

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
THE ARMENIAN CAFE, INC.,) OTA NO. 18012082
)
) APPELLANT.)
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TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Tuesday, September 17, 2019

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
355 S. Grand Ave. 23rd Floor, Los Angeles,
California, 91401, commencing at
10:07 a.m. and concluding at 10:37 a.m.
on Tuesday, September 17, 2019, reported
by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: Hon. NGUYEN DANG

Panel Members: Hon. JEFF ANGEJA
Hon. KENNY GAST

For the Appellant: EDDY SHAKARJIAN
JIM TALEB

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE ADMINISTRATION
By: SCOTT LAMBERT
LISA RENATI
DANA FLANAGAN-MCBETH

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I N D E X

OPENING STATEMENT

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E X H I B I T S

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1 Los Angeles, California; Tuesday, September 17, 2019

2 10:07 a.m.

3

4 ADMINISTRATIVE LAW JUDGE DANG: Let's go ahead
5 and go on the record.

6 Good morning, everyone. We're opening the record
7 in the appeal of The Armenian Cafe, Inc., before the
8 Office of Tax Appeals. The Case Number is 18012082. This
9 hearing is being convened in Los Angeles on September 17,
10 at 10:07 a.m.

11 Today's case is being heard by a panel of three
12 judges. My name is Nguyen Dang. I'm the lead judge for
13 purposes of conducting this hearing. Also on this panel
14 with me here today is Judge Kenneth Gast to my left and
15 Judge Jeffrey Angeja to my right.

16 Beginning with Appellant, could you please state
17 your appearance for the record?

18 MR. TALEB: My name is Jim Taleb. I'm the
19 representative. I'm the accountant, and I'm the power of
20 attorney for The Armenian Cafe.

21 MR. SHAKARJIAN: My name is Eddy Shakarjian. I
22 am The Armenian Cafe, the owner.

23 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

24 And CDTFA?

25 MR. LAMBERT: My name is Scott Lambert, and to my

1 far left is Dana Falanagan-McBeth. And we plan to have a
2 second chair come in mid-hearing, which will be Lisa
3 Renati.

4 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

5 The issue in this appeal is whether adjustments
6 are warranted to the measure for unreported taxable sales.

7 Is that correct, Mr. Taleb?

8 MR. TALEB: Yes.

9 ADMINISTRATIVE LAW JUDGE DANG: CDTFA?

10 MR. LAMBERT: Correct.

11 ADMINISTRATIVE LAW JUDGE DANG: Great. Thank
12 you.

13 Appellant, you submitted as evidence exhibits
14 which are attached to your briefs, which we've combined
15 into a pdf, which was sent to you prior to this hearing.
16 Did you receive that file, and are there any errors in
17 that file?

18 MR. TALEB: I did receive it. No errors in the
19 file.

20 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.
21 CDTFA do you have any objections to admitting
22 Appellant's exhibits as evidence in this matter?

23 MR. LAMBERT: No.

24 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.
25 And, CDTFA, we've also received your Exhibits A through H.

1 Appellant, do you have any objections to entering
2 those exhibits into evidence?

3 MR. TALEB: No.

4 ADMINISTRATIVE LAW JUDGE DANG: Okay. So because
5 there's no objections, these exhibits are now entered into
6 the record for our consideration as evidence in this
7 matter.

8 (The Electronic Exhibit File was received
9 in evidence by the Administrative Law Judge.)

10 ADMINISTRATIVE LAW JUDGE DANG: Mr. Taleb, if
11 you're ready, you may begin your 15 minute presentation.

12

13 OPENING STATEMENT

14 MR. TALEB: So we received the letter from the
15 CDTFA, or Board of Equalization at that time, to conduct
16 an audit for the years 2012 through 2014. The auditor
17 came to my office, me as the accountant, and I presented
18 him with the sales tax returns, bank statements, invoices,
19 federal income tax returns. He did some work at my
20 office.

21 Then sometime later, a month or maybe more, he
22 went to the restaurant to conduct an audit there. He
23 spend couple weeks there. He looked at every sales
24 receipt for that two-week period in June and in that check
25 presenter at that time, because my client received a

1 notice that he had to vacate the premises by the end of
2 the year. He received that in April of 2015, I believe,
3 or late March 2015.

4 He started asking the customers to, if they can,
5 to pay cash instead of credit cards since he was going out
6 of business and to save on fees. And in the check
7 presenter, he had a card stating what he wanted, asking
8 the customers to pay cash if they can.

9 So the auditor had an opportunity there, since he
10 looked at every case -- every sales receipt for that
11 two-week period to see that there was any evidence there
12 for my client asking the customers to pay cash if they
13 can. Now, the auditor also contends that --

14 ADMINISTRATIVE LAW JUDGE DANG: I'm sorry,
15 Mr. Taleb. I just want to interrupt you for a brief
16 moment to note for the record that Lisa Renati has just
17 appeared for CDTFA. Thank you.

18 Sorry for the interruption.

19 MR. TALEB: No problem. Okay.

20 So the auditor contends that there's a difference
21 or inconsistency between the federal income tax returns
22 and the sales tax reports. There's an exhibit there. And
23 I did some analysis, and I was not consistent on how I
24 reported deductions for sales tax or tips. But the
25 analysis shows that there's no difference between the

1 federal income tax as far as the taxable sale and the
2 reports of Board of Equalization as far as sales tax.

3 Now, my client kept some sales receipts in his
4 garage. Unfortunately, we couldn't find enough receipts
5 for -- we didn't find any for 2014. We found just a
6 handful for 2013. We found about, best of my estimates,
7 about 10 percent of the sales receipts for 2012. I did
8 some analysis on this and on the sales receipt. It shows
9 whether the payment was in cash or credit card, of course,
10 to arrive at the credit card ratio for that year and
11 hopefully ask the Board to use it as a guide to determine
12 the cash to credit card sales.

13 As I said, the sample size was about 10 percent,
14 which I believe is large enough for any people who do
15 statistics. They would love to have a sample size of 10
16 percent. When oppose -- you know, to oppose right now on
17 politicians, they only sample 1,500 maybe 2,000 Americans,
18 and they tell you 50 percent support so-and-so.

19 I provided them with about 310 receipts, but this
20 wasn't enough for them. But I do believe should be
21 because it's a large sample size. The credit card ratio
22 for that sample size was about 97, 98 percent, which what
23 we contend to be all along for a long time, for my
24 customer.

25 He's an area where a lot of people there

1 basically are either middle class or high-income people.
2 A lot of tourist there are from Canada. It's right on the
3 beach there in Carlsbad on PCH. They pay mostly with
4 credit card.

5 The Board also refuse to let us have employees
6 testify to the fact that there wasn't enough cash for them
7 at the end of the day to take their tips in cash. They
8 would have to come back a day or two later when my client
9 gets enough cash to give them tips. I have some letters
10 from a couple of employees, but the Board refused that.

11 Also, the Board would not let us use sales
12 receipt, which we have a lot of them, as I said, from
13 maybe, like, 2011, 2010. We have a lot more than 2012
14 because they're outside of the audit period. Also, as far
15 as I did some analysis for 2015 that shows the actual cash
16 receipts, and it's in one of the exhibits there. And 4th
17 Quarter 2015 we reported 20 percent, 3rd Quarter
18 15 percent, 2nd Quarter 6 percent, 1st Quarter 3 percent.

19 For my client -- as I said, tourist area. A lot
20 of people go to the beach. So 2nd Quarter and 3rd Quarter
21 are always the highest as far as sales. In 2015, since my
22 client was going out of business, he was on Facebook --
23 and he was in business there for 28 years. There in all,
24 they discussed that he was going out of business. So they
25 had an exceptional quarter in 2015 where sales were a lot

1 higher than previous years.

2 I did some analysis to show that -- in one of the
3 exhibits -- that normally 4th Quarter and 1st are the
4 slowest of the year. There's an exhibit there that shows
5 that. So in 2015 I would take that as exception to the
6 rule as far as the 4th Quarter and the higher sales.
7 Also, the auditor one of the -- in the report, I believe
8 his cash to credit card ratio analysis is incorrect for
9 2013. They show in there that there was cash receipts of
10 \$175,000, and that's not correct because he didn't take
11 the total receipts for the quarter.

12 So he did not include tips. If he would have
13 included tips, the ratio would have been -- the cash ratio
14 would have been about two or three percent as in 2012 that
15 he did, which is correct. I have no problem with that.

16 I don't know what's special about my client here
17 to be honest with you, but he doesn't get a lot of cash.
18 Again, one of those areas may be that it's an exception to
19 the rule as far as sales, as far as the kind of customers.
20 But all along his credit card ratio has been indeed upper
21 90s. I've been dealing with him since 2005. I'm very
22 familiar with his business, and there's not much cash.
23 It's mostly credit cards.

24 The auditor also wanted to find out the cost of
25 food. So one day we went back to the kitchen. We started

1 weighing items for the popular food items on the menu.
2 There are, like, five items. We started weighing the
3 meat, the lamb, the onions, the rice, you name it, to
4 arrive at cost for these popular menu items so he can
5 figure out his markup.

6 For some reason he contends that, you know, even
7 though we showed him, you know, the invoices for the cost
8 of these items, and we showed him the portions, he
9 contends that we're not true to him. We were deceiving
10 him.

11 Do you have anything else?

12 It's all I have to say.

13 MR. SHAKARJIAN: No. Basically, that's it. Our
14 sales on that last quarter in 2015 the cash was higher
15 because I did post a check presenter -- a note in each
16 presenter that this is our last quarter. We got our
17 notice. We're gonna leave, and we encourage people to pay
18 us in cash so we can save on card, the fees; which was at
19 the time, 3 percent of our sales.

20 So people agreed to do that. And as a result,
21 apparently the cash ratio was higher on that quarter. And
22 the auditors based their entire decision on that quarter
23 because they're seeing a lot more cash. So, therefore,
24 they assume 2012, 2013, 2014 should be the same thing, and
25 we explain it's not. Look at the records. We have

1 records all the way to 1998, but they ruled all of those
2 out.

3 They just wanted to see the three years, and it
4 was a lot lower. It was only on that quarter it bummed up
5 because of what we have, you know, experienced. So that
6 was an important thing. And then one of the auditors
7 mentioned that they don't have any evidence that we put
8 anything with the check presenters, and they went to the
9 trouble to go to Yelp and Facebook to find a customer who
10 posted that note that, "Look what these people are doing.
11 They are asking people to pay cash."

12 So even though that there was a proof, but the
13 post was done in September, so they're ruling that out
14 that, you know, how do we know that ticket -- that note
15 was in the check presenters back when the auditors were
16 there from June 1 to June 15?

17 And my answer to that was the -- the auditor, he
18 took every check presenter from us to audit before he gave
19 it to us. So when the waitresses came, he sat at one
20 table with the check presenters there. He audits the
21 cash. He audits the ticket. He writes it down. And he
22 saw every ticket in that check presenter. So they're
23 saying in the one of the statements in the report there,
24 that we're ruling that out because the auditor hasn't
25 mentioned anything about that.

1 To me it's nonsense, but he witnessed every check
2 presenter which was there. And we have -- a few weeks ago
3 I pulled a video that we have in archive at a
4 belly-dancing show that we have at the restaurant. And I
5 zoomed right at a table where the belly dancer was
6 performing there, and the man was putting a dollar in her
7 waist. And there was the check presenter, and that paper
8 was right in there in that check presenter. And that was
9 in June 3, June 4, something like that. It was that
10 Friday that happened.

11 So we did it. We're not deceiving anyone. We --
12 this was the true thing that we have presented. There's
13 no reason to -- if I wanted to cheat, I could have cheated
14 the whole area on 4th Quarter and, you know, hide the
15 cash. But we didn't do that. That's not what we do.

16 So all my account for the previous years are all
17 in harmony with what we have doing in all these years with
18 the exception of that last quarter that they flagged us
19 for it because of what has happened. People have left us
20 more cash, and we reported that cash.

21 The end.

22 MR. TALEB: I want to, you know, confirm again.
23 This cash to credit card ratio based on the auditor's
24 analysis for 2015, our contention is that it should not be
25 applied to the audit period because 2015 was an exception

1 year for him. As I said, he was closing. He asked the
2 customers to pay cash, and that's why he got more cash.
3 It's as simple as that.

4 Thank you.

5 ADMINISTRATIVE LAW JUDGE DANG: Thank you for
6 your presentation.

7 At this time I'd like to ask my panel members if
8 they have any questions for you.

9 Judge Angeja?

10 ADMINISTRATIVE LAW JUDGE ANGEJA: No. No
11 questions.

12 ADMINISTRATIVE LAW JUDGE DANG: Judge Gast?

13 ADMINISTRATIVE LAW JUDGE GAST: No questions.

14 ADMINISTRATIVE LAW JUDGE DANG: Okay. I don't
15 have any questions either. So at this time, CDTFA, if you
16 are ready, you have 15 minutes for your presentation.

17 MR. LAMBERT: Thank you.

18

19 OPENING STATEMENT

20 MR. LAMBERT: In this particular case, the
21 taxpayer operated a restaurant that was audited for three
22 years. The years were 2012, 2013, and 2014. Upon audit,
23 there was a lack of detail information that was presented.
24 There was summary information. And based on that, the
25 markup of record was less than what we would expect for

1 this type of business.

2 So for 2012, the markup was approximately -- this
3 is the reported markup -- was 140 percent. For 2013, it
4 was 116 percent, and for 2014 it was 122 percent. This is
5 below what we would expect for this type of business. In
6 conjunction with that, the amount of cash sales that were
7 reported were extremely low for this type of business, as
8 the Appellant stated.

9 They had reported about 3 percent of their sales
10 as cash sales. So based on that, the Department decided
11 to conduct an observation test. And so we went out for
12 one day, observed what the Appellant was reporting in the
13 records, and it appeared to be acceptable to us. And so
14 what we did is we asked the Appellant to keep records for
15 a two-week period, in which they did.

16 They kept track from June 1st of 2015 through
17 June 14th of 2015. And a detail -- well, a summary by day
18 is recorded on the Department's Exhibit Bates stamped 33.
19 So what you'll see there is the observation test by day.
20 If you look at Column D, that will be the cash sales,
21 which includes sales tax. And during this period of
22 time -- it's a little bit hard for me to see -- but from
23 memory, I believe it was \$9,800 or so in cash sales with
24 sales tax for that 14-day period.

25 We compared that to the credit card sales that

1 were made. And that's what we come up with, the credit
2 card percentage of 79.75 percent. So it was established,
3 based on the Appellant's records for a two-week period
4 that they retained. Now, we weren't able to do it for the
5 other periods because we had some of the information that
6 we provided -- that they provided, but we didn't have all
7 the information.

8 And we're not disputing that the information that
9 they provided to us shows a cash sales per day of about
10 2-and-a-half percent. We don't believe that we have all
11 the records. And we also believe there's a likelihood
12 that cash sales were not included, either in those, all of
13 those reports that they provided to us, or the other
14 reports had more cash sales in them. And it's difficult
15 to do comparisons in this case because we don't have the
16 detailed records to look at.

17 But what I would point you to is the
18 Appellant's -- the Appellant did an analysis on their
19 page 60. And I will -- mine is at the top. So the one
20 thing we do know is the cash sales for the two-week period
21 in June was -- I'm sorry -- it was -- I can see it better
22 now. It was \$9,489 in cash sales for the two-week period
23 in June 2015.

24 If you take a look at Appellant's Exhibit 60, for
25 the 2nd Quarter, it'll show reported cash receipts of

1 \$19,170. So even though this is outside the audit period,
2 because the audit period ended in 2014, I believe it's a
3 good example of showing why we don't believe all the cash
4 sales were recorded and reported by the Appellant.

5 So they have \$19,170 that they reported as cash
6 sales for the 2nd Quarter of 2005. We know \$9,500 of that
7 came from a two-week period. So if you subtract out the
8 \$9,500 from \$19,170, you're going to come up with about
9 \$9,600 in cash. We would assume that the second half of
10 June of '15 probably had similar cash sales during that
11 period.

12 So, essentially, what that means is the taxpayer
13 reported zero cash sales in April and May of 2015. We
14 don't believe that to be reasonable. The arguments that
15 have been made is that starting in April the taxpayer
16 asked customers to pay in cash. We believe that this
17 20 percent was consistent throughout the audit period. It
18 does show in the 4th Quarter that there is 20 percent cash
19 sales. We believe that happened throughout the audit
20 period. And the fact that there were no cash sales
21 reported for April and May of 2015, which doesn't appear
22 to be reasonable, is consistent with cash sales not being
23 recorded.

24 For a business of this type, we would expect cash
25 sales to run in the 80 percent area. It can obviously

1 vary by the type -- the location and the type of
2 restaurant. Generally, the more expensive dine-in
3 restaurants have a higher credit card percentage.
4 80 percent is consistent in the range with what we would
5 find.

6 So when we take -- when we use the 80 percent
7 factor to develop what the audited taxable sales are, the
8 post-markup percentage falls in range with what we would
9 expect. For 2012, it comes to 171 percent. For 2013,
10 it's 176 percent, and 2014, it's 184 percent. And this is
11 consistent with what we would expect for this type of
12 business to have as a markup.

13 So for those reasons the audit was conducted in
14 the manner that it was. And I'm available for questions.

15 ADMINISTRATIVE LAW JUDGE DANG: Thank you,
16 Mr. Lambert. I just had one question for you. I believe
17 the taxpayer, Mr. Taleb, had raised an issue with the
18 calculation for 2013. He referenced a \$175,000 figure.
19 Would you be able to address that?

20 MR. LAMBERT: Sure. And I believe he's correct
21 in that analysis. What they were trying to do on the
22 schedule that he's referring to was determine what the
23 cash was reported. And so this was an initial analysis
24 that was done by the auditor. And I do believe they
25 forgot to take the tips out of that analysis.

1 But what that does is, it basically lowers the
2 cash that they reported. So it would make it, in my
3 opinion, worse for the Appellant in that they reported
4 less cash sales than what we show there. But in any case,
5 that's not what we used to establish the audited taxable
6 measure. We used the credit card method.

7 So even though our analysis -- there should have
8 been adjustment for that, it would have shown less cash in
9 that year. But it does not have any effect on the end
10 results of what we ultimately determined.

11 ADMINISTRATIVE LAW JUDGE DANG: Great. Thank you
12 so much for your explanation.

13 At this time I'd like to turn it to the panel.
14 Judge Angeja, do you have any questions?

15 ADMINISTRATIVE LAW JUDGE ANGEJA: No questions.

16 ADMINISTRATIVE LAW JUDGE DANG: Okay.
17 Judge Gast, do you have any questions?

18 ADMINISTRATIVE LAW JUDGE GAST: No questions.
19 Thank you.

20 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you,
21 everyone, for your presentations. The record in this
22 appeal is now closed, and the appeal will be submitted for
23 decision. We will meet and deliberate. And we endeavor
24 to have a written decision issued sometime within -- I'm
25 sorry.

1 I forgot to give you your closing presentation.
2 I'm terribly sorry about that. Mr. Taleb, if you're
3 ready, you may have five minutes for your closing.

4

5

CLOSING STATEMENT

6 MR. TALEB: As far as the cash receipts for the
7 year 2015, I mean, look at how much cash we reported for
8 the -- there's an exhibit there for the 3rd and 4th
9 Quarters, and sales were not up by that much. 4th Quarter
10 2015, it's almost similar to the 1st Quarter of 2015. The
11 1st Quarter we reported \$8,715 cash. By the 4th quarter,
12 on sales of 267 -- sorry -- \$338,000 for the 4th Quarter.
13 We reported almost \$71,000 in cash.

14 The 1st Quarter sales were 281. That includes
15 tax and tips, of course, and we reported only \$8,000.
16 Well, you know, guys, we're the exception to the rule as
17 far as food cost and as far as credit card to cash ratio.
18 Why can't we be? Why does everyone has to fall within
19 their parameters?

20 Thank you.

21 MR. SHAKARJIAN: We don't -- if we wanted not to
22 pay or not to report the cash, we would have done that on
23 the 4th Quarter if we have been accused of that numerous
24 times, but that's not our thing. We did report everything
25 we got on 1st, 2nd, 3rd and 4th quarter. Again, not to

1 repeat, but the ratio increased of the cash because of
2 what we did. We just asked people to pay us in cash, so
3 we could pay -- try to save that 3 percent on the credit
4 card fees.

5 Plus the cost of the food that I use, it's
6 nothing to be compared to any other restaurant, and my
7 clients know that. My cost of the food is a lot
8 end-higher. I sell lamb kabob plater for \$14, where my
9 lamb per pound is costing me about \$18. So no restaurant
10 operates that way, but we did, and it push our cost high.
11 But we did it because that was in our style, and it was
12 our food, and that's why we had the business we had.

13 He mentioned that there were no cash reported in
14 the first quarter, I think, or the 2nd Quarter. He said,
15 in April and May, and that's not true because we did
16 report cash. So that's a contradiction there.

17 I don't have anything else at this time. Thank
18 so very much for your time.

19 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

20 CDTF, if you're ready, you may have five minutes
21 for your closing.

22 MR. LAMBERT: We have nothing further.

23 ADMINISTRATIVE LAW JUDGE DANG: Okay. Now, thank
24 you, everyone, for your presentations. The record in this
25 matter now closed, and the appeal submitted for decision.

1 We endeavor -- we will meet and deliberate on this case,
2 and we endeavor to have a written decision to you within
3 100 days. Thank you.

4 This hearing is now adjourned.

5 (Proceedings adjourned at 10:37 a.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 7th day of October, 2019.

ERNALYN M. ALONZO
HEARING REPORTER