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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE OF, )  
 )  
JOSEPH BOODAIE and MOJGAN ) OTA NO. 18011178  
BOODAIE, )  
 )  
 )  
APPELLANT. )  
 )

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Transcript of Proceedings, taken at  
12900 Park Plaza Dr., Cerritos, California, 90703,  
commencing at 10:15 a.m. and concluding  
at 12:29 p.m. on Wednesday, December 18, 2019,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ KENNY GAST

Panel Members: ALJ JEFFREY MARGOLIS  
ALJ RICHARD TAY

For the Appellant: JOSEPH BOODAIE  
WALTER WEISS

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
By: DAVID HUNTER  
PETER KWOK

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I N D E X

E X H I B I T S

(Appellant's Exhibits were received at pages 8 and 67.)  
(Department's Exhibits were received at page 7.)

OPENING STATEMENT

	<u>PAGE</u>
BY Mr. Weiss	9
By Mr. Hunter	68

DEPARTMENT'S

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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(None offered)

APPELLANT'S

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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Soheil Darvish	13			
Joseph Boodaie	21	47	57	

CLOSING STATEMENT

	<u>PAGE</u>
By Mr. Weiss	75

1 Cerritos, California; Wednesday, December 18, 2019

2 10:15 a.m.

3

4 JUDGE GAST: We are on the record.

5 This is the appeal of Boodaie, OTA Case Number  
6 18011178. It is Wednesday, December 18th, 2019. The time  
7 is approximately 10:15 a.m. We're in Los Angeles,  
8 California.

9 I am the lead Administrative Law Judge, Kenny  
10 Gast. Joining me on the panel is Judges Richard Tay and  
11 Jeffrey Margolis.

12 We are the panel here deciding this case. May I  
13 ask the parties to please state your names and titles for  
14 the record, starting with the taxpayer.

15 MR. BOODAIE: My name is Joseph Boodaie,  
16 J-o-s-e-p-h. Last name is B, like boy, O, Oscar, O,  
17 Oscar, D, David, A, apple, I, India, E, Elm.

18 JUDGE GAST: Thank you.

19 MR. WEISS: Walter Weiss. I am Mr. Boodaie's  
20 attorney. W-e-i-s-s. Walter is my first name.

21 JUDGE GAST: Thank you.

22 MR. HUNTER: David Hunter, H-u-n-t-e-r. Tax  
23 counsel for the Franchise Tax Board. And to my left is  
24 Peter Kwok, K-w-o-k. Also, tax counsel for the Franchise  
25 Tax Board.

1 JUDGE GAST: Thank you.

2 I forgot to mention that this hearing is  
3 scheduled to be about two hours. If you need additional  
4 time, we can do that. But if you don't need all that  
5 time, you don't have to use all that time. I just want to  
6 be sensitive. We have cases after this. And also, we may  
7 take a break at about, you know, one hour into it for  
8 about five minutes. So just a heads-up on that.

9 Okay. For this case we have three issues. This  
10 first issues is whether Appellants must include in their  
11 gross income \$3,256,232 of ordinary pass-through income  
12 from All Century Incorporated, an S corporation. The  
13 second issue is whether Appellants are entitled to deduct  
14 \$25,000 of passive rental real estate losses against  
15 ordinary income. And the third issue is whether  
16 Appellants are liable for the accuracy-related penalty.

17 Moving onto exhibits, I'll start with FTB's  
18 exhibits. Mr. Hunter you submitted Exhibits A through U;  
19 is that correct?

20 MR. HUNTER: Yes, Judge Gast.

21 JUDGE GAST: And Mr. Weiss, there were no  
22 objections to those exhibits; is that correct?

23 MR. WEISS: Correct.

24 JUDGE GAST: Thank you.

25 So, therefore, FTB's Exhibits A through U will be

1 admitted into the record as evidence.

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

4 JUDGE GAST: Taxpayer submitted Exhibits 1  
5 through 17 as well as an additional exhibit. I'm going to  
6 mark just for now as Exhibit 18.

7 Mr. Hunter, you had no objections for Exhibits 1  
8 through 16; that is correct? Well, at least you only  
9 filed a written objection for Exhibit 17.

10 MR. HUNTER: That's correct because that was the  
11 exhibit that was proffered after the prehearing  
12 conference. So understanding that this is an  
13 administrative body and the exhibits will come in, I'd  
14 just like to state for the record that a lot of these  
15 exhibits are irrelevant because they encompass a time and  
16 scope which is outside for the tax year at issue.

17 JUDGE GAST: Okay.

18 MR. HUNTER: So let that just stand as an omnibus  
19 objection where the trier of fact is weighing the  
20 evidence. The same would hold true for the exhibit that  
21 was --

22 JUDGE GAST: 18?

23 MR. HUNTER: Yeah. Produced this morning.

24 JUDGE GAST: Okay. So I guess you're not  
25 objecting. You're okay with them being admitted into the

1 evidence?

2 MR. HUNTER: I trust this panel to weigh the  
3 evidence.

4 JUDGE GAST: Okay. Thank you. So I will go  
5 ahead and admit exhibits 1 through 18 into the record as  
6 evidence.

7 (Appellant's Exhibits 1-18 were received  
8 in evidence by the Administrative Law Judge.)

9 JUDGE GAST: Okay. Why don't we move on to the  
10 parties' presentation? Mr. Weiss, you will have 90  
11 minutes. But before I do that, I would like to ask  
12 Mr. Boodaie to stand and be sworn in as well as the second  
13 witness, Mr. Darvish. I can do that at the same time. Is  
14 Mr. Darvish here?

15 MR. WEISS: Yes.

16 JUDGE GAST: Can you please come forward and sit  
17 next to Mr. Boodaie, if that's okay?

18 MR. WEISS: Sure.

19 JUDGE GAST: Thank you.

20 MR. WEISS: Thank you.

21 JUDGE GAST: Will you both raise your right hand.

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JOSEPH BOODAIE,

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

SOHEIL DARVISH,

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

JUDGE GAST: Thank you. You may be seated.

All right. Mr. Weiss, you will have 90 minutes whenever you are ready.

MR. WEISS: Let me start with an opening argument or opening statement.

OPENING STATEMENT

MR. WEISS: A little background. Mr. Boodaie in 2008 had a -- acted as a -- was in the real estate business. He had also had -- he was a real estate accommodator. And there's exhibits in there that -- showing the contracts with Dr. Rash -- Ms. Rashti, and Dr. Rostami, you know, involving the exchange. Those are Exhibits 2 and 3. We'll get to those.

And we'll also get into the agreement -- the

1 exchange agreement, Section 5.1 of the exchange agreement.  
2 It specifically says Mr. Boodaie has the right to invest  
3 the money at his discretion. That was, you know, agreed  
4 to by the parties. So -- and as you know, an exchange is  
5 180 days typically by law, a deferred exchange.

6 So, basically, Mr. Boodaie received the sum of  
7 \$3,564,575 from the two exchange parties. He -- I believe  
8 at the end of the 180 days he remitted, I believe,  
9 \$308,431, giving them -- leaving a net sum of \$3,256,232,  
10 which is exactly the amount of this deficiency. So right  
11 at the time of 180 days, Mr. Boodaie assigned -- had an  
12 assignment prepared for both of these two parties, for  
13 Dr. Rashti and Mr. Rostami. He signed two promissory  
14 notes secured by a Deed of Trust. And the total of those  
15 notes are totaled up for about \$5,192,000.

16 So instead -- you know, really to get to the  
17 point, instead of giving back money and splitting up some  
18 issues, he gave these parties \$5,192,000. The Franchise  
19 Tax Board omits this information. I think that's a very  
20 bad thing they did. They should have -- you know, they're  
21 here to be objective.

22 Both sides should have been submitted. That  
23 was -- that was given. And it was given as part of the  
24 exchange because the exchange is 180 days. And even  
25 though the notes might have been given the next year,

1 they're still within the 180-day period as if he gave  
2 money. It still goes back to the year of the exchange.  
3 That's the year you report it.

4 So these people got over \$5 million. The record  
5 will show that Mr. Boodaie paid over \$4,700,000 for the  
6 notes. That's Exhibit 14 and Exhibit 10. So really what  
7 we have here, it's almost like a sale or exchange. He got  
8 the money. They got consideration for an excess.  
9 Exhibit Number 17 and Exhibit 18 will show, actually --  
10 these people actually received value. Mr. Darvish will be  
11 here to testify that he paid them off on the \$2,100,000  
12 note that Mr. Boodaie gave. And the last exhibit shows a  
13 deed by --I wish she was here. I'd love to have her  
14 testify because her signature is all over it -- by  
15 Ms. Rashti indicating that the property in Vegas was given  
16 over.

17 So a lot of facts were omitted. A lot of facts  
18 were not disclosed. And I really think it's the job of  
19 the Franchise Tax Board, you know, they're auditors.  
20 Okay. I know we're here. It's litigated, but you've got  
21 to play both sides here. That's the way it works, and I'm  
22 sure that's in their audit manual. I don't have it in  
23 front of me. It says, you know, an audit is an audit, pro  
24 and con.

25 So that's what we've got here. And, you know,

1 we'll get into Mr. Boodaie's testimony, but it was a tough  
2 year for him. He'll testify to that that, essentially, he  
3 had health problems. He's going -- starting a divorce,  
4 and there were a lot of problems. And I'm not going to  
5 say Mr. Boodaie is perfect, okay. He's not. But the  
6 point is that, you know, there's real value given and why  
7 they, you know, if you're going to say income, well, then  
8 you've got to give the man credit for whatever he gave  
9 back. Because there's value. There's basis. So there's  
10 actually a loss here on paper of about one-million and a  
11 half dollars.

12 All right. So I'd like to call Mr. Darvish first  
13 because he's kind enough to come down here. And we can  
14 put him on and let him go, if it's okay with -- he's out  
15 of order -- if that's okay with you guys?

16 JUDGE GAST: Yeah. Except if Mr. Hunter has  
17 questions for Mr. Darvish, I'd ask that he stay for that  
18 portion.

19 MR. WEISS: Well, can they question him? Can we  
20 do both, maybe?

21 JUDGE GAST: Yeah. That's fine.

22 MR. WEISS: So I would let them go question him  
23 while he's here, and then we could --

24 JUDGE GAST: Yeah. After Dr. Darvish testifies,  
25 if -- Mr. Hunter, if you have any questions?

1 MR. HUNTER: Sure.

2 MR. WEISS: It's going to be a very short  
3 testimony.

4 MR. HUNTER: That's fine. No problem.

5 JUDGE GAST: Thank you.

6 MR. WEISS: So I want to call Mr. Darvish. We'll  
7 move the microphone over to him.

8 JUDGE GAST: Yes, please.

9

10 DIRECT EXAMINATION

11 BY MR. WEISS:

12 Q All right. Mr. Darvish, please state your name.

13 A Soheil Darvish.

14 Q Okay. And you know the gentleman next to you.  
15 How are you familiar with the gentleman next to you,  
16 Mr. Boodaie? Explain your relationship with him.

17 A Well, it was a business relationship, and the --  
18 my company back in 2004, '05, we borrowed money, multiple  
19 properties through All Century. Okay.

20 Q And let me show him because I -- I don't know if  
21 the witness has copies. I can show my copies. It's  
22 Exhibit 17. Okay. There's a document here. And let me  
23 ask you, if I can put this before you. Both can look at  
24 it together. Was E&D Holdings, LLC, your company?

25 A Yes.

1 Q Okay. How many members in the LLC? Did you have  
2 a partner?

3 A Yes, I had a partner.

4 Q And what was your partner's name?

5 A Joseph Israel.

6 Q Okay. The borrower was E&D Holdings, LLC?

7 A Correct.

8 Q Okay. All right. And let me turn to the exhibit  
9 here. And do you recall how much money you borrowed from  
10 Mr. Boodaie?

11 A Over \$2 million.

12 Q Okay. And there's a document here -- I think  
13 it's Exhibit Number 13. Is that your signature? I'm  
14 sorry. That's Mr. Boodaie's signature. Let's see. Is  
15 that -- sorry. Let me go back here. I'm trying to find  
16 the document, the actual mortgage document. I think it's  
17 Exhibit 16 -- maybe Exhibit 6. Let's go to this. Okay.  
18 Here we go. All right. Oh, it's still the same document.  
19 Okay. Well, all right. Why don't you -- let's go to  
20 Exhibit 6. Please -- please tell the Board -- I'm  
21 sorry -- the Tax Appeals Board, the judges, what this  
22 document is to the best of your knowledge?

23 A This is a copy of the assignment of the mortgage  
24 that's pertaining to that mortgage that we took originally  
25 from Mr. Boodaie through All Century. And this is the

1 assignment of that mortgage to -- I think Mrs. Rashti.

2 Q Okay. And you discussed this document with  
3 Mr. Boodaie?

4 A What do you mean?

5 Q Well, you are aware of this document?

6 A Yes, of course. Yes.

7 Q Okay. Did you ever communicate with Dr. Rashti?

8 A Yeah. We had multiple phone conversations.

9 Q Okay. And then did you payoff --

10 A Yes.

11 Q -- Dr. Rashti and --

12 A Yes.

13 Q Okay. And can you explain -- there's a document,  
14 Exhibit 17. Please describe in your words the best you  
15 can what this document is?

16 A Well, this document is the satisfaction of the  
17 mortgage as we sold the parties, we paid them. We paid  
18 Mr. And Mrs. Rashti off at the closing.

19 Q Okay. But do you remember how much the payoff  
20 was?

21 A It was -- I don't remember the exact number, but  
22 this is for the full amount of satisfaction.

23 Q Okay. Okay. I have no further questions. Oh,  
24 one other thing. Was there -- okay. Page -- I guess  
25 page 3 of the agreement, why don't you tell the judges

1 what this document means and their -- you know, what this  
2 means to you. What is the document entitled, if there is  
3 a title?

4 JUDGE GAST: I'm sorry. What exhibit is that?

5 MR. WEISS: It's page 3 of Exhibit 17. Actually,  
6 let me see. I'm sorry. Yeah. Page 3 of Exhibit 17.

7 THE WITNESS: Well, it says clearly on top it  
8 says, "Satisfaction of Mortgage for the Loan of  
9 \$2,100,000." And also states that's pertaining to the  
10 loan that was made by All Century to E&D Holdings, which  
11 was one of our LLCs. And this satisfaction was signed on  
12 November 12, 2010, by the lenders or by the people that  
13 had the assignment of that mortgage from Mr. Boodaie.  
14 That would be Mrs. Rashti, Mr. Rostami, and Mr. Rashti.  
15 And the acknowledgment is attached too.

16 BY MR. WEISS:

17 Q So how was this -- was this done so -- who -- so  
18 that -- your familiar with the signature, Rashti's  
19 signature?

20 A Well, I'm not familiar with their signature, but  
21 it's been notarized by a notary public here in  
22 Los Angeles.

23 Q And after that document was signed, sometime in  
24 2010 it looks like, did you ever hear from Dr. Rashti  
25 or --



1 A No. No.

2 Q So to the best of your knowledge or your  
3 understanding, that was it? They were paid in full?

4 A Yes.

5 MR. WEISS: No further questions.

6 JUDGE GAST: Thank you.

7 Mr. Hunter, would you like to question the  
8 witness?

9 MR. HUNTER: Sure.

10

11 CROSS-EXAMINATION

12 BY MR. HUNTER:

13 Q Mr. Darvish, just to get this straight, in 2009  
14 say a partner, another individual, and yourself, who owns  
15 this company, received \$2.1 million from All Century; is  
16 that correct?

17 A 2009.

18 Q I'm sorry. Yes, the assignment -- I'm sorry.  
19 2006. When was the date of the initial mortgage from All  
20 Century to your company?

21 A Let me look at that.

22 MR. WEISS: It's actually Exhibit Number 4,  
23 Blanket Mortgage.

24 THE WITNESS: 2006.

25 BY MR. HUNTER:

1 Q Got it. And that was a debt owned by your  
2 company All Century; is that correct?

3 A I'm sorry?

4 Q That was a debt, a mortgage, money owed by your  
5 company to All Century; is that correct?

6 A Correct.

7 Q Okay. And in March of 2009, this debt owed by  
8 your company to All Century was assigned to another party;  
9 is that correct?

10 A Well, that's the -- yes, correct.

11 Q Okay. So now let's go back to Exhibit 17.

12 A Let me just confirm the date. One second. Yes,  
13 2009.

14 Q Okay. So now Exhibit 17, it purports to be a  
15 satisfaction of this mortgage, and the date is  
16 November 12, 2010; is that correct?

17 A Can I see the satisfaction here?

18 MR. WEISS: Oh.

19 THE WITNESS: This is the mortgage and the note.

20 MR. WEISS: Okay let's get the satisfaction.

21 THE WITNESS: And this is the assignment.

22 MR. WEISS: I think you have it. Let's take a  
23 look.

24 THE WITNESS: It's not here.

25 MR. WEISS: Oh, here we go.

1 THE WITNESS: I'm sorry. Can you repeat the  
2 question?

3 BY MR. HUNTER:

4 Q I'm just asking about the date of this document?

5 A The satisfaction of the mortgage is dated  
6 November 12, 2010.

7 Q Got it. And the question was asked. I want to  
8 make sure that we're clear. For these three individuals,  
9 Dr. Rashti, her husband, and Mike Rostami, how much money  
10 did they receive as a result of this satisfaction?

11 A I don't remember the exact amount that they  
12 received, but this satisfaction is for the entire amount.

13 Q Well, if the mortgage was satisfied, that means  
14 your company paid it off; correct?

15 A Yes.

16 Q So how much did you pay?

17 A I don't remember. I don't have the document with  
18 me. It's way too long. It's past nine years already.

19 MR. HUNTER: No further questions.

20 JUDGE GAST: Thank you, Mr. Hunter.

21 Mr. Weiss, would you like to do a redirect?

22 MR. WEISS: No. No further questions. We can  
23 let the witness go if it's okay with --

24 JUDGE GAST: Well, let me ask the panel. Are  
25 there any questions for the witness?

1 JUDGE MARGOLIS: Did Mr. Rashti or Rostami, did  
2 they sign anything in connection with the actual  
3 assignment? Did they accept it or acknowledge it when it  
4 was given?

5 MR. WEISS: You're asking me?

6 JUDGE MARGOLIS: Yes. Did they sign -- I'm  
7 asking the witness. Did they sign any documents accepting  
8 the assignment?

9 THE WITNESS: What they -- what they have done --  
10 no, they -- I don't think the laws in New York, anyone  
11 needs to accept what they -- obviously, they could have  
12 rejected it, but the assignment is actually signed by  
13 Mr. Boodaie to them. And then -- then there's a  
14 satisfaction of that mortgage that it's signed by the  
15 Rashtis and Rostami.

16 JUDGE MARGOLIS: Okay. But at the time -- at the  
17 time the assignment was made, they didn't agree to accept  
18 payment in the form of a Deed of Trust? Did they?

19 THE WITNESS: I'm sorry. I don't understand.

20 JUDGE MARGOLIS: Did they agree to accept the  
21 deed as payment at the time the assignment was made?

22 THE WITNESS: Well, in fact, I was actually I  
23 didn't -- I don't know if Mr. or Mr. Rashti or  
24 Mr. Rostami. I never met them in my life. They approve  
25 -- they called me, in fact, and they said, "We have an

1 assignment of the mortgage from Mr. Boodaie, and you need  
2 to pay us right now."

3 JUDGE MARGOLIS: Okay.

4 JUDGE GAST: Is that it?

5 JUDGE MARGOLIS: Yes.

6 JUDGE GAST: Okay. Judge Tay?

7 JUDGE TAY: No question.

8 JUDGE GAST: All right. Mr. Darvish, you're free  
9 to go. Thank you for your time.

10 THE WITNESS: Thank you.

11 MR. WEISS: I guess we can call Mr. Boodaie.

12 JUDGE GAST: Okay.

13 MR. WEISS: All right. Okay. Give me a second.  
14 I want to put my exhibits back. I should have had other  
15 copies, but let me put them in order.

16

17 DIRECT EXAMINATION

18 BY MR. WEISS:

19 Q Okay. Mr. Boodaie, in 2008 what was your  
20 occupation?

21 A I was an accommodator and dealing in real estate.  
22 Mainly in real estate and lending money and doing it as --  
23 acting as an accommodator.

24 Q Did you also own real estate?

25 A Yes.

1 Q Okay. And let's go back to the year 2008, then  
2 2007, 2008 there about. What was your financial -- what  
3 was your financial status at that time? Were you having  
4 any problems? Two questions. You can answer one and the  
5 other if you would like.

6 A What year are you mentioning?

7 Q Let's go to 2008. What was your financial  
8 position in 2008?

9 A In 2008 the financial position was good. I had  
10 assets and some liabilities, but the net worth was -- I  
11 had a good net worth. The financial was good in 2008.

12 Q Well, wasn't the -- wasn't the real estate market  
13 crashing at that time?

14 A Exactly. They said this was the first time for  
15 the last 100 years that we have real estate bubble. So  
16 most of the people like me, we had liquidated problem.

17 Q Okay. And also how many years were you -- did  
18 you act as an accommodator?

19 A Since 2004.

20 Q And going back to 2008, did you have any health  
21 issues?

22 A Yes.

23 Q Please tell the judges what they were?

24 A Mostly because of the financial problems that due  
25 to the economy and also, we had some marital issues, I had

1 anxiety that I was taking different pills every day. And  
2 mostly a lot of stress and anxiety, and I had been going  
3 to my doctor that I use and had to take pills.

4 Q Okay. And tell us a little more about the  
5 marital problems you were having?

6 A You know, I don't know if it's related or not,  
7 but since the financials and the situation of it going  
8 down, we -- I have three children, and we had marital  
9 issues. And I was worried about the well-being of the  
10 children. So always it was bothering me that they wanted  
11 to leave home and not to live with me.

12 Q Okay. Prior to the exchange, did you know  
13 Mrs. Rostami and her spouse? Did you ever meet them?

14 A Prior to exchange, no.

15 Q Had you ever done any -- you say -- did you ever  
16 speak to them or do any business with them?

17 A No.

18 Q Okay. With respect to Dr. Rostami, Mike Rostami,  
19 did you ever speak to him prior to the exchange?

20 A I don't think so, no.

21 Q And same question. Did you ever do any business  
22 with him?

23 A No.

24 Q How did you -- how did the -- these people,  
25 Rostami and Rashti come to your office? How did they --

1 as an accommodator, what did you -- you know, who referred  
2 them?

3 A You know, I was very famous in the community  
4 doing exchange and real estate. So there was an  
5 accountant that I heard about him, but I -- honestly, I  
6 didn't know him well or so. He's -- this accountant was  
7 Dr. Rashti's accountant. And Dr. Rashti asked that  
8 accountant, "Can you refer me to an accommodator?"

9 So that accountant, his name is David Gadoshian.  
10 That David, the accountant, referred Dr. Rashti to my  
11 office to the 1031 exchange.

12 Q Had you ever done any business with Mr. Gadoshian  
13 prior to this exchange?

14 A Not at all. No.

15 Q Okay. All right. So are you aware that  
16 Dr. Gadoshian was also sued by Mrs. Rashti?

17 A Yes, I was aware that this poor guy, even though  
18 he was just doing a referral, they went to him and said --  
19 they sued him. They did file a lawsuit against him for  
20 referring me to them.

21 Q Do you know what happened to the lawsuit as a  
22 result?

23 A If I --

24 Q Let me -- let me rephrase it. I'm sorry. That  
25 was a bad question. Strike that question.



1           Do you know the result -- did -- let me put it  
2 this way. Did Dr. -- did Mr. Gadoshian and Mrs. Rashti  
3 settle their lawsuit?

4           A    Yes, they did.

5           Q    Was any money paid to Mrs. Rashti?

6           A    Yes.

7           Q    Okay. Was any money paid to Mr. Rostami?

8           A    I don't know.

9           Q    Okay. All right. So and when you received the  
10 money from the -- we'll call him Rostami and Rashti, we'll  
11 call them the exchange parties for purposes of our  
12 understanding. When you received the money from the  
13 exchange party, was the money invested?

14          A    Yes.

15          Q    Where was it invested?

16          A    You know, there was a pull-out money. I cannot  
17 locate or substantiate or separate the monies because the  
18 monies were going to the same bank account, and I was  
19 using it for different investments for paying for loans.

20          Q    Okay. And did you tell Mr. Rashti that you were  
21 going to invest the money -- their money that she gave  
22 you?

23          A    They knew from day one number one, it was part of  
24 the contract that All Century had the right to invest the  
25 money, and I told them that they can benefit from this.

1 They were benefiting by me pay them interest on the money.

2 Q So if the money would have sat in the bank or in  
3 an interest-bearing account, what -- do you recall at what  
4 the interest rate would have been?

5 A I don't know the exact number, but it was maybe 1  
6 or 1-and-a-half percent.

7 Q And now that the money was invested, how much  
8 were they earning on their, you know, funds they gave you?  
9 Do you recall?

10 A Something else. 7 to 8 percent.

11 Q Okay. Let's go to Exhibit Number 2, and it's  
12 also the same as Exhibit 3, which is the exchange  
13 agreements. What are -- please read to the judges, what  
14 is Section 5.1 say?

15 A I'm sorry. Which number?

16 Q 5.1. It's Exhibit 2.

17 A You want me to read it?

18 Q What -- yeah. Read the --

19 A It says exchanger agrees.

20 Q Yeah.

21 A Exchanger agrees that intermediately has the  
22 right to invest their funds at their discretion.

23 Q Okay. And -- and -- and that was explained to  
24 Mrs. Rashti?

25 A To all the clients that everything -- they knew

1 about this, yes.

2 Q So they were -- they were aware that the money  
3 would be invested, you know, in notes or other type of  
4 investments?

5 A They didn't know exactly what kind of notes or  
6 what, but, yes, it was invested in notes or real estate.  
7 Yes.

8 Q Okay. Did -- you're aware that an -- when you  
9 received the money -- I believe you received the money  
10 from them, it looks like, in September -- was it  
11 September 12, 2008?

12 A Correct. Based on this statement, yes.

13 Q Okay. Page 1 of the exchange agreement. Okay.  
14 So you -- and how many months do you hold their money,  
15 typically?

16 A All right. The exchange agreements or the laws  
17 of -- it's a federal law that says within 45 days they  
18 have to identify a property. If they don't identify,  
19 they're gonna lose their exchange. And normally, it's not  
20 my practice other exchange companies also, we keep the  
21 money for 180 days. And then we ask them to see what they  
22 want to do with the money.

23 Q Okay.

24 A So they have -- sorry that I'm repeating. We  
25 have 100 -- they have 45 days to identify the property

1 that they want to exchange with, and they have 180 days to  
2 close. But if within the 45 days, which is in this case,  
3 within 45 days, they did not identify a property. So  
4 within 180 days I would ask them the direction that they  
5 want to go with their money.

6 Q Okay. And they were aware that they would get  
7 back -- they would get back -- there's a possibility they  
8 would not get back money, but they would get back other  
9 assets equal to or more than the amount of money they  
10 invested?

11 A The very first question that you asked me about  
12 the problems in 2008 and '09 was liquidity. There were a  
13 lot of assets sitting there but, unfortunately, starting  
14 at the end of 2007 or beginning of 2008 the banks started  
15 not to give loans anymore.

16 So when I lend the money, for example, to the guy  
17 that was a witness here, within a period, a short period,  
18 within the 10 days because it was a short lending of  
19 money, he would go to the bank, get a combination of a  
20 loan and give me my money back. And I had liquid assets  
21 all the time to pay the people.

22 But because of that problem in 2008 and '09, I  
23 already explained to all my clients that listen, the banks  
24 are not giving any loans. So I may not have liquidity to  
25 give you the money. So what I can do is I have notes that

1 if it is liquidated you can get your money back.

2 So since you need your money back right away, if  
3 you let me, I will go and collect the money from the  
4 borrowers. But if you are in a rush, I'm more than happy  
5 to assign my rights, which one of them was him. And there  
6 was a second note or so that was transferred to  
7 Mrs. Rashti and Mike Rostami. In lieu of giving them the  
8 money, I give them the notes and assigned it to them.

9 It was recorded. And then, as the witness  
10 testified, it was liquidated, and he gave them the money.

11 Q Let's go back there. Let's go back there. So  
12 when 180 days came around, Mr. -- Mrs. Rashti did not have  
13 a problem -- could not -- didn't find another property to  
14 buy?

15 A Correct.

16 Q And also within 180 days, Dr. Rostami did not  
17 have a property to buy?

18 A Correct.

19 Q So after 180 days they asked for their money?

20 A Yes.

21 Q And what did you do at that time?

22 A I told her to come to my office, that I can  
23 discuss. And I explained the situation I just said a few  
24 minutes ago. I told them about the liquidity. I told  
25 them, either I liquidate for you. I give you the cash or

1 I give you the notes. She said, "No. Just give me the  
2 notes. We're gonna go after them and get the money  
3 ourselves."

4 Q So she personally -- did you tell her you were  
5 going to prepare assignments to her?

6 A Yes.

7 JUDGE MARGOLIS: Who is -- excuse me. Who is  
8 "she"?

9 MR. WEISS: I'm sorry. Mrs. Rashti.

10 BY MR. WEISS:

11 Q Let me -- I'll re-ask the question. Did you tell  
12 Mr. Rashti you were going to assign some notes in  
13 collateral to her?

14 A Yes.

15 Q And what was her response?

16 A This was like I told her. She said, "No give me  
17 the notes. I'm going to liquidate it myself."

18 So in order for me to give notes to somebody, I  
19 have to just authorize it and send it to the title company  
20 to record it, that the notes would transfer from my name,  
21 All Century's name, which was my company, to her name.

22 Q All right. Let's turn to Exhibit Number 4. I  
23 think we've -- Mr. Darvish was here. Was this one of the  
24 notes -- was that one of the notes you gave to her?

25 A Correct.

1 Q Okay. And that note is between E&D Holdings and  
2 your company, I believe, All Century, Inc. All Century  
3 Inc. was your company?

4 A Correct.

5 Q Okay. And what was the face amount of that note?

6 A The face value of that note was \$2.1 million.

7 Q Okay. And let's go -- let's go to Exhibit  
8 Number 14, and what is exhibit --in your words, please  
9 explain to me what Exhibit Number 14 was.

10 A When we give loans, we have to wire transfer the  
11 money to that person or entity. HSBC was the bank that I  
12 was dealing with, and we sent them \$2,057,945. That was  
13 the net amount for 2.5 -- 2.1 because usually there was  
14 some equity for everything else.

15 But as I mentioned, the face value of the note  
16 was 2.1, but the net amount that I -- it was wire  
17 transferred based on this notification from HSBC Bank here  
18 in California. It was \$2,057,945, and that was sent out.

19 Q Who was it sent to?

20 A To Soheil Darvish.

21 Q Is that the same Soheil Darvish that just  
22 testified?

23 A Correct. Yes.

24 Q Okay. All right. So that, Mr. Boodaie, that --  
25 so the face amount of the note was \$2,000,001. This is

1 proof that All Century paid -- this was the wire to him,  
2 the \$2,057,954? That was what you paid for that -- what  
3 you lent actually to him?

4 A Correct.

5 Q Okay. And that was the same money that  
6 Mrs. Rashti received?

7 A No. Can I explain very short?

8 Q Sure.

9 A The \$2.1 million was face amount of the notes.  
10 Since this note, he hasn't paid for almost two or  
11 three years. So if you remember, the witness said, "I  
12 don't remember the amount, but in unit face it was \$2.1."

13 It was the money that was paid to her for  
14 satisfaction of the mortgage, was the face amount, which  
15 was \$2.1 plus the accrued interest for the period. So the  
16 difference with the money is over \$2.1 million actually,  
17 not \$2.1. And that is plus accrued interest for that  
18 period, that interest was not paid.

19 Q And do you recall the interest rate that was paid  
20 on that?

21 A The interest rate on that, I think, was about  
22 10 percent.

23 Q Okay. All right. So, okay. Let's go to -- and  
24 let's go to the -- let's go back to Exhibit 13. And was  
25 that -- that note -- is this the same note -- the



1 assignment, is that the same note that was assigned to  
2 Mr. Darvish -- or I'm sorry.

3 A No.

4 Q I'm sorry. It was assigned to -- let me strike  
5 that.

6 Was this -- you just identified the blanket  
7 mortgage, and now this is the same document, collateral  
8 assignment of the blanket mortgage, that was assigned to  
9 Mr. and Mrs. -- it looks like Rashti and Mr. Rostami?

10 A Yes.

11 Q Okay. And who prepared that assignment?

12 A My office prepared the collateral assignment. We  
13 send it to the title company. It was notarized and sent  
14 to the title company to record it. And the liquidation is  
15 up there. So it was recorded. It means that to the  
16 public it was transferred from my name to Mrs. Rashti and  
17 Mr. Mike Rostami.

18 So practically I -- this was also a question you  
19 asked the witness. When you assign something to somebody,  
20 if they -- when it's delivered and they get it, it means  
21 they accept it. If they reject it, as he said -- they  
22 said no, I don't want it -- and they give it back.

23 So the only one that has to sign and notarize it  
24 is the note holder, which was me. It was signed by me and  
25 authorized and recorded to her name -- I'm sorry -- to

1 Mrs. Mahnaz Rashti and also Mr. Mike Rostami. And when  
2 they accepted this, they started collections.

3 So if they didn't want this, they wouldn't go  
4 up -- after this to collect it from the witness and the  
5 other note that I gave. So both of them was assigned.  
6 And, again, not too repetitious a sign to me that only the  
7 note holder would assign it, which it should be my  
8 signature. We don't need an acceptance on this. And this  
9 standard for government and --

10 JUDGE MARGOLIS: So it was assigned in 2009? And  
11 when was it -- when was it paid off in full?

12 THE WITNESS: Yes. It was assigned on  
13 April 3rd, 2009, correct.

14 JUDGE MARGOLIS: But the assignment is not cash.  
15 When was it paid off in full? The note was paid off, but  
16 it was sold in 2010?

17 THE WITNESS: Yes, correct.

18 JUDGE MARGOLIS: Was the property sold at that  
19 time? Is that why they had cash to pay it off?

20 THE WITNESS: Not the property was sold. The  
21 lender -- I'm -- I'm sorry. The borrower got the money  
22 together and paid her off in full.

23 JUDGE GAST: Okay.

24 THE WITNESS: Then we have satisfaction of  
25 mortgage from State of New York that it was satisfied and

1 paid in full. And we have also an agreement that shows  
2 the \$2.1 plus interest was paid in full.

3 BY MR. WEISS:

4 Q Okay. So from your experience there's -- there's  
5 never any place where the S&E, which would be Dr. Rostami  
6 and Mrs. Rashti, there's no place ever for the S&E to sign  
7 the collateral assignment?

8 A That's correct.

9 Q All right. So did you physically hand them these  
10 documents after the assignment was recorded?

11 A Yes, I did.

12 Q Okay. And approximately what was the date of  
13 that?

14 A This was sometime on April 3rd, right after the  
15 180 days expired, something like that. Very, very close  
16 to that period. But they ask for the money, and I told  
17 them, "I give you this in lieu of the cash money."

18 Q Well, if you kind of calculate this, maybe  
19 30 days after the 180 days was expired. Is the date on  
20 here?

21 A The date is April 3rd, of 2009, and that exchange  
22 was September of 2008. After 180 days, it would come  
23 almost to the end of March. So less than a month maybe,  
24 that negotiated, I give them this for the satisfaction of  
25 the money.

1 Q Okay. All right. In addition to the note --  
2 well, by the way, the properties that secured that note,  
3 what -- to the best of your knowledge, what was those  
4 properties that secured that note?

5 A It was a commercial property in the State of the  
6 New York.

7 Q Okay. All right. Let's go to -- give me one  
8 second. Let's go to Exhibit Number 5. Please tell the  
9 judges what is this document?

10 A This is a promissory note.

11 Q Well, and who is -- let me check. Who is the  
12 borrower?

13 A The borrower was Ray Korogli. Actually, there  
14 were three borrowers. That's on the last -- on page 4 of  
15 this document that they all signed. And this one is a  
16 promissory note that I gave these people \$3,092,000. The  
17 exact amount is \$3,920,002.70.

18 Q Okay. Well, did you actually give them that  
19 much, or did you give them less?

20 A Normally, this is the note amount again. The  
21 interest is accrued in there. The interest is added. For  
22 example, if today I'm giving somebody a loan for \$800,000,  
23 I would calculate also a month in advance for interest and  
24 any fees related, and I deduct it from there.

25 So not -- this is the note's -- the face amount

1 of the note. But the one that was paid, the difference  
2 was less than this because of the accrued interest and  
3 also because of other expenses.

4 Q So in other words, there's a discount. You  
5 deduct fees or prepaid interest in advance from the face  
6 amount of the loan, and they give you less. So you're  
7 deducting interest in essence in advance?

8 A I -- I give them less. On this note, we agreed  
9 that they pay one-year interest ahead of time on this  
10 note. So we calculated the interest for \$3,092,000 for  
11 one year plus other expenses. And we gave them all.

12 Q Let's go to Exhibit Number 10. What is this  
13 document?

14 A This document is from Comerica Bank. I was  
15 dealing with two different banks. Comerica Bank is the  
16 one that the company was dealing with. It shows that we  
17 send this borrower the net amount of \$2,689,860.14. I can  
18 repeat again, \$2,689,860.14. It was sent to them to  
19 satisfy this note of \$3 million. That's the net amount  
20 after accrued interest and everything else.

21 Q And the borrower was it all Mariners, LLC?

22 A Yes, Mariners View. Mariners View was the name  
23 of company. There were three partners in there. The  
24 names are here, Ray Korogli, Hamid Mahban, and Michael  
25 Mona.

1 Q So these three individuals were -- they owned  
2 Mariners View. It was like 9 or 5 years ago.

3 A Correct.

4 Q And what was the collateral for the loan? What  
5 type of property was it?

6 A There was a big subdivision of land in Laughlin,  
7 Nevada. That's -- they were building new housing there.

8 Q Okay. All right. So you would say --

9 A Development site.

10 Q Development site. Development property. Okay.  
11 Then this loan was also assigned to Ms. Rostami -- I'm  
12 sorry -- Dr. Rostami and Mrs. Rashti?

13 A Correct.

14 Q Okay. And the assignment is -- is the  
15 assignment -- let's go to Exhibit 12. Was this the  
16 assignment that -- was this the same property that was  
17 assigned to them, the Las Vegas Nevada property?

18 A Correct. Through the title company, it was  
19 Southland Title. I did a collateral assignment again, and  
20 that note is also in Nevada -- Laughlin, Nevada was  
21 assigned to Mrs. Mahnaz Rashti and Mike Rostami.

22 Q Okay. And who prepared that document?

23 A This document is a standard document that was  
24 prepared in our office, but it was recorded by the title  
25 company.

1           Q    And after it was recorded, did you hand them a  
2           copy? Did you give them these -- this paper, the  
3           collateral assignment?

4           A    Yes, I did.

5           Q    Okay. And approximately when was that, if you  
6           recall what time period?

7           A    This one more or less is at the same time. It  
8           was prepared and notarized on April 3rd, and then it was  
9           recorded April 10th -- I'm sorry -- April 3rd of 2009.

10          Q    Okay. And after you gave her that document, did  
11          she -- was she satisfied that you had given her back these  
12          assets in lieu of money -- the money?

13          A    She asked me for the information about the two  
14          borrowers, which I gave it. I said, "Listen, even though  
15          I assign everything to you and your brother," which is  
16          Mrs. Rashti and Dr. Rostami, I said, "I'm going to be  
17          helping you. These are the information about the  
18          borrowers. You can go collect your money, and if at any  
19          time you need help, you can call me. That way I can make  
20          sure you get your money back."

21          Q    So the way I calculate it, when you take the  
22          New York property and the Las Vegas property, the value of  
23          the notes are \$5,192,000; is that correct?

24          A    More or less correct, yes.

25          Q    And when I calculate what you paid for the notes,

1 it's \$4,747,805?

2 A More or less correct, yes.

3 Q Right. So under any scenario, they received over  
4 a million-and-a-half dollars more than they gave you?

5 A That's correct.

6 Q Okay. All right. One other document. Today --

7 MR. WEISS: And I apologize for getting it late,  
8 but Mr. Boodaie got it late.

9 BY MR. WEISS:

10 Q Exhibit 18 is a document and what -- the  
11 document, I guess, is called Grant Bargain Sale Deed.  
12 Okay. Mr. Boodaie, what is this document? Where did you  
13 get this document?

14 A I got this from the title company in Nevada. I  
15 was told that the notes in Nevada that I assign to  
16 Mrs. Rashti and Mr. Mike Rostami, they went ahead and  
17 foreclosed on the property. So they owned it. They owned  
18 the property, and sometimes in 2017 they sold it.

19 Q Okay. So do you know when they foreclosed on the  
20 property?

21 A I don't.

22 Q Who told you they foreclosed?

23 A I heard this from the borrower.

24 Q When you say you heard this from the borrower,  
25 the borrower --



1           A    The borrower is --

2           Q    Hold on please.  Let me ask you the question.  
3   Hold your answer.

4           MR. HUNTER:  For the reporter, can we not talk  
5   over each other.

6           MR. WEISS:  Right.  Well, that's why I want to go  
7   back and strike it.  Let's go back and ask him because,  
8   you know, he -- all right.

9   BY MR. WEISS:

10          Q    When you say you heard from the borrower, please  
11   explain what that means?

12          A    The borrower in Laughlin, Nevada, the main person  
13   was Ray Korogli.  Which he contacted me, and he said, "The  
14   note that you gave to Mrs. Rashti and Mr. Mike Rostami,  
15   they foreclosed on it, and they took all the property.  I  
16   guess they resold.  They took it, and they said they're  
17   going to go ahead and sell it at the proper time.

18          Q    So when you say you heard from them, you meant  
19   Mr. Korogli told you this?

20          A    Correct.

21          Q    Do you know what year the property was foreclosed  
22   on?

23          A    Honestly, I don't recall the exact date.  No.

24          Q    Okay.  And why -- did you try to get Mr. Korogli  
25   to come here to testify?

1 A Yes.

2 Q And why could Mr. Korogli not testify?

3 A Mr. Korogli recently was in a freak accident in  
4 Nevada. Apparently, he was doing something on the roof of  
5 a property, and he fell down, and physically he cannot  
6 walk. So we apologize, but he told me if it is necessary  
7 and he's available, he can talk also.

8 Q Okay. Are you familiar -- okay. So this -- this  
9 is a deed this document, right? This is a deed, correct,  
10 from the real estate broker? You can identify this? What  
11 type of deed is this?

12 A Grant Deed. They call it Grant Bargain Sale  
13 Deed. It's a little different from California. In  
14 California we only call it "Grant Deed". But in Nevada  
15 they call it "Grant Bargain Sale Deed". And this is when  
16 they sell the property and transfer it to somebody else.

17 Q So it's a -- okay. So are you familiar with  
18 Dell Cannon Investments, LLC?

19 A Dell Canon, according to the paperwork that I  
20 received, Mrs. Mahnaz Rashti was the manager of that LLC,  
21 which she owned 100 percent.

22 Q And on page 3 of that document -- okay. On page  
23 2, that's your signature; correct?

24 A I don't know, but when it was notarized and it's  
25 an acknowledgement that signature was notarized by a

1 notary, public notary.

2 Q All right. Okay. So from this -- it took a  
3 while but from this document it looks like she was -- the  
4 property was sold. She was paid a lot of the proceeds of  
5 that note?

6 A Correct.

7 Q And at the top right-hand corner, there's a -- if  
8 you're familiar with this, there is a -- there's a number  
9 here. There's an RPTT 1632, are you familiar with that?

10 A I'm not familiar. These are from the State of  
11 Nevada I'm not that familiar. But this is the transfer  
12 tax that they paid. It's very similar, but California has  
13 different rates.

14 Q So in fairness, they paid -- if there was a  
15 transfer fee there must have been valuable consideration?

16 A Correct.

17 Q All right.

18 JUDGE MARGOLIS: Before we move on, can I ask a  
19 question about this document? The transfer sale price  
20 seems to be \$320,000, according to the document. Is that  
21 the price it was sold at? If you look on page -- where  
22 they talk about the transfer received. It's the second to  
23 last page. It talks about \$320,000. So does that -- is  
24 that the price the property was sold at?

25 MR. WEISS: Oh, I see what you're saying.

1 JUDGE MARGOLIS: I'm just a little confused  
2 because I thought the note was worth -- it had a face  
3 amount of, like, \$2 million or something, like, \$2-plus  
4 million.

5 THE WITNESS: More than that.

6 JUDGE MARGOLIS: I just want to clear this up  
7 before we move on.

8 THE WITNESS: Okay. We have to go back to  
9 original note because they were different assets of  
10 numbers. There were different lots. Apparently, this was  
11 one of the lots that she sold in 2017.

12 JUDGE MARGOLIS: Okay. So --

13 THE WITNESS: This is one of the lots -- one of  
14 the lots in that note. Because a \$3 million note, this  
15 was a note not the purchase price. Could not go back to  
16 \$300,000, but here they are identifying on Number 1-A, the  
17 parcel number. This is one of the parcels that was sold  
18 in 2017.

19 JUDGE MARGOLIS: Okay. Thanks.

20 THE WITNESS: Sure.

21 BY MR. WEISS:

22 Q So let me go back there.

23 THE WITNESS: Sorry. I apologize. You said we  
24 may have -- because I was taking so much water -- quick  
25 break?

1 JUDGE GAST: Yeah. Would you like to take a  
2 quick break?

3 THE WITNESS: Yes.

4 JUDGE GAST: Okay. Why don't we take a  
5 five-minute break and get back here at 11:20.

6 THE WITNESS: Thank you.

7 JUDGE GAST: Thank you.

8 We're off the record.

9 (There is a pause in the proceedings.)

10 JUDGE GAST: Why don't we go back on the record.  
11 Mr. Weiss, you're up still?

12 MR. WEISS: Yeah, yeah. Let me -- just a couple  
13 of more questions.

14 BY MR. WEISS:

15 Q Let's go to Exhibit Number 10. Okay. I think  
16 we're been there. Let's clarify this. How much money did  
17 you loan Mariners View, LLC, Mr. Korogli?

18 A I already gave you the face amount, but the net  
19 that I paid them with the wire transfer from Comerica Bank  
20 was \$2,689,860.40.

21 Q So you believe the value of the property at that  
22 time as a lender, there was enough equity in the property  
23 -- the value of the property at that time to make a loan  
24 of this amount?

25 A Exactly. And I did some checking myself, so yes.

1 Q So those are money that All Century actually  
2 spent or loaned?

3 A Right. Right.

4 Q Now, what's the date of that?

5 A October 30th, 2007. That's when the money sent,  
6 actually, wire transferred.

7 Q So let's go back to your testimony. Your  
8 testimony was you gave them -- you assigned this note and  
9 gave them the assignment on -- in April 2009?

10 A Correct.

11 Q So the time period between the loan and the  
12 assignment was maybe not even a year and a half?

13 A Correct.

14 Q All right. So at the time you assigned the loan  
15 at that time, the property to the best of -- in your  
16 opinion or to the best of your knowledge, how much equity  
17 did the property have?

18 A Usually, for the properties in Nevada, I would  
19 give only 50 percent loan to value. So to me they  
20 purchased this property over \$6 or \$7 million.

21 Q All right. So the question that Judge Margolis  
22 raised was why was it only \$300,000 in year 2017? Do you  
23 know why?

24 A I don't know. I'm not that familiar with Nevada.  
25 But as I said, there may have been different parcels?



1           Q    Okay.  So let me turn your attention to -- I  
2 think it was Exhibit 5.  That's October 25, 2007, a  
3 promissory note secured by a Deed of Trust.  And this is  
4 when All Century lent the money here, \$3 million, to  
5 Mr. Korogli.  The last page of that exhibit has an APN,  
6 which is 26428710-001.  Do you see that?

7           A    No, I don't.  What page are you referring to?

8           Q    The last page of Exhibit 5.

9           MR. WEISS:  You're referring to the promissory  
10 note secured by a Deed of Trust?

11          MR. HUNTER:  That is correct.  Last page.

12          MR. WEISS:  The last page is page 4; is that  
13 right?  It's numbered on the bottom, 4.  I want to make  
14 sure we have the same document.

15          MR. HUNTER:  It should be 5.  My exhibit is not  
16 numbered.

17          MR. WEISS:  The bottom of the page is -- it's a  
18 four-page note.

19          MR. HUNTER:  After that note, I have a Deed of  
20 Trust with assignment of grants.

21          MR. WEISS:  Oh.  Let's find that.  Is that  
22 Exhibit 11 maybe?

23          JUDGE MARGOLIS:  It's the last page of Exhibit 5.

24          JUDGE GAST:  It was originally your Exhibit D.

25          MR. WEISS:  Yeah, let me find it.  Deed of Trust



1 document. Hold on. Let me find it here.

2 JUDGE GAST: Mr. Kwok?

3 MR. KWOK: May I?

4 JUDGE GAST: Yes, please. We've a copy of here.

5 MR. WEISS: All right. Thank you. That's what  
6 you're referring to. Okay.

7 BY MR. HUNTER:

8 Q Yeah, that is correct. Look at the middle of  
9 this page, APN264-28-710-001, 14.09 acres between Needles  
10 Highway and South Bay Parkway in Laughlin, Nevada. Do you  
11 see that?

12 A Yes, I do.

13 Q Is that accurate?

14 A I don't know. I just see the APN number. The  
15 number you read to me, it's right here too.

16 Q You're a real estate broker and an agent, this  
17 is -- you didn't verify the accuracy of this document?

18 A As a broker we don't do that. We have title  
19 company that I think they do it.

20 Q Well, you lent money based on this being your  
21 security; is that correct?

22 A I'm sorry. The question again?

23 Q This is an assignment of rents and you -- did All  
24 Century loan money with this document acting as security?

25 A Document and what? I'm sorry.

1 Q Let's move onto Exhibit 6.

2 A Exhibit 6.

3 Q It's a collateral assignment of a Deed of Trust.

4 MR. WEISS: Are you asking on Deed of Trust with  
5 assignment --

6 BY MR. HUNTER:

7 Q No let's -- I've moved onto Exhibit 6 now.

8 A Exhibit 6 right now.

9 Q Was when --

10 MR. WEISS: I'd like the witness to answer the  
11 questions. Can we -- can we read it back and make sure  
12 the witness answers the question because I didn't get an  
13 answer.

14 JUDGE GAST: Mr. Hunter, go ahead and ask that  
15 questions again, if you would like. Otherwise, you can  
16 move. Exhibit 6?

17 MR. HUNTER: Yes.

18 JUDGE GAST: Okay. Let's move on to Exhibit 6.  
19 Go ahead.

20 BY MR. HUNTER:

21 Q Its' a collateral assignment a Deed of Trust,  
22 again, in the middle of the page, APN 264-28-710-001,  
23 14.09 acres. Do you see that, Mr. Boodaie?

24 A Yes, I do.

25 Q Okay. And, again, the document that was

1 introduced today, the same APN but with the value of  
2 \$320,000. Now was your testimony that was one of the  
3 lots; is that correct?

4 A Most probably because the value of \$7 to  
5 \$8,000,000 could not go down to \$300,000, number one.  
6 Number two, if you remember, I said it was they have an  
7 open, so it may have been something where -- I have -- we  
8 have to check it because there's no way something would go  
9 back to -- even what --the \$3 million that I gave them, as  
10 I told you, the value is \$6 or \$7 million.

11 So this is not even 5 percent of that value. Not  
12 5 percent. 10 percent would be \$600,000. \$300,000 would  
13 be 5 percent. There is no way that 14-acres of land for  
14 \$300,000 in Laughlin, Nevada. I've dealt with Laughlin  
15 before. There's no way that 14-acres could go for  
16 \$300,000. It was a subdivision. Most probably they  
17 subdivided that.

18 Q Most probably. Do you have any evidence that  
19 this was subdivided, sir?

20 A I'm sorry.

21 Q Do you have any evidence that this 14-acres was  
22 subdivided?

23 A The only thing that I -- I don't have any  
24 evidence. But the only thing I can say is the \$6 or \$7  
25 million value for that cannot go down to \$300,000 within

1 that period.

2 Q Okay. And, again, on this particular assignment,  
3 the assignment was made to the Rashtis and Rostami in  
4 2009. Is that correct?

5 A Correct.

6 Q Okay. Now, earlier in your testimony the  
7 question was asked of you if the lawsuit against yourself  
8 and David Gadoshian had been settled. Do you remember  
9 that?

10 A Yes.

11 Q Okay. You indicated that the lawsuit was  
12 settled; is that correct?

13 A The question was David Gadoshian and Mrs. Rashti,  
14 I said that it was almost settled, yes.

15 Q But not the lawsuit against you; is that correct?

16 A I'm sorry.

17 Q But not the lawsuit against you where you are a  
18 named plaintiff in the same lawsuit; is that correct?

19 A My little knowledge that I thought from law, and  
20 I gave them the notes, it was the satisfaction of the  
21 lawsuit.

22 Q Okay. In 2008 did Dr. Rashti come to you and  
23 identify replacement property?

24 A No, she didn't.

25 Q Again, let me repeat the question. Towards the

1 end of 2008, did Dr. Rashti identify a replacement  
2 property for you, sir?

3 A End of 2008?

4 Q Yes. The replacement period is 45 days.

5 A Right.

6 Q Right?

7 MR. WEISS: No.

8 BY MR HUNTER:

9 Q That's the -- per the contract, that's the time  
10 to identify.

11 MR. WEISS: Identify. It's not a replacement  
12 period. It's the identification period.

13 BY MR. HUNTER:

14 Q Did she identify a replacement property before  
15 the end of tax year 2009?

16 A I don't recall, and I don't think so.

17 JUDGE MARGOLIS: I think you mean 2008.

18 MR. HUNTER: I'm sorry. 2008. Thank you,  
19 Judge Margolis. I'm trying to expedite on things.

20 BY MR. HUNTER:

21 Q The question was asked whether or not the Rashtis  
22 and Mr. Rostami agreed to accept these notes or blanket  
23 deeds of trust instead of cash. The cash that represents  
24 the proceeds of a sale of their property. You testified  
25 that they did agree to receiving notes and blanket

1 mortgages; is that correct?

2 A Yes.

3 Q All right. Do you have that in writing?

4 A Nothing is in writing. When I hand them  
5 something, it's considered as an acceptance. When you  
6 hand in notes that was assigned and it was collateral  
7 assignment and it was recorded to their name, if they  
8 wouldn't accept it, they wouldn't take it. They would say  
9 no thank you, and they would give it back. Then I would  
10 assign it to somebody else.

11 Q But just to expedite this, nothing in writing; is  
12 that correct?

13 A I'm sorry?

14 Q Nothing in writing; is that correct?

15 A Nothing in writing was necessary, just --

16 Q I'm not asking necessary or not, just nothing in  
17 writing. You also indicated that as soon as they received  
18 the note or the mortgage that they immediately took  
19 collection action on the same. Do you have anything in  
20 writing to show that?

21 A The witness was here. He could have totally said  
22 that they called me during 2009. The witness was here,  
23 and he could have testified to that.

24 Q 2009?

25 A Yes.

1 Q Okay. So that being the case, why did she sue  
2 you for cash the proceeds of the sale of her property?

3 A You want to know the answer why she sued me for  
4 cash? Because.

5 Q She --

6 A Can I answer?

7 Q Yes.

8 A Because she was greedy. You know, she just  
9 wanted to get more and more money. And needless to say,  
10 accidentally I was at the court house last week, and I was  
11 planning to check the lawsuit that she filed. I saw two  
12 pages of the lawsuit that she filed for the last few  
13 years, and she was the plaintiff.

14 So maybe she -- I don't know. She likes to  
15 torture people. She came to my office, and I showed her  
16 the amounts and she accepted it. She took the two notes.  
17 And she definitely started collection action after that.  
18 To me the value that my company paid was more than the  
19 value that she invested with me.

20 Q To you; is that correct?

21 A Correct.

22 Q Okay. So if there's a Los Angeles Superior Court  
23 lawsuit against you stemming from this particular  
24 transaction, the sales proceeds from the property would  
25 never be returned to Mr. Rostami and the Rashtis, why

1 didn't you present this as a defense to the Los Angeles  
2 Superior Court action?

3 A At the time that she filed that lawsuit, number  
4 one, I thought by giving those notes where it was  
5 satisfied, so it was not for me to defend. And number  
6 two, I didn't have -- at that time, I didn't have  
7 resources to hire an attorney to defend myself. So  
8 nothing was defended. I didn't go to any court. If you  
9 look at it, I did not represent -- was not represented. I  
10 did not go to court at all.

11 Q Why not?

12 A Two reasons. Number one, I didn't have resource  
13 to hire an attorney. Number two, I thought by giving her  
14 those two notes she's satisfied. It's already  
15 satisfaction of the payment for them, and that was paid.

16 Q Well, let's talk about that. This note that was  
17 assigned the face value of \$2.1 million in 2009, you  
18 testified that the Rashtis were paid in full. Do you have  
19 any documents to show that?

20 A Yes.

21 MR. WEISS: Objection. I think that misstates  
22 his testimony. He didn't state that. If you want to go  
23 back to the record, I think he -- his testimony was that  
24 he thought they were substantially paid. And the witness  
25 was here who actually paid them. That would have been a



1 better person to ask.

2 MR. HUNTER: I did. I did. He didn't remember.

3 JUDGE GAST: Okay. Let's just stick to question  
4 and answer. If he doesn't know the answer, then let's  
5 just move on to another question.

6 MR. HUNTER: Okay, Judge Gast. That ends the  
7 cross. I have a statement here that I'd like to read, and  
8 address testimony.

9 JUDGE GAST: Can that wait for your presentation?

10 MR. HUNTER: This is the presentation. I'm  
11 sorry. I'm done with cross.

12 MR. WEISS: Okay. Okay.

13 JUDGE GAST: So I would like to go back to  
14 redirect, if you would like.

15 Note, we have about 10 minutes, and then I'd like  
16 to go to FTB's presentation.

17 MR. WEISS: All right. I'll make it very brief.

18 JUDGE GAST: Okay. Thank you.

19

20 REDIRECT EXAMINATION

21 BY MR. WEISS:

22 Q All right. Did Dr. -- did Mike Rostami sue you?

23 A Yes, he did. He withdrew after he got paid.

24 Q So it's my understanding that Mike Rostami was  
25 paid, and he never pursued the litigation?

1 A Correct.

2 Q And is Mike Rostami the brother of -- the  
3 brother-in-law of Mahnaz Rostami Rashti?

4 A Actually the brother.

5 Q The brother. It's her brother.

6 A The brother.

7 Q Okay. And the FTB has some paperwork regarding  
8 some bank -- did you ever file bankruptcy yourself?

9 A No.

10 Q Okay. So the only bankruptcy documents, I guess,  
11 that were presented involved your ex-wife; is that  
12 correct?

13 A Yes.

14 Q And you were not involved in that bankruptcy?

15 A No.

16 MR. WEISS: No further questions.

17 JUDGE GAST: Thank you.

18 Panelists, any questions?

19 JUDGE TAY: I do.

20 JUDGE GAST: Go ahead.

21 JUDGE TAY: Mr. Boodaie, can you just clarify  
22 what you did with the money that Mr. -- Mrs. Rashti and  
23 Mr. Rostami gave to you in 2008? You said you invested  
24 it. How did you invest it?

25 THE WITNESS: I invested in notes. I was lending

1 the money based on the value of the properties. Like I  
2 said, I've been doing this for many years. So we would  
3 check the property. We would check the purchase price and  
4 the value, and then we would give them up to 50 to  
5 60 percent loan to value.

6 JUDGE TAY: I see. Okay. And then did you have  
7 any meetings with your clients about locating or  
8 identifying a replacement property?

9 THE WITNESS: I called them a few times myself,  
10 and I told them the 45 days is getting very close. But I  
11 know this for sure because I asked at the end of 2008, if  
12 they identified. But within the 45 days I can testify,  
13 I'm under oath that they definitely did not identify the  
14 property.

15 JUDGE TAY: Okay. And at the end of 45 days and  
16 according to the agreement, they have the right to request  
17 for the proceeds back. But it looks like the assignments  
18 did not occur until 2009. Can you explain that, please?

19 THE WITNESS: Sure. As I said in my prior  
20 testimony, the fact is this, that most of accommodators --  
21 you check with them also. It's customary that after 45  
22 days, they hold onto the money until the 180 days expires,  
23 and they would pay the client interest. So this is what I  
24 did right after 180 days. I met with them to see how they  
25 want to get paid. So after if it's consummated, then we

1 hold the money and pay them interest up to 180 days. And  
2 then we ask them for the direction that they want to use  
3 that money.

4 JUDGE TAY: Okay. And just to clarify, they did  
5 not ask for the money back after the 45 days; is that what  
6 you're saying? Because according to the agreement, they  
7 have the right to request the proceeds.

8 THE WITNESS: When? When?

9 JUDGE TAY: After the identification period,  
10 which would have been 45 days.

11 THE WITNESS: They are -- they can ask for the  
12 money if they identify within 45 days, and they can ask  
13 that I send the money to the replacement property.

14 JUDGE TAY: No. After --

15 THE WITNESS: That's for the replacement  
16 property.

17 JUDGE TAY: I believe after the 45 days, they  
18 have the right to request the money back to them.

19 THE WITNESS: Not to them, to the escrow company  
20 that would give them the 1031 exchange or replacement  
21 property.

22 JUDGE TAY: Okay. Well, then did they ask for  
23 the money back after 45 days at all?

24 THE WITNESS: No. As I said, the property was  
25 not identified. And then after 180 days I -- this is the

1 time that I agree, and I pay them with the notes.

2 JUDGE MARGOLIS: I have a question to ask.

3 JUDGE GAST: Go ahead.

4 JUDGE MARGOLIS: Mr. Boodaie, when was the first  
5 time that your clients indicated some -- that they were --  
6 they wanted their money because they were upset? Either  
7 the money back from you or to be transferred to a new  
8 accommodator? When did that first happen?

9 THE WITNESS: Sending the money to the new  
10 accommodator didn't happen because as I said, within 45  
11 days they did not identify the property. But I don't  
12 remember officially when they asked me what -- definitely  
13 after 180 days was the time that I asked them to come to  
14 my office, and we meet to make sure they get paid.

15 JUDGE MARGOLIS: Okay. And I have questions  
16 about the investments you made under the agreement. Were  
17 you investing for yourself or for your customers?

18 THE WITNESS: Very good point. This was a  
19 pull-off money. You could not say -- I had a lot of my  
20 own money in there also. A lot of my own money in that  
21 bank account that I was using for investments. Not  
22 everything -- not all of that came from the investors. So  
23 at the end, it was pull-out money.

24 We could not identify to see what part is going  
25 for one note because the bank account is sitting there,

1 and my money and other monies sitting there. And I would  
2 use the money to lend and get notes.

3 JUDGE MARGOLIS: So there is no segregation of  
4 funds?

5 THE WITNESS: No segregation.

6 JUDGE MARGOLIS: So how did you decide how much  
7 they were -- they would be -- you said that the clients  
8 would earn some money on these investments.

9 THE WITNESS: Right.

10 JUDGE MARGOLIS: That's what you said, but how do  
11 you decide how much they earn if you don't segregate their  
12 investments? I mean, some of your notes earned one  
13 interest rate, and some would earn another. So how would  
14 you decide how much interest to pay them?

15 THE WITNESS: This would also answer the question  
16 of when I paid them the interest. The question they would  
17 ask also, do you let the client know that you are  
18 investing the money in that note or whatever. Since I was  
19 the only decision maker of the company, at All Century,  
20 all the money would come to the pool.

21 The date that they give me the money, they would  
22 get the interest no matter what. It doesn't matter -- I  
23 wouldn't assign them to any notes. I would just say okay.  
24 You give me the money. I pay you the interest from day  
25 one, but what I decide to see what note -- what places or

1        what notes I can buy or to lend. So at the end of the  
2        day, if their money is sitting there for about a month or  
3        a couple of months, it's my loss that it was sitting in  
4        the exchange account and earning no interest.

5                But I was paying them interest from day one  
6        anyway. So everything was under my obligation to pay them  
7        the interest and invest their money in different notes.  
8        And then I would make the spread. If I was giving them,  
9        like, 8 percent and I charge a client 10 percent, I would  
10       make that 2 percent split for mistaking the decision and  
11       being the broker in that deal.

12               JUDGE MARGOLIS: Okay. Thank you.

13               THE WITNESS: I've already answered your  
14       question. So at the end I would not go to, for example,  
15       X, Y, Z and tell them, listen, I'm buying this note for  
16       you. This is not the way to do it. They would give me  
17       the money. From day one I would pay them interest. And  
18       what I would invest it in is different and as you -- as my  
19       money was involved in there also.

20               JUDGE MARGOLIS: So did you -- you didn't pay  
21       them any interest during the first to 180 days though, did  
22       you?

23               THE WITNESS: I did. Yes. It's on their  
24       statement. I did pay them, yes.

25               JUDGE MARGOLIS: Is that statement in the

1 evidence? Do you know?

2 THE WITNESS: Yeah, the statement --

3 MR. WEISS: I may have. I may have. You know he  
4 has internal accounting record. I'm happy to admit it.

5 JUDGE MARGOLIS: I didn't see any.

6 MR. WEISS: I didn't -- it may -- it may have  
7 been in the -- it might be in the unnumbered exhibits. If  
8 it's not, let me present it. I've got it here somewhere.  
9 Hold on. Give me one second. Let's take a look here.  
10 Let me go back to my original brief.

11 JUDGE GAST: All right. Mr. Weiss, I'd like to  
12 move on.

13 MR. WEISS: Yeah. Here it is. It's in  
14 exhibit -- originally, our Exhibit G. It might be  
15 Exhibit G. It's in there. There's a --

16 JUDGE GAST: Exhibit A?

17 MR. WEISS: Well, our original G. Let me find it.

18 JUDGE GAST: Right. Which is Exhibit A, that's  
19 the tax return.

20 MR. WEISS: The tax return. It's followed by --  
21 there's an accounting that Mr. Boodaie has an internal  
22 accounting record that are in here.

23 JUDGE GAST: Okay.

24 MR. WEISS: Is that?

25 MR. BOODAIE: That's -- there's one for Mike



1 Rostami and one for Rashti. I know how to find them.  
2 This is not it. It was in a different exhibit. I can  
3 look at that. I can find it.

4 JUDGE GAST: Okay. Why don't you come back to it  
5 on your closing, if you would like, but I'd like to move  
6 on with FTB's presentation.

7 MR. HUNTER: Judge Gast, I have a document here I  
8 could present to the Court. It does show the repayment of  
9 \$8,000 to Dr. Rashti for tax year 2008. And as I  
10 referenced in my objection, there was accounting and  
11 adjustment for that regarding the unreported income.

12 JUDGE GAST: Okay.

13 MR. HUNTER: So I could spread them out, and we  
14 can move on. It'll be really quick.

15 JUDGE GAST: Sure. Sure. Please. Thank you.

16 MR. HUNTER: May I?

17 JUDGE GAST: Yes. Thank you. Was this exhibit  
18 introduced into the record?

19 MR. HUNTER: No.

20 MR. WEISS: No.

21 JUDGE GAST: Okay. FTB, would you like to  
22 introduce it into the record?

23 MR. HUNTER: If it could assist in understanding  
24 that Dr. Rashti was paid back a sum of about \$8,000 in  
25 2008, sure. I had this exhibit on standby because we have

1 the money being received by All Century the sales from the  
2 proceeds of the -- which represents the sale of the  
3 property -- the proceeds from the sale of the property in  
4 2008.

5 Nothing else was done until April of 2009, which  
6 here this reflects the assignment. So this is a mere  
7 accounting. We knew the issue that we just delved in when  
8 Judge Margolis asked this question.

9 JUDGE GAST: Okay.

10 JUDGE MARGOLIS: So the figure you're referring  
11 to in this exhibit is the 9/22/08 entry of \$8,341. Is  
12 that what you're talking about, return of excess funds for  
13 escrow?

14 MR. HUNTER: Correct. And you also had a  
15 question regarding interest.

16 JUDGE MARGOLIS: And where is the interest that's  
17 reflected here? I don't see it. I mean, I don't see any  
18 interest payments.

19 MR. HUNTER: If you look at -- there's an entry  
20 of 10/31, 11/30, and 12/31. The description says interest  
21 for October, November, and December of 2008. There's also  
22 \$783,000. I'm sorry. \$783.

23 JUDGE MARGOLIS: But Mr. Boodaie, these numbers  
24 that he's referring to for 10/31, 11/30, and 12/31,  
25 that's -- that reflects interest that had accrued, not

1 that was paid; correct?

2 MR. BOODAIE: No. It was accounted for at the  
3 end because they --

4 JUDGE MARGOLIS: It was accounted for, but it  
5 wasn't paid in the 2008, I don't think. Otherwise it  
6 would be in the credit column, I believe; right?

7 MR. BOODAIE: No, no, no. When -- it works for  
8 us different around because this is not -- this is for us  
9 not for the client. When -- for example, I'm looking at  
10 Mahnaz Rashti. When she paid a \$1,419,000, we put on the  
11 debit. It means I owe them the money. And then at the  
12 end of every month, interest was accrued and added to  
13 their balance.

14 JUDGE MARGOLIS: Okay.

15 JUDGE GAST: Okay. So I think what I'll do is  
16 I'll admit this exhibit into evidence, unless, Mr. Weiss,  
17 you have an objection?

18 MR. WEISS: No objection.

19 JUDGE GAST: Okay. So I'll admit this as FTB's  
20 Exhibit V.

21 (Appellant's Exhibits V were received  
22 in evidence by the Administrative Law Judge.)

23 JUDGE GAST: Okay. Any more questions, Judge  
24 Margolis?

25 JUDGE MARGOLIS: No.

1 JUDGE GAST: Okay. Mr. Hunter, you have 30  
2 minutes.

3 MR. HUNTER: Thank you, Judge Gast.  
4

5 OPENING STATEMENT

6 MR. HUNTER: May it please the panel, this case  
7 involves pass-through losses from an S corporation to its  
8 sole shareholder for the only tax year at issue, 2008.  
9 The law is clear. Internal Revenue Code Section 1366  
10 provides that S corporation shareholders shall report  
11 their pro rata share of the S corporation separately  
12 stated items of income, loss, deduction, and credit on  
13 their individual income tax return.

14 The same goes for their pro rata share of  
15 non-separately stated items of income or loss. California  
16 law conforms to this federal law with Revenue & Taxation  
17 Code Section 17087.5, Section 23800 and Section 23802.5.  
18 In this case, the facts and evidence show that Appellant  
19 was the president and 100 percent shareholder of All  
20 Century Incorporated during the tax year at issue.

21 He testified as such under oath, also Exhibit B  
22 to Respondent's opening brief. And Exhibit B in this case  
23 was a prior deposition testimony, and he confirmed this in  
24 his reply brief. It was all him. He controlled All  
25 Century. The facts and evidence show that All Century

1 received \$3.5 million from two clients, Mr. Rostami and  
2 the Rashtis, collectively, that hired All Century to  
3 perform a Section 1031 exchange.

4 The facts and evidence show that All Century  
5 failed to return \$3.2 million of this money to these two  
6 clients during the tax year at issue; because we have  
7 pieces of paper, we have a note, we have a blanket  
8 mortgage. What we don't have is a bank statement or any  
9 proof that these victims received their money back, cash.  
10 All Century kept the money. And one of the clients,  
11 Dr. Rashti, has been suing to get her money back ever  
12 since.

13 So as to the first issue, unreported income,  
14 Respondent audited All Century's tax year 2008 return and  
15 correctly assessed additional California income tax due to  
16 this unreported income. And that's on the, of course, S  
17 corp, the franchise tax. After audit and protest and a  
18 failed attempt and an appeal before the Board of  
19 Equalization, this bill -- this assessment against the  
20 S corporation has gone final. The company was suspended  
21 and remains in suspended status to this day.

22 Appellant as 100 percent shareholder of All  
23 Century, failed to report this income on his individual  
24 tax return for tax year 2008. Again, the law is clear.  
25 He must report his pro rata share of income from the

1 S corp.

2 But in this case, the facts and evidence show  
3 that he failed to do so. He admits he's the sole owner of  
4 the company. He admits that he alone controls the  
5 company, and he failed to report this income on his  
6 individual income tax return. And really, that's where  
7 the analysis should end.

8 Also when speaking about the tax year that the  
9 Office of Tax Appeals has jurisdiction over, 2008, I went  
10 back and took a look. Both victims, Mr. Rostami and  
11 Dr. Rashti, reported theft losses for the year at issue,  
12 2008, on their personal income tax returns, the other side  
13 to this transaction.

14 Revenue Procedure 2010-14 provides a method to  
15 report this loss for certain taxpayers who initiate  
16 deferred like kind exchanges on their Section 1031 but  
17 failed to complete the exchange because the qualified  
18 intermediary defaulted on its obligation to require and  
19 transfer replacement proper to the taxpayer.

20 The IRS knew that there was some abuse occurring,  
21 and they assisted taxpayers with this revenue procedure.  
22 Both the IRS and Respondent allowed Dr. Rashti's theft  
23 loss in the amount of \$1.4 million for tax year 2008.  
24 Both the IRS and Respondent allowed Mr. Rostami's theft  
25 loss in the amount of \$1.8 million for tax year 2008.

1           JUDGE MARGOLIS: Excuse me. Are these in the --  
2 in this record? Are these theft losses in the records?

3           JUDGE GAST: No. This is not. So, essentially,  
4 we would just -- this is just argument, not testimony.  
5 Unless you want to be sworn in, because this is not in the  
6 record.

7           MR. HUNTER: It's argument. I took a look at it.  
8 So it's argument.

9           JUDGE GAST: Okay.

10          MR. HUNTER: If you want to --

11          JUDGE GAST: You can proceed. We'll consider  
12 this as argument, not evidence --

13          JUDGE MARGOLIS: Okay. I just --

14          JUDGE GAST: -- just to be clear. Go ahead.

15          MR. HUNTER: Okay. So these two amounts added up  
16 comprises the unreported income from All Century in the  
17 amount of \$3.2 million. As to the second issue, rental  
18 real estate activity, Internal Revenue Code Section  
19 469(c)(2) provides that any rental activity is considered  
20 a passive activity regardless of the level by the  
21 taxpayer.

22                 Now, under federal law, certain real estate  
23 professionals are permitted to treat rental real estate  
24 activity losses as nonpassive. But California law  
25 explicitly does not conform to this treatment at

1 Revenue & Taxation Code Section 17561(a).

2 Therefore, for California tax purposes, rental  
3 real estate activities are passive activities, just like  
4 the activity reported on this K-1 from All Century to this  
5 taxpayer in the amount of \$473,000. These activities are  
6 per se passive regardless of the taxpayer's level of  
7 participation.

8 In this case, Respondent correctly  
9 re-characterized Appellant's reported flow-through losses  
10 in the amount of \$473,000 as passive. First, he didn't  
11 show material participation in rental activities when  
12 documents and information were requested at the audit  
13 stage and at the protest stage. Also, there's a phase out  
14 when the taxpayer's federal modified adjusted gross income  
15 reaches over \$150,000.

16 Here Appellant's 2008 federal modified adjusted  
17 gross income was revised to \$4.9 million after the All  
18 Century flow-through adjustments. His federal modified  
19 adjusted gross income was well over \$150,000. And this  
20 \$25,000 limitation is reduced to zero. So if this panel  
21 finds for the Respondent on the first issue, the second  
22 issue goes away.

23 As to the third issue, the accuracy-related  
24 penalty, it was mechanically and correctly applied in this  
25 case because Appellant underreported his taxable income on



1 his individual income tax return by greater than 10  
2 percent of the tax required to be shown on the return or  
3 \$5,000 for tax year 2008.

4 Appellant is an enrolled agent before the  
5 Internal Revenue Service, a real estate broker, a real  
6 estate agent, and he has not presented anything that even  
7 comes close to receiving advice from a tax professional to  
8 fail to report \$3.2 million in income, both at the  
9 S corporation level and on the individual return. He  
10 makes no showing of reasonable cause as a defense to this  
11 panel, no showing of substantial authority, and no showing  
12 of adequate disclosure, again, unreported income, and  
13 reasonable bases therefore. So the accuracy-related  
14 penalty was properly imposed in this case.

15 Just to buttress something here, Appellant  
16 testified in response to a question, what happened to the  
17 sales proceeds when the property was sold and looking for  
18 a replacement property. He testified, "You could not  
19 separate the money. It went into a pool of money. I had  
20 a lot of my money in there also," speaking in the voice of  
21 Appellant.

22 Commingling of funds is not allowed. It's almost  
23 like a client trust account for an attorney. It's not his  
24 money. It was Dr. Rashti's property and her brother's  
25 property, which was sold. And that property should be on

1 account, ready when they request money back if no  
2 replacement property is purchased. And that did not  
3 happen here.

4 And in response to that, the California  
5 legislature even passed a law in 2008. And it's in the  
6 Financial Code, Section 51000 through 51013. And  
7 reference was made in this exchange agreement that the  
8 intermediary can't invest the funds. Well, that's  
9 supposed to safeguard the client's money. The  
10 intermediary is held to a standard of care as a prudent  
11 investor. And they violate that standard of care when  
12 they exchange -- the exchange funds are knowingly  
13 commingled by the facilitator with the operating accounts  
14 of the facilitator or his personal funds.

15 Also Section 51011 says that a person engaged in  
16 the business of being a qualified intermediary shall not  
17 do the following: Make any material misrepresentations  
18 concerning any like kind exchange transaction; commit any  
19 fraud or crime involving fraud or misrepresentation;  
20 misappropriation of funds; materially fail to fulfill his  
21 contractual duties to a client to deliver property or  
22 funds to the client.

23 Any person -- a person who violates this division  
24 is subject to civil suit in a court of competent  
25 jurisdiction. This creates a private right of action for

1 a taxpayer or a client that list the services of a  
2 qualified intermediary and does not receive their money  
3 back.

4 JUDGE MARGOLIS: What were you reading from  
5 again, Mr. Hunter?

6 MR. HUNTER: I'm reading from California  
7 Financial Code Section 51011 and 51013.

8 So in other words, you had qualified  
9 intermediaries performing 1031 exchanges, and the market  
10 was going bad. And some intermediaries could not provide  
11 the client their money back upon request. This -- the  
12 California Legislature responded. She sued him. She  
13 obtained a default judgment. She's still trying to  
14 collect, no matter what this exchange agreement says on  
15 Appellant's or All Century's unfettered right to invest  
16 her funds whichever way it saw fit.

17 So I think that's very important here when the  
18 evidence and testimony showed that the funds were  
19 commingled. At the audit level information was requested  
20 to attempt to trace the funds inside of All Century  
21 Incorporated, and no documents were provided.

22 With that, Respondent's action must be sustained.

23 JUDGE GAST: Thank you.

24 Mr. Weiss, you will have 30 minutes for your  
25 closing.

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CLOSING STATEMENT

MR. WEISS: Okay. Well, let me start out by saying the -- I don't believe the Financial Code Section 51011 and 21013 was in -- I don't think it was in the briefs. So at a minimum, we would like an opportunity to look at that and respond because he's bringing up items that he had -- they had plenty of time to put it in the brief.

Now they're bringing it up and, you know, any due process would allow us to respond to that. Because off the top of my head, I'm not aware of those sections. And, you know, I'm not, you know, disputing what Mr. Hunter says. I'd just like to have an opportunity to look at it. And, you know, at least a time period to --

JUDGE GAST: And as I told Mr. Hunter, we will consider what he said about the theft and all that from Dr. Rashti as argument and not evidence.

MR. WEISS: Okay.

JUDGE GAST: It's not in the record, so it's not evidence.

MR. WEISS: Okay. All right. I was going to say the same would apply to the theft loss. I mean, I was expecting Dr. Rashti to be here, but she's not here. And, you know -- I mean, if I would have known, maybe I would have subpoenaed her myself because they listed her as a

1 witness. She's not here, and I don't know why she's not  
2 here. But it is what it is. So let's go further.

3 I think Mr. Boodaie to be -- you know,  
4 Mr. Boodaie's conduct, you know, it was not perfect.  
5 However, there's a lot of offsets, and he's entitled to  
6 offsets and basis for what he gave -- what he paid and  
7 what he gave back. Initially, they accepted the --  
8 there's no evidence to refute that they did not accept  
9 these documents.

10 In fact, the evidence on the contrary from  
11 Mr. Darvish said that they were paid off at least  
12 somewhere around \$2,100,000. I don't know exactly how  
13 much was paid off on the Laughlin property. But, you  
14 know, Mr. Boodaie paid -- loaned \$2.6 million in a very  
15 short time period. And with respect to -- this is a  
16 little bit different. You know, the tax year as an  
17 accommodator, you got to look at it this way almost like  
18 the taxpayer.

19 The way it works is, even though you receive  
20 money in one year, say late 2008, he really -- most  
21 accommodators do not return the money after 180 days.  
22 That's pretty much the practice in the community, and they  
23 earn interest. And they were credited with interest and  
24 they were given money back. But the point is, at the  
25 earliest, Mr. Boodaie could not have returned the money

1       until around March 2009.

2               So it's really part of one transaction. So he  
3       did give funds. I mean, there is wired funds, unrefuted,  
4       that he paid for this, and I think he should be entitled  
5       to an offset or some sort of basis to offset that amount  
6       of money. And that -- that has not been refuted. We have  
7       a witness here that testified that it was paid.

8               I think with respect to the litigation,  
9       Dr. Rashti is not here to verify the litigation. I don't  
10      know why she continued with the lawsuit. She's probably  
11      mad at him. But the point is she was paid. She settled  
12      with the accountant, and also, she received these items.  
13      And honestly, I don't know why she -- she continued on.  
14      The testimony Mr. Boodaie is they didn't want to deal with  
15      it.

16              We didn't get into this. Boodaie had a lot of  
17      problems at the time, and it went to default. And I -- I  
18      think that, you know, that's -- there's no, you know,  
19      there's no evidence that she wasn't paid in full. She  
20      pursued a lawsuit. And, really, his lack, you know, his  
21      lack of participation, he tried to explain. And I think  
22      that should not be considered because she did receive  
23      funds.

24              With respect -- so it's a little bit different.  
25      If this was a normal transaction that could close by

1 12/31/2008, I could accept, you know, the Franchise Tax  
2 Board's position. But as you know, when you -- let's say  
3 Mr. Rostami and Rashti would have went and bought an  
4 exchange property in 2009, they would have reported that  
5 on their 2008 return, because I think it's all part of one  
6 transaction.

7           You report the sale with the 1031 exchange. You  
8 report it on your 2008 return, even though the property  
9 was not bought until 2009. You know, if it's bought  
10 within the 180 day -- identified within the 45 days and  
11 closed within the 180 days. So I think that's a very  
12 important factor that's been overlooked because it's  
13 really one transaction. And it's really still open.

14           And I -- and I think that he, you know, he did --  
15 he gave value, notes. Yes, probably, you know, maybe  
16 there would have been a better way for him to do that, but  
17 he did give them money. You know, it's unusual that a  
18 brother and a sister Mr. -- Dr. Rostami didn't pursue  
19 litigation. He didn't go to a judgment.

20           He withdrew. You know, from the same assumptions  
21 they're making, that means he was satisfied. And he  
22 actually -- he put up more money than she did. I believe  
23 he put up close to \$2 million, and she put up, I believe,  
24 about \$1.2 million.

25           So the fact that he withdrew, if you want to go

1 that way, then that's an assumption. He was paid. So I  
2 would take that position. Let's see what else. I -- I  
3 think that would be -- with respect to the penalties, let  
4 me get to that issue. But let me get to the second issue,  
5 the \$25,000 passive loss reduction. I agree with the  
6 Franchise Tax Board.

7           Unfortunately, the State of California does not  
8 have a real estate professional category. And if there  
9 was a real estate professional category, it would be  
10 deductible. But it is limited, and his income -- unless,  
11 you know, if -- if the judge -- if the three of you decide  
12 for us, that issue goes away because his -- the losses  
13 would more than offset that, and he would get that. But I  
14 agree. The state of the law is that California is limited  
15 in its carryover. So whatever is there, I guess, would be  
16 a carryover. It would be a passive loss carry over, and  
17 it would be used at the time there's an ultimate  
18 disposition of the property. I don't know the R&T  
19 section, but it's 469 of the Internal Revenue Code.

20           So going on. The penalties, I believe  
21 Mr. Boodaie acted in good faith. He believed in his mind  
22 that he had satisfied the obligation. He did not -- they  
23 accepted. There's no evidence to the contrary, but  
24 Dr. Rashti -- I guess she's a dentist. Dr. Rashti and her  
25 husband and Dr. Rostami accepted the assignments. So in



1 his mind he believed he satisfied.

2 In his mind he believed Section 5.1 of the  
3 exchange agreement allowed him to have other investments.  
4 In his mind he paid a lot more than what they gave him.  
5 So I don't think there should be any penalty. I mean, I  
6 think he acted in good faith. And I think that he, you  
7 know, there's not -- he wasn't reckless. He didn't have  
8 to -- listen, the penalty should be sustained if he didn't  
9 give them back a dime.

10 But he gave them back all that, and, you know, he  
11 tried to make it right. Yeah, he had problems. Yes, he  
12 had health issues, and those are issues that should be  
13 taken into consideration in any penalty. If you have  
14 problems, clearly, marital problems and health issues are  
15 a factor in an accuracy-related penalty irrespective of  
16 the fact that he's an enrolled agent. When you have  
17 problems, you have problems. Everybody goes through  
18 those.

19 So I think that's really the extent of my  
20 argument. And I want to thank you gentlemen for  
21 listening. And other than the issue of the financial, you  
22 know, if that's not going to be evidence, then, you know,  
23 I would -- whatever is going to happen I'd at least like  
24 an opportunity to look at that and respond, if you guys  
25 want. Otherwise, if it's excluded, it's excluded. We

1 won't have to deal with it.

2 JUDGE GAST: Thank you.

3 I'm going to go to my panelists. Any final  
4 questions, Judge Margolis?

5 JUDGE MARGOLIS: No.

6 JUDGE GAST: Okay. Judge Tay?

7 JUDGE TAY: Maybe just one quick question for  
8 Franchise Tax Board. Is there any authority to say -- to  
9 show that a shareholder of an S corp cannot challenge a  
10 partnership level adjustment -- or I'm sorry -- an S corp  
11 level adjustment?

12 MR. HUNTER: No. It becomes a substation issue,  
13 Judge Tay. So it's akin to a -- an S corporation  
14 shareholder receiving an inaccurate K-1. Let's say the  
15 K-1 reflects income that passes through to the individual  
16 shareholder of a million dollars. And these shareholders  
17 take the position that that's incorrect. My pro rata  
18 share of income is only \$500,000. Well, then the  
19 individual shareholder is obliged to self-report income of  
20 \$500,000, clearly mark on the tax return why that taxpayer  
21 is doing so and substantiate their tax reporting position  
22 at the individual level.

23 In this case, it's exactly what Appellant is  
24 attempting to do. Because the S corporation liability  
25 both for franchise tax purposes and the unreported income

1 has gone final. With the same documents being represented  
2 at the appeal level in that protest, this is the -- not  
3 the other side of the coin -- but the natural consequence  
4 of this unreported income at the individual level.

5 It flows through the S corp return. It's merely  
6 a reporting return. The assessment occurs at the  
7 individual level, and that's what we're discussing today.  
8 So it's -- it's not a second bite at the apple, it's  
9 substation from the standpoint of the individual taxpayer.  
10 And I would also like to --

11 JUDGE MARGOLIS: So in other words, he's not  
12 barred by contesting it here is what you're now saying.  
13 But just because he didn't contest it at the corporate  
14 level, he can still contest it at the pass-through level.

15 MR. HUNTER: Well, he had the -- I'm sorry. He  
16 had every opportunity to contest it at the S corp level.  
17 But because --

18 JUDGE MARGOLIS: He's not barred if he didn't do  
19 it, though.

20 MR. HUNTER: I'm not saying he's barred. My  
21 statement is when that judgement as been -- I'm sorry.  
22 That assessment has gone final in terms of the  
23 S corporation unreported income that flows through to him,  
24 that's the procedural status of the S corp determination.

25 And we are here today discussing Appellant's

1 position. Why? To sum it up in this case, that the  
2 victims or Dr. Rashti and Mr. Rostami did receive a  
3 portion of their money back in a later year. But I would  
4 like to pause it on this panel. Both the S corporation  
5 tax return and individual tax return have a box checked.  
6 They report on a cash basis method of accounting. There's  
7 no accrual here. There's no offset.

8 We're within the confines of tax year 2008. If  
9 there was a deduction by All Century for return of the  
10 money in a later year, that's on a separate return.  
11 There's no appeal filed for 2009 or 2010, any year up to  
12 the present.

13 One last point, if I could be heard, Judge Gast?

14 JUDGE GAST: Go ahead.

15 MR. HUNTER: So a statement was made why --  
16 again, just speculation. Why would Mr. Rostami drop his  
17 lawsuit if he wasn't fully paid? Well, again, for  
18 argument sake, a victim could have taken a theft loss.  
19 But the way it works on the Internal Revenue Code which  
20 California law conforms to, if you take a deduction for  
21 theft loss in year A, but you are compensated for that  
22 loss in year B, C, or D, you recognize that compensation  
23 as income in year D.

24 You can't take the loss without reconciling that.  
25 However, that will be tax treatment for these individuals

1 when the time occurs. We're focused on 2008 here. I just  
2 wanted to address how that operates.

3 JUDGE GAST: Okay. Thank you. All right. I  
4 think with that that concludes the hearing. With --  
5 sorry.

6 MR. BOODAIE: I apologize. Can I say the last  
7 word also myself?

8 JUDGE GAST: Yes. Yes. Go ahead.

9 MR. BOODAIE: You want to say something?

10 MR. WEISS: Yeah. I'm just going to respond. I  
11 think that -- I think it's all open. I think it's akin to  
12 a -- the year is open; the year is open. I don't know if  
13 the assessment is final. I think that -- I think that  
14 everything related to this assessment of flow through, you  
15 know, I'm not sure the Franchise Tax Board on a 90-day  
16 letter to the tax board. It's open. You can bring in  
17 mitigating stuff. So I'm not aware of that law, number  
18 one.

19 And number two, I think the judges -- you Judges  
20 have to consider the 1031, and it's really one transaction  
21 open until the 180 days are closed. And that's why I  
22 think everything should be considered back to 2008, much  
23 like the reporting requirement. Granted I can't give you  
24 a cite off the top of my head. But I mean, I know there's  
25 federal law about mitigation and items open. I just don't

1 have them off the top of my head.

2 But, clearly, the transaction is open. And if it  
3 was -- we didn't -- if he handed back the money in the  
4 next year, it's the same as -- he gave the notes instead.  
5 So that's why I think -- that's why you gentlemen should  
6 consider it from our perspective.

7 Mr. Boodaie, make it quick.

8 MR. BOODAIE: Thank you for your patience.  
9 You're honest. I will make it very short in regard to  
10 three items. Number one, is that if you look at my tax  
11 return, whenever I received the money, I call it a gross  
12 income to me. And whenever I pay it was my cost. So at  
13 the end of the day, the very quick example is like this.

14 If a person is buying something from me that I  
15 pay \$2,000 for it, and this person is giving me a  
16 thousand, to me, accounting-wise I lost a thousand  
17 dollars. So to this lady and her husband, this is Rashti  
18 and the Dr. Rostami, the money that was hard cash that was  
19 paid from a corporation, was in excess of what they  
20 invested with me. So as accounting-wise, very simple.

21 They gave me something, and I gave them something  
22 back. Difference is my loss. I don't know how I make  
23 money. I've been doing accounting also for many years,  
24 but my main practice before was real estate. When they  
25 paid me \$3 million, I give them over \$4.7 million back,

1 hard money that came from, this is a loss to me. All my  
2 accounting that I learned in New York is a garbage. I'm  
3 sorry to say that. But to me I lost \$1,700,000.

4 Cause number two or item number two, he said  
5 about the loss in 2008. The loss was enacted after the  
6 real estate debacle. I'm talking about the 1031 exchange  
7 loss. Before, those days 2004, 2005 that I start this  
8 business, you did not even need to have any license or to  
9 be a broker. You could be an accommodator. Any person.  
10 Even a person who that didn't have a high school diploma  
11 could have intermediary.

12 The law that he's talking about is after the  
13 fact, that after these things happened, and the State of  
14 California changed the law. At the end, to me I wanted to  
15 end it like this. That I don't want to brag or whether to  
16 say how much I had a big net worth of assets or wealth and  
17 all of them I lost. My own money I lost also. I don't  
18 know how I made money if I lost all of my money.

19 The house that I owned that I don't want to brag  
20 about it how much it cost because I'm living in a one  
21 bedroom. How did I make \$2 million that he is claiming?  
22 I lost every single money that I made for the last 4 years  
23 here in California. How could I make money? What he's  
24 claiming? At the end, Your Honors, if you look at the  
25 money -- how the money came from, the \$4.7 to them in lieu

1 of the \$3 million? Accounting-wise I lost a \$1,7000,00.

2 Thank you too, Your Honors. That's all I want to  
3 say.

4 JUDGE GAST: All right. Thank you very much.  
5 This concludes the hearing. The judges will meet and  
6 decide the case based on the documents and testimony  
7 presented and admitted as evidence. And we will aim to  
8 send the parties our written decision no later than 100  
9 days from today.

10 And now the case is submitted, and the record is  
11 closed. Thank you.

12 (Proceedings adjourned at 12:29 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 17th day of January, 2020.

\_\_\_\_\_  
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