice of Determination was deficient in its
4 timeliness. But we are saying that taken as a whole, all
5 these items and the facts and circumstances, that we
6 believe it should have been the prior quarter. So,
7 therefore, the Notice of Determination would be invalid.

8 Next is the willfulness, which we all know that
9 this is a real tough one. The code is pretty clear as to
10 the issues with willfulness and what has to happen or
11 doesn't have to happen. The three -- going back to the
12 three under 1702, the three requirements is knowledge,
13 authority, and funds available.

14 Mr. Mirolla pretty much lost all of his authority
15 when the bankruptcy started. He was under the direction
16 of the trustee and the bankruptcy attorney as to what
17 needed to be paid. And for those of us who have ever gone
18 through a bankruptcy with a company, there's a very
19 detailed monthly report that is presented by the trustee
20 accounting, and it details out every dollar in and every
21 dollar out. And CDTFA has those reports in their exhibits
22 as examples. And these clearly show that this company is
23 just not going to -- it's just not going to make it.

24 Going back to the sale agreement, the sale
25 agreement we retrieved from the attorney's invoices that

1 they actually received \$567,381, that was from Steven's
2 Engineering. And there was about another \$100,000 that
3 came in sometime between August and October of that 2010.
4 But clearly, I put the dates on the summary of all the
5 payments that were received in.

6 Now, my point is, is that Mr. Mirolla had no idea
7 that this money came in. I mean, he had -- he didn't see
8 it. It did not go into DIP accounts. It went straight to
9 the trustee and the bankruptcy attorney, and the money was
10 used to disperse from there. So from August 2nd on, his
11 ability and his availability of the funds was completely
12 limited as far as trying to get the sales tax paid.

13 And the sales tax balance is on all these monthly
14 reports. It's right at the bottom. It shows the tax
15 that's supposed to be due. But he was never instructed to
16 make these payments and get this tax paid. Now, Letter
17 Number C, Total Receipts of Cash April to August, this --
18 I didn't mean for this to be a fill in the blank exercise.
19 But my point in showing that, is that -- we didn't put the
20 total there. But my point is there was 124,000 -- round
21 it off -- \$124,400 received in from April to August on the
22 receivables.

23 So there really wasn't that much money that was
24 coming in from the receivables. And on the August report,
25 the receivables are gone. And the receivables are gone

1 because Steven's Engineering bought those. So therefore,
2 that was pretty much the end of all the cash. And, again,
3 during that time, Mr. Mirolla and his team paid payroll
4 taxes. They paid the employees to finish off and shut the
5 company down. That was their job. That's what they
6 needed to do is finish up and close everything down, and
7 finish the LA contract.

8 The phone -- another issue toward not willfulness
9 is that the phone calls to the BOE show a continued and
10 genuine concern for the sales tax. They never ignored the
11 phone calls. Mr. Mirolla son's, Darrin, always answered
12 the calls and always got back to her, to the Board
13 representative, when he said he was going to.

14 And also, in Exhibit 5, page 11 of 19, it shows
15 in the call logs that the agent asked if there should be
16 an audit on the company, and the response is no, because
17 they have such a good track record in prior years. So one
18 thing that was concerning that we did a lot of research on
19 to find out what was going on -- so my biggest question
20 was why wouldn't the sales tax get paid when the money is
21 there? I mean, what was preventing that from happening?

22 So I contacted a good bankruptcy attorney and
23 asked him, and then he asked the trustee. And what we
24 discovered was that during the bankruptcy process, it
25 appears that the BOE only put in a proof of claim for

1 \$76,000 and \$71,000, and they got paid for that \$76,000
2 and \$71,000.

3 So from my understanding, the deal is that if the
4 proof of claim is not in for the full amount, then the
5 trustee and the bankruptcy attorney, they're not compelled
6 to pay out the rest of the sales tax and get it paid. So
7 it kind of just sits on the back burner. Unfortunately,
8 Mr. Mirolla got stuck hanging with the bill because the
9 money was there. They got all \$660,000 of cash in, and
10 the money just did not get paid to the Board of
11 Equalization. So we're -- he was very, very upset about
12 it, and he kept asking why they're not getting paid, and
13 he was told don't worry about it.

14 So the next issue is the -- whether the relief of
15 penalties asserted against ALA is warranted, and then of
16 course the interest that goes along with that. We
17 believe, and Mr. Mirolla believes, that three years after
18 the bankruptcy we totally understand. We're okay with
19 that. He doesn't have a problem with that as far as
20 having the interest and penalties accrue. The issue is
21 the remaining 6 years that -- the 6 years that it took us
22 to get to here.

23 And, obviously, with the tremendous amount of
24 backlogs and the amount of detail it takes to put one of
25 these hearings together, I mean, I can see why it takes so

1 long to get to here. It's a long process. I appealed
2 this twice. One of the times I talked to Mr. Geary in
3 June of 2017. He's now one of the judges. So it's --
4 it's a very long process. And the issue is that the
5 remaining 6 years we're asking for relief on that under
6 1668G, as to the unreasonable amount of time for the sales
7 tax to be -- I'm sorry. I think I just quoted that wrong.

8 ADMINISTRATIVE LAW JUDGE ANGEJA: 6593.5, I
9 think.

10 MR. BOWMAN: There you go. 6593.5. Yes, very
11 good.

12 We're asking for relief on that because we feel
13 that it's just an incredible amount of time to get to
14 here. And his question is, "Why should I be charged
15 penalties and interest because the process takes us a long
16 time?"

17 It's not necessarily any employee of the BOE or
18 the CDTFA. We understand that it's not the -- it's
19 nobody's -- necessarily, it's nobody's fault. It's just
20 the fact that the process just takes a long time. So
21 relief for those remaining 6 years is what we would really
22 appreciate that the panel consider.

23 And that is it.

24 ADMINISTRATIVE LAW JUDGE ANGEJA: I have one
25 quick point for clarification. The penalties are separate

1 from the interest, right. So the penalties are imposed
2 for late payment -- I don't think it's late filing. It is
3 late payments --

4 MR. BOWMAN: Late payments.

5 ADMINISTRATIVE LAW JUDGE ANGEJA: -- during the
6 audit period. So the 6 years, those are apples and
7 oranges. The 6 years is not relevant to the conduct that
8 incurred the penalty. And in order to relieve those
9 penalties under 6592, we need to hear a reasonable cause,
10 a nonnegligent reason for why the corporation failed to
11 timely pay. So the 6 years don't pertain to that.

12 I don't know if you want to separately address
13 the penalties. But I just wanted to make clear that what
14 you said is fine as it relates to the interest, but it
15 doesn't give us a basis to consider relief of the penalty.

16 MR. BOWMAN: Okay. During the 2009 and 2010?

17 ADMINISTRATIVE LAW JUDGE ANGEJA: Right. And
18 that's what we had discussed earlier at the prehearing
19 conference, is that the penalties were incurred by the
20 corporation. So good cause needs to be shown for the
21 corporation's failure to timely pay at that time when
22 those payments were due.

23 MR. BOWMAN: Okay.

24 ADMINISTRATIVE LAW JUDGE ANGEJA: So I'm just
25 clarifying.

1 MR. BOWMAN: Understood.

2 ADMINISTRATIVE LAW JUDGE ANGEJA: And I can allow
3 time at the end if you want to address those specifically.

4 MR. BOWMAN: Okay.

5 ADMINISTRATIVE LAW JUDGE ANGEJA: But for now,
6 does that conclude your case in chief?

7 MR. BOWMAN: Yes.

8 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. And
9 CDTFA -- oh, questions.

10 ADMINISTRATIVE LAW JUDGE KWEE: I did have one
11 question. I guess a clarification on the statute of
12 limitations issue. When exactly are you saying that the
13 business terminated? I think I heard June of 2010. But
14 I'm just wondering what the specific date is, if you have
15 a date.

16 MR. BOWMAN: Well, they vacated the building
17 August 3rd, 2010.

18 ADMINISTRATIVE LAW JUDGE KWEE: Okay.

19 MR. BOWMAN: But as far as from June 24th or
20 20th, to August 3rd, they were pretty much just handling
21 all the remaining requirements for the LA contract. They
22 were handling receivables that were still theirs until the
23 sale closed. And so when they sell all their inventory
24 and they sell all their assets, they were -- as far as
25 termination is concerned, as you know, the business is

1 done. It's terminated if it doesn't have any assets to
2 sell.

3 ADMINISTRATIVE LAW JUDGE KWEE: So if I'm
4 understanding correctly, if the date of termination is,
5 from Appellant's perspective, June 20th?

6 MR. BOWMAN: Yes.

7 ADMINISTRATIVE LAW JUDGE KWEE: Okay. And so I
8 understand that they filed a return for the third quarter
9 of 2010, which is July, August, and September. And I'm
10 wondering then, what was reported? What sales were being
11 reported on that return, the later quarter?

12 MR. BOWMAN: I don't remember if the September --
13 I think the September did have a few sales because they
14 sold some of the inventory that Steven's didn't pick up.
15 I'm not 100 percent sure. There were sales in July, but
16 there was definitely no sales after August -- about
17 August 3rd. But there were some sales in July, I believe,
18 because some of the inventory they didn't pick up, and
19 they just sold it.

20 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.

21 ADMINISTRATIVE LAW JUDGE DANG: I have a question
22 regarding the request for interest relief. The relief of
23 interest in this case is standard. It would be that there
24 was some sort of unreasonable delay on the part of
25 scheduling the appeals that you referred to that took 6

1 years. Obviously, the entire 6 years can't be deemed to
2 be unreasonable. Is there some portion you felt that took
3 longer than you might have expected or you felt was
4 unreasonable.

5 MR. BOWMAN: Well, unfortunately, I'm saying the
6 6 years is the unreasonable part.

7 ADMINISTRATIVE LAW JUDGE DANG: It does take time
8 arrange these things, as you mentioned.

9 MR. BOWMAN: Right. Yeah. What I was saying is
10 it's a total of nine years. So we're saying the first
11 three, no problem. We totally understand it. But the
12 last six years to today is just a matter of the process
13 and how the whole process works. It's not anybody's
14 fault.

15 It just takes a long time to get here. Even with
16 some of these other cases, 2012, 2011. We understand
17 that. But he's just saying why should he be charged
18 interest on that, because the settlement can't be done
19 until we finish this and move forward?

20 ADMINISTRATIVE LAW JUDGE DANG: As far as the
21 time frame, when did the six years go back to? At what
22 point? Is that the filing of the petition with CDTFA?

23 MR. BOWMAN: Well, he had filed a petition for
24 appeal before he hired us. So I don't recall exactly what
25 the day was on that -- on his appeal petition. So we

1 didn't get involved until about 2014.

2 ADMINISTRATIVE LAW JUDGE DANG: I guess I'm
3 trying to understand where the three years -- why the
4 three years is reasonable and then six years beyond that.
5 Where was the transitioning point between three and six
6 years? Was that still with the CDTFA appeal? Were you in
7 the audit process working with the district staff? Or had
8 it already been, like, it couldn't have been a petition
9 before OTA because we didn't exit at that time, but was it
10 petitioned before the Board?

11 MR. BOWMAN: Yes. He had petitioned before OTA
12 came into existence, yes. I just don't remember what the
13 date was.

14 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.

15 ADMINISTRATIVE LAW JUDGE ANGEJA: Can I try and
16 clarify that?

17 ADMINISTRATIVE LAW JUDGE DANG: Sure.

18 ADMINISTRATIVE LAW JUDGE ANGEJA: Based on what
19 we discussed at the prehearing conference, my recollection
20 is that three-year period is the difference between the
21 termination date of the corporation and the date on which
22 CDTFA issued the NOD to the individual because it's six
23 years from the date of the -- approximately six years from
24 the date of the NOD at issue here until today. The first
25 three years is that they issued it sometime in 2013, and

1 the corporation ceased in August of 2010.

2 MR. BOWMAN: October 23rd, 2000 -- '14 or '13?

3 MS. HE: Yeah. '13.

4 MR. BOWMAN: That's when the NOD was issued.

5 ADMINISTRATIVE LAW JUDGE ANGEJA: So the six
6 years is basically this right here.

7 ADMINISTRATIVE LAW JUDGE DANG: Okay. Great.
8 Thank you. I also have one other question regarding
9 willfulness. I notice you had mentioned in your
10 presentation that it appears a dispute had arisen due to
11 Appellant lacking the authority to pay and the funds
12 available once bankruptcy had started for the corporation.
13 Prior to that period, there's no dispute that Appellant
14 had the authority to pay and funds were available?

15 MR. BOWMAN: Well --

16 ADMINISTRATIVE LAW JUDGE DANG: Is bankruptcy the
17 defining point in which he lost that ability?

18 MR. BOWMAN: Yes.

19 ADMINISTRATIVE LAW JUDGE DANG: Okay.

20 MR. BOWMAN: We're saying that up to the point of
21 bankruptcy, Mr. Mirolla thought he had a chance. He
22 thought -- he met with the bankruptcy attorney in early or
23 late 2009, and the whole original plan was to put him
24 through 11, have him come out on the other end. And he
25 continues on and he gets his paycheck every two weeks, and

1 everything is fine.

2 They lose some of their employees because the
3 business was going down because of the recession. But
4 they had no idea that things would hit so hard and so
5 fast. As a result, he was thinking all along he was
6 really going to be able to pay this back. And the call
7 logs show that. Even in April of 2010, Darrin Mirolla was
8 telling the agent that we believe we can pay this. And he
9 also said in those calls that once the business sells
10 those assets they'll get paid.

11 Well, unfortunately, they didn't even see the
12 money. The professional fees alone were almost \$500,000.
13 So a lot of the money was just gone. Unsecured creditors
14 didn't get anything. That's the unfortunate part of the
15 outcome of this. But yes, I mean, he felt that he was
16 going to be able to turn this around and pay it. That was
17 his intention, and it's in there. Until the May -- that
18 became very clear in May.

19 It's in the exhibit, that I quoted, that his
20 intention now was just to keep it going long enough to pay
21 off all the bills and sell their assets. So in May it was
22 a clear cutting point that that's when he knew it was
23 done. There's no way this was going to come back.

24 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.

25 MR. BOWMAN: You're welcome.

1 ADMINISTRATIVE LAW JUDGE ANGEJA: CDTFA.

2 MS. HE: Yes, thank you.

3

4 OPENING STATEMENT

5 MS. HE: First respect to Appellant's personal
6 liability for the unpaid sales and use tax liabilities of
7 Associate of Los Angeles, we call it the ALA, Revenue and
8 Taxation Code, Section 6829(a), provides that upon
9 termination, dissolution, or abandonment of the business
10 or corporation, any person having control, supervision, or
11 who is charged with the responsibility for the filing of
12 the returns or the payment of the tax, or who was on a
13 duty to act with the corporation in complying with any
14 requirement of the sale and use tax law, shall be
15 personally liable for the corporation's unpaid tax
16 interest and penalties, if the person wilfully fail to pay
17 or caused to be paid any tax due from the corporation.

18 Section 6829, in its implement and Regulation
19 1702.5, four requirements must be made to hold the person
20 personally liable for the unpaid tax interest and
21 penalties voted by corporation: First, the corporation's
22 business has terminated; second, the corporation collected
23 sales tax reimbursements, as relevant here; third, the
24 person was a responsible person; and fourth, the person
25 wilfully failed to pay or cause to be paid the

1 corporation's tax liabilities.

2 Here, Appellant has previously considered the
3 first of the three requirements for a person responsible
4 for personal liability, which is also established by the
5 Department's hearing Exhibit C, the duel package. That
6 leaves only the last requirement in dispute; whether
7 Appellant willfully failed to pay or cause to be paid any
8 tax due from ALA.

9 Revenue and Taxation Code Section 6829(d) defines
10 willfully fails to pay or cause to be paid to mean that
11 the failure was the result of an intentional, conscience,
12 and voluntary course of action. Regulation 1702.5(b)(2)
13 provides that a person has willfully failed to pay taxes
14 or caused them to be paid when he or she knew that the
15 taxes were due but not being paid, had the authority to
16 pay taxes or caused them to be paid and had the authority
17 to pay taxes but failed to do so.

18 Regulation 1702.5 further explains that this
19 failure may be willful even if it was not with a bad
20 purpose or evil motive. The first element for willfulness
21 is knowledge that the taxes were due but not being paid.
22 We just heard from Appellant that Appellant does not deny
23 knowledge. And of course the Department has abundant
24 evidence to establish the knowledge element as well. But
25 for the economy of time, I'll skip those.

1 So we're going to the second element of
2 willfulness; the authority to pay the taxes or to cause
3 them to be paid. On that, Appellant as ALA's president
4 and CEO and the sole member of its board of directors and
5 sole or 100 percent stock owner, had authority over ALA's
6 financial matters.

7 And as exhibit or the duel package exhibit show,
8 Appellant admitted that he was responsible for ALA's sales
9 and use tax compliance. In addition, in a written
10 agreement dated February 11, 2010, Appellant certified
11 that he had the authority to request an electronic debit
12 from the corporate account. In other words, he had the
13 authority to pay.

14 Furthermore, in Department's hearing Exhibit D,
15 Darrin Mirolla stated that only Appellant could authorize
16 payments, and the Appellant confirmed in the same writing
17 that that statement is true. So the authority to pay
18 element is also satisfied.

19 The last element for willfulness is ability to
20 pay taxes. In other words, whether ALA had funds
21 available to pay the taxes. The Department's evidence
22 established that ALA did have funds available to pay the
23 taxes. As during the liability period, ALA collected
24 sales tax reimbursements on sales, as shown in duel
25 package Exhibits D, E, F, and I-3.

1 And further, ALA had funds available as
2 summarized in the duel memo on page 5 with evidence from
3 ALA's financial documents and its sufficient payments of
4 wages and rents as provided in duel package Exhibits I
5 through R. For example, duel package Exhibit O, ALA's
6 October '09 bank statement, shows deposits of over 1.3
7 million dollars with a balance of over \$281,000 on
8 October 30th of '09. That's right around when the second
9 quarter '09 tax return was due.

10 Then, duel package Exhibit P, ALA's operating
11 statements for '09 as of October 31st of '09, shows year
12 to date sales of over 6 million dollars, cost of goods
13 sold of close to 5 million dollars. And duel package
14 Exhibit R, the EDD inquiry, shows that ALA paid over a
15 million dollars in wages for second quarter '09 through
16 first quarter of '09, and then half-a-million dollars for
17 the first three quarters of 2010.

18 Duel package Exhibit I through I-3 further
19 contends various bankruptcy filings documenting ALA's
20 financial status and payment. For example, for first
21 quarter of 2010, the 90-day period right before ALA filed
22 for bankruptcy, ALA paid over 30 vendors over
23 half-a-million dollars. That's in our hearing Exhibit C,
24 pages 56 to 58.

25 And then ALA's total disbursements were over

1 \$544,000 for second quarter of 2010, and \$328,000 for
2 third quarter of 2010. Those payments included payments
3 over \$20,000 a month, post petition, on inside
4 compensation, including about 7 to \$8,000 a month to
5 Appellant each month, as well as rents payable to the
6 Mirolla Family Trust of about \$25,000 per month.

7 Those same documents show that cumulatively, ALA
8 had gross sales over \$662,000, post dates bankruptcy
9 petition. You can find those numbers in our hearing
10 Exhibit C, pages 235, pages 92 to 93, pages 119 to 120,
11 and pages 147 to 148. Further, a statement of cash
12 receipts and disbursements for April 2010 for the general
13 account shows a beginning balance of over \$179,000. And
14 bank deposits were over \$240,000 into one bankruptcy
15 checking account for the first 20 days of April 2010, over
16 \$180,000 into ALA's business checking account for the
17 first 20 days of April, and over \$74,000 for another
18 bankruptcy checking account for the last 2 weeks of April
19 2010.

20 You can find those numbers in hearing Exhibits C,
21 pages 71, 74, 76, and 82, respectively. Those numbers
22 were arrived at the time when ALA filed bankruptcy. So
23 the funds were moved right over to the bankruptcy
24 accounts. So this and all the other evidence included in
25 the duel package established that ALA had funds available,

1 including the sales tax reimbursements collected for
2 Appellant to pay or cause to be paid in full ALA's
3 self-reported tax liabilities when the Appellant had
4 actual knowledge of them due but unpaid, while Appellant
5 instead, chose to use the funds to pay other vendors,
6 rents, wages, including wages to himself and other
7 operating expenses. Therefore, the authority to pay
8 element is satisfied as well.

9 In sum, the evidence establish that Appellant
10 knew that the taxes at issue were not paid on or after the
11 date that they became due, had the authority to pay or
12 cause them to be paid on the date that the taxes became
13 due. And when he had actual knowledge of them, paid
14 sales -- unpaid taxes due and ALA had the ability to pay
15 with ALA's funds available when the Appellant had the
16 actual knowledge of the unpaid taxes due.

17 Yet, Appellant chose to use all the available
18 funds, including tax reimbursements ALA collected from
19 customers for other purposes, including paying himself and
20 the family trust for rent, and failed to pay or cause to
21 be paid ALA's taxes. Together these three elements
22 establish Appellant's willfulness under Section 6829 and
23 Regulation 1702.5.

24 Appellant's argument that he did his best he
25 could due to economic situation and the intended for the

1 company out of distress first before paying the Department
2 is legally irrelevant. The fact remains that even by
3 Appellant's own account, Appellant made the intentional
4 conscience and voluntary choice to pay others first before
5 paying the Department.

6 Such an intentional, conscience, and voluntary
7 choice to pay others first before the Department, while
8 Appellant was the responsible person and had the authority
9 and ability to pay the taxes he knew were due and unpaid,
10 is the very definition of willfully fails to pay or cause
11 to be paid on Section 6829 and Regulation 1702.5.

12 And appellant's argument that his authority and
13 ability to pay was limited upon bankruptcy filing was
14 incorrect for the periods at issue. First, there's no
15 trustee in control in ALA's bankruptcy case, as this was a
16 Chapter 11 debtor in possession situation, both legally
17 and factually. So legally and the bankruptcy code, upon
18 filing of a voluntary petition for relief in Chapter 11,
19 as was the case here, the debtor automatically assumes
20 additional identity as the debtor in possession. That's
21 US Code Chapter 11, Section 1101.

22 That term, debtor possession, returns the debtor
23 that keeps possession and control of his assets while
24 undergoing a reorganization under Chapter 11 without
25 employment of a case trustee. As a debtor in possession,

1 not only did ALA have the authority, in fact, he had the
2 obligation to pay all necessary taxes.

3 Factually, when you look at all the bankruptcy
4 documents on file, Exhibit C for example, page 36, the
5 Chapter 11 case status report at the top says, "Attorney
6 for debtor in possession," and then all the other phone
7 questionnaires that the Appellant completed for the
8 corporation from the debtor in possession's perspective.

9 So like had the debtor in possession done this in
10 the last 30 days, done that last 30 days, so everything
11 shows that ALA was the debtor in possession while it was
12 in Chapter 11 bankruptcy and had control of its
13 corporation, including its assets and payments.

14 ADMINISTRATIVE LAW JUDGE ANGEJA: At what page
15 was that? I'm sorry.

16 MS. HE: Exhibit C, for example, I didn't get all
17 the references though, like 30, 40 references to the
18 debtor in possession. Page 36, for example, that's a case
19 status report. And when you look at the questionnaire --
20 I didn't get the page I'm referencing. One of the
21 documents Appellant signed and the printed capacity of
22 principle for debtor in possession, that was in Exhibit C,
23 page 96.

24 So all of this show ALA was a debtor in
25 possession and in control. There was no case trustee.

1 You may see -- come across reference to a bankruptcy
2 trustee, but that's United States trustee. So that's a
3 totally different entity from the case trustee or the
4 debtor in possession.

5 So basically, regardless of whether who had the
6 control, whether it's a debtor in possession had control
7 or it's the case trustee had control, it is always in the
8 background and oversight observation that was housed in
9 the Department of Justice. It's called the Office of the
10 U.S. Trustee.

11 They don't have control. They don't get actively
12 involved in the bankruptcy at all. All they do is when --
13 you got to copy them all the documents you file. I mean,
14 the Appellant had to copy the U.S. Trustee all the
15 documents and file, and they just monitor them to make
16 sure there is no fraud or nothing out of the ordinary.
17 But that was the case even if there was a case trustee,
18 which was not the case here.

19 So there was no inability to pay as the taxes
20 continued to accrue postpetition. Granted there was some
21 restriction postpetition to pay prepetition dates. But
22 when you look at all the quarter at issue, second quarter
23 of '09 and then first quarter of '09, those were
24 prepetition periods. The knowledge of the taxes due for
25 the petition periods were there. And Appellant didn't

1 deny, on the due date all the way through the date of the
2 bankruptcy filing, the authority to pay and the ability to
3 pay were also there all the way from the due date of those
4 taxes all the way through when they filed for the
5 bankruptcy.

6 So Appellant had all the time, from the due date
7 all the way through the date of the filing of the
8 bankruptcy, to take care of those taxes. But he failed to
9 do that, satisfying all the three elements; knowledge,
10 authority, and ability to pay during those periods. And
11 that's sufficient for the imposition of the responsible
12 personal liability on Section 6829.

13 And in fact, when you look at the case law, we
14 had cases where you have a former officer who quit before
15 the corporation was terminated. He could have been held
16 liable for the period. He had knowledge, authority, and
17 ability to pay. There's no reason why, like the Appellant
18 who actually continued to have responsibility, would not
19 be held liable once the bankruptcy filed. He had all
20 these time periods to do that. And in Section 6829 that
21 was sufficient for that.

22 And in terms of the postpetition liability, as I
23 say, as a debtor in possession, not only did ALA have the
24 responsibility -- authority, but in fact had the
25 responsibility to pay all the necessary tax as accrued.

1 So -- and, in fact, when you look at all the bankruptcy
2 financial documents, ALA did pay vendors, pay inside
3 compensation, including himself, pay the rent to the
4 family trust. All these payments show ALA could make
5 payments.

6 And of course, Appellant as the principal for the
7 debtor in possession and continues as the CEO president,
8 sole 100 percent owner and sole director, had all the
9 authority and ability to make that happen. He just -- and
10 as Appellant just made reference to a May 2010 event, that
11 was, in their mind, the defining moment when Appellant
12 knew they cannot make it.

13 But even by that account, they had the ability to
14 make all the payments. They just decided it from May of
15 2010 onwards that they should pay others first to make the
16 business afloat instead of paying the BOE. That, again,
17 is a conscience voluntary choice. And that would make the
18 very definition of willfully fail to pay or cause to be
19 paid on Section 6829.

20 So accordingly, the Department has proved all the
21 elements required for imposing personal liability on
22 Appellant for the unpaid liability that's at issue here.
23 And the bankruptcy, the only thing you guys pointed out,
24 the only thing the bankruptcy is the first quarter of 2010
25 liability, which was for prepetition period, but that came

1 due postpetition. But as you can see from the DNR, the
2 Department deleted that order from the responsible person
3 liability against Appellant. So that was the only narrow
4 impact of the quarter, which was not at issue.

5 Now, turning to the issue of timeliness of the
6 Notice of Determination. As you know, a Notice of
7 Determination -- sorry. For Deficiency of Determination
8 issued under Section 6829, shall be mailed as relevant
9 here within 3 years after the last day of the calendar
10 months following the quarterly period in which the
11 Department obtains actual knowledge of the termination,
12 dissolution, or abandonment of the business of a
13 corporation.

14 ADMINISTRATIVE LAW JUDGE ANGEJA: Please slow
15 down for the court reporter.

16 MS. HE: Oh, thank you.

17 As a matter of law, the period in which to timely
18 issue a Notice of Determination, under Section 6829,
19 cannot start until the corporation had actually ceased its
20 business operations. Here as set forth in the
21 Department's dual package, Exhibit M -- so it's the last
22 page, which was also in Appellant's Exhibit 5 -- ALA's
23 last day of its business operation was August 3rd, 2010,
24 according to its he vice president, Darrin Morello. And
25 Appellant does not -- I guess, well, now the Appellant

1 disputes that.

2 But regardless, the evidence establish that ALA
3 continue to operate past April 2010, making substantial
4 inventory purchases and sales, continued to file returns
5 for first quarter 2010, second quarter 2010, and third
6 quarter 2010 as debtor in possession reporting
7 considerable sales tax liabilities and continued to pay
8 wages to many employees. All this while under Chapter 11
9 Reorganization Bankruptcy, all the way through August 2010
10 as evidenced by the bankruptcy financial documents showing
11 sales ALA made post April 2010, as well as ALA's sales and
12 use tax returns, and the EDD wage payments.

13 And just today Appellant made a new argument
14 about a new knowledge dated for June 2010, the asset sale
15 date. But that goes to same. That actually contradicts
16 the evidence the Department has. For example, duel
17 package Exhibit R shows that ALA had 43 employees in June
18 2010, 17 employees in second quarter 2010. Of course that
19 included June. And then 11 employees in third quarter of
20 2010. That's posted June 2010. And they pay the wages of
21 over half-a-million dollars, and that there were about
22 \$19,000 for third quarter of 2010.

23 Of course that's just basically one month and
24 three days, but that was still a significant operation
25 post June. And duel package Exhibit J of the hearing

1 Exhibit C, it shows that ALA reported a total sales of
2 close to \$593,000 for second quarter of 2010 and then
3 \$85,000 for 2010 -- for third quarter of 2010.

4 As documented in the SM notes included in
5 Department's dual package Exhibit M, because ALA's third
6 quarter '10 sales and use tax return had a handwritten
7 notation final, it prompted the CDTFA to make a phone
8 inquiry on September the 10th, 2010, to inquire what
9 "Final" meant on top of the third quarter 2010 return. To
10 which ALA's vice president, Darrin Mirolla, said, quote,
11 "The business doesn't exist anymore."

12 I asked him, "What day the business closed?"

13 And Darrin said, "August the 3rd. We'll forward
14 the request for close out," end quote.

15 This clearly establishes that ALA did not
16 terminate its business until August 2010. And further,
17 Appellant -- the Department did not learn about the
18 business termination until from Mr. Darrin Mirolla, via
19 that September 10, 2010, phone conversation as to both
20 ALA's business termination date and the Department's first
21 knowledge of it in third quarter of 2010, three years
22 after the last date of the calendar months following the
23 quarterly period of third quarter 2010 is October 31st of
24 2013. Therefore, the NOD dated before that on
25 October 28, 2013 is timely.

1 The above evidence that I just pointed out also
2 contradicts Appellant's new argument today that ALA's
3 business terminated upon its asset sales to Steve
4 Engineering in June 2010. As you know, the law defines
5 business termination to mean the termination of the
6 operation for which a seller's permit is required. The
7 fact that ALA continue to make sales, employ employees,
8 paying wage, and reporting sales tax liabilities past June
9 shows that ALA's operation, which required a seller's
10 permit, continued all the way at least to August of 2010.

11 Since ALA did not actually close until August
12 2010, the Department could not have had knowledge sooner
13 than the actual termination date, either when it was
14 filing for bankruptcy, or when they sold a significant
15 portion of its assets to Steve's Engineering. Therefore,
16 it's legally irrelevant whether Department knew prior to
17 the debt on which ALA actually terminated its business
18 operation for which a seller's permit was required, that
19 ALA was likely to terminate its business operations to
20 update its bankruptcy fines.

21 The statute of limitations begins on the date of
22 the Department's knowledge of the actual termination of
23 the business, not likelihood of it's business future
24 termination nor its sell of the assets, if after that
25 point of time it continues to make retail sales requiring

1 the seller's permit.

2 Respect to the third issue for the relief of
3 penalties, ALA was assessed penalties for its failure to
4 timely file returns or pay taxes due for the periods at
5 issue. And the Department properly included those
6 penalties in the NOD to Appellant under Section 6829.
7 There's no statutory or regulator authority for relieving
8 penalties in Section 6829 determinations.

9 Section 6592(a) provides that the Department may
10 relieve late payment penalties if it finds that failure to
11 timely pay was due to reasonable cause and circumstances
12 beyond the person control, and occurred notwithstanding
13 the exercise of ordinary care, and in the absence of
14 willful neglect. That's if reasonable cause is shown why
15 ALA failed to timely pay its taxes. The penalties
16 incurred by ALA may be relieve, and consequently,
17 Appellant's liability for the penalties would also be
18 eliminated.

19 Here Appellant just states that ALA was a victim
20 of a severe downturn of the economy, that it did
21 everything it could to pay the taxes and keep the business
22 alive. However, a lack of funds, whether due to economic
23 recession or other reason, does not constitute reasonable
24 cause or circumstances beyond the corporation's control to
25 sufficiently relieve the penalties.

1 Moreover, as I discussed in detail previously,
2 the Department's evidence establish that ALA did have
3 funds available to pay the taxes. Therefore, no relief of
4 the penalties is warranted.

5 Last thing on Appellant's request for interest
6 relief, the imposition for interest is mandatory. The law
7 provides for relief of interest only under very narrow
8 circumstances. The only possible basis for relief here
9 would be unreasonable delay by CDTFA employee. But
10 Appellant does not state any fact that suggest there was,
11 and we're not aware of any such unreasonable delay.
12 Therefore, no relief from interest is warranted.

13 In conclusion, the responsible personal liability
14 against the Appellant here should be sustained because the
15 Department issued the NOD within the 3-year statute of
16 limitation and has further established all four legal
17 requirements that are necessary for responsible personal
18 liability. And the Appellant has not provided any basis
19 for refund of interest or penalties.

20 This appeal should, therefore, be sustained.
21 Thank you. Be denied. I'm sorry.

22 ADMINISTRATIVE LAW JUDGE ANGEJA: That concludes
23 your presentation?

24 MS. HE: Yes.

25 ADMINISTRATIVE LAW JUDGE ANGEJA: And a

1 five-minute rebuttal from Appellant.

2 Oh, sorry. Questions?

3 ADMINISTRATIVE LAW JUDGE DANG: Just one very
4 quick question for CDTFA. Under Revenue and Taxation Code
5 Section 69 -- I'm sorry. I'm getting this jumbled.
6 6593.5, the interest relief provision, I'm just curious.
7 What is CDTFA's position on the meaning of board employee?
8 Does that include OTA, or is that limited only to CDTFA
9 employees?

10 MS. HE: Yeah, it was referring to CDTFA
11 employee.

12 ADMINISTRATIVE LAW JUDGE DANG: Okay. Go ahead.

13 MS. SILVA: Yes. Your question as whether or not
14 the interest relief applies to a CDTFA employee as written
15 in the statute; correct?

16 ADMINISTRATIVE LAW JUDGE DANG: Correct.

17 MS. SILVA: Right. So, CDTFA.

18 ADMINISTRATIVE LAW JUDGE DANG: Okay. Is there
19 any authority for that position?

20 MS. HE: Yes. I think the Government Code that
21 split the BOE into three agencies, in terms of anything
22 other than constitutional-related functions that was
23 reserved for BOE, every other reference is for BOE or
24 Board, as it would be referring to CDTFA from the point on
25 was after the reorganization.

1 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

2 ADMINISTRATIVE LAW JUDGE KWEE: With respect to
3 an appeal it should be referred to OTA; correct?

4 MS. HE: Yeah, correct. I'm sorry. Yes.

5 ADMINISTRATIVE LAW JUDGE KWEE: I did have a
6 separate question. So I thought there was reference to an
7 installment-payment agreement. Was the installment
8 payment agreement during the time frame of the liability
9 period, or is that before the liability period?

10 MS. HE: It was -- it was installment payment
11 agreement entered on February -- I believe it was February
12 2010. That was to cover the second quarter and first
13 quarter of '09 liability. So the Appellant did attempt to
14 make several payments, but one of the key terms of the IPA
15 was that they had to file returns under -- make
16 prepayments as an ongoing obligation.

17 They did not make all the -- not only did they
18 not make all the installment payments, they also failed to
19 do -- satisfy their ongoing obligation to file new returns
20 and do prepayments as they became due.

21 ADMINISTRATIVE LAW JUDGE KWEE: So when was the
22 installment payment agreement terminated?

23 MS. HE: I don't think there was, like, an
24 official termination date. It's just by -- because of the
25 failure of Appellant to stick to the installment payment

1 agreement, it was no longer in effect. And there was
2 never any attempt by the Appellant or ALA to make further
3 payments or make good on that agreement afterwards anyway.

4 ADMINISTRATIVE LAW JUDGE KWEE: So CDTFA never
5 officially sent the letter terminating that
6 installment-payment agreement?

7 MS. HE: I did not check into that because it was
8 not put into -- from my perspective to the case. Because
9 even with or without the IPA, after the IPA and all the
10 way through the bankruptcy filing date, Appellant could
11 have made the payments and had the authority and ability
12 to pay with the all the three elements of willfulness
13 satisfied.

14 So regardless of whether he had some sort of good
15 attempt at one point to satisfy the liability, the fact
16 remain that he did not satisfy all the obligations. And
17 because he knew that, he had the ability and authority to
18 pay those liabilities. All the way up until the filing of
19 the bankruptcy, he was still liable for the corporation's
20 liabilities legally under Section 6829.

21 ADMINISTRATIVE LAW JUDGE KWEE: I guess I had
22 thought that CDTFA generally didn't hold willfulness
23 during the time frame that there was an active
24 installment-payment agreement until after the IPA was
25 terminated. I'm not sure if that is --

1 MS. SILVA: We did have a -- we did do that. But
2 in this case, there was not compliance with the IPA. It's
3 only when there's full compliance with the IPA that we use
4 that.

5 ADMINISTRATIVE LAW JUDGE KWEE: Okay. I see.
6 And as far as the case being converted to a Chapter 7, did
7 that occur during the liability period or was that later?
8 Do you know when the conversion was?

9 MS. HE: That was -- even for the documents filed
10 all the way through 2011, they were still referring to ALA
11 as a debtor in possession.

12 ADMINISTRATIVE LAW JUDGE KWEE: Okay.

13 MS. HE: Yeah. We don't have the exact date on
14 when it was converted to Chapter 7 or when exactly the
15 bankruptcy actually ended. But, again, that was not
16 pertinent. Because all the way through the due date of
17 the third quarter 2010 liability, which was the final
18 period that was assessed against Appellant, Appellant had
19 the knowledge, authority, and ability to pay. And since
20 he did not pay and had all the time to do that, whether,
21 you know, several years down the road, he couldn't pay,
22 that was legally relevant under Section 6829.

23 ADMINISTRATIVE LAW JUDGE KWEE: Okay. But then
24 Chapter 7 occurred after the liability period?

25 MS. HE: Way after.

1 ADMINISTRATIVE LAW JUDGE KWEE: Okay.

2 MS. HE: We don't know exactly how many years
3 after, but at least 2010, 2011 -- at least more than a
4 year afterwards.

5 ADMINISTRATIVE LAW JUDGE KWEE: Okay.

6 Understood. Thank you.

7 MS. HE: Thank you.

8 ADMINISTRATIVE LAW JUDGE DANG: Sorry to go back
9 to this again. Under 6593.5(a), Board is also referenced.
10 I was just wondering what CDTFA's position on whether
11 Board refers to OTA or the CDTFA in that subdivision?

12 MS. HE: We previously gave our position in
13 another case. Basically, it says whenever there was an
14 appeal involved in that debt with interest or penalties,
15 wherever the statute referenced that the Board employee
16 may do that, since OTA stands in position of the Board in
17 terms of appeals function, CDTFA's position is that OTA
18 has the authority as well.

19 ADMINISTRATIVE LAW JUDGE DANG: Okay. So we have
20 the authority to relieve the interest. But in terms of
21 the unreasonable error delay that gives rise to relief,
22 that would pertain to actions by CDTFA?

23 MS. HE: Correct. Yeah.

24 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.

25 ADMINISTRATIVE LAW JUDGE KWEE: I have no further

1 questions.

2 ADMINISTRATIVE LAW JUDGE ANGEJA: You are now
3 allowed to rebuttal. So I turn it over to you for a
4 rebuttal.

5 MR. BOWMAN: Could you repeat that?

6 ADMINISTRATIVE LAW JUDGE ANGEJA: All we just
7 said?

8 MR. BOWMAN: Just kidding.

9

10 CLOSING STATEMENT

11 MR. BOWMAN: Just a couple of things. We kind of
12 knew the rent issue was going to come up, and I talked to
13 Mr. Mirolla about this. And, basically, he had said that
14 about 16 to almost \$18,000 of the \$25,000 a month rent,
15 that was his mortgage on the building. And another 5 or
16 \$6,000 a month was for the property taxes that he had to
17 pay on the building.

18 So, although, it sound like it's not a good idea
19 to pay the rent to himself, they still had to occupy the
20 building. Otherwise the building would have foreclosed.
21 So it's kind of a catch 22 that he had to deal with that.

22 In August of 2010 -- I just looked it -- there
23 were no sales in August of 2010. Unfortunately though, I
24 did not catch there were sales in July. So -- and that's
25 about it.

1 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. You have
2 nothing further?

3 MR. BOWMAN: No.

4 ADMINISTRATIVE LAW JUDGE ANGEJA: Questions from
5 the panel? None.

6 I think we have all the evidence. And with
7 nothing further on the horizon, I will close the record
8 and will end the hearing. The panel will confer after
9 today, and we will issue a decision within 100 days. I
10 hope we're faster than that, but the maximum allowed is
11 100 days.

12 And that will do it for today. So thank you,
13 everybody, for your time and eloquence. Thank you.

14 (Proceedings adjourned at 12:22 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 14th day
of October, 2019.

ERNALYN M. ALONZO
HEARING REPORTER