

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
MICHAEL F. CREAMER and)
MITSURU CREAMER) OTA NO. 18010027
)
APPELLANT.)
)
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TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Thursday, September 19, 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 11:00 a.m.
and concluding at 12:00 p.m. on Thursday,
September 19, 2019, reported by
Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

1 APPEARANCES:
2
3 Panel Lead: ALJ JOHN JOHNSON
4
5 Panel Members: ALJ JEFFREY MARGOLIS
6 ALJ RICHARD TAY
7
8 For the Appellant: MICHAEL CREAMER
9 A. LAVAR TAYLOR
10
11 For the Respondent: STATE OF CALIFORNIA
12 FRANCHISE TAX BOARD
13 By: GI NAM
14 MARIA BROSTERHOUS
15
16 TAX COUNSEL
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I N D E X

OPENING STATEMENT

PAGE

By Mr. Taylor

36

By Mr. Nam

40

DEPARTMENT'S
WITNESSES:

DIRECT

CROSS

REDIRECT

RECROSS

(None offered)

APPELLANT'S
WITNESSES:

DIRECT

CROSS

REDIRECT

RECROSS

Michael Creamer

8

34

E X H I B I T S

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

(Franchise Tax Board's Exhibits were received at 7.)

CLOSING STATEMENT

PAGE

By Mr. Taylor

48

1 Los Angeles, California; Thursday, September 19, 2019

2 11:00 a.m.

3

4 ADMINISTRATIVE LAW JUDGE JOHNSON: We'll go on
5 the record.

6 This is the appeal of 609 N. Hayworth LP, Case
7 Number -- oh, sorry. It's not that case.

8 This is the case of Michael F. and Mitsuru
9 Creamer, 18010027. It is 11:00 a.m. on
10 September 19, 2019, here in downtown Los Angeles,
11 California.

12 I am the lead ALJ for this hearing, John Johnson.
13 Let me say good morning to my panelists.

14 Good morning, Judge Margolis.

15 ADMINISTRATIVE LAW JUDGE MARGOLIS: Good morning.

16 ADMINISTRATIVE LAW JUDGE JOHNSON: Good morning,
17 Judge Tay.

18 ADMINISTRATIVE LAW JUDGE TAY: Good morning.

19 ADMINISTRATIVE LAW JUDGE JOHNSON: Let me have
20 the parties introduce themselves for the record. We'll
21 start with Appellant.

22 MR. CREAMER: Michael Creamer, C-r-e-a-m-e-r.

23 MR. TAYLOR: Good morning. Lavar Taylor, counsel
24 for Mr. and Mrs. Creamer.

25 ADMINISTRATIVE LAW JUDGE JOHNSON: Thank you.

1 And Respondent.

2 MR. NAM: Gi Nam for Franchise Tax Board.

3 MS. BROSTERHOUS: Maria Brosterhous for Franchise
4 Tax Board.

5 ADMINISTRATIVE LAW JUDGE JOHNSON: Thank you.

6 The panel has your briefs. We have examined the
7 exhibits that have been provided. I'd like to remind
8 everyone that we're an independent agency, so there is no
9 ex parte communications. What we have from the briefing
10 and any additional exhibits that is submitted and what you
11 present to us today is what we'll base our decision on. I
12 fully respect the importance of the decision to be made in
13 this appeal, and I appreciate your efforts in getting to
14 this point.

15 The issue we have on appeal is: Whether
16 Appellants have shown error in FTB's proposed assessment
17 of additional tax, which is based on a federal
18 determination.

19 We discussed the exhibits off the record, and I
20 will admit into evidence Exhibits 1 through 18 for
21 Appellant and Exhibits A through L for Respondent. The
22 parties have indicated they have no objections to those
23 exhibits.

24 (Appellant's Exhibits 1-18 were received
25 in evidence by the administrative Law Judge.)

1 (Department's Exhibits A-L were received in
2 evidence by the Administrative Law Judge.)

3 ADMINISTRATIVE LAW JUDGE JOHNSON: We have three
4 stipulations I'll read into the record before we begin.
5 First, Appellant stipulate that they concede an amount of
6 unreported taxable income of \$21,797.52. Appellant
7 stipulate that they are not seeking any additional
8 deductions for business expenses or otherwise, except for
9 the deduction of \$341,494.48 of the \$363,292 in income
10 shown on the 1099s that Appellant's argue is attributable
11 to clients and Ms. Shultz. The parties stipulate that, to
12 the best of their knowledge, the federal action on
13 Appellant's 2010 tax year account is final.

14 If the parties have any other stipulations they
15 wish to make, they can do so when they give their
16 presentations. We're now, ready to move onto the
17 testimony portion.

18 Let me ask the Appellant, do you have any
19 questions before we proceed?

20 MR. TAYLOR: No, Your Honor.

21 ADMINISTRATIVE LAW JUDGE JOHNSON: And Franchise
22 Tax Board, do you have any questions before we proceed?

23 MR. NAM: No questions.

24 ADMINISTRATIVE LAW JUDGE JOHNSON: Okay. Let me
25 swear in Mr. Creamer. Could you stand and raise your

1 right hand.

2

3 MICHAEL CREAMER,

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

7

8 ADMINISTRATIVE LAW JUDGE JOHNSON: Thank you.

9 Please proceed. And Appellant, you may begin when you are
10 ready.

11 MR. TAYLOR: Thank you.

12

13 DIRECT EXAMINATION

14 BY MR. TAYLOR:

15 Q Mr. Creamer, are you a practicing attorney?

16 A Yes, I am.

17 Q Okay. You're admitted in California?

18 A Yes, I am.

19 Q How long?

20 A Since about 2000.

21 Q Okay. Could you just briefly describe what your
22 practice was like in 2010?

23 A I had a handful of clients in very active civil
24 cases.

25 Q The cases you just described, were they

1 contingency cases?

2 A No, they weren't.

3 Q Did your office handle contingency cases in 2010?

4 A Not in the beginning but later on with Lisa
5 Shultz we did.

6 Q Okay. Can you tell us how you first met Lisa
7 Shultz?

8 A So about 2002, 2003, I -- before I was really
9 practicing, I was doing something called special
10 appearances. That's where an attorney will appear for
11 other counsel in a case. And I had an office near the
12 Santa Ana Courthouse in downtown Santa Ana. And Lisa
13 Shultz ended up renting an office right across from mine.
14 That's where I met her.

15 Q Okay. Can you describe what happened in your
16 relationship with Ms. Shultz?

17 A She was a very nice person, and we got to -- you
18 know, we were across from each other, and I got to know
19 her a little bit. And then -- and then it started to dawn
20 on me that she had a serious drug addiction.

21 Q What did you do about that?

22 A I contacted the -- what's called the Alternate
23 Bar Association. It's an organization that helps
24 attorneys with addiction problems.

25 Q So in other words, to rephrase it, you turned her

1 in? Is that a fair characterization of what happened?

2 A Yeah. Yeah. I contacted them about her drug
3 problem.

4 Q Okay. And did you -- what happened then after
5 that with respect to Ms. Shultz?

6 A She ended up -- she ended up going into a drug
7 program. And then I guess later on she had -- she was --
8 she ended up in drug court. So I don't know the exact
9 circumstances, but I know she had some issues with law
10 enforcement. But, fortunately, she was already part of
11 this bar program to help attorneys work out their life.

12 Q But why -- like, at what point in time did she
13 not have an office next to you then, for the first time?

14 A So I ended up leaving -- no, no, no. She -- in
15 about 2000 -- probably about 4 months after I contacted
16 the bar, she ended up leaving, and then I left soon after
17 that and moved to Huntington Beach.

18 Q Okay. What was your office like in Huntington
19 Beach?

20 A It was a rather large office, but it was in a,
21 like, an industrial setting. So it was all based on -- it
22 wasn't like executive suites that you would think of. It
23 was more of, like, businesses that did manufacturing.

24 Q Did Ms. Shultz later come back into your life?

25 A Yes.

1 Q Could you describe what happened?

2 A Sure. So probably late 2009 she contacted me out
3 of the blue. I'm sure she got my information from the
4 bar. And she said she wanted to meet, and I agreed. And
5 she had gone -- she told me about her life. She had
6 basically hit bottom. She had lost custody of her child.
7 She had lost -- she had a home down in Mission Viejo, and
8 she lost that. And she was basically just looking to
9 restart. And she wanted -- I got the impression she
10 wanted to know if I could maybe help her out.

11 Q And did you help her out then?

12 A Not -- not at first. But I told her that there
13 was an open suite next to mine that she could rent, and
14 she ended up moving into that office.

15 Q Okay. And did you later get her involved in
16 cases being handled by your office?

17 A Yes. So after she moved in, and she had a couple
18 of cases and then she told me she needed more work. And
19 she asked me if I had any ideas. And I was working --
20 like I said, I sort of had a handful of cases. I wasn't
21 really looking for any extra work. But I knew of a firm
22 called Wattel & York that would -- they advertised
23 nationally for people that had been in collisions.

24 And they needed more attorneys in Southern
25 California that could handle the property damage aspect or

1 diminished value. And I told her about that. I said, you
2 know, they already know me, and if you'd be willing to
3 take on the work, they could send business over.

4 Q Did she actually work on those cases herself?

5 A She did. Initially -- I initially sort of helped
6 and showed her. She had a lot more years of litigation
7 than I did. But I showed her how to -- showed her how to
8 do a complaint for these types of cases. And then I gave
9 her some of the authority that I had been using to
10 prevail. But I hadn't done it in several years.

11 Q All right. And these case that you took in, were
12 they all diminished value cases?

13 A With Lisa Shultz, all except for -- there was one
14 personal injury case that she had with -- with a relative
15 of hers.

16 Q And just for the record, could you explain a
17 little more detail of what you mean by diminished value?

18 A Okay. So in -- when you have a collision,
19 automobile collision, and it's not your fault, you're
20 entitled to a couple of things. One of the things you're
21 entitled to is have the car repaired. And if it is
22 repaired, sometimes the value of your car, even after the
23 repair, is not worth the same amount of money that it
24 would have been had it never been in an accident or
25 collision.

1 And that difference we call diminished value.
2 But there's a lot -- unfortunately, there's a lot of
3 California attorneys that don't -- they pursue the
4 personal injury, but they sort of ignore the property
5 damage aspect.

6 Q Okay. Now, could you turn to the declaration of
7 Lisa Shultz, which has been marked as Exhibit 10.

8 A Okay.

9 Q Turn to the second page of that exhibit, if you
10 would please?

11 A Okay.

12 Q And you see there's Items A through J listed.
13 The first one is listed Century Surety Company. The last
14 one is United Services Auto Association. Could you look
15 at that list and tell us whether those cases were the
16 diminished value case and the one personal injury case
17 that Ms. Shultz worked on?

18 A That's correct. The Item F was the one that had
19 to do with a boating accident and her relative.

20 Q Okay. Now, these cases, were they worked under
21 your office's name?

22 A Yes. The --

23 Q Okay. And then did you sign engagement letters
24 with these clients?

25 A No, I did not.

1 Q Who did?

2 A That probably would have been Wattel & York, I
3 would imagine or Lisa Shultz.

4 Q Okay. But did you have an arrangement with
5 respect to the payment of fees?

6 A Yes.

7 Q Could you turn to your declaration, which is
8 Exhibit 13, and the document attached to that declaration,
9 which is called Retainer Agreement.

10 A Yes.

11 Q Is that the type -- did you enter into this type
12 of agreement in all of these cases?

13 A Except for the personal injury, yes.

14 Q And how did the personal injury agreement differ,
15 if at all, with respect to this case?

16 A That's something Lisa Shultz did, but it would
17 have been -- it should have been very similar to this.

18 Q Okay. Now, with respect that -- were there
19 settlements that came in these cases listed in
20 Ms. Shultz's declaration during 2010?

21 A There were settlements that came in.

22 Q Okay. And could you describe physically what
23 happened with respect to checks or money coming in and
24 being paid out?

25 A So the first couple of checks -- seven checks

1 that came in, I put them into the trust account, and they
2 were based on insurance. They were from an insurance
3 company. So usually it was a certified check. And after
4 just one or two days, then I would withdraw the amount of
5 money for the client, and then also give Lisa Shultz her
6 share.

7 Q And when you say her share and the client's
8 share, how much did the clients receive from the money
9 that came in?

10 A 60 percent.

11 Q 60 percent of the check that came in?

12 A 60 percent of the check that came in was for the
13 clients.

14 Q Okay. And I'll refer to as attorneys, which
15 could include you and Ms. Shultz. How much did the
16 attorneys get?

17 A 40 percent.

18 Q Okay. Now, how did this 40 percent that came
19 in -- did you have an understanding with Ms. Shultz as how
20 much you were going to get?

21 A We had --

22 Q Yes or no.

23 A Yes. Yes.

24 Q Could you describe that understanding, please?

25 A So since she was the one working up the cases,

1 but I was the one referring the cases to her, we would
2 agree that she would get 85 percent, and I would get
3 15 percent.

4 Q Okay. And is that what happened?

5 A So that was what was supposed to happen.
6 Unfortunately, it didn't always occur that way. But --

7 Q So what actually did happen then in some cases?

8 A Well, there was just a lot of times where she had
9 one reason or another that she needed the entire
10 40 percent. But since -- since I don't have good records,
11 I have already talked to you about conceding. And I'm
12 just going to claim that I did get the 15 percent.

13 Q So just to be clear as you sit here today, you
14 believe that you got less than 15 percent, but you're
15 willing to accept responsibility for the 15 percent?

16 A That's correct.

17 Q And that would be 15 percent of the 40 percent of
18 the check?

19 A Of the 40 percent in the fees that we received,
20 85 percent went to her. And I'm claiming 15 percent, even
21 though I didn't always get the amount.

22 Q Now, you have bank records for 2010; correct?

23 A I did have bank records for 2010.

24 Q Okay. You don't have those records today, do
25 you?

1 A No, I don't.

2 Q What happened to those records?

3 A So I ended up relocating from the Huntington
4 Beach office over to Anaheim. And in that move, I --
5 there's a lot of things that I ended up not taking with
6 me, including these bank records.

7 Q If we had those bank records today, would they
8 help show that money was actually paid to Ms. Shultz?

9 A No.

10 Q Why not.

11 A The reason is when I went -- when I would go deal
12 with the trust account, I would just do a withdraw for the
13 amount of money that had come in. One portion would go to
14 the client. Then the second portion would go to Lisa.
15 And then whatever Lisa -- whatever I didn't pay to Lisa
16 from the 40 percent, I would take. And then later on
17 after she relocated, I ended up just doing a withdraw and
18 transferring the amount over to Lisa, and then she would
19 pay the clients.

20 Q Okay. You mentioned that Ms. Shultz relocated.
21 Could you discuss what happened when -- once she relocated
22 and what happened?

23 A So, initially, when we were working these cases,
24 when she was working on the diminished value cases, it
25 went -- it was going very smooth. Then she got a new

1 boyfriend, or boyfriend I should say. And then, you know,
2 there started being disruptions. And then she told me
3 that she wanted to move from Huntington Beach down to San
4 Juan Capistrano, which was closer to where she was living
5 at the time, which was in Dana Point.

6 Q Okay. So then she relocated her office. Did she
7 take the physical case files with her?

8 A She took all the cases for the diminished value
9 cases.

10 Q Have you seen those case files since then?

11 A No.

12 Q And did you stop working with her at some point?

13 A I did.

14 Q Why.

15 A Probably the biggest reason was on the case where
16 she settled with her -- that she settled with the
17 insurance company for the personal injury to a relative.
18 She didn't want to give me the 15 percent. And at that
19 point, I decided wanted to wrap it up. I didn't want to
20 deal with her anymore on these cases.

21 Q All right.

22 A And also -- sorry. One more thing. And also, I
23 started suspecting that she might start to have addiction
24 problems again. So after she -- I knew that she started
25 drinking, and I was -- I warned her several times that if

1 she wasn't careful that probably would lead back to her
2 drug addiction.

3 Q Mr. Creamer, have you ever, ever taken a dollar
4 of money of your clients that belonged to them and
5 misappropriated it?

6 A No. Never.

7 Q Has anyone ever file a bar complaint against you
8 with respect -- on that topic?

9 A No. Never.

10 Q Now, you did not issue a 1099 to Ms. Shultz, did
11 you?

12 A I did not.

13 Q Can you explain why?

14 A I wish I did. The situation was that when I got
15 the -- you know, when these funds came in, they're in my
16 account for just one or two days, and then I ended up
17 giving Lisa the money. But what I didn't realize was
18 that -- were that 1099s were issued. I didn't even -- I
19 didn't have a chance to actually see them. Unknown to me,
20 it seems like 1099s issued, but they were sent somewhere
21 else. I didn't receive them.

22 Q Okay. When you say there were 1099s issued, have
23 you ever seen form 1099 issued with respect to the cases
24 that are listed in Ms. Shultz's declaration?

25 A No.

1 Q So never at any point in time?

2 A No, not that I -- no.

3 Q Okay. Now, do you recall your 2010 tax return

4 being audited by the IRS; correct?

5 A That's correct.

6 Q And you were represented by another individual;

7 correct?

8 A Yes.

9 Q Is that individual an attorney?

10 A No, he's not.

11 Q An accountant?

12 A No.

13 Q During the IRS audit, did you ever get a chance

14 to make a presentation to them like you did today?

15 A No, I did not.

16 Q Did your representative ever let you talk to the

17 IRS?

18 A No.

19 Q Did your representative ever ask you to provide

20 document to the IRS?

21 A No.

22 Q Do you have an understanding at all why today you

23 have -- how it became you got a bill, or the IRS made an

24 assessment when you were contending you didn't owe this

25 money?

1 A No.

2 ADMINISTRATIVE LAW JUDGE JOHNSON: You have about
3 two minutes left.

4 BY MR. TAYLOR:

5 Q Okay. Did you have a separate employer or
6 identification number for your law practice?

7 A Not that I recall, no.

8 Q Did you use your social security number?

9 A I used my social security number.

10 Q The Shultz declaration, you drafted it; correct?

11 A I did.

12 Q Can you describe the circumstances under which
13 you drafted it?

14 A I understood that I was being audited. At first
15 when I heard how much money that I made, I was shocked.
16 And then when I learned it came from 1099s, and then I was
17 like, who? Who would issue me these 1099s? And then when
18 I saw the insurance companies then it dawned on me. These
19 were the diminished value cases and also the personal
20 injury case that she had handled.

21 So I know she -- I was able to get a hold of her,
22 and I told her I'm going to need to -- you know, I'm being
23 audited for money that you made, and I need you to sign a
24 declaration saying that you're the one who received the
25 money. She agreed.

1 But then I couldn't get a hold of her. It turns
2 out she was incarcerated. I didn't know it. But then
3 finally I was able to find her and then have this
4 declaration signed and notarized at a bank.

5 Q Okay. And at any time during the -- I'm going
6 back to the IRS audit before I conclude. At any time
7 during that IRS audit, did you ever tell the IRS that you
8 agree that you should be taxed on this money?

9 A No.

10 Q Have you ever agreed that you should be taxed on
11 this money by anybody, IRS or Franchise Tax Board?

12 A I've always maintained I didn't get this money.

13 Q And you communicated that to the person who was
14 representing you previously; correct?

15 A That's correct.

16 MR. CREAMER: All right. Thank you.

17 ADMINISTRATIVE LAW JUDGE JOHNSON: All right.
18 Thank you.

19 Let's turn to Franchise Tax Board. You'll have
20 five minutes for any cross or any questions.

21 MR. NAM: We have no cross-examining questions.

22 ADMINISTRATIVE LAW JUDGE JOHNSON: Okay. Lets go
23 to the panel then. Let me ask if there are any questions
24 from Judge Tay?

25 ADMINISTRATIVE LAW JUDGE TAY: No.

1 ADMINISTRATIVE LAW JUDGE JOHNSON: Any questions
2 from Judge Margolis?

3 ADMINISTRATIVE LAW JUDGE MARGOLIS: Yes, I do
4 have a few.

5 MR. CREAMER: Yes, Your Honor.

6 ADMINISTRATIVE LAW JUDGE MARGOLIS: Is that
7 better?

8 MR. CREAMER: Yes, Your Honor.

9 ADMINISTRATIVE LAW JUDGE MARGOLIS: This person
10 who represented you before the IRS, how did you find him?
11 I mean, what credentials did he have?

12 MR. CREAMER: He was -- it's my understanding
13 he's an EA Agent, and he was recommended. He's sort of
14 a -- I guess he has Asperger's. He's -- I mean, he's on
15 some things he's a genius. I thought this would be --

16 ADMINISTRATIVE LAW JUDGE MARGOLIS: I noticed
17 that you claimed that he screwed up your case with the
18 IRS. I mean, are you pursuing any sort of malpractice
19 case against him or anything? Is there some agreement
20 there? You can confer with your Counsel, if you would
21 like.

22 MR. CREAMER: No, no. I don't need to confer.
23 It's -- it's difficult in this setting to describe the
24 individual, but it's -- he's -- he's not -- he's -- he's
25 not a typical person. He's got Asperger's and it would

1 be -- I don't know the return, but it would be sort of
2 like -- in some ways it would be like a child.

3 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay.

4 MR. CREAMER: I didn't realize it was that bad
5 until later though, unfortunately.

6 ADMINISTRATIVE LAW JUDGE MARGOLIS: So you had
7 to -- the checks were deposited without your involvement,
8 the that checks you received from the insurance companies,
9 the settlement checks. Did you have any participation in
10 the deposit of those checks?

11 MR. CREAMER: I did. I did.

12 ADMINISTRATIVE LAW JUDGE MARGOLIS: So --

13 MR. CREAMER: They went into a trust account.

14 ADMINISTRATIVE LAW JUDGE MARGOLIS: You deposited
15 them into your trust account?

16 MR. CREAMER: That is correct.

17 ADMINISTRATIVE LAW JUDGE MARGOLIS: And then
18 how was -- you said the bank records wouldn't help show
19 that you paid Lisa Shultz anything or the clients
20 anything, but how did you get the money out of the
21 account?

22 MR. CREAMER: I would withdraw the money.

23 ADMINISTRATIVE LAW JUDGE MARGOLIS: Cash?

24 MR. CREAMER: I would withdraw it and put it into
25 a cashier's check and give one to -- one for the client

1 and one for Lisa with the proof of payment to go into
2 the -- for her to put that into the file.

3 ADMINISTRATIVE LAW JUDGE MARGOLIS: So you
4 weren't able to get proof of the cashier's checks or
5 anything or records of that?

6 MR. CREAMER: No. I -- I tried.

7 ADMINISTRATIVE LAW JUDGE MARGOLIS: And how did
8 you compute -- did you just compute the \$341,000 of the
9 amounts paid to Ms. Shultz based upon the percentages? Is
10 that purely the way you computed the amount that you
11 believe you paid Ms. Shultz? Was it simply 85 percent of
12 40 percent?

13 MR. CREAMER: That's the position I'm taking
14 right now. There are many times where she got more than
15 that. But since I don't have the records, and she and I
16 agreed that I would get 15 percent, that's where I'm
17 conceding the 15 percent as if I got paid the full
18 15 percent of the 40.

19 ADMINISTRATIVE LAW JUDGE MARGOLIS: And the
20 declaration from Ms. Shultz was dated -- was executed on
21 March of 2013, but it was notarized the following year in
22 2014. So I'm just kind of curious. Did she sign it in
23 2013, and then you needed to get it notarized for the FTB?
24 Or did you -- is the date that she said she signed it, is
25 that wrong?

1 MR. CREAMER: No. Thank you, Your Honor. I
2 drafted this on March 27, 2013. But then I took her to
3 the bank where she signed it in front of the notary, and
4 that was the date that's attached.

5 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay. That
6 was almost a year later, I think.

7 MR. CREAMER: That's correct. So that was the
8 actual date that she signed it. The date I drafted it was
9 March 27, 2013.

10 ADMINISTRATIVE LAW JUDGE MARGOLIS: And let's
11 see. I just have some more questions. So all of the
12 1099s for these cases went to Ms. Shultz's address, her
13 office address; is that correct?

14 MR. CREAMER: That's my recollection. I
15 didn't --

16 MR. TAYLOR: Yeah. I mean, I don't know if
17 there's been a foundation that he knows. He's never seen
18 the 1099s.

19 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay. And
20 did you have a written agreement with Ms. Shultz?

21 MR. CREAMER: As far as the percentage?

22 ADMINISTRATIVE LAW JUDGE JOHNSON: As far as the
23 85-15 split?

24 MR. TAYLOR: No, I did not.

25 ADMINISTRATIVE LAW JUDGE MARGOLIS: Aren't you

1 supposed to have one for the state bar purposes or not
2 really, or you don't know?

3 MR. CREAMER: It's not between attorneys.

4 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay. I
5 notice you did claim, I think it was about \$32,000, of
6 legal and professional cost when you originally filed a
7 return. And I know Mr. Taylor has conceded those. But do
8 you know -- did that relate to Ms. Shultz, the amount
9 claimed on your original return for legal and professional
10 fees?

11 MR. CREAMER: No, that was a different matter.

12 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay. And do
13 you still have a federal offer and compromise pending?
14 Are you aware?

15 MR. TAYLOR: There is no federal offer and
16 compromise pending at the time. I mean, the Tribunal
17 understands the submission of an offer and compromise
18 tolls the collection statute of limitations. Right now
19 they're not bothering him. And at some point, you know,
20 when you're trying to -- there's a couple of different
21 ways to solve from, you know, to solve a problem.

22 One of them is to come here and get a ruling
23 that's favorable, if we get it, then to take that to the
24 IRS. Or another way is just to wait and let the clock run
25 out. And so the submission of the offer and compromise

1 from a tactical standpoint, from my standpoint, would not
2 come until after this Tribunal rules, if it's submitted.

3 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay. I
4 guess, you know, my question here is when did you move to
5 your Anaheim office?

6 MR. CREAMER: Right near the beginning of 2013, I
7 believe.

8 ADMINISTRATIVE LAW JUDGE MARGOLIS: Well, it
9 seems -- I see a declaration to Ms. Shultz in 2013. So,
10 obviously, the IRS audit was somewhat hot and heavy at
11 that time. And I don't understand why you wouldn't keep
12 your records at that time, you know, of bank records, all
13 the records you would need to deal with the IRS audit.
14 Maybe you could address that?

15 MR. CREAMER: Sure. No problem. If I had known
16 at the time when I was relocating that I was being
17 audited, I certainly would have kept those records. I
18 would have kept those. But even -- the problem I have is
19 even if I kept those bank records, they still would
20 show -- they would show \$270,000 going in, and a couple of
21 days later \$270,000 going out. It's just -- I mean,
22 that's exactly what my testimony is here. It would
23 reflect the same thing.

24 MR. TAYLOR: And if I can correct the impression
25 that this -- what happened during the audit was that the

1 IRS requested a declaration. They didn't get. This
2 declaration did not get provided until after the IRS audit
3 was over.

4 ADMINISTRATIVE LAW JUDGE MARGOLIS: And my
5 understanding is that you gave them the declaration
6 afterwards, and then they said that was not sufficient to
7 reopen the audit? Is that --

8 MR. TAYLOR: That's what is in the record. In
9 other words, he had submitted it, then the IRS said -- he
10 went to the Advocate's Office and there's a letter. One
11 of the exhibits here is the letter from Advocate in
12 response to the amount of returns that were prepared
13 showing that. And the IRS just said, "No, thank you."

14 ADMINISTRATIVE LAW JUDGE MARGOLIS: And maybe you
15 can -- I might probably be asking the FTB the same
16 question, but how does it usually work when you get a 1099
17 for a settlement case? Do you usually get it -- does it
18 usually include the client portion or just the separate
19 checks or -- you know, what are the different mechanisms
20 that are used?

21 MR. CREAMER: So I've seen one or two of them,
22 and it's for the full amount that they're paying out.
23 It's a check for the full amount.

24 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay.

25 MR. TAYLOR: And if I can, because I'm dealing

1 with this issue right now in another case. The rules on
2 issuance of 1099s are actually very complicated, and they
3 are rarely complied with. So there are different rules.
4 So if the income in this case, diminished value cases,
5 there's no income to the client because they're just
6 getting back the cost of their car. Okay.

7 In a personal injury there's no income to the
8 client. And so there is no requirement to issue a 1099 to
9 the client. There would be a requirement to issue a 1099
10 to the attorney for the amount of the fees. But what I
11 have found in practice is that the issuer don't
12 distinguish between those two. They just issue it for the
13 full amount.

14 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay.

15 MR. TAYLOR: And it's what we'll get to when I
16 argue. There's something in the record that's, I think,
17 you know, it's interesting. You know, you Judges will
18 decide how significant it is, but there's no evidence in
19 the record that there were any 1099s issued in the name of
20 Mr. Creamer and his tax ID number from most of the people
21 on this list. Because we now have the list of the IRS,
22 what we call the IRP or IRP transcript which shows 1099s
23 issued under an SSN; those 1099s don't show up here.

24 ADMINISTRATIVE LAW JUDGE MARGOLIS: Right. But
25 you don't dispute that this income did come in?

1 MR. TAYLOR: No. But I'm focusing strictly on
2 the 1099s. Since you focused on the 1099s, and that's
3 what your question was directed, I'm just directing
4 there's no dispute that the money came in, and as we've
5 said went out. But, you know, since your question focused
6 on the 1099s, I thought I would point out that we don't
7 know, as we sit here today, if the 1099s were issued.

8 He believes they were. It's possible that that's
9 how the IRS audit. But the 1099s for the -- there are no
10 1099s anywhere referred to for most of those people. And
11 so it's entirely possible that the 1099s were issued under
12 Ms. Shultz's tax ID number, but in the firm name of
13 Mr. Creamer. We don't know that. But we do know there
14 were no 1099s listed in his SSN from these people.

15 ADMINISTRATIVE LAW JUDGE MARGOLIS: And she was
16 operating under the name of your law office?

17 MR. CREAMER: That's correct.

18 ADMINISTRATIVE LAW JUDGE MARGOLIS: But you did
19 not pay her law office rent or anything like that?

20 MR. CREAMER: No. No.

21 ADMINISTRATIVE LAW JUDGE MARGOLIS: And what
22 about expenses? Maybe experts on her cases, anything like
23 that?

24 MR. CREAMER: No. Nothing like that.

25 ADMINISTRATIVE LAW JUDGE MARGOLIS: She paid that

1 or there weren't any?

2 MR. TAYLOR: There weren't any.

3 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay. I
4 think that's all I have for now.

5 MR. CREAMER: Thank you, Your Honor.

6 ADMINISTRATIVE LAW JUDGE JOHNSON: Thank you.
7 And in following up on that, you said there was a fee
8 arrangement or retainer agreement. Was anything ever
9 signed between you and her as to how the income would be
10 split?

11 MR. CREAMER: No.

12 ADMINISTRATIVE LAW JUDGE JOHNSON: Never any
13 paper written. Was there any e-mails around this time,
14 2010?

15 MR. CREAMER: No.

16 ADMINISTRATIVE LAW JUDGE JOHNSON: It was just a
17 verbal agreement?

18 MR. CREAMER: Just verbal agreement. So just
19 like a typical case let say it was for \$5,000 or
20 something. \$5,000 -- I mean, the amount I would be
21 receiving was a few hundred dollars, \$300 or something
22 like this. So it didn't -- I didn't think I needed, you
23 know, something written. It wasn't like -- I mean, except
24 for this big \$270,000 case that, you know, I was really
25 upset about. It wasn't a lot of money. So --

1 ADMINISTRATIVE LAW JUDGE JOHNSON: Okay. And
2 just sort of one last question on the income. It would
3 come in to you, and then you would in some form withdraw
4 it from the account, and then do cashier's checks to the
5 client and Ms. Shultz as well?

6 MR. CREAMER: That' correct.

7 ADMINISTRATIVE LAW JUDGE JOHNSON: And presumably
8 you would keep some cash for yourself or redeposit it for
9 yourself; is that right?

10 MR. CREAMER: That's correct.

11 ADMINISTRATIVE LAW JUDGE JOHNSON: At what
12 point -- what form would the cash actually be split up?
13 Would it be taken out as three separate cashier's check?

14 MR. CREAMER: Yes. So the first few it was that
15 way, then I was transferring -- I was just transferring
16 the money to her in her -- she had a trust account. So I
17 was transferring it from my trust account to her trust
18 account for her and her clients.

19 ADMINISTRATIVE LAW JUDGE JOHNSON: And she would
20 pay the clients herself?

21 MR. CREAMER: That's right.

22 ADMINISTRATIVE LAW JUDGE JOHNSON: Okay. Any
23 further questions from the panel?

24 ADMINISTRATIVE LAW JUDGE TAY: No.

25 ADMINISTRATIVE LAW JUDGE MARGOLIS: No.

1 ADMINISTRATIVE LAW JUDGE JOHNSON: Okay. Let's
2 turn back to --

3 MR. TAYLOR: If I may, could I just add a little
4 redirect in light of the panel's questions?

5 ADMINISTRATIVE LAW JUDGE JOHNSON: Yes. I was
6 coming back to you for a redirect of five minutes. Please
7 begin when you're ready.

8

9 REDIRECT EXAMINATION

10 BY MR. TAYLOR:

11 Q There was reference earlier, Mr. Creamer, to the
12 delay between the date on the declaration and the date it
13 was notarized?

14 A Yeah.

15 Q When did Ms. Shultz first -- when did you discuss
16 the possibility of a declaration with Ms. Shultz? Or
17 should I say was it done in person or done by the phone?

18 A It was done by the phone. It was done on the
19 phone.

20 Q And did she immediately then sign the declaration
21 after that telephone conversation?

22 A No. It would have been very close to -- or
23 probably just a few days just before March 27th, 2013.
24 Because then I would have dropped it after I talked to
25 her.

1 Q And so what happened to cause the delay of the
2 signature?

3 A From when she --

4 Q From memorization?

5 A When she agreed to sign it, I couldn't get a hold
6 of her. I didn't know until later one that she had been
7 arrested. She was incarcerated.

8 Q Okay. But at some point, then you did manage to
9 get a hold of her again?

10 A That's correct.

11 Q And that's when she signed it?

12 A Yeah. I was so happy to get a hold of her. And
13 then I went down to -- we agreed to meet at a place, and
14 then we went to Chase Bank, and she signed this.

15 Q Okay. Do you know what a W9 is, Mr. Creamer?

16 A Yes.

17 Q What is that? What's your understanding of that?

18 A It's a form that you fill out where you provide
19 your tax identification.

20 Q So in cases that -- not involving Lisa Shultz,
21 but just involving contingency cases, would you fill out a
22 form, a W9, before you got paid money on a settlement?

23 A Yes.

24 Q Do you recall ever filling out a form, W9, for
25 any of the cases handled by Ms. Shultz?

1 A No.

2 MR. TAYLOR: Nothing further.

3 ADMINISTRATIVE LAW JUDGE JOHNSON: Thank you.

4 Let me return to the panel to see if we have any
5 questions. I'm sorry. Let's go ahead and let the parties
6 argue.

7 Appellants you will have 15 minutes to present
8 your arguments. Are you ready to proceed?

9 MR. TAYLOR: I'm ready to proceed.

10 ADMINISTRATIVE LAW JUDGE JOHNSON: All right.
11 Please do so.

12

13 OPENING STATEMENT

14 MR. TAYLOR: What you have not heard here today
15 is evidence that Mr. Creamer got these checks,
16 misappropriated the money, put it in the bank account,
17 cause his clients to go to the state bar and do
18 complaints. What you have not heard here today is that
19 Mr. Creamer took this money, abrogated his agreement with
20 Ms. Shultz, let her do all the work on the cases after he
21 did some initial training, and then took the money from
22 her. You haven't heard that here today.

23 And I think that if those had been the facts, the
24 evidence would be much, much different than what the
25 evidence here is today. There are no bar complaints. We

1 have that screen shot. He's testified as to what
2 happened. Had Ms. Shultz not been paid the money she was
3 due, something would have happened. We don't know what,
4 but here we have a very unusual situation.

5 We don't have any of the 1099s. They don't ex --
6 you know, we think they're out there, but the -- but the
7 under reporter transcript which shows the 1099s received
8 by the IRS issued under Mr. Creamer's SSN, almost --
9 there's one for \$5,000 on that list attached to
10 Ms. Shultz's declaration that shows up. Every other
11 single one of those cases, there's no 1099 issued to
12 Mr. Creamer under his social security number. So that's
13 consistent with the testimony of Mr. Creamer.

14 Oh, one -- one point, perhaps out of order, we
15 discussed this before we went on the record. The
16 Franchise Tax Board is willing to stipulate that there is
17 no return filed under the social security number that we
18 provided. Now, again, we have provided the declaration of
19 Judge Cheng, which is Exhibit 14, which explains how she
20 went about that.

21 And so to dispel any doubt that this social
22 security number might not be Ms. Schultz's that we're
23 talking about here, we included that information. So the
24 Franchise Tax Board agrees that she never filed a return.
25 And while we would all love to have Ms. Shultz here, okay,

1 she's off somewhere in meth land. That was her
2 methamphetamine land, unfortunately.

3 So a destroyed life, a sad situation, but we
4 don't have her here today. But her declaration is clearly
5 against her own interest. And, in fact, it's consistent
6 with the fact that there is no return under this social
7 security number. So -- and then, you know, the job of
8 this Tribunal is not to determine -- not to say, oh, the
9 IRS did a good job or a bad job. We all agree that
10 there's an assessment out there.

11 But the evidence in the record is quite clear.
12 Mr. Creamer did not agree with this assessment. Now, I
13 have to say, his prior representative did something, to
14 me, is an act of magic. You know, reversed magic, maybe
15 voodoo. Because what happened is, there's an assessment
16 even though he disagrees with it.

17 Now, Mr. Creamer testifies that he doesn't know
18 how this happened. Okay. And he didn't get a chance to
19 present these facts. But normally -- and this Tribunal
20 can go check and take judicial notice of the fact that
21 there is no tax court case ever filed in Mr. Creamer's
22 name. So there's nothing out there.

23 So what had to have happened was that, since
24 there is no tax court, is one of two things. Either the
25 IRS noticed a deficiency and there was not a tax court

1 petition, or his prior representative signed a piece of
2 paper allowing him to get the bill. That's the only way
3 this assessment could have happened.

4 Mr. Creamer doesn't know and doesn't understand
5 how this happened. I can speculate to it, but there's no
6 tax board case. And the exhibits are quite clear.

7 Mr. Creamer has never ever agreed that this was income to
8 him. And so this may have been a -- it sounds like a
9 mistake made by his prior representative.

10 But it's not this Tribunal's job to figure out
11 whether he committed malpractice, or to sit here and
12 say -- the job is to figure out what happened. And what
13 happened -- the evidence here is very clear, is that
14 Mr. Creamer took out these checks, went into his trust
15 account, not his regular account. He didn't put it into
16 his regular account. This money did not belong to him as
17 a matter of law. Anybody can put anything on a 1099.
18 They can put any number. They can issue it to whoever.
19 It doesn't make the 1099 right. And it doesn't make the
20 client's -- the money that belongs to the client income of
21 Mr. Creamer.

22 That money belonged to his clients. And unless
23 he misappropriated it, which he did not, he did not. It
24 was always in his trust account. It is legally not income
25 to him. So that part of the case to me is very simple.

1 That's his client's money, that 60 percent, no matter
2 what. He did not misappropriate it. He didn't touch it.

3 The 40 percent we have to talk about and focus on
4 a little more closely. But the evidence here as to what
5 happened to that 40 percent is consistent. Again, he
6 got -- he's testified he received the money, and he paid
7 it out. And he's even said he paid out more than he's
8 willing to accept responsibility for because his records
9 are lousy.

10 So in this situation, we believe the record is
11 clear. And, again, it's the job of this Tribunal not to
12 sit here and say, "Well, the IRS did it, so we must do it
13 too." That's not what this Tribunal is here for. It's
14 here to decide what happened.

15 Thank you.

16 ADMINISTRATIVE LAW JUDGE JOHNSON: Thank you.

17 Franchise Tax Board, you'll have 15 minutes to
18 present your arguments. You can begin when you are ready.

19 MR. NAM: Thank you.

20

21 OPENING STATEMENT

22 MR. NAM: We are here today because we still do
23 not have any credible proof, such as electronic bank
24 statements or ledgers, which the tax agencies have
25 repeatedly asked for over the past 6 years. Respondent's

1 assessment at issue mirrors a finalized federal
2 assessment, and the issue here is whether Appellant has
3 shown that the assessment is erroneous by the
4 preponderance of the evidence.

5 Since federal audit, Appellant has only presented
6 affidavits from Appellant's husband and a person named
7 Lisa Shultz who Respondent did not have an opportunity to
8 question and failed to locate a 2010 tax return for.
9 Furthermore, even Lisa Shultz's affidavit doesn't state
10 the details of a fee-sharing agreement, details of exactly
11 how much Appellant's husband received, and details of the
12 dates they were transferred.

13 In fact, we have some inconsistencies on the
14 declarations. Lisa Shultz declared that she received a
15 transfer of the full, roughly, \$360,000 amount. Here
16 we're now hearing that Appellant has received the trust
17 account and then paid to clients directly and paid a
18 portion of Lisa Shultz's fee to her.

19 In a comparable case involving an audit of
20 attorney's trust account, U.S. Tax Court in Canatella v
21 Commissioner, the citation is TC Memo 2017-124,
22 scrutinized each deposit, transfer, and withdrawal one by
23 one. The tax court ruled against the taxpayer when he
24 failed to support his allegation with records and ledgers
25 that was required by the labeling and recordkeeping rules

1 of the California State Bar.

2 Here we have even less than what the U.S. Tax
3 Court had. We do not even have electronic bank statements
4 showing transactions at issue, let alone recordkeeping
5 documents Appellant's husband was required to maintain as
6 a member of the state bar.

7 Most importantly, we are bound by precedential
8 case law, the appeal of Don A. Cookston. The citation is
9 83SB-048, which provides that Appellant's failure to
10 produce evidence that is within their control gives rise
11 to presumption that such evidence is unfavorable in their
12 appeals.

13 Ruling that Appellants made their burden of proof
14 by merely presenting affidavits and testimony from
15 interest of party is unprecedented and sets unintended
16 consequences of condoning taxpayer to conceal evidence.
17 There are many questions that are still unproven, such as
18 were the funds actually deposited into a trust account?
19 Were they transferred to another trust account? Exactly
20 what amount and when did Appellant's husband receive his
21 fees? How much of the funds were given to clients?

22 In response to the prehearing conference, if it's
23 determined that the assessment should be adjusted to
24 only -- at roughly \$21,000 of gross receipts and income,
25 there would be no understatement for an assessment of

1 accuracy-related penalty. However, given Appellant failed
2 to meet its burden of proof, the accuracy-related penalty
3 as assessed was properly imposed and may not be abated.

4 At this point, all we're sure of is that
5 Appellant's husband has received an amount of roughly
6 \$360,000 of gross receipts under his firm's name.
7 Appellant has not overcome the presumption of the
8 assessment being correct, and presumption that they failed
9 to provide is unfavorable. Therefore, Respondent's
10 assessment must be sustained in full.

11 Thank you. I'd be happy to answer any questions.

12 ADMINISTRATIVE LAW JUDGE JOHNSON: Thank you.

13 We'll now go to questions from the panel
14 regarding parties' arguments. We'll start with
15 Judge Margolis.

16 ADMINISTRATIVE LAW JUDGE MARGOLIS: Mr. Nam, I'm
17 not sure if I understood your statement regarding the
18 accuracy-related penalty.

19 MR. NAM: Yes.

20 ADMINISTRATIVE LAW JUDGE MARGOLIS: If the
21 determined deficiency is less than \$5,000, do you still
22 contend the accuracy of the related penalty applies to
23 that reduced amount? Or are you saying that the
24 accuracy-related penalty would only apply if the
25 deficiency is substantial in amount?

1 MR. NAM: To clarify my statement, at the
2 prehearing conference the Judge asked me to prepare a
3 response or provide answers that in the event the panel
4 rules in favor of the Appellant with the accuracy-related
5 penalty be assessed. Our response is if we were to assess
6 only \$21,000 in gross receipts, it would not meet the
7 accuracy-related thresholds as you indicated, a \$5,000 or
8 \$10,000 in under statement. So, therefore, there will not
9 be an accuracy-related penalties.

10 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay. Great.
11 And do you -- do you have any -- you mentioned the state
12 bar rules in recordkeeping rules. Do you have a cite of
13 those? I mean, is there a certain number of years that
14 you're supposed to keep client trust fund account records?
15 I mean, right now we're dealing with years that are pretty
16 old.

17 MR. NAM: Yes, Judge Margolis. So those
18 California Bar requirements were discussed in the U.S. Tax
19 Court that I mentioned, Canatella v Commissioner.

20 ADMINISTRATIVE LAW JUDGE MARGOLIS: How do you
21 spell that?

22 MR. NAM: Sure. It's C-a-n-a-t-e-l-l-a, v
23 Commissioner. And there was a -- the tax court described
24 the California State Bar's members general requirement to
25 maintain records -- appropriate records for trust

1 accounts. I do not have the specific information as to
2 how many years.

3 However, I would like to point out that Appellant
4 was requested to provide supporting documents to bring his
5 IRS audit, which was only several years after 2010. I
6 believe they were undergoing IRS audits in 2013.

7 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay. And
8 those requests are in the exhibits?

9 MR. NAM: Yes.

10 ADMINISTRATIVE LAW JUDGE MARGOLIS: The IRS
11 requests? Okay. And I think my final question has to do
12 with the 1099s. Do you have -- have you been able to
13 reconcile the 1099s with the amount of income that was
14 determined by the IRS?

15 MR. NAM: I provided exhibits of the federal
16 records and, particularly, the wage and income transcript
17 shows the 1099 that we received from the IRS. I have not
18 been able to reconcile. However, I would like to remind
19 the panel that it is uncontested that roughly \$360,000
20 gross receipts was received by Appellant's husband's firm
21 name.

22 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay. But I
23 think the question is what -- one of the questions, I
24 think is relevant, is what social security number or EIN
25 those amounts paid under? And I assume you've looked

1 under Mr. Creamer's social security number, and they don't
2 show up there. Like, the \$270,000 payment, that's not on
3 the wage and income transcript, is it?

4 MR. NAM: I cannot locate that in the wage and
5 income transcript. However, it is that \$360,000 amount
6 that is on the federal assessment which is final.

7 ADMINISTRATIVE LAW JUDGE MARGOLIS: Can you
8 backtrack and find out who that 1099 was issued to? I
9 mean, knowing the payor name, or is that possible?

10 MR. NAM: We don't have a way to do that. The
11 only way we can -- what I -- we requested, for the
12 purposes of this hearing, all the wage and income
13 transcript under Appellant's husband's name. And what we
14 provided is all we can find.

15 ADMINISTRATIVE LAW JUDGE MARGOLIS: Question for
16 my panel. Might it be useful to see if we can get a wage
17 and income transcript under Lisa Shultz's name?

18 ADMINISTRATIVE LAW JUDGE JOHNSON: Let's ask the
19 Franchise Tax Board.

20 ADMINISTRATIVE LAW JUDGE MARGOLIS: Would you be
21 able to get us a wage and income transcript under the
22 social security number you have for Ms. Shultz?

23 MR. NAM: Yes. I'll be able to. I'll provide
24 that post-hearing.

25 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay. Thank

1 you.

2 MR. NAM: And just so you know. There are some
3 time constraints -- time delays for requesting that. It
4 may take two to four weeks.

5 ADMINISTRATIVE LAW JUDGE JOHNSON: That would be
6 fine.

7 MR. NAM: Okay. And to answer your earlier
8 question, I subsequently found that California Bar
9 requires attorneys to maintain trust accounting records
10 for five years.

11 ADMINISTRATIVE LAW JUDGE MARGOLIS: Thank you
12 very much. I have no further questions.

13 ADMINISTRATIVE LAW JUDGE JOHNSON: Judge Tay, do
14 you have any questions?

15 ADMINISTRATIVE LAW JUDGE TAY: No further
16 questions.

17 ADMINISTRATIVE LAW JUDGE JOHNSON: I don't
18 believe I have any further questions either. So we will
19 move on to closing statements.

20 Franchise Tax Board, are you ready to proceed
21 with closing statements?

22 MR. NAM: We have no closing statements.

23 ADMINISTRATIVE LAW JUDGE JOHNSON: All right.
24 And Appellants, are you ready?

25 CLOSING STATEMENT

1 MR. TAYLOR: I just have one comment for the
2 panel, and that is my esteemed colleague over there refers
3 to this money paid as gross receipts. It's not gross
4 receipts. It's money held in trust. Gross receipts is
5 what I got. I've got 500 widgets. I sell it, and I get
6 the money and it's mine.

7 I don't think there's any dispute that is a legal
8 matter. That money never belonged to Mr. Creamer. It is
9 the client's money, and then he's entitled to be paid out
10 of that money. So it's not his gross receipt -- his
11 firm's gross receipts, that money. So I think it's --
12 it's a small quibble that I -- I think is important in
13 this context.

14 So I have nothing further. Thank you.

15 ADMINISTRATIVE LAW JUDGE JOHNSON: Thank you.

16 We have evidence that has been admitted. We have
17 your arguments and your briefs, as well as your arguments
18 today. We have everything we need to decide this appeal.

19 We will ask for the one additional information if
20 Franchise Tax Board is able to acquire the IRS transcript,
21 the income transcript for Ms. Shultz. I will provide you
22 a time to do that. Once that is received, we'll send a
23 notice closing the record.

24 I thank both parties for efforts on appeal. This
25 concludes the hearing of appeal. And once the record is

1 closed, you should look for our decision within 100 days
2 from that date.

3 We will now go off the record.

4 (Proceedings adjourned at 12:00 p.m.)

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I, Ernalyne M. Alonzo, Hearing Reporter in and for
the State of California, do hereby certify:

That the foregoing transcript of proceedings was
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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 October, 2019.

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