

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
RICHARD KHRAICH,) OTA NO. 18012026
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) APPELLANT.
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, December 18, 2019

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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IN THE MATTER OF THE OF,)
RICHARD KHRAICH,) OTA NO. 18012026
APPELLANT.)
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Transcript of Proceedings, taken at
12900 Park Plaza Dr., Cerritos, California, 90703,
commencing at 1:06 p.m. and concluding
at 1:43 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 DANIEL CHO

Panel Members: ALJ LINDA CHENG
ALJ NGUYEN DANG

For the Appellant: RICHARD KHRAICH

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

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I N D E X

E X H I B I T S

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

OPENING STATEMENT

	<u>PAGE</u>
By Mr. Khraich	7
By Mr. Lambert	20

REBUTTAL STATEMENT

	<u>PAGE</u>
By Mr. Khraich	24

1 Cerritos, California; Wednesday, December 18, 2019

2 1:06 P.m.

3

4 JUDGE CHO: Let's go on the record.

5 This is the appeal of Richard Kraich, OTA Case
6 Number 18012026. Today is December 18th, 2019. The time
7 is approximately 1:06 p.m. We're holding this hearing in
8 Cerritos, California.

9 My name is Daniel Cho. I'm the lead
10 Administrative Law Judge in this hearing. With me are
11 Administrative Law Judges Linda Cheng and Nguyen Dang.
12 Can the parties please introduce and identify yourselves
13 for the record, beginning with the Appellant.

14 MR. KHRAICH: Richard Kraich, R-i-c-h-a-r-d,
15 K-h-r-a-i-c-h.

16 JUDGE CHO: Thank you. Department.

17 MR. LAMBERT: My name is Scott Lambert. I'm
18 representing the California Department of Tax and Fee
19 Administration. To my left is Lisa Renati, and to her
20 left is Dana Flanagan-McBeth.

21 JUDGE CHO: Thank you.

22 The issue in this appeal is whether adjustments
23 are warranted to the determined measure of tax.

24 With respect to the evidentiary record, CDTFA has
25 provided Exhibits A through C. Appellant did not object

1 to these exhibits. Therefore, we'll be admitting these
2 exhibits into the evidentiary record.

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

5 JUDGE CHO: Appellant has submitted Exhibits 1
6 through 5. CDTFA has not objected to these exhibits, and,
7 therefore, we'll be admitting these exhibits into the
8 evidentiary record as well.

9 (Appellant's Exhibits 1-5 were received
10 in evidence by the administrative Law Judge.)

11 JUDGE CHO: Mr. Khraich, originally, we gave you
12 30 minutes to provide your presentation because you have
13 witnesses. But it looks like there are no witnesses at
14 this point in time, would 15 minutes be okay for you.

15 MR. KHRAICH: Yes. Thank you.

16 JUDGE CHO: Great. And if you don't mind, would
17 you stand, and I'll put you under oath. Please raise your
18 right hand.

19

20

RICHARD KHRAICH,

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

24

25

JUDGE CHO: Thank you. Have a seat.

1 MR. KHRAICH: Thank you. Can I take my jacket
2 off?

3 JUDGE CHO: Sure.

4 MR. KHRAICH: I ate downstairs and it smells like
5 fried food, the whole cafeteria.

6 JUDGE CHO: No problem. All right. Thank you
7 very much. So when you're ready, please begin.

8

9

OPENING STATEMENT

10 MR. KHRAICH: Okay. I've -- I've kind of
11 prepared a statement, but I also have a description of my
12 business and why these deductions should be warranted. So
13 I'll start with my statement to basically explain how we
14 got to this point and also explain how my business
15 operated to justify why I'm disputing the tax amount I'm
16 being asked for.

17 Thank you for allowing me to appear here today.
18 It's a day that I've been actually waiting for a long
19 time. It's -- my business closed a long time ago, and it
20 seems like this has been a nightmare haunting me ever
21 since. So I really appreciate being heard today.

22 I'd like to start the chain of events as I recall
23 them and state some facts during those events. When I
24 received the audit notice from Mr. Medina, I made sure
25 that all my files for the period requested were available

1 and labeled by month and year. So I also gave Mr. Medina
2 access to my computer at work to access any information he
3 needed, as all sales were saved on a software that was
4 being used at the time to process automotive sales.

5 During Mr. Medina's time at my office, I was
6 always available and answered any questions he had. Also,
7 during his visit, he was given access to all voided
8 reports of sale known as RS, due to sale cancellations and
9 buyback deals. The buyback deals were due to first
10 payment default or down payment reversal.

11 After some time had lapsed, I received a call
12 from Mr. Medina stating my ledger of sales made and the
13 filings were inconsistent. At that time, I made it clear
14 to Mr. Medina that I was filing the completed sales only
15 and omitting any canceled or repurchased sales from my
16 filings due to first payment default or down payment
17 reversal. I urged Mr. Medina to return to my office and
18 take accurate account of those sales. At the time,
19 Mr. Medina stated he would be out of the office for a
20 period of time because he was getting married and will get
21 in touch with me when he returns to work.

22 The following call I got from Mr. Medina was that
23 he has been promoted or reassigned -- I do not recall at
24 this time -- to a different division and will not be
25 completing my audit. More and more time had lapsed, and I

1 received a visit from two gentlemen, one of whom was
2 Mr. Flores at a location I had provided after I shut down
3 my business.

4 I was told my audit had been completed using data
5 received from the DMV, and I was responsible for the
6 difference. I was shocked and frustrated as the location
7 I was being visited at I was being evicted out of. I had
8 lost my home of eight years, my business has been closed
9 and, I was using that location as a last resort to
10 liquidate any vehicles or anything that I had prior to
11 closing down the rest of my business.

12 The records at that time were stored at that
13 location, which I explained to Mr. Flores that everything
14 was boxed up and stored with furniture and computers and
15 everything that was removed from the retail location that
16 I once rented and operated out of. At the time I was
17 given an unrealistic period of time to produce records in
18 an organized matters. I do not blame the Franchise Tax
19 Board for where I was in my life or how organized I was at
20 the time. I got myself there by following a failing
21 business model, and I drained my savings and drowned in
22 debt over a short period of time.

23 My argument from day one was they used general
24 data from the DMV to conclude my audit because no one
25 wanted to do the actual work. And when I gave -- and when

1 I was given a chance to reconcile, I was given days when I
2 was scrambling to keep my family out of the streets.

3 Every time a report of sale is used, as a dealer
4 I have five business days to report that to the DMV. Once
5 a sale has concluded and fees are posted, the title, the
6 registration transfers ownership. But every report of
7 sale that I initiate has to be reported within five days,
8 otherwise a penalty is imposed on the sale.

9 The sales that were canceled and never completed
10 require the dealer to maintain a list of canceled RSs --
11 physical RSs. RS stands for report of stale in their
12 place of business. So if the DMV was to audit their
13 ledger, they're able to account for those canceled report
14 of sales.

15 Now, I'd like to stop and emphasis a little bit
16 on the way my business operated and the type of lenders
17 that I used to operate my business. I was able to locate
18 a contract for one of the lenders I used, which I
19 submitted as Exhibit Number 4. And in that contract, it
20 clearly states that as a dealer, I will be obligated to
21 purchase back any contract if the buyer does not post
22 their first payment or if their down payment does not
23 clear my bank account.

24 And that was the case for other lenders that I
25 used at the time. I was operating as a small used car

1 dealer in a market where the only clients that visited my
2 location were clients seeking credit that wasn't provided
3 at your typical car dealer. So the only lenders that we
4 can use for that particular borrower put a stipulation on
5 the owner of the business as the sole proprietor. So I
6 had the responsibility of repurchasing those contracts.

7 Now, my understanding of how a California used
8 car dealer operated and was responsible to post sales tax
9 was on completed sales. And at any given time if we are
10 to buyback a contract or have a repurchase, that sales tax
11 wouldn't be due. However, any DMV fee posted to the DMV
12 would carry on with the title of the vehicle. In other
13 words, I wasn't able to apply for a refund from the DMV.
14 So that's how I operated and posted fees at my dealership.

15 Now, in regards to the reports of sale, every
16 dealer is given a numeric sequence of report of sales, and
17 that's how the DMV keeps records on which vehicles my
18 dealership sold. And that's the report that the Franchise
19 Tax Board used to compile a list of the vehicles that I
20 actually sold and got paid for and needed to pay sales tax
21 on. But that's not the case here. The case here is that
22 that report is just to account for every report of sale
23 issued to me from the DMV.

24 And I had to -- any time I used one, whether it
25 was a sale that was concluded or not, I had to report that

1 within five days so they can add it into their system.
2 Now, why would I use a report of sale and not conclude a
3 sale? The lenders at the time were only funding a
4 contract if provided with a registration showing them as
5 lien holder. In other words, I could not initiate a
6 contract and get paid on it until that vehicle was
7 registered.

8 So I would go and register that set vehicle
9 before -- in some cases, before I even gave delivery to
10 the person just to secure funds, and then ask them to come
11 and pick up the vehicle once the lender has approved their
12 application and funded that deal. And then in some cases,
13 those were canceled because the lender either found fraud
14 or found that the applicant doesn't make the money they
15 stated on their application. Whatever, the case might be.

16 Now, on the repurchases, those typically happen
17 on -- on the first payment that the borrower made, or if I
18 received the bounced check on a down payment, I had to
19 report it to them that that contract was invalid because
20 the payment bounced. So I was then asked to repurchase
21 the contract by form of ACH. So they would -- if I had
22 money coming from them, they would take back the funds for
23 the contract that they're making me repurchase.

24 So there was no -- in most cases, there were no
25 actual check that I had written. So I supplied the one or

1 two that I had access to as -- as part of the evidence
2 that I provided. But a lot of times it was a -- it was
3 pretty much like a reconciliation of one sale to the
4 other. And those repurchases happened because the
5 vehicles themselves had left my lot.

6 So on anything that was canceled, it was canceled
7 prior to the delivery. Anything that was repurchased was
8 after the delivery. The person had already had the
9 vehicle, and I was asked to buyback that contract. Now,
10 in most of these cases, we never recovered the vehicle.
11 Because we would hire a repo company, which I've submitted
12 documentation on a sample of a repossession order that we
13 gave, and the company didn't guarantee actually finding
14 that vehicle.

15 In a lot of cases, the address that was given on
16 the application was incorrect, or the phone number that
17 was given on the application was disconnected. So -- so
18 in a lot of cases, we never recovered the asset or the
19 product that we actually sold. So I had to go and pay
20 back money that I was funded on that contract.

21 My frustration from day one and my plea from day
22 one was for the Franchise Tax Board to audit my actual
23 files that I made available at that time. That I had
24 resources to hire accountants to work on them with the
25 auditor. I had resources to do a lot of things. But

1 their -- their decision to conclude their audit came at a
2 time when my business had already been closed, and I was
3 in no financial position to fight it or dispute it or do
4 anything about it.

5 And we're talking almost two years. We're not
6 talking from the first time I pleaded with Mr. Medina to
7 come back to my business, it was in 2013, and in 2015 was
8 when I was told that my audit was final, and this is my
9 responsibility. And I believe when I met with Mr. Flores
10 at the Franchise Tax Board office in Riverside, I visited
11 after being frustrated from not getting a clear answer on
12 what's going, I was told that I had better luck just
13 filing an appeal than going back and redoing my audit from
14 scratch.

15 Well, I later realized that that was better luck
16 for the person that was working on the audit not
17 necessarily better luck for me. And here we are today.
18 So I hope that I gave a brief explanation on the events
19 and the nature of my business, and why I feel that actual
20 credits were never warranted.

21 JUDGE CHO: Okay. Thank you very much.

22 MR. KHRAICH: Thank you.

23 JUDGE CHO: CDTEFA, do you have any questions for
24 the witness?

25 MR. LAMBERT: We do not.

1 JUDGE CHO: Panel members, do you have any
2 questions, Judge Cheng?

3 JUDGE CHENG: No questions.

4 JUDGE DANG: Just a brief question for
5 Mr. Khraich. I noticed you referred to the Franchise Tax
6 Board during your presentation multiple times. I believe
7 you are actually referring to the California Department of
8 Tax and Fee Administration?

9 MR. KHRAICH: The Board of Equalization. I'm
10 sorry.

11 JUDGE DANG: Okay.

12 MR. KHRAICH: I saw FTB on the documents that I
13 was receiving, and that's why. I apologize.

14 JUDGE DANG: Okay. Thank you. Also one
15 follow-up question for you. It appears a large portion of
16 the audit was computed from your differences between your
17 own recorded sales, and not from the DMV records?

18 MR. KHRAICH: Correct. So we have -- we're
19 supposed to carry what's called a ledger. DMV requires us
20 to carry a ledger to, again, document any report of sale
21 that's being used. So the -- the ledger that I had in my
22 office, I made available to Mr. Medina when he visited my
23 office, and that's what I'm assuming he used to come up
24 with those figures.

25 JUDGE CHO: Okay. And you're saying there are

1 inaccuracies in those records, so you did not investigate
2 them thoroughly?

3 MR. KHRAICH: So basically, the ledger describes
4 any sale that we initiate. Every sale that's concluded
5 had a file in my office with an executed contract, a
6 completed registration, a copy of the title showing that
7 the vehicle was transferred to the buyer and has the lien
8 holder as a -- as a -- I can't think of the word now.
9 Usually on the bottom right of the title of a vehicle,
10 there's a section for the lien holder.

11 So every one of my files had the original
12 application, the executed contract, the funding figures,
13 basically, the closing figures that I got from funding
14 that contract, a copy of the title showing that the new --
15 that the buyer did transfer -- did get their name on title
16 and the lien holder. So that's what we call a completed
17 sale, a funded-closed sale. So I had those available for
18 him. And then of those close-funded sales, I had a
19 separate section that had the repurchases.

20 JUDGE DANG: They were not recorded on this
21 ledger?

22 MR. KHRAICH: Correct, sir. Everything was
23 recorded on the ledger. Anytime --

24 JUDGE DANG: But even if it was a buyback, it's
25 not recorded on that same ledger?

1 MR. KHRAICH: No. Buy backs were not included in
2 my filings.

3 JUDGE DANG: Okay.

4 MR. KHRAICH: And any canceled RS -- any RS that
5 was initiated that never led to a sale was never included.
6 It was included on my ledger because I have to keep
7 account of any report of sale I used, but it wasn't filed
8 as a tax sale.

9 JUDGE DANG: And you're no longer able to produce
10 the buy-back records.

11 MR. KHRAICH: Correct. So --

12 JUDGE DANG: Okay.

13 MR. KHRAICH: -- and we can thank the City of
14 Riverside for that. I have two files -- two cases with
15 the City of Riverside. One from December of 2012 for my
16 mechanic shop being robbed. And then one that I provided
17 the file number and the title of the actual -- I had --
18 once I moved out of the City of Riverside completely, I
19 knew that I was going to need those records and computers
20 at one point, so I had ownership -- my dealership at the
21 time I owned it, owned a trailer that you pull behind the
22 car, a box trailer.

23 So I put everything in it, and I placed it in
24 front of my parents' house in Riverside. And a couple of
25 years -- after a year after -- after it was sitting in

1 front of their house for about a year and a half, it was
2 stolen with everything in it. And I provided a police
3 report number and a copy of the title of the actual vessel
4 that I owned that I was storing everything in.

5 JUDGE DANG: Okay. Thank you so much.

6 MR. KHRAICH: You're welcome.

7 JUDGE CHO: I have just a quick question from me.
8 Is there any other way to obtain evidence of the buy
9 backs? For example, did you use a business account which
10 you still have access to, which is probably an online
11 record or some sort?

12 MR. KHRAICH: So my business account was with
13 Bank of America, and it was closed somewhere around the
14 time of December 2014 when I filed my bankruptcy. My
15 account was overdrawn, and I couldn't maintain it. And I
16 don't know if they will allow me to get records from that
17 far back, but a lot of these repurchases were reconciled
18 with other -- in other words, they were reconciled with
19 other funding.

20 So if I had \$10,000 coming in from Westlake
21 Financial, for example, which is a company I was using to
22 fund loans, and I had a repurchase for \$7,000, they
23 actually reconciled on that invoice. And that invoice was
24 placed in the file that closed showing that the funds
25 received from that sale were short because of this

1 buyback, for example.

2 Everything was reconciled in every sale. Now, in
3 the events that I actually wrote a check back to the
4 lender for -- for that buyback, that would have appeared
5 on my bank statement, which I provided a sample check that
6 I would treat for the file. When I was dealing -- I
7 believe shortly after -- I can't recall now if it was 2015
8 or 2016, I was dealing with a person via e-mail that asked
9 me for proof of a few items -- a few files that were
10 purchased back, and I was able to retrieve those documents
11 and e-mail them. And then when I got to this point, I
12 went back to archive the e-mails and printed those copies
13 again to present them, otherwise, I wouldn't even have
14 those copies.

15 JUDGE CHO: Did you try going to the credit union
16 that you used to ask for their copy of the transaction?

17 MR. KHRAICH: I have -- I have only made an
18 attempt. I -- my only attempt was to go back to my
19 account executive which one of the lenders that I had a
20 personal relationship with at the time. He visited my
21 home and visited my dealership often. Because of a lack
22 of a contact, his personal phone number is disconnected.
23 And I tried to reach him at the company by sending him
24 e-mails, but it got rejected. And I tried to call the
25 company, but he doesn't work for them anymore.

1 So my attempt is to call somebody in their
2 business office to provide records. I dealt with four
3 banks at the time. So I would have to make an attempt to
4 call every single one of those and see if they could
5 provide me of any records of my buy backs.

6 JUDGE CHO: Okay. Thank you. Those are all the
7 questions I have. So let's move on to CDTFA.

8 Are you ready to do your presentation?

9 MR. LAMBERT: Yes.

10 JUDGE CHO: Please begin when you're ready.

11

12

OPENING STATEMENT

13

14 MR. LAMBERT: All right. In this particular
15 case, the taxpayer operated a used car dealership.
16 Actually, two locations one in Riverside, one in San
17 Bernardino. The records that they provided, they did not
18 have a sales journal, which we would typically see for
19 this type of business.

19

20 They did have a record of sales for a period of
21 time for both locations. So what we do was obtain
22 information from the Department of Motor Vehicles. They
23 can provide us with the report of sale information
24 basically, when the dealer fills out the report of sale.
25 They submit it to the DMV. DMV maintains that information
26 by dealer number. We're able to take the license fee.

1 And based on that, we can determine what the selling price
2 of the vehicle is, and that's what we did in this case.

3 We obtained the information from the Department
4 of Motor Vehicles and essentially compared it to what was
5 reported and came up with a difference. The audit working
6 papers were provided to the Appellant. He did express
7 disagreement at that time that there were various things,
8 which would be unwinds. And basically, an unwind is when
9 you make a sale but there's no title or possession that
10 transfers, and you just basically undue the paperwork.
11 There's no transaction here.

12 That's not what we're talking about here because
13 the information that we used was the Department of Motor
14 Vehicle report of sale information. So unwinds should not
15 be an issue in this audit. There's also what's called
16 roll backs. So you would fill out the paperwork, but the
17 vehicle comes back before the DMV processes or transfers
18 title to that. And I don't believe that to be an issue.

19 There's also what's called "repossession". And
20 that -- that's a possibility in this case. The one
21 contract that's been provided here is what the Appellant
22 said. In this particular case, which is if the buyer does
23 not pay either the down payment or make the first payment,
24 the dealer can be responsible for that contract. And so
25 they would have to essentially pay back the money to the

1 loan company.

2 So what I -- it becomes difficult when you have
3 repossessions because there's a formula that you have to
4 calculate and there are certain things that you need to
5 know. And without that information, it's difficult to
6 decide what the bad debt allowance would be on any
7 particular transaction.

8 And what I would point out is -- taxpayer didn't
9 file any bad debt claims on their income tax returns, nor
10 did they claim it on their sales and use tax returns. So
11 I notice in his -- in the Appellant's Exhibit B, the sales
12 contract, if you look at B- 3, which is the second page of
13 the sales contract. If you look down on the left-hand
14 side down to item G, which is cash, it shows that the
15 customer paid \$3,500. I'm assuming that's cash.

16 Generally, if there was a check that was written,
17 it would be in column or Item F, "Other," and would show
18 the check that's being received. But in this particular
19 case there would be \$3,500 that the customer is paying in
20 cash. So even if you had a repo. You would have to take
21 that into account and then also the value, if you got the
22 vehicle back, you would have to take the value of that
23 into account. And all of these things are unknown at this
24 particular time.

25 So when they did the audit, it was completed in

1 March of 2015. It went through the review process, which
2 at that time the district principal auditor would contact
3 the Appellant. And so they did contact him. He said he
4 had additional information that he wanted to provide. The
5 auditor then met in person with the Appellant on
6 May 11, 2015, which is documented in a memo to the
7 district principal auditor on May 20th of 2015. And this
8 is in Department's Exhibit 1.

9 And at that time, the Appellant did not bring any
10 additional records with him in order to show that -- what
11 value for bad debts, roll backs, et cetera, would be
12 allowable. So the audit went further to the appeals
13 process, which is to our Appeals Bureau. So basically,
14 the Department has no information at this time in order to
15 make any additional adjustments for bad debts, roll
16 backs -- well, those would be the two items. There is no
17 information in our possession to make that adjustment.

18 So I'm available for questions.

19 JUDGE CHO: Thank you.

20 Panel members, do you have any questions?

21 JUDGE CHENG: No questions.

22 JUDGE DANG: No questions.

23 JUDGE CHO: I don't have any questions either.

24 Then in that case, Appellant, you have five minutes on
25 rebuttal.

1 MR. KHRAICH: Okay. Thank you.

2

3

REBUTTAL STATEMENT

4 MR. KHRAICH: So going back to what -- I'm sorry.
5 Remind me of your last name?

6 MR. LAMBERT: Lambert.

7 MR. KHRAICH: -- what Mr. Lambert just stated. In
8 regard to one statement, he mentioned the unwind process
9 that an RS would be used for but would not have been used
10 in the calculation because it's an unwind, and it would
11 not have popped up on that report they got from the DMV.

12 If I write an RS on December 1st, I have until
13 December 5th to actually mail a clip of that report of
14 sale to the DMV to record that sale in their system. Now,
15 whether it gets completed, registered, fees paid on it,
16 anything done at that time, would be concluded because
17 what that does it starts a timer for the transaction. So
18 I have to post fees within 30 days of the date of that
19 report of sale. And I have to conclude the transaction
20 completely within a certain date of that RS date.

21 So I have to file those reports of sale with the
22 DMV within five business days so they can start the clock
23 on it. So in regard to the statement that an unwind would
24 not have been on this report, I disagree with that. If
25 that report of sale was sent off within five days, and an

1 unwind happened within that five days, the unwind would
2 have been on that report taken off from the DMV.

3 Transfer title did not happen before roll back.
4 As I explained earlier, the nature of our business we were
5 at the mercy of these lenders to provide credit for people
6 that couldn't get credit elsewhere. And their stipulation
7 for us was to provide a copy of a registration showing
8 them as lien holder before this loan can even be funded.

9 So a roll back in this case happened after a
10 transfer was completed at the DMV. Otherwise, I wouldn't
11 have been able to get the roll back situation. And the
12 same goes for a buyback. All these -- all these
13 transactions have to be completed at the DMV in order for
14 the lender to issue payment, decline to issue payment, or
15 force me to repurchase them if the first payment is not
16 made.

17 Formula to calculate -- I'm going to go back to
18 notes that I took here, so just allow me one second. If I
19 recall, Mr. Lambert's statement that the auditor didn't
20 have a formula to calculate that amount that I would have
21 been credited based on that buyback, and I agree with it
22 100 percent. He wouldn't have the formula.

23 Because had Mr. Medina come back to my dealership
24 and the first time he stated that they had inconsistencies
25 or even reassigned that audit to somebody else prior to

1 March of 2015, when my business had already closed, and I
2 was in no financial position to reopen all my files and
3 provide everything that they needed that they gave me days
4 to do.

5 So had they not waited two years -- close to two
6 years to act on my original request of saying, "Hey, you
7 guys got it all wrong. Come back and recalculate these
8 correctly because I have all my files and my documents in
9 place. I have the time to do it and the resources."
10 Nobody showed up then.

11 They designed to conclude the audit as it
12 became -- handed from one person to another, and then more
13 convenient to just close it out and send that client to an
14 appeal process. So you're right. They didn't have a
15 formula in March of 2015, but they had the formula
16 available for a long period of time before that.

17 In regard to Item G on a contract, which states
18 "Cash Receipt or Cash," I don't know what contracts look
19 like today, but at least for the years I operated as a car
20 dealer, any form of down payment came in the form of cash
21 on the contract. In other words, whether the borrower
22 gave us a check, cashier's check or cash, it fell under
23 cash on the contract. "Other" was stipulated for any
24 deferred payment.

25 So if the borrower was providing a payment on

1 buying the car on December 1st and given a payment on
2 December 10th, it went under other. But any time we
3 received a payment -- at least that's how I operated my
4 business -- it all went under the item cash because there
5 was no section for check or cashier's check or any other
6 form of payment.

7 May 11th, of 2015, and as I stated in my letter
8 that I sent in with Exhibit Number 6, was the visit
9 initiated by myself to the office in Riverside to
10 basically try to salvage this audit from getting to a
11 point that I couldn't come back from.

12 I had a phone conversation with Mr. Flores on
13 March 3rd. I provided the e-mail that he sent me
14 confirming that phone call and also telling me that he
15 will be following up with me after that. When I did not
16 receive a call back, as I had been concerned with this
17 audit from day one and from Mr. Medina's early statements.

18 I went back to the office, and, at that time, I
19 was -- I don't want say to persuaded, but I was somewhat
20 told that my only option at that point is to pursue an
21 appeal and not to go back and invest the time and the
22 money and take the time -- or be allowed the time to
23 revisit all my files I still had access to at that time.

24 Because I could guarantee you, at that particular
25 time, I did not have or think that I would have 10 or 15

1 years, \$175,000 to my name to pay back on a business that
2 already wiped me out. So I was prepared to do whatever
3 they wanted to ask me to do at that time to provide them
4 with any documentation to get this reconciled. So that's
5 the 5/11 visit that was mentioned by Mr. Lambert.

6 No information at this time is available. Of
7 course, there's no information at this time available
8 before -- besides archived e-mails and things that I keep
9 going to, but that's not my fault. That's not my doing.
10 That's not my creation. Because I -- my -- if you go back
11 to any documents associated with this audit or any phone
12 conversations or any e-mails, everybody that's worked on
13 this audit will agree that I have been very prompt in
14 responding, very prompt in providing information, very
15 prompt in actually being the one initiating a sense of
16 urgency.

17 So the fact that there's no information for them
18 available today to do it right is not my doing. And I
19 don't have anything else to say about Mr. Lambert's
20 statements. So I took notes of everything he said, and I
21 just wanted to be clear where I stand on those statements.

22 JUDGE CHO: Thank you very much.

23 MR. KHRAICH: Thank you.

24 JUDGE CHO: So before we adjourn this hearing,
25 let me just ask one more time.

1 Any final questions, Judge Cheng?

2 JUDGE CHENG: Yes, for Mr. Kraich. You said that
3 the fact that the Department has no records to go on, it's
4 not your fault, but did you not claim that the records in
5 the trailer were stolen, and that's why no information is
6 available?

7 MR. KHRAICH: The reason I'm making that
8 statement is because my plea from day one was to revisit
9 my business as it was in operation and re- audit my files
10 correctly. But due to Mr. Medina's wedding and then
11 promotion and then the person that took over the audit not
12 contacting me until March 2015, all the things that
13 happened during that period, that's what I'm referring to.

14 But if you want to refer to the physical answer,
15 the act that prevents us today from doing that, the simple
16 act was, yes, me losing my records by them being stolen
17 from a trailer.

18 JUDGE CHENG: Okay. Thank you.

19 JUDGE CHO: Any final questions, Judge Dang?

20 JUDGE DANG: No questions.

21 JUDGE CHO: Okay. I don't have any final
22 questions either. So this will conclude the hearing. The
23 panel will meet and confer and discuss the case based on
24 the document and the testimony that was presented today.
25 We will issue a written decision no later than 100 days

1 from today.

2 This case is now submitted, and the record is now
3 closed. Thank you very much.

4 (Proceedings adjourned at 1:43 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 21st day of January, 2020.

ERNALYN M. ALONZO
HEARING REPORTER

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I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this [!DAY OF DEPO] day of [!MONTH OF DEPO], [!YEAR OF DEPO].

ERNALYN M. ALONZO
HEARING REPORTER