

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
DOUGLAS CHARLES O'REAR AND) OTA NO. 18011101
JULIE O'REAR,)
)
)
APPELLANT.)
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, January 22, 2020

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
12900 Park Plaza Dr., Cerritos, California, 90703,
commencing at 11:21 a.m. and concluding
at 11:59 a.m. on Wednesday, January 22, 2020,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

1 APPEARANCES:

2

3 Panel Lead: ALJ TERESA STANLEY

4

5 Panel Members: ALJ RICHARD TAY
6 ALJ ELLIOTT SCOTT EWING

7

8 For the Appellant: JULIE O'REAR, TAXPAYER
9 LANE J. LOPEZ, ATTORNEY

10

11 For the Respondent: STATE OF CALIFORNIA
12 FRANCHISE TAX BOARD
13 By: BRANDON KNOLL,
14 TAX COUNSEL
15 BRADLEY COUTINHO,
16 TAX COUNSEL

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I N D E X

E X H I B I T S

(Appellant's Exhibits were received at page 5.)
(Department's Exhibits were received at page 6.)

OPENING STATEMENT

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DEPARTMENT'S
WITNESSES:

DIRECT CROSS REDIRECT RECROSS

(None offered)

APPELLANT'S
WITNESSES:

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CLOSING STATEMENT

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By Mr. Knoll 35

1 Cerritos, California; Wednesday, January 22, 2020

2 11:21 a.m.

3

4 JUDGE STANLEY: On the record in the appeal of
5 Douglas Charles O'Rear and Julie O'Rear, now Julie Ford,
6 Case Number 18011101. Today is January 22nd, 2020. The
7 time is 11:21 a.m., and we're in Cerritos, California.

8 I am Judge Teresa Stanley. I have to my left
9 Judge Richard Tay and to my right Judge Scott Ewing.

10 And I'll ask for identification on the record,
11 Mr. Lopez.

12 MR. LOPEZ: Good morning. Lane Lopez for the
13 taxpayer, Julie Ford, formerly Julie O'Rear.

14 MS. FORD: Taxpayer Julie Ford.

15 JUDGE STANLEY: Thank you.

16 MR. KNOLL: Brandon Knoll, Franchise Tax Board.

17 MR. COUTINHO: Brad Coutinho, Franchise Tax
18 Board.

19 JUDGE STANLEY: Thank you.

20 We will admit Appellant's Exhibits 1 through 3
21 into the record, and we will admit Franchise Tax Board's
22 Exhibits A through R into the record as well. That is
23 without objection by either party.

24 (Appellant's Exhibits 1-3 were received
25 in evidence by the Administrative Law Judge.)

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

3 JUDGE STANLEY: The two issues that are before us
4 today are whether the Appellants have established that
5 they had a basis in securities that they sold in 2007 and
6 2008, that is greater than the basis that was allowed by
7 the Franchise Tax Board. And the second issue is whether
8 Julie Ford is entitled to innocent spouse relief for 2007
9 and 2008, and if so, is she entitled to partial or full
10 relief.

11 We're going to start with opening statements.
12 And Mr. Lopez, that means you can explain to us what you
13 believe the evidence is going to show us today.

14 MR. LOPEZ: Thank you.

15

16 OPENING STATEMENT

17 MR. LOPEZ: Good morning to the Office of Tax
18 Appeals and to the judges on the panel and the FTB
19 counsel. On behalf of the taxpayer, we appreciate your
20 time and consideration of this matter. This case involves
21 a marriage of my client Julie Ford, formally Julie O'Rear,
22 and her former spouse Douglas O'Rear. At the time in
23 question, the 2007 and 2008 tax years, Julie was a
24 committed home maker who home-schooled her three children.

25 As you will hear today, Doug was a secretive,

1 evasive, and dishonest partner who thought he was smarter
2 than everyone else, and in particular his wife Julie.
3 Doug was so smart in fact that he did not believe he
4 needed to share any of business or financial information
5 with his wife. Doug was also paranoid and did not trust
6 anyone, especially with his business matters.

7 He didn't need to tell Julie the specifics of
8 what he did for a living or when he was leaving out of
9 town because that's typically how Doug treated Julie. In
10 fact, being so smart, Doug thought Julie could not
11 possibly understand or comprehend the nature of his
12 business. Doug would feed her generic information, such
13 as he was involved in big business deals, and "you
14 wouldn't understand what I do for a living."

15 You will also hear today of how Mr. O'Rear
16 intimidated, controlled, and demeaned his wife, concealed
17 his finances in business dealings from her and ran a
18 business that he actively hid from his family. Doug would
19 regularly leave town without notice and would be gone for
20 long stretches of time. He refused to tell Julie in
21 advance where he was going for the purpose of his trips,
22 other than they were for business.

23 When it came time to prepare taxes, Doug alone
24 would take his information and documentation to H&R Block
25 or a similar tax preparer. Doug would not give Julie an

1 opportunity to review the tax returns before they were
2 filed, going so far as to have her sign them in the
3 parking lot of H&R Block.

4 In the course of paying the household bills, one
5 of the few areas that Douglas would actually permit
6 Julie's participation, Julie would write checks to the IRS
7 and FTB for taxes. Julie was reasonable in her belief
8 that she was reporting and paying her taxes in proper
9 fashion. The fact is that she was not allowed to know
10 about Doug's business dealings, which he refused to
11 discuss with her, despite her various inquiries over the
12 years.

13 Taxpayer also intends to submit a declaration
14 from Adam Gelcich, Doug's former stockbroker who later
15 became Julie's financial adviser following their divorce.
16 And he will affirm that he had no contact or interactions
17 with Julie prior to the divorce, and that she was in no
18 way involved with Doug's business dealings or -- or
19 decisions revolving around the family business.

20 Eventually, the secrecy, deceit, and evasiveness
21 reached a tipping point. The marriage came to an end some
22 22 years after it started. To this day Julie remains in
23 the dark about Doug's business dealings during their
24 marriage. To this day Doug has little to no contact with
25 his children. He has paid no child support and a

1 negligible amount of spousal support despite a divorce
2 judgment almost 10 years ago.

3 In his divorce agreement, he conceded in writing
4 that he was responsible for the taxes in 2007 and 2008.
5 And despite this, he has absconded, leaving Julie to raise
6 the kids and clean up the mess he created. The critical
7 matter in this case revolves around the basis in stocks
8 that Douglas sold in 2007 and 2008. The FTB has allowed
9 the basis claimed by Doug due to a lack of documentation.
10 The reality is that the only person with access to that
11 information and documentation is Douglas.

12 Douglas was responsible for tracking the numbers,
13 tracking the business. He did not share any information
14 with Julie, and he is the only one who knows how these
15 numbers were determined and generated. Almost all of the
16 stocks acquired by Doug were closely held and not sold on
17 the open market at the time they were acquired.

18 Even in the few cases where publicly traded --
19 even in the few cases where the stocks were publicly
20 traded when Doug acquired them, we don't know how many
21 shares were bought and sold in order to substantiate the
22 basis. So even with public records and information,
23 that's the only thing available to Ms. Ford. She's still
24 unable to determine how and why Doug used the numbers that
25 he did. This has put her at a significant disadvantage.

1 Douglas' nonparticipation has adversely affected
2 Julie and her ability to gather information and
3 documentation in support of her case and to compel
4 Douglas' testimony in this matter. To the extent that
5 Douglas is not a participant in this hearing, we would
6 object to any adverse adjudication against Ms. Ford since
7 she has not had a reasonable or adequate opportunity to
8 obtain records and information in Douglas' position that
9 may be relevant to this matter.

10 And furthermore, this very matter was deemed not
11 right for settlement due to Douglas' absence from the
12 proceedings. Therefore, Julie's efforts to negotiate a
13 reasonable, good-faith settlement to resolve this matter,
14 short of a hearing, has been frustrated again by Douglas'
15 absence. Therefore, Julie objects to any adverse
16 determination or adjudication prior to Douglas'
17 involvement.

18 Based on the testimony that we will present today
19 and the evidence in the record, we believe that Julie
20 meets the criteria for innocent spouse relief, and we
21 would ask that the Office of Tax Appeals render a
22 determination as such.

23 Thank you.

24 JUDGE STANLEY: Thank you.

25 Franchise Tax Board, would you like to make an

1 opening statement?

2 MR. COUTINHO: I believe we waved our opening
3 statement during the prehearing conference. Just to note
4 that as we stated earlier, Mr. Knoll will be addressing
5 the substantiation issue, and I will be establishing why
6 Ms. Ford is only entitled to partial innocent spouse
7 relief under 18533(f).

8 Thank you.

9 JUDGE STANLEY: Okay. Thank you. I do recall
10 that now. So what I'm going to do is ask Ms. Ford to
11 raise your right hand and be sworn in.

12

13 JULIE FORD,
14 produced as a witness, and having been first duly sworn by
15 the Administrative Law Judge, was examined and testified
16 as follows:

17

18 JUDGE STANLEY: Thank you.

19 Mr. Lopez, you may proceed. I don't know if your
20 client would like to have -- to make a narrative
21 statement, or if you would like to do a question and
22 answer format, but whatever is most comfortable for her.

23 MR. LOPEZ: I think the most efficient use of our
24 time would be a Q and A format. That will help us work
25 through the facts as quickly as possible.

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DIRECT EXAMINATION

BY MR. LOPEZ:

Q So if you would state your name and spell it for the record?

A Julie Ford, F-o-r-d.

Q And your former married name was Julie O'Rear; correct?

A Yes.

Q And if you would please state the date of your birth?

A March 8, 1968.

Q And Ms. Ford, what is your highest level of education?

A I have some college, community college.

Q And approximately when did you meet Mr. O'Rear?

A 1986.

Q And you two were later married?

A Yes.

Q And what was the date of your marriage?

A June 27th, 1987.

Q And were you married approximately 22 years?

A Yes.

Q And how many children do you have with Doug?

A Three.

Q And at some point, the marriage came to an end;

1 is that correct?

2 A Yes.

3 Q And you separated on December 14th, 2009?

4 A Yes.

5 Q Sound about right?

6 A Yes.

7 Q And your divorce was finalized pursuant to a
8 written divorce agreement on February 7th, 2011; is that
9 correct?

10 A Yes.

11 Q And that divorce judgment was later entered with
12 the court as a court judgment; correct?

13 A Yes.

14 Q Okay. Now, during the time in question, the 2007
15 and 2008 tax years, what was your occupation?

16 A I was a homemaker.

17 Q Okay. And prior to that, what was your
18 profession or employment?

19 A Up until 2000, I was a secretary but hadn't
20 worked out of home since 2000.

21 Q Okay. And in addition to your duties as
22 homemaker you home schooled your three children?

23 A Yes.

24 Q Okay. Now, speaking about your relationship with
25 Douglas, was he ever physically abusive with you?

1 A Yes.

2 Q Okay. Can you just briefly explain for the panel
3 what happened in that encounter?

4 A We were arguing, and I was trying to leave the
5 home. And he physically restrained me and pulled me back
6 into the home and threw me against the wall and slammed
7 and closed the door.

8 Q And how tall was Douglas?

9 A Approximately six-feet tall.

10 Q So he was -- he was big and intimidating?

11 A Yes.

12 Q Was he ever verbally or emotionally abusive with
13 you?

14 A Yes.

15 Q Would you say that continued pretty consistently
16 throughout your marriage?

17 A Yes.

18 Q Okay. Now, what kinds of things would he do that
19 make you say that he was emotionally and verbally abusive
20 with you?

21 A Well, he was a -- he used his intelligence, I
22 guess. He would always say he was the smartest person in
23 the room. He was a financial genius. He would say that I
24 couldn't understand the level at which his mind operated.
25 I had a uterus for a reason. I was to bear children and

1 care for children. Just manipulations as to my
2 intelligence and role as a woman.

3 Q So -- so his conversations with you were largely
4 demeaning and insulting as far as your inability to
5 comprehend his business or the family financial matters?

6 A Yes.

7 Q Okay. Did you feel like you had a voice in the
8 family as it pertained to business and finances?

9 A No.

10 Q Okay. And he told you, specifically, that your
11 home was in -- that your place was in the home raising
12 children; correct?

13 A Regularly, yes.

14 Q Okay. So he didn't even allow you to participate
15 in business or financial decisions?

16 A Never.

17 Q And he didn't treat you as an equal as far as you
18 can determine?

19 A No. No.

20 Q Okay, now, what specifically, if anything, did he
21 ever tell you about family finances and where the
22 household income came from?

23 A He didn't tell me any specifics. He would tell
24 me when to pay bills, what checks to write, when to write
25 them. He just told me that he was a financial genius and

1 was always working on big deals.

2 Q So you would pay household expenses, like,
3 utilities and rent and the car insurance and various items
4 like that; correct?

5 A Yes, when he instructed me to. Yes.

6 Q Okay. But you weren't involved in his day-to-day
7 business affairs?

8 A No.

9 Q Okay. And he never explained to you what he did
10 for a living or really discuss it with you?

11 A No. He said I wouldn't understand.

12 Q Okay. And when I say that I'm thinking either,
13 you know, casual dinner talk conversation, this is what
14 happened today or even long-term serious discussions where
15 you sit down and have a long and involved discussion about
16 finances and where things are going, neither of those; is
17 that correct?

18 A Never.

19 Q Okay. So you would say that he was pretty
20 secretive; is that correct?

21 A Yes.

22 Q Would you say he was paranoid?

23 A Yes.

24 Q Would you say he was unreasonably secretive and
25 paranoid?

1 A Yes.

2 Q Okay. Did he have multiple cell phones?

3 A Yes.

4 Q Okay. Did you communicate with him on only one
5 of those cell phones?

6 A Yes.

7 Q Okay. And to this day you don't know what the
8 other cell phone was for; is that correct?

9 A No.

10 Q Okay. For your mailbox, did he lock your
11 mailbox?

12 A Yes.

13 Q With a key?

14 A Yes.

15 Q Did you have -- were you provided a key to that
16 mailbox?

17 A I wasn't allowed a copy of the key.

18 Q Okay. So you weren't even really able to get
19 mail?

20 A No.

21 Q Okay. So he would restrict your access to the
22 mail, to your knowledge of what he did, to -- to his --
23 his day-to-day actions when he would leave the house. He
24 wouldn't share that part of his life with you really, it
25 sounds like?

1 A Correct.

2 Q And it sounds like he actually went beyond that
3 to actively conceal what he did by restricting you from
4 access to the mail, et cetera?

5 A Yes.

6 Q Okay. Would you say that he was evasive and
7 deceitful with you when it came to sharing information
8 about the family finances?

9 A There was no sharing. It was --

10 Q So in your mind that would be deceitful?

11 A Yes.

12 Q Okay. Did he also constrain your ability to join
13 Facebook and social media sites?

14 A Yes. I wasn't allowed.

15 Q Okay. Which because you're from Australia, that
16 would be even more important to you to keep in touch with
17 family and friends back there; correct?

18 A Yes.

19 Q Now, do you think all of these restrictions that
20 he imposed on you, was this a result of his secrecy and
21 paranoia and evasiveness?

22 A Yes.

23 Q Okay. What would -- would Doug restrict your
24 ability to talk to your friends on the phone when he was
25 there?

1 A Yes. I wasn't allowed to use the phone when he
2 was home.

3 Q Okay. And again, he never volunteered
4 information to you about any business or finances?

5 A No.

6 Q But did you ever ask him what he did?

7 A I did.

8 Q Okay. How many times would you say?

9 A Many, many times.

10 Q Okay. And again, can you tell us some of his
11 typical responses to these inquiries?

12 A Usually the first response is I wouldn't
13 understand what he did. But he had said from time -- or
14 at a time that he bought and sold stocks.

15 Q Okay. All right. And to the best of your
16 knowledge, was that with Mr. Gelcich?

17 A I didn't know at the time, but I now understand
18 it was with Adam Gelcich.

19 Q With information you've discovered after --

20 A Post divorce.

21 Q -- the divorce. Okay. Now, did Doug think he
22 was smarter than everybody else?

23 A He told myself and anyone who would listen that
24 he was the smartest you knew or the smartest person in the
25 room.

1 Q Okay. And that he bragged about how smart he
2 was, obviously?

3 A Regularly.

4 Q Did he call himself a financial genius?

5 A Regularly.

6 Q Okay. Now, did he feel that he was too big and
7 sophisticated for small-town rural Ventura County?

8 A Yes.

9 Q Okay. So generally speaking, he thinks that he's
10 above everybody else due to his superior intellect?

11 A Yes.

12 Q Okay. Did he have a business office that you
13 were aware of?

14 A No.

15 Q Okay. So where did you understand he worked?

16 A He took a lot of phone calls at home behind
17 closed doors, and he traveled a lot.

18 Q Okay. So he traveled a lot, and would he leave
19 town unexpectedly?

20 A Yes.

21 Q Without announcement?

22 A Yes.

23 Q How many times did he just leave out of town
24 unexpectedly?

25 A More times than I can count.

1 Q Would he do things like call you from the airport
2 or a taxicab?

3 A Yes.

4 Q And that's when you would first find out that he
5 was leaving for extended periods of time on business?

6 A Yes.

7 Q Okay. Would he ever tell you anything about the
8 nature of his travel; where he was going and why he was
9 going?

10 A Mostly it was a big deal. Big, big business.

11 Q Okay. Those were his words?

12 A Big -- Yes.

13 Q So he would call you from other cities and states
14 and countries and tell you that he was -- wouldn't be
15 coming home?

16 A Yes. It was a dire emergency for big business.

17 Q Okay. So -- so -- okay. Can you give me some
18 examples of the places he would call you from?

19 A It seemed like Las Vegas was a very regular spot;
20 Australia, Korea, Germany, New York. Sometimes there was
21 one or two from Boston. Mostly Las Vegas.

22 Q So did you consider him an absentee parent?

23 A Yes.

24 Q Okay. And obviously his traveling made it more
25 difficult for you to ascertain what he did for a living?

1 A Yes.

2 Q Now, Exhibit A that we've stipulated to being
3 admitted is your state tax return for 2007. And Exhibit C
4 is your state tax return for 2008. You've had a chance to
5 review those exhibits; correct?

6 A I've seen them, yes.

7 Q Okay. And do you recall signing either of these
8 forms?

9 A I don't have independent recollection of signing
10 them, but that's not unusual because I don't prepare them.
11 But they would be handed to me to sign.

12 Q Okay. All right. So did Douglas have a regular
13 CPA or tax preparer?

14 A No.

15 Q Okay. So he didn't have -- for a big -- for
16 somebody who was always involved in big business deals and
17 constantly traveling, he didn't have a CPA or a bookkeeper
18 that he met with regularly throughout the year or
19 throughout the course of your marriage?

20 A No.

21 Q Okay. So who would you say was responsible for
22 preparing the taxes?

23 A He was.

24 Q Okay. And what did you know about his efforts to
25 prepare the tax returns? What did you know about that

1 process?

2 A I would see him use Turbo Tax from time to time.
3 And then he would go down to H&R Block and tell them the
4 numbers, and they would generate a tax return.

5 Q Okay. Would you -- were you invited to those
6 meetings?

7 A Never.

8 Q Did you ever meet with the CPA during those
9 meetings?

10 A There wasn't a CPA, to my knowledge.

11 Q Okay.

12 A A tax preparer perhaps.

13 Q And Doug would schedule and attend those meetings
14 without your knowledge; is that correct?

15 A Yes.

16 Q Okay. So he was the one that was responsible for
17 providing information and documentation to the CPA or to
18 the tax preparer?

19 A Yes.

20 Q Okay. And did you have any discussions with
21 Douglas before he met with the accountant to talk about
22 what was going to happen and -- and about filing the tax
23 returns?

24 A No.

25 Q Okay. Do you have any idea to this day where he

1 got the number, or how he calculated the information that
2 was provided to the tax preparer?

3 A No.

4 Q Okay. Now, I'm going to reference Exhibit C,
5 page 5, of that document, which is Schedule D. And it
6 lists -- I beg your pardon. It's actually Exhibit D,
7 page 5. And this -- do you recognize this exhibit?

8 A I don't know any of the entries.

9 Q Where any of this information came from?

10 A I don't even know the names of these.

11 Q Okay. Do you recognize a company by the name of
12 BioSolar?

13 A No.

14 Q Do you know what that does?

15 A I don't.

16 Q Were you involved in the decision to buy BioSolar
17 stock or to sell BioSolar stock?

18 A No.

19 Q What about Cereplast. Do you know anything about
20 Cereplast or what that company does or why Douglas was
21 buying and selling it?

22 A I don't.

23 Q Okay. Is it fair to say that all of these
24 entries on here represent transactions that you are not
25 familiar with and were not involved in?

1 A I don't know anything about them. I was not
2 involved.

3 Q Okay. Did he ever approach you and say, "I'm
4 thinking about buying stocks? What do you think?"

5 A No.

6 Q Okay. He never consulted with you or sought your
7 input as to whether you thought it was a good idea or not?

8 A No.

9 Q Okay. Do you think that Doug used Turbo Tax --
10 and this is in hindsight? Do you believe that Doug used
11 Turbo Tax and H&R Block instead of a more regular or
12 sophisticated tax preparer because they would probably ask
13 fewer questions and maybe rubber stamp the returns?

14 A Yes.

15 Q Okay. So that's your understanding. To this
16 day -- so to this day you don't have any access to any
17 documents or records that would shed light on Doug's
18 business dealings or how he prepared and populated the tax
19 returns with those numbers?

20 A No.

21 Q Okay. So in the course of paying your household
22 expenses, like, utilities and car insurance and other --
23 other formalities, did you also prepare, in your memory,
24 checks to the IRS and to the FTB?

25 A At his instruction, yes.

1 Q Okay. And so Doug would tell you how much to
2 pay?

3 A Yes.

4 Q Okay. But you, nonetheless, were signing. You
5 were preparing a return, and you were writing the checks
6 out to the government. So in your mind, were you paying
7 and reporting taxes as required by law?

8 A Taxes were filed, and taxes were written.

9 Q Okay. But you -- but you personally wrote checks
10 to IRS and FTB?

11 A Yes.

12 Q Okay. So -- so regardless of whether Doug gave
13 you the right information or the right numbers to pay, you
14 still were -- you still had a reasonable belief that you
15 were complying with the tax laws; is that correct?

16 A Yes.

17 Q Okay. Did Doug ever give you access to any
18 records or information that would allow you to
19 independently verify the numbers that he was putting on
20 the return?

21 A No.

22 Q Okay. So you don't even know if those were
23 accurate?

24 A No.

25 Q Okay. Did -- before you signed the tax returns,

1 did Doug ever sit down and -- sit down with you and go
2 over them?

3 A No.

4 Q Did he ever give you a final draft of the returns
5 before he asked you to sign them?

6 A No.

7 Q Describe how much time Doug would typically give
8 you before you had to sign one of these returns?

9 A He would call me from H&R Block or -- and say,
10 "Come down here now. You need to sign this." And there
11 was a time or two where he met me in the parking lot of
12 H&R Block and handed me a document to sign through the car
13 window and say, "Sign here."

14 Q And what did you think would happen if you said
15 no, or you wanted to ask more questions?

16 A He would tell me I wouldn't understand.

17 Q Okay. Were you intimidated about asking him for
18 that kind of information --

19 A Yes.

20 Q -- given his history of physical and verbal
21 abuse?

22 A Yes.

23 Q Okay.

24 MR. COUTINHO: Excuse me. Mr. Lopez, sorry to
25 interrupt you.

1 MR. LOPEZ: Sure.

2 MR. COUTINHO: Can we -- can FTB have a brief
3 recess to discuss the testimony that Appellant has given
4 currently. I know it's unusual to --

5 JUDGE STANLEY: You don't want to wait until the
6 end of it?

7 MR. LOPEZ: If you like, I'm almost done with my
8 examination.

9 MR. COUTINHO: Okay. Yeah, yeah, yeah. Sure.

10 MR. LOPEZ: I have maybe three to five minutes at
11 most.

12 MR. COUTINHO: Okay.

13 JUDGE STANLEY: And then we'll break.

14 MR. COUTINHO: Okay. Sure.

15 BY MR. LOPEZ:

16 Q Okay. So have you received any spousal support
17 from Doug that he was required to pay in the divorce
18 judgment?

19 A In 2010 I received three monthly alimony checks.

20 Q But nothing since 2010?

21 A Nothing.

22 Q Okay. And you had primary custody and all
23 attended to all obligations of your three children?

24 A Yes.

25 Q All minor children; correct? They are now age of

1 majority, but for most of this time period they were minor
2 children?

3 A My eldest child was almost -- around 18. Almost
4 18, the eldest.

5 Q Okay. Did you receive any child support from
6 Doug under the divorce judgment?

7 A None.

8 Q None. Has his failure to pay court-ordered
9 support, has that put you at a disadvantage economically?

10 A Yes.

11 Q Okay. Can you explain just very briefly how that
12 disadvantaged you?

13 A I've had to seek out sources of income for myself
14 post-divorce and had to learn to be responsible for
15 finances.

16 Q So in the divorce judgment Doug specifically
17 agreed that he was responsible for all of the consequences
18 related to 2007 and 2008?

19 A Yes.

20 Q That was your understanding?

21 A Yes.

22 Q So he was accepting responsibility for those tax
23 obligations?

24 A Yes.

25 Q Has he made any effort to stand by those

1 obligations?

2 A No.

3 Q Have you spoken with Doug recently?

4 A No.

5 Q When approximately was the last time you spoke
6 with him?

7 A Spoke approximately 2011.

8 Q Okay. Does he communicate with your children at
9 all?

10 A Not to my knowledge.

11 Q Okay. Do you know where Doug is currently?

12 A I haven't known where he is since he left the
13 home in 2009.

14 Q Okay. Have you had any business dealings with
15 Doug after the divorce?

16 A No.

17 Q Do you have any access to his business records or
18 documents currently for 2007 or 2008?

19 A No.

20 Q Had you ever had access to his business records
21 or documents for '07 or '08?

22 A No.

23 Q So you don't have any documentation in your
24 possession, despite your efforts, to dispute the FTB's
25 position regarding the value of the stocks that Doug

1 purchased?

2 A No.

3 Q Okay. And -- and would that also be safe to say
4 that you don't have any documentation that would allow you
5 to go back and reconstruct or better understand what Doug
6 was doing from a business standpoint?

7 A I have no access.

8 Q So you're still in the dark as to really what he
9 did?

10 A Yes.

11 Q Okay. And he left you, as they say, high and dry
12 holding the bag?

13 A Yes.

14 Q Okay. Real briefly about Mr. Gelcich. Who is
15 Mr. Gelcich?

16 A He is my financial adviser at Wells Fargo.

17 Q And when was the first time you spoke with him?

18 A The first time I spoke with him was approximately
19 in 2013.

20 Q Okay. And up until that time he had been
21 Douglas' broker?

22 A I now understand that, yes.

23 Q Based on your understanding now, okay. And up
24 until that time, all -- up until post-divorce, all
25 communications, interactions with Mr. Gelcich regarding

1 your financial and business matters were handled by Doug;
2 is that correct?

3 A Yes.

4 Q Okay. Prior to the finalization of your divorce,
5 did you have any discussions with Mr. Gelcich regarding
6 your and Douglas' financial or business matters?

7 A No.

8 Q Okay. Assuming that Mr. Gelcich assisted Douglas
9 in buying and selling stocks, would you ever be consulted
10 or involved with those transactions either by Doug or
11 Adam?

12 A No.

13 Q Okay. So you had no involvement or input into
14 Mr. Gelcich buying and selling stocks for Douglas?

15 A No.

16 MR. LOPEZ: Okay. I think we would rest on
17 direct examination.

18 JUDGE STANLEY: Okay. And then you want a
19 15-minute break to --

20 MR. COUTINHO: Actually, FTB does not need a
21 recess. We would just like to revise our position in
22 regard to the innocent spouse issue. Based on Ms. Ford's
23 testimony regarding physical, verbal, and emotional abuse
24 against -- by Mr. O'Rear, FTB will revise its position in
25 regard to whether or not Ms. Ford is eligible for the

1 one-half attributable to herself. And, therefore, the
2 same analysis in regard to equitable innocent spouse
3 relief in regard to the balancing factors, those weigh in
4 favor. And, therefore, FTB will grant her full innocent
5 spouse relief. Or FTB's position is that it will grant
6 full innocent spouse relief for the tax years at issue.

7 JUDGE STANLEY: Okay. Well, based on that
8 concession then there's no remaining issue other than the
9 initial appeal which is whether --

10 MR. COUTINHO: Correct.

11 JUDGE STANLEY: -- an adjustment to basis is
12 warranted.

13 MR. COUTINHO: Correct.

14 JUDGE STANLEY: Okay. So on Issue Number Two,
15 Franchise Tax Board is conceding that Ms. Ford is entitled
16 to full innocent spouse relief.

17 And so unless you have more evidence, Mr. Lopez,
18 on the issue of basis, I don't think there's anything left
19 for us to do.

20 MR. LOPEZ: No evidence on that. We would submit
21 to the FTB's proposal.

22 JUDGE STANLEY: Okay. So do you have anything
23 else that you want to say before I adjourn?

24 MR. LOPEZ: Not at this point, Your Honor.

25 JUDGE STANLEY: Take it? And do you have

1 anything else that you want to present?

2 MR. COUTINHO: Not to present. FTB would ask
3 whether or not Ms. Ford would still like to pursue the
4 substantiation or whether she would like to concede to the
5 substantiation issue.

6 MR. LOPEZ: Our position is that we have no
7 access to any documentation that would refute or -- we
8 believe the basis is somewhere above zero. But in
9 observance of the taxpayer's burden to document and
10 support basis claimed, we don't have any evidence that
11 would substantiate the basis. But our position is that
12 Ms. Ford was unable to gain access to that information.

13 JUDGE STANLEY: So since Mr. O'Rear has not -- he
14 filed the initial appeal but has not participated in quite
15 some time, I think the only thing we can ask of Ms. Ford
16 at this point is whether or not she wants the remainder of
17 appeal to be decided on the basis of the written record
18 that exist today. Would that be acceptable?

19 MR. LOPEZ: I think that's appropriate, Your
20 Honor.

21 JUDGE STANLEY: Okay. So we'll do that. We will
22 write up -- we'll give you a written decision. We'll do
23 it on the basis of the current written record with respect
24 to Issue Number One. And with respect to Issue Number
25 Two, we'll write that FTB has conceded full innocent

1 spouse relief.

2 MR. COUTINHO: I apologize. I spoke too early.
3 We would still like to be heard on Issue One regarding the
4 substantiation.

5 JUDGE STANLEY: Okay. So you want to do a
6 closing argument with respect to --

7 MR. COUTINHO: Yes.

8 JUDGE STANLEY: And you, Mr. Lopez, you said
9 everything that you need to say on that issue; right?

10 MR. LOPEZ: I believe so.

11 JUDGE STANLEY: Okay. You may proceed then on
12 that issue.

13 MR. COUTINHO: All right.

14

15 CLOSING STATEMENT

16 MR. KNOLL: Good morning.

17 The Appellants have failed to substantiate their
18 basis in capital assets in 2007 and 2008. The Appellants
19 have been given ample time, over eight years, by
20 Respondent and the Board of Equalization, now the Office
21 of Tax Appeals, to substantiate their basis but failed to
22 do so.

23 Respondent's determination of basis is
24 presumptively correct, and it is Appellant's burden to
25 show that it is erroneous. Therefore, Respondent's notes

1 of action, increasing the taxpayer's gain for capital
2 assets sold in 2007 and 2008 should be sustained.

3 Thank you.

4 JUDGE STANLEY: Okay. Do you have any response,
5 Mr. Lopez?

6 MR. LOPEZ: No, Your Honor, other than we don't
7 have any documents. We don't have any access to any
8 documentation to either support or refute the FTB's
9 position.

10 JUDGE STANLEY: Okay. Are there any questions by
11 Mr. Ewing?

12 JUDGE EWING: I have none, Judge Stanley.

13 JUDGE STANLEY: Okay.

14 JUDGE TAY: No questions.

15 JUDGE STANLEY: Okay. Well, then we will adjourn
16 today's hearing, and we'll issue a decision within 100
17 days.

18 And we won't need to address the issue of
19 Mr. Gelcich; right.

20 MR. LOPEZ: Right. That's correct, Your Honor.

21 JUDGE STANLEY: Okay. So I won't set up a
22 timeline for further witness declaration for getting that
23 document. Okay.

24 We're adjourned. Thank you.

25 (Proceedings adjourned at 11:59 a.m.)

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HEARING REPORTER'S CERTIFICATE

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

That the foregoing transcript of proceedings was
taken before me at the time and place set forth, that the
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proceedings taken at that time.

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

I have hereunto subscribed my name this 5th day
of February, 2020.

ERNALYN M. ALONZO
HEARING REPORTER