

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
FRANK BOWMAN, ) OTA NO. 18103940  
 )  
 )  
 ) 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 10:39 a.m. and concluding  
at 11:04 a.m. on Wednesday, January 22, 2020,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ TERESA STANLEY

Panel Members: ALJ NGUYEN DANG  
ALJ RICHARD TAY

For the Appellant: FRANK BOWMAN

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
By: MIRA PATEL

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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.)

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1 Cerritos, California; Wednesday, January 22, 2020

2 10:39 a.m.

3

4 JUDGE STANLEY: Okay. Then we're going to go  
5 ahead and go on the record.

6 When you speak, I'll ask that you speak slowly  
7 and clearly so that our stenographer can catch everything.  
8 It's also being recorded, but we don't like to have to go  
9 back and compare the written transcript to the auditory  
10 tape.

11 So this is the appeal of Frank Bowman, Case  
12 Number 18103940. It's January 22nd, 2020, and the time is  
13 10:39 a.m. And we are in Cerritos, California.

14 Once again, I'm Judge Teresa Stanley. I have  
15 Judge Richard Tay and Judge Nguyen Dang. I'll conduct the  
16 hearing, but they will be equal participants, and they may  
17 have questions of either party here today.

18 Mr. Bowman, for the record, can you please state  
19 your name.

20 MR. BOWMAN: Frank Bowman.

21 JUDGE STANLEY: And Franchise Tax Board.

22 MS. PATEL: Mira Patel. That's P-a-t-e-l.

23 JUDGE STANLEY: Okay. We have Appellant's  
24 Exhibits 1 through 10 that will be admitted into evidence  
25 and Franchise Tax Board's Exhibits A through I, will be

1 admitted into evidence all without objection.

2 (Appellant's Exhibits 1-10 were received  
3 in evidence by the Administrative Law Judge.)

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

6 JUDGE STANLEY: To restate the issue, the issue  
7 is whether Mr. Bowman, who is the Appellant, has shown  
8 that the Franchise Tax Board erred in granting innocent  
9 spouse relief to Angela Bowman.

10 Because there's only one witness here today,  
11 we're going to forego opening statements, and we will  
12 start with Mr. Bowman's case.

13 Will you raise your right hand.

14

15 FRANK BOWMAN,

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

19

20 JUDGE STANLEY: Thank you. I think you may need  
21 to press the button to turn on the microphone.

22 MR. BOWMAN: It's a green light?

23 JUDGE STANLEY: It's green. Okay. Now I can  
24 hear you. Okay. All right. Thank you. And you asked  
25 for 25 minutes to present your case, and so I'm just going

1 to let you tell us what you want us to know. And you can  
2 use narrative form or whatever is comfortable for you.

3 MR. BOWMAN: Thank you.

4

5

WITNESS TESTIMONY

6 MR. BOWMAN: When I heard this was being disputed  
7 or as innocent spouse, I took the time and I went and  
8 researched what are the criteria to meet innocent spouse.  
9 I found four items, and I would like to read those items.  
10 And then I'll address those items.

11 One of the first item was change in standard of  
12 living or levels of income as a result of the transaction  
13 in question; the sophistication, education, and level of  
14 experience of the spouse seeking relief; the involvement  
15 of alleged innocent spouse in the business or financial  
16 affairs of the family; and the degree to which the other  
17 spouse has been evasive or deceitful about finances or the  
18 transaction.

19 So this is in reference to the joint tax returns  
20 on 2012. So that would be the actual year of 2011. And  
21 so what I would like to do is just address each one of  
22 those quickly and concisely.

23 On changes of living and standard, we were in the  
24 same house for over six and a half years from that time of  
25 2011 while my kids attended high school in La Costa

1 Canyon, California.

2 The sophistication and education and level of  
3 experience of my wife is second to none. This woman has  
4 an accounting degree from Loyola University, has passed  
5 the State Bar in the State of Ca -- in the State of  
6 Florida, worked for the Attorney General Janet Reno. She  
7 also passed the Bar in the State of California. And she  
8 also is a financial planner Series 7 license with a 65 and  
9 principal's license.

10 She also passed the insurance exam and was a  
11 property and casualty and life insurance agent. She  
12 worked for the Arizona State Supreme Court as an attorney  
13 for the Supreme Court of the State of Arizona. She has  
14 written laws on domestic violence, and she has anchored  
15 the N-ship program for the State of Arizona. Also,  
16 managed over 25 employees for the State. So this is a  
17 woman who has quite a level of experience, knowledge, and  
18 understanding of many things.

19 I am a high school graduate, and I'm  
20 self-employed. Let me take you back to -- well, one  
21 second please.

22 Number three is the involvement or allegedly  
23 innocent spouse in business or financial affairs in the  
24 family. Up until 2007, she paid all the bills. She did  
25 everything until May 27th of 2007. When she was -- went

1 in for a routine surgery three days later bled out, and  
2 became disabled, where her boys found her on the bathroom  
3 floor where they had to revive her; so that has led to a  
4 lot of struggles in our life.

5 In that same year three months later, my two  
6 year-old daughter was mauled by a dog and has facial  
7 scarring. My -- then we were evacuated for two-and-a-half  
8 weeks from the fires. And then my son had to go in for  
9 surgery. Since then it has been quite a struggle. The  
10 bottom line is that in 2007 when the injury happened to  
11 the question of her return was 2011, was five years.

12 In 2011 she was unable to open and initiate  
13 getting a bank account where she made a deposit of  
14 \$12,000. She daily had access to all her credit cards,  
15 had her own car. She had a MacBook Pro. She had an  
16 iPhone, two iPads, and the bottom line is that she had  
17 access. She had means, and she had the ability to know  
18 what was going on. She also signed all our tax returns  
19 since we were married in 1994. She also was involved in  
20 our offer and comprise and actually spent time with our  
21 CPA who put together and, you know, started the offer and  
22 comprise. So she was well aware of the tax liability on  
23 the federal and the state.

24 The reason why this is very difficult -- it's  
25 simple. It's that it seems that she is disabled for

1 certain things and not disabled for other things, and that  
2 has been the biggest problem with our children and all the  
3 events that she has missed. Because someone chooses to  
4 stay in her room or not get out of bed or do certain  
5 things doesn't mean that they're not aware of things.

6 As you can see from all the pages that she,  
7 wrote, it looks like it was a horrible 23 years. Just to  
8 set the record straight, an independent mediator in our  
9 divorce granted custody to myself for my daughter. All  
10 these allegations that she made in those statements that  
11 she wrote in here and she wrote to the, you know, to the  
12 courts, all were either not substantiated or found untrue.

13 Bottom line is that she had the ability and the  
14 knowledge of what was going on in 2011. There was no  
15 additional hiding or evasiveness. The problem with  
16 someone that has had major blood loss is their cognitive  
17 function. And with that comes days of no getting out of  
18 bed, no doing anything, leaving the house. But then there  
19 are good days. And in those good days we went through a  
20 cycle of every 60 to 90 days where we go over all the  
21 banking information, all the passwords. And it was repeat  
22 every 60 to 90 days. Then I'd give her all the  
23 information. She would forget about it or not use it.

24 So these are some of the things that can -- if  
25 you know the history of the whole picture, it's a

1 different -- different perspective. A lot of the things  
2 that she said and what I told the mediator was accurate  
3 that they did happen, but the results are different. And  
4 that's based on her cognitive abilities and functions. So  
5 all I wanted you to do was to understand the timeline of  
6 when that tax liability was due, all the things she did in  
7 that same year.

8 She had the ability, and she could do all those  
9 things. And there was no innocence or deceptiveness on my  
10 part of the tax liability. Plus, the simple fact that she  
11 did the offer and comprise, signed it, met with CPA, and  
12 all these other additional things can go to prove that  
13 there was no deceptiveness, no change in anything, and she  
14 knew what was going on.

15 So thank you.

16 JUDGE STANLEY: Okay. Ms. Patel, do you have any  
17 questions?

18 MS. PATEL: No objections.

19 JUDGE STANLEY: Any questions?

20 JUDGE DANG: I just have one brief question. It  
21 was my understanding that the year at issue is 2012; is  
22 that correct?

23 MR. BOWMAN: Yes.

24 JUDGE STANLEY: But you were just testifying as  
25 to events which occurred in the year 2011?

1           MR. BOWMAN: The tax year 2011 she actually  
2 opened a bank account. So that would show that I had no  
3 knowledge of the bank account until this divorce  
4 proceeding. So it showed that she had the ability to  
5 function, open a bank account, go online and make a  
6 financial transaction in the same year she's claiming she  
7 had no knowledge or the ability to where I suppressed her  
8 from getting an actual, you know, being financially  
9 independent.

10           JUDGE DANG: Okay. Thank you.

11           JUDGE STANLEY: Judge Tay?

12           JUDGE TAY: No questions.

13           JUDGE STANLEY: I had just one. You were  
14 testifying that she met with your CPA with you?

15           MR. BOWMAN: Correct. Jeffery Klein.

16           JUDGE STANLEY: Was that in respect only to the  
17 IRS?

18           MR. BOWMAN: Correct. To the IRS offer and  
19 comprise, which was still laid out all our tax liabilities  
20 from the Franchise Tax Board. And we discussed whether we  
21 could work with the Franchise Tax Board and do it, and he  
22 just said they were very difficult. It was easier to work  
23 with the federal government. So that's what we did.

24           JUDGE STANLEY: So you did discuss the Franchise  
25 Tax Board --

1 MR. BOWMAN: Yes, we did.

2 JUDGE STANLEY: -- with the CPA?

3 MR. BOWMAN: Correct.

4 JUDGE STANLEY: Okay. All right. Do you have  
5 anything else that you want to add?

6 MR. BOWMAN: No.

7 JUDGE STANLEY: Okay. Then we'll conclude with  
8 that presentation. And since the Franchise Tax Board has  
9 no witnesses, what we're going to do is go straight to  
10 closing arguments. I wanted to make a note that I didn't  
11 on the record that pursuant to -- pursuant to our rules  
12 for tax appeals, Regulation Section 30312, the OTA will  
13 seal Appellant's Exhibit 9.

14 And now I'm going to give you time to, kind of,  
15 bring your evidence together for us. And you can argue  
16 how that evidence supports your claim that she's not  
17 entitled to relief.

18 MR. BOWMAN: Thank you.

19

20 CLOSING STATEMENT

21 MR. BOWMAN: In closing, I would like to say that  
22 she had the ability, the means, and the opportunity to  
23 engage in any financial transactions in 2011. She  
24 actually did open up her own checking account unbeknownst  
25 to me, but she did open up her own checking account. She

1 had access to credit cards. She had access to the  
2 internet. She had many multiple devices.

3 I can't control the fact that she chose to stay  
4 in the house and not leave the home due to her own  
5 disability. But the disability had nothing to do with her  
6 brain. It had other issues. She's still the same woman  
7 that passed the State Bar in two states, worked for the  
8 Supreme Court, had many more -- much more knowledge than  
9 myself as a high school graduate. And that's all I need  
10 to say.

11 JUDGE STANLEY: Okay. Ms. Patel.

12

13 CLOSING STATEMENT

14 MS. PATEL: Respondent properly granted innocent  
15 spouse relief to Ms. Bowman for the 2012 tax year, and  
16 Appellant has not shown any error in Respondent's  
17 determination. Appellant and Ms. Bowman filed a married  
18 filing joint return for the 2012 tax year reporting  
19 Appellant's business income and Ms. Bowman's social  
20 security disability income.

21 They self-assessed taxes on only Appellant's  
22 business income resulting in a tax due about \$5,000.  
23 However, no payments was made with their return. After  
24 Respondent began collection on their self-assessed  
25 liability, Ms. Bowman timely requested innocent spouse

1 relief.

2 Based on the fact that their 2012 liability was  
3 self-assessed, relief was available to Ms. Bowman under  
4 Revenue and Taxation Code Section 18533(f). Ms. Bowman  
5 met her burden to show that she satisfies the seven  
6 threshold conditions, as numerated in Respondent's opening  
7 brief, to be considered for Section (f) relief.

8 She also established that she meets the three  
9 requirements for Section 4.2, streamline relief. And  
10 additionally, showed that she meets the Section 4.03,  
11 balancing factors, establishing that she's entitled to  
12 innocent spouse relief. Appellant's only arguments on  
13 appeal are that Ms. Bowman participated in their financial  
14 affairs, and the tax liability is attributable to her  
15 cancellation of debt income for her student loans, as  
16 argued in Appellant's opening brief.

17 Both of these arguments do not establish that  
18 Respondent erred in granting innocent spouse relief.  
19 First with respect to the knowledge requirement, Appellant  
20 allegedly had Ms. Bowman declared unfit to manage finances  
21 in order to receive Ms. Bowman's social security income.

22 Additionally, Ms. Bowman's request and statement  
23 from her father both indicate that Ms. Bowman had little  
24 involvement in their financial affairs and did not know of  
25 the underpayment for the 2012 tax year. Even the

1 additional exhibits provided by Appellant shows Ms. Bowman  
2 was not capable of managing finances and that Appellant  
3 maintained control of their final situation when they were  
4 living together.

5 Second with respect to Ms. Bowman's student loan  
6 forgiveness, Ms. Bowman neither had cancellation of debt  
7 income in 2012 nor reported cancellation of debt on their  
8 joint return in 2012. Appellant seems to refer to their  
9 2011 tax return, which again as stated, is not at issue on  
10 appeal.

11 Based on the arguments made on appeal, Appellant  
12 has not established that Respondent erred in granting Ms.  
13 Bowman innocent spouse relief for the 2012 tax year.  
14 Therefore, on the facts and evidence in the record,  
15 Respondent respectfully request you sustain this position.

16 Thank you.

17 JUDGE STANLEY: Thank you.

18 Mr. Bowman, you can have the final word and  
19 address what Ms. Patel has stated.

20 MR. BOWMAN: Oh, sure.

21

22 REBUTTAL STATEMENT

23 MR. BOWMAN: On her first statement that there  
24 was a -- on the tax liability that it was under reported,  
25 we reported it. We had the tax liability, but we've been

1 in payment plans for almost 15 years at \$650 a month. And  
2 I sent those records. You can see all those payments. So  
3 there was no surprise that there was a tax liability nor  
4 was it -- that they were coming after us for that money.  
5 We were already in actual collect -- we were paying \$650 a  
6 month forever. I mean forever.

7 Then she said that I declared her in -- that I  
8 declared her unfit. No. I had nothing to do with it.  
9 The disability told me that that's what the process was.  
10 We've never been through the state disability or the  
11 government disability. They told me to fill out the form.  
12 I followed the directions. She got disability on the  
13 first time. I didn't declare her anything. I didn't have  
14 the ability to declare her in any -- in any way.

15 I just followed what they told me to do. I've  
16 never had that happen before. I never knew what to do.  
17 They just told me this is what I do. I did it, and that  
18 was it. I didn't declare her anything. Maybe her medical  
19 doctor did, but I didn't do it.

20 There was -- and then she said there was no one  
21 to pay -- there was never -- we knew what the taxes were.  
22 There wasn't any under payment of anything of the tax  
23 liability. The tax return was what it was. We had a  
24 liability, and we couldn't pay it. So we've been paying  
25 on the \$650 a month forever.

1           And she referenced that I was talking about the  
2 tax year 2011. I never made reference to tax year 2011.  
3 I said it was 2012, but the actual year of real world was  
4 2011. And those are when the items happened. So in 2011  
5 if you have the filing in 2012, it indicates what happened  
6 in year 2011. So what I'm trying to say is, is that a lot  
7 of that stuff that she said doesn't have any merit to what  
8 has actually happened and the ability for her to know what  
9 was going on.

10           That's all. Thank you.

11           JUDGE STANLEY: Okay. I don't usually like to do  
12 this after people have concluded, but I did notice,  
13 Ms. Patel, that you said that he had her declared unfit.  
14 But I didn't see anything in the record that indicated  
15 that. Do you have an exhibit you can point to that would  
16 show us that?

17           MS. PATEL: That fact is simply from Ms. Bowman's  
18 innocent spouse request file, Exhibit I.

19           JUDGE STANLEY: Okay. So it should be included  
20 in Exhibit I?

21           MS. PATEL: Yes.

22           JUDGE STANLEY: Okay. Do you have any other  
23 follow-up questions?

24           JUDGE DANG: No questions.

25           JUDGE STANLEY: Judge Tay?

1           JUDGE TAY: For Franchise Tax Board, in terms of  
2 the streamline -- the qualifications for the streamlined  
3 relief, would you mind discussing economic hardship?

4           MS. PATEL: So for the streamline relief, there  
5 are three requirements. Ms. Bowman established that she  
6 had the three -- or the -- sorry -- the seven threshold  
7 requirements, which then would require her to file -- show  
8 she had streamline relief. The second of the streamline  
9 relief is the requesting spouse will suffer an economic  
10 hardship if the relief is not granted as set forth in  
11 4.032(b).

12           Economic hardship exists if partially or wholly  
13 allow satisfying the tax liability would cause the  
14 requesting spouse unable to pay reasonable basic living  
15 expenses. As stated, or as explained in Respondent's  
16 opening brief, the only income that we have record of for  
17 Ms. Bowman is that social security disability income that  
18 she's currently receiving. And that was also included in  
19 her innocent spouse file.

20           We're not sure what kind of expenses her parents  
21 are paying for her currently because they are living  
22 separately right now. But the total amount, I believe, as  
23 stated in Respondent's opening brief, was about a thousand  
24 a month. Which in comparison to the federal standards for  
25 basic living expenses, did fall within a lower level of

1 income. And so this factor was met simply because her  
2 monthly income and annual income, quite frankly, does  
3 not -- was not sufficient enough in comparison to the tax  
4 liability.

5 JUDGE TAY: So the relevant year that you would  
6 look at to determine economic hardship, would that be this  
7 year, or would it be --

8 MS. PATEL: That would be the current year right  
9 now because the tax liability would be due as of right  
10 now. It was due in 2012, but currently requesting  
11 innocent spouse relief would it cause financial relief on  
12 her. Currently our determination was, yes, it would.

13 JUDGE TAY: And how does spousal support work  
14 into that calculation?

15 MS. PATEL: Spousal support is considered as  
16 income received. However, based on Ms. Bowman's innocent  
17 spouse request, she had indicated that she was not  
18 receiving regular spousal support payments.

19 JUDGE TAY: Okay. And if she were receiving  
20 regular spousal support, as dictated by the court order,  
21 would that change that element of the streamline relief?

22 MS. PATEL: I think ultimately it would go into  
23 considering how much her annual income or monthly income  
24 was. But she also was required to pay for child support  
25 in addition to that. So that's a subtraction from her

1 income that would be received. So like I said, this  
2 income was not considered because she did not receive it.  
3 But I think there are other things that should be  
4 considered if she did actually receive it.

5 JUDGE TAY: May I ask --

6 MR. BOWMAN: Can I respond?

7 JUDGE STANLEY: I'm going to give you a chance.  
8 I always let the Appellant have the last word. So I'm  
9 going to let you respond to anything that she said. But I  
10 think Judge Tay has more questions.

11 MR. BOWMAN: Sure.

12 JUDGE STANLEY: And maybe some for you.

13 JUDGE TAY: Oh, mine was just to ask if it's okay  
14 for the Appellant to respond.

15 JUDGE STANLEY: Okay. We're on the same page  
16 then.

17 MR. BOWMAN: Thank you.

18

19 REBUTTAL STATEMENT

20 MR. BOWMAN: Okay. I'd love to respond to the  
21 hardship on her income. And that income I actually was --  
22 I was ordered to pay \$2,654 a month, which I have been for  
23 the last two years or so. And then she was granted to pay  
24 me \$36 a month due to the fact that I had our daughter.  
25 But, actually, last January our daughter expressed

1 interest in being with her mom, and my wife has been  
2 getting a lot better and being able to almost live on her  
3 own at this point.

4 And she actually got an apartment or a house and  
5 is now living on her own. And just so you know, for the  
6 last 12 months I've been paying her \$3,664 a month without  
7 court order based on, you know, obviously the calculations  
8 from my attorney before if I were to pay child support.  
9 So it's not that I'm not going to pay this debt of the  
10 \$5,000 in the 2012 tax year, this is a principle thing.

11 I'm paying it. I'm going to pay it. Nobody else  
12 is going to pay it. I'm not asking my wife to pay it or  
13 to be responsible for the debt to pay it. It's just when  
14 I get to the final divorce proceedings, it's just on my  
15 balance sheet as something that she owes. I'm paying the  
16 debt. I'm still paying it every month, and I'm going to  
17 pay it off. That is the last -- I'm down to about \$4,000  
18 total.

19 But bottom line is that she does have income.  
20 She doesn't report that income. I can't control that of  
21 what she wrote, and what she does do. But you can see the  
22 court order, or I can provide you what I have been paying.  
23 And what I don't have a court order for and have been  
24 paying, which is \$3,664 a month for the last year without  
25 a court order.

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Thank you.

JUDGE STANLEY: Is that it? Are you okay?

All right. Well, thank you both for presenting.  
We'll take this under submission and make a decision.  
We'll send out a written decision in 100 days or less.  
And we are going to recess for 10 minutes before we go to  
the next case.

(Proceedings adjourned at 11:04 a.m.)

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HEARING REPORTER'S CERTIFICATE

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

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

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

I have hereunto subscribed my name this 3rd day of February, 2020.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER