

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
LANCE JON GASICH,) OTA NO. 19034563
)
 APPELLANT.)
)
)

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Wednesday, January 29, 2020

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
400 R Street, Sacramento, California, 95811,
commencing at 10:01 a.m. and concluding
at 10:54 a.m. on Wednesday, January 29, 2020,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

1 APPEARANCES:

2

3 Panel Lead: ALJ ANDREW KWEE

4

5 Panel Members: ALJ JEFF ANGEJA
6 ALJ SHERIENE RIDENOUR

7

8 For the Appellant: LANCE JON GASICH

9

10 For the Respondent: STATE OF CALIFORNIA
11 DEPARTMENT OF TAX AND
12 FEE ADMINISTRATION
13 By: SUNNY PALEY
14 MONICA SILVA
15 JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits were received at page 10.)
(Department's Exhibits were received at page 10.)

P R E S E N T A T I O N

P A G E

By Mr. Gasich	11
By Ms. Paley	28

1 Sacramento, California; Wednesday, January 29, 2020

2 10:01 a.m.

3

4 JUDGE KWEE: We're going to go on the record now.

5 We're opening the record in the appeal of Lance

6 Jon Gasich before the Office of Tax Appeals. The Case

7 Number is 19034563, and today's date is Wednesday,

8 January 29th, 2020. The time is approximately 10:01 a.m.

9 So today's hearing is being -- I'm sorry.

10 So today's hearing is being convened in

11 Sacramento, California. We're going to be heard by a --

12 it's going to be heard by a panel of three Administrative

13 Law Judges, Jeff Angeja to my left and Sheriene Ridenour

14 to my right. They are the other members of this tax

15 appeals panel, and my name is Andrew Kwee.

16 All three judges are going to meet after this

17 hearing and produce a written decision as equal

18 participants. Although the lead judge, that's myself,

19 will conduct the hearing, any member of this panel may ask

20 questions or otherwise participate to ensure that we have

21 all the information needed to decide this appeal.

22 For the record, will the parties at the table

23 please state their names and who they represent, starting

24 with Respondent, CDTFA.

25 MS. PALEY: Yes. Sunny Paley for CDTFA. And I

1 am with Monica Silva and Jason Parker.

2 JUDGE KWEE: Okay. Thank you.

3 And for the taxpayer, Appellant.

4 MR. GASICH: Lance Gasich representing myself.

5 JUDGE KWEE: Okay. So as one preliminary matter,

6 the Notice of Panel that went out identified Sara Hosey as

7 a member of this panel, but Sheriene Ridenour is going to

8 be substituting in place of Sara Hosey due to a scheduling

9 conflict. Does either party have a --

10 CDTFA, do you have any objection to the

11 substitution?

12 MS. PALEY: No. Thank you.

13 JUDGE KWEE: And Mr. Gasich, do you have an

14 objection?

15 MR. GASICH: I do not.

16 JUDGE KWEE: Okay. Thank you. So I believe

17 Mr. Gasich, you indicated that you might have a witness,

18 Robin Saunders, the former assistant manager at South Bay

19 Organic Solutions. Is she here today?

20 MR. GASICH: She's not.

21 JUDGE KWEE: Okay.

22 MR. GASICH: I just have her letter, her

23 testimony.

24 JUDGE KWEE: Okay. And that is part of the

25 exhibit package; is that correct?

1 MR. GASICH: Yeah. I was hoping to get her out
2 here, but she's -- she's having to have to come all the
3 way from Florida.

4 JUDGE KWEE: Okay. I understand. So it's just
5 going to be you today; is that correct?

6 MR. GASICH: Yes, sir.

7 JUDGE KWEE: Okay. And CDTFA, do you have any
8 objections to hearing testimony from Mr. Gasich today?

9 MS. PALEY: No, we're not.

10 JUDGE KWEE: Okay. Great. So on the exhibits, I
11 believe for Mr. Gasich we have your exhibit index and
12 package, which contains 12 exhibits consisting of 41
13 pages. And in addition, yesterday OTA received
14 Exhibit 13, which was case information for a misdemeanor
15 complaint in a proceeding against Charles Todd Hill. Do
16 you have any additional exhibits? Or does that
17 describe -- summarize all of your exhibits for today?

18 MR. GASICH: That's -- that's it. Thank you.

19 JUDGE KWEE: Okay. Sure. And for CDTFA, I have
20 Exhibits A through F. That's 136 pages. Are all those
21 all of your exhibits for today?

22 MS. PALEY: Yes.

23 JUDGE KWEE: Okay. Great. So I'll get to
24 objections. Does CDTFA, do you have any objections to any
25 of the 13 exhibits that are -- that have been submitted by

1 the taxpayer?

2 MS. PALEY: No. We do to the admission of
3 Appellant's 13 as being untimely, exhibits were due
4 approximately two weeks ago. There hasn't been a showing
5 as to why that was not available at that time. Also we
6 would object on the basis of relevance as well as what it
7 purports to be. We have no information as to what that
8 charge is or who that person is specifically, if it's
9 relevant or not.

10 JUDGE KWEE: Okay. And I'll turn to Mr. Gasich.
11 Do -- would you like to respond? There's been an
12 objection raised to your Exhibit 13; the one that was
13 submitted yesterday, I believe.

14 MR. GASICH: Well, I think in that case, I do
15 appreciate the fact that it was late. It was brought to
16 my attention that the criminal case against Todd Hill who
17 was the owner of SBS -- SBOS Solutions. I find that
18 relevant to the character of the person that was involved
19 in it. And it's, you know, defrauding money from many
20 people at that time. And I thought that was relevant to
21 have of how he treated me and the situation I was involved
22 with.

23 JUDGE KWEE: Okay. So with Exhibit 13 it appears
24 to me it's just a list -- an unspecified misdemeanor case.
25 It doesn't indicate what it's for. And it looks like it

1 hasn't -- there hasn't been a pleading or conviction in
2 that case. And also in this case or in this case of this
3 exhibit, it is submitted untimely.

4 I did mention at the conference there would be a
5 due date, 15 days before the hearing. And it does look
6 like in this case you do have exhibits that were timely
7 submitted referring to the arrest of Mr. Todd Hill. So it
8 does also look like Exhibit 13 is duplicative of what
9 you're trying to get to that's already in your other
10 exhibit. So I'm just going to exclude Exhibit 13 as
11 untimely because it doesn't -- well, as untimely. It
12 doesn't appear too relevant or to what we have today.

13 MR. GASICH: Can I say one more thing?

14 JUDGE KWEE: Yes. Go ahead.

15 MR. GASICH: My hope was because I was -- I was
16 going to communicate with the D.A. who was in charge of
17 that case, that perhaps that's where this -- my case
18 belongs in that case. Because it's just that -- it's a
19 series of people kind of similar to a class-action lawsuit
20 where it's a bunch of investors that have been defrauded.
21 And so my feeling was that's what -- where my case
22 belongs, not -- not in my lap.

23 JUDGE KWEE: Okay. I understand. And you're
24 certainly welcome to provide your testimony today
25 regarding this matter. And you'll have an opportunity to

1 say that later. So with the object -- with the exhibits,
2 did you have any objections to the exhibits that CDTFA had
3 submitted today?

4 MR. GASICH: No.

5 JUDGE KWEE: Okay. With that said, the
6 Exhibits 1 through 13 for the taxpayer and A -- I'm sorry.
7 1 through 12 for the taxpayer, excluding Exhibit 13, and
8 A through F, I believe -- that's correct -- A through F
9 for CDTFA are admitted into the evidentiary record.

10 (Appellant's Exhibits 1-12 were received
11 in evidence by the Administrative Law Judge.)

12 (Department's Exhibits A-F were received in
13 evidence by the Administrative Law Judge.)

14 JUDGE KWEE: So just as a summary, a recap, the
15 way this will proceed today is we'll start with taxpayer's
16 presentation and testimony, and they have been afforded
17 15 minutes.

18 Mr. Gasich has 15 minutes for their testimony
19 followed by turning it over to CDTFA, who will have
20 15 minutes to do an opening presentation. After that
21 either party may ask questions. And in addition, since
22 Mr. Gasich will be testifying under oath as -- CDTFA will
23 have an opportunity to ask questions of Mr. Gasich if they
24 so choose. Following that, each party will have five
25 minutes for closing arguments. And that will conclude

1 today's hearing.

2 Does either party have any questions about that
3 before we proceed?

4 MS. PALEY: No. Thank you.

5 MR. GASICH: If I go over, like, a minute or two
6 is that a problem?

7 JUDGE KWEE: I -- I don't have a stopwatch, so
8 you're good. Okay.

9 So the issue on this appeal is whether Appellant
10 is personally responsible for the unpaid liabilities of
11 South Bay Organic Solutions, Inc.

12 And before we turn it over to Mr. Gasich for his
13 testimony, I'm going to ask you to raise your right hand
14 and swear you in.

15

16 LANCE JON GASICH,

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

20

21 JUDGE KWEE: Okay. Thank you. You may proceed
22 with your presentation.

23

24 PRESENTATION

25 MR. GASICH: First I just want to thank the panel

1 for the opportunity to present this final appeal. And I
2 was going to present -- I was going to read orally or
3 verbally my testimony -- my opening testimony letter, my
4 testimonial. And then prior to doing that, I just want to
5 mention that the -- that the woman that had been assigned
6 to my case originally, Carrie Shottle, back in 2000 -- I
7 believe '14.

8 I work with her for about a year presenting
9 evidence that I had amassed and was more accessible to me
10 at the time because it was -- it was closer to the time
11 that I left the company. So there's more available to me.
12 After dealing with her for a year, she had agreed to
13 dismiss the case. And then it was overturned a month
14 later by her supervisor.

15 During that -- that time I got rid of a lot of my
16 evidence because I thought I was done with this. So then
17 when I found -- you know, when I had to go back when --
18 when the news came out that I had to, you know, that I had
19 to stay with the case, I had to go -- I had to amass more
20 material that had been lost. And, unfortunately, I don't
21 have everything I originally had. So I just want to state
22 that for the record.

23 And before I read my testimony, I just want to
24 say that up until I got the bill from the BOE, which is
25 now the OTA, I was completely unaware of any tax liability

1 at all. I had left the company after six months, and this
2 was in September, and I was not aware of any tax liability
3 at that time. And, uh, the bill that I got was even
4 including the revenue that was generated after I left the
5 company.

6 So the bill that I'm actually -- have the
7 liability with is -- is actually inflated, even if I was
8 actually going to take responsibility for it, which I -- I
9 don't feel I should. I was completely unaware of any tax
10 liability.

11 I did not have any retail experience. I was not
12 in charge of the finances. Todd Hill was in charge of the
13 finances 100 percent. So it came as a shock when I got
14 the bill, and, you know, I've been dealing with this for,
15 you know, years now.

16 So I'll just read my testimonial and then just go
17 through some of my exhibits quickly.

18 (There is a pause in the proceedings.)

19 MR. GASICH: I was contacted and hired by the
20 owner SBOS, Todd Hill, open and run a retail business DBA
21 South Bay Organic Solutions. He had already secured the
22 lease, formed the corporation, and set up the banking
23 before I was contacted. Todd Hill did not want to be on
24 record as an officer of the company because of other
25 business dealings that he had going on in real estate.

1 And the stigma of the cannabis industry at the time would
2 be unfavorable for him raising investment capital.

3 I unwittingly signed on with Todd and his company
4 on April 1st, 2011. I was seeking work because I had lost
5 my mortgage company of 10 years due to the Great
6 Recession. He needed a strong man, and like all con men
7 he took advantage when I was vulnerable. He offered me a
8 \$5,000 a month salary to put my name on the corporate
9 charter as the CEO and help get the business jump started.

10 As evidenced by numerous correspondence e-mails
11 with Todd and a statement of fact by the then office
12 manager, Robin Saunders, I nor any other employees had
13 control of the finances. If anything needed to be paid,
14 it was personally authorized by either Todd or his
15 personal secretary, Sue. He had complete control and
16 authority of the finances. Complete authority.

17 My responsibilities were to build a team of
18 employees and procedures that he would later inherit and
19 manage. After five months of working at SBOS, I left the
20 company in late August 2011. Todd Hill then changed the
21 locks in the front door to the business and more or less
22 we ceased correspondence, and he still owed me \$10,000 in
23 back pay.

24 After I had left, I asked him to take my name off
25 the corporate charters as the CEO. He said he would make

1 sure that he did at the end of the year. I told him
2 please make sure everything is in order with taxes, et
3 cetera. I didn't want anything blowing back on me. He
4 assured me he would take care of everything, which he
5 obviously did not.

6 I was compliant because he still owed me money --
7 owed myself and my contractor friend money that my
8 contractor friend had contributed time and material to the
9 building out of the office space. Todd Hill continued to
10 operate and run the business until it was dissolved
11 sometime in 2012. From what I've come to understand, he
12 milked the company dry to recoup his initial investment.
13 He accomplished this by burning people like me and not
14 paying the taxes.

15 I was never aware that the BOE sales tax
16 liability was not paid. I wasn't even aware that there
17 was a tax liability until months later in 2012 when I
18 received a letter from the BOE. Again, as I stated
19 before, I've never been involved in retail business, and
20 that was my responsibility because I was not part -- I had
21 nothing to do with the purse strings. Only in emergencies
22 was I able to, you know, maybe write a check for a phone
23 bill or something.

24 So that includes my testimonial. I would just
25 like to just go briefly through my exhibits just to point

1 out some of the experiences that -- that I had at the
2 company. I could go in order. Do I need to call out the
3 exhibit itself or --

4 JUDGE KWEE: If you could refer to the exhibits
5 then, that would be helpful so we could follow along.

6 MR. GASICH: Sure. Exhibit 1, page 1, Todd Hill
7 is making -- Todd Hill is taking charge of the business as
8 evidenced in the e-mail. I will get the place furnished
9 with furniture, product, and insurance for the opening.
10 I'm just trying to show that he was always in direction
11 of -- of finances.

12 Exhibit 1, page 3, Todd Hill setting up business
13 operations. From Todd Hill the e-mail states, "It is
14 important to us to get all of these docs signed by the
15 employees. Please do not change any of the verbiage. Our
16 attorney did these docs. Thank you." So again he's --
17 he's showing -- he's showing control of, you know, legal
18 proceedings or legal documents within the company.

19 And then Exhibit 1, page 5, "Please keep" -- this
20 is Todd Hill to Robin the manager. "Please keep" -- I
21 highlighted some of these things within the paragraph. So
22 I'm sorry if, you know, you can't follow me on this.
23 "Please keep track of the time you spend before you start,
24 so that you can be compensated for your time." Again,
25 he's speaking -- he's showing that he's the one in control

1 of paying things.

2 Down below on the same page Todd Hill is giving
3 instructions on business operations, "Figure out the
4 point-of-sale system, inventory system," blah, blah, blah.
5 Exhibit 2, page 1, this is the letter that Robin Saunders
6 provided as evidence to her experience while working with
7 me, Todd, and the crew at SBOS.

8 "My name is Robin Saunders. I worked at SBOS as
9 an assistant manager during the time frame in 2011, that
10 Mr. Gasich was the general manager. I reported directly
11 to Mr. Gasich and to Todd Hill, who everyone knew was the
12 owner and ultimately controlled all financial decisions
13 regarding who, what, and when got paid.

14 "I knew for a fact that Todd Hill knew about the
15 sales tax liabilities. He was the final decision maker on
16 all bills. I recall numerous times that Lance and myself
17 would ask Todd for money to pay bills. It was always met
18 with stonewalling saying he would get to it later. This
19 is how he controlled the business, which was a huge level
20 of frustration for both myself and Mr. Gasich.

21 "Please make the correct and ethical decision to
22 relieve Mr. Gasich of his liability. He is in no way
23 responsible for the irresponsible and self-serving actions
24 of Todd Hill."

25 That was Robin Saunders. I worked with her, you

1 know, day in and day out from 9:00 to 5:00. So she had
2 intimate knowledge of how things were -- were run.
3 Exhibit 3, page 1. Todd Hill is corresponding with the
4 bank manager at First Republic Bank, Kelly Yang. He's
5 telling -- he's instructing Kelly to, "Please pay these
6 checks that had been held up for insufficient funds."

7 She wasn't sure what to do. So this is his
8 correspondence to her showing that he's the one that's
9 calling the shots with the banking.

10 Exhibit 4, page 1. This is Todd Hill instructing
11 his secretary, Sue, what needs to be paid. "Sue, you are
12 the one that got the cashier's check and paid it. What
13 amount did you send? I gave you the money for this, the
14 2K -- the 2K of money owed to me that I've not collected."
15 Showing again that he's instructing people on what needs
16 to be paid.

17 Exhibit 5, page 1, this is myself corresponding
18 with Sue Goodwin, pleading with her to -- to pay the
19 bills. "Morning Sue, please call AT&T first thing this
20 morning and get the hold released on our long distance.
21 We cannot call or fax outside the area code from the
22 office phone. Please, please with sugar on top. Also as
23 a reminder, I need the replacement checks for the Mark
24 Borgese and the Kanaroo Kitchen. Please leave the two
25 additional blank checks for vendors, which I will need in

1 a couple of days."

2 Again, this is showing that I -- every time I had
3 to get something paid, it was just, you know,
4 excruciatingly painful to -- to get things done. Down
5 below, again, asking her to prepare the replacement check.
6 Exhibit 5 -- I think this is page 1. It's cut off in the
7 bottom. It's an e-mail correspondence from Todd to Sue.

8 Again, Todd is instructing Sue to pay rent. "Can
9 you please cut a check for \$7,320 to Union Plaza for
10 August and September rent. This need to go out this
11 week." Again, Todd Hill instructing what needs to be
12 paid.

13 Exhibit 6, page 1. This is myself to Sue, again,
14 requesting checks to be cut for vendors. "Sue, please
15 confirm receipt of vendor check request dated 7/5. I will
16 need to pick them up by 1:00 p.m. Thank you."

17 Everything in Exhibit 6 is -- is kind of this --
18 just a bunch of stuff that -- showing that a bunch of
19 transactions and time that -- that Sue spent doing all of
20 the back-end work for the business, which I had no part
21 of. She would bring me in on meetings to participate and
22 give my opinion. But, ultimately, she was running things
23 from the back end of the business.

24 Exhibit 8, page 1, this is some checks that had
25 been returned NSF. And it is Todd Hill instructing these

1 checks to be paid. Exhibit 9 is the statement from the
2 EDD of my unemployment insurance award that I -- I claimed
3 once I left. So what I wanted to make sure that was
4 known, again 'cause I stated earlier, I left the company.
5 By September I was gone.

6 And the company continued to do business for, I
7 think, at least five or six months. And the bill that I
8 received includes the revenue that was, you know,
9 generated during the time that I wasn't even there.

10 Exhibit 10, I guess this is kind of that -- the
11 character thing. This is Todd Hill up to his usual
12 shenanigans. He was arrested in Los Gatos on four
13 grand-theft arrest warrants. He was -- this is part of
14 the lawsuit that's still going on, which is Exhibit 13.
15 But I guess more investors have come forward, you know.
16 So now it's like 14 rather than, like, 2.

17 So this guy was -- he took 2 people, went for
18 \$200,000 and the other one for \$500,000. So, you know, I
19 was unfortunately and unwittingly involved with somebody
20 who, you know, had unscrupulous behavior. And, you know,
21 I am the victim here. I pay my bills. I'm a working man.
22 I don't pretend to be a mover and shaker. I'm a guy that
23 just gets up and goes to work.

24 And that's all I have to say.

25 JUDGE KWEE: Okay. Thank you. At this point I

1 would like to ask CDTFA if they have any questions for the
2 witness.

3 MS. PALEY: No. Thank you.

4 JUDGE KWEE: Okay. And just a quick point of
5 clarification, we are the Office of Tax Appeals. We're a
6 separate agency from the State Board of Equalization,
7 which had handled this prior to 2018.

8 MR. GASICH: Okay.

9 JUDGE KWEE: And I did have a couple of questions
10 for you, Mr. Gasich.

11 MR. GASICH: Yes.

12 JUDGE KWEE: So in looking at CDTFA's documents,
13 they had attached the signature card and copies of
14 canceled checks for First Republic Bank.

15 MR. GASICH: Yes.

16 JUDGE KWEE: And on the signature card, it looks
17 like it only lists one authorized signer, which was Lance
18 Gasich, President. And I'm just trying to reconcile this
19 and then the cashed checks with your signature on them to
20 the testimony from the -- to the e-mails in the testimony
21 that you gave earlier --

22 MR. GASICH: Yes.

23 JUDGE KWEE: -- indicating that Todd Hill was the
24 person directing payment. And I'm just trying to
25 understand how Todd Hill was making the payments if you're

1 the only person on the bank account. And I'm wondering if
2 there's a different account or if there is some
3 explanation just to reconcile the payments.

4 MR. GASICH: I can explain that.

5 JUDGE KWEE: Okay.

6 MR. GASICH: Again, he didn't want his name on
7 anything, and he did have multiple accounts. So he was
8 paying things out of other accounts that would be applied
9 to the business. I was the signer, but everything had to
10 be approved, you know. They would, you know, they would
11 set out the checks, and then all I would do is just sign
12 it.

13 You know, I didn't have control over what was --
14 you know, why those checks were being cut. But I would --
15 I would sign the checks to get the, you know, move forward
16 with the, you know, the transaction that needed to -- you
17 know, whatever needed to be paid. But often, other checks
18 would be -- he'd be paying stuff from other accounts. I
19 didn't even know where they were coming from.

20 JUDGE KWEE: Okay. So the money that this
21 business earned, did that all go into the bank that you
22 were a signature on, or did money go to different bank
23 accounts?

24 MR. GASICH: I -- I don't think I'm following
25 you.

1 JUDGE KWEE: Oh. So the money that was collected
2 from the sales that the business made --
3 MR. GASICH: Oh, yes.
4 JUDGE KWEE: -- did that all go into the bank
5 account that you were the signer on or was this money
6 going into separate accounts? Or how was --
7 MR. GASICH: I believe most of it went in there,
8 but he would move money from there and into other
9 accounts, you know, from First Republic.
10 JUDGE KWEE: Okay. So and -- Mr. Todd Hill, was
11 he a -- what was his relationship to the corporation? I
12 understand he -- was he an officer or was he a
13 shareholder?
14 MR. GASICH: He -- he's the one that started the
15 company.
16 JUDGE KWEE: Okay.
17 MR. GASICH: You know, he had every -- he had
18 the -- you know, he had found the property. He had formed
19 the -- you know, he was the one that was on the lease.
20 JUDGE KWEE: Okay. Was he shareholder in the
21 corporation or --
22 MR. GASICH: He owned the company. I was not an
23 owner.
24 JUDGE KWEE: Okay. So your role was an officer,
25 and his role was a shareholder?

1 MR. GASICH: Right. He was the -- he was the
2 owner. I was the CE -- you know, he needed -- 'cause he
3 wanted to incorporate, he needed a -- somebody to be a
4 director.

5 JUDGE KWEE: Okay.

6 MR. GASICH: And so I offered to put my name on
7 there, although, I did not act as a CEO.

8 JUDGE KWEE: Did you have any ownership interest
9 at all in the corporation.

10 MR. GASICH: No, I did not.

11 JUDGE KWEE: Okay. So as far as the EDD
12 statement that you had brought, I'm -- I'm just trying to
13 understand this because you were saying that you left the
14 corporation I think in September 2011.

15 MR. GASICH: Yes.

16 JUDGE KWEE: And I'm -- I'm wondering -- I'm just
17 trying to understand what the EDD statement is. Did you
18 claim wages from September? Or did you claim wages from
19 January of 2012? When did the claim start?

20 MR. GASICH: Well, I think didn't -- I didn't
21 even -- I wasn't planning on filing unemployment. So I
22 didn't file it right away. And then I decided to go ahead
23 and file it. So I filed a little, you know, after I had
24 left the company, like, a couple of months. But what I
25 think what they do is they take your -- your best quarters

1 earnings, and that's what -- what your -- your
2 installment -- you know, what your allowance is going to
3 be. So --

4 JUDGE KWEE: Okay. And if I'm looking at this.
5 It's your exhibit with the Notice of Employment Insurance
6 Award that we just went over. And it looks like it is
7 saying, if I'm understanding this correctly, that you
8 didn't receive wages for the fourth quarter of 2010, the
9 first quarter of 2011, the second quarter of 2011, but you
10 did receive wages for the third quarter of 2011 of
11 \$15,000. Am I understanding this correctly?

12 MR. GASICH: I think he paid me -- because I
13 think I went a couple of months without getting paid. And
14 then, you know, he paid me in a lump sum.

15 JUDGE KWEE: Okay.

16 MR. GASICH: Yeah.

17 JUDGE KWEE: So as far as the liability of that
18 is concerned my -- at issue, my understanding was that
19 arose from a non-remittance return. And if I'm looking at
20 CDTFA's exhibit, it was the decision. It was saying that
21 you filed and signed the return for the liability at
22 issue. Are you disputing that?

23 MR. GASICH: No. Because I -- you know, I didn't
24 even -- he -- I think he sent that over electronically,
25 and I had already left the company. I -- I didn't -- you

1 know, I assuming whatever I was signing was making sure
2 that he could move forward with paying things
3 appropriately and handling what business needed to get --
4 you know, be done.

5 JUDGE KWEE: Oh, so are you disputing that you
6 actually signed that return? Or you're --

7 MR. GASICH: No. I -- I do believe signing a
8 return.

9 JUDGE KWEE: Okay.

10 MR. GASICH: Yeah.

11 JUDGE KWEE: I'd like to briefly turn to CDTFA.
12 So when was the return filed at issue?

13 MS. PALEY: Give me one moment, please.

14 JUDGE KWEE: Okay. I'm just trying to understand
15 the termination date and when these additional --

16 MR. GASICH: I know I had already left the
17 company.

18 JUDGE KWEE: Okay.

19 MR. GASICH: Yeah.

20 MS. PALEY: The return was filed
21 January 31st, 2012.

22 JUDGE KWEE: Okay.

23 MR. GASICH: So I -- I had been out of the
24 company for, you know, four months, three or four months.

25 JUDGE KWEE: Okay. And for CDTFA, I think I

1 remember there was some reference to EDD wage info. Do
2 you have in the exhibit package information on what wages
3 were paid to Mr. Gasich and for what periods?

4 MS. PALEY: If you could give me one moment.

5 JUDGE KWEE: Okay.

6 MS. PALEY: It doesn't break down by employee.
7 It just -- the number of employees is reported, and the
8 wage is reported. It doesn't denote by person.

9 JUDGE KWEE: Okay. So you don't have any
10 information on file --

11 MS. PALEY: I don't have any specifics, no.

12 JUDGE KWEE: -- when he was paid? Okay. Thank
13 you.

14 I should ask my co-panelists if they have any
15 questions to ask at this point.

16 Okay. I think that's all I had at the moment.
17 Oh, I -- and just to clarify. So are you -- the banking
18 the documents that CDTFA had submitted that list you as
19 the only signer on that account, are you -- do you dispute
20 that you're the only signer on this account? Or do you
21 contend that Mr. Hill was also a signer on the account?

22 MR. GASICH: You know, Judge Kwee, I -- I don't
23 even know to be honest. I mean, you know, he would come
24 out of the blue with paying stuff at the last minute.
25 And, I -- I mean, I don't know. He was good buddies with

1 the president of the bank. And, you know, they had
2 wheeling and dealings that I -- I was unaware of.

3 JUDGE KWEE: Okay.

4 MR. GASICH: I mean, the guy could have had five
5 other accounts there. I mean, I really don't know.

6 JUDGE KWEE: Okay. Thank you.

7 I'll, at this time point, turn it over to CDTFA
8 for their opening presentation.

9 MS. PALEY: Thank you.

10

11 PRESENTATION

12 MS. PALEY: In 2011 Appellant ran South Bay
13 Organic Solutions, Incorporated, a medical cannabis
14 dispensary. As seen in Exhibit B, on December 26, 2014, a
15 Notice of Determination was issued to the Appellant for
16 the unpaid liabilities for South Bay.

17 As you're aware personal liability may only be
18 imposed if CDTFA establishes that while the person was a
19 responsible person, the corporation collected sales tax
20 reimbursement from customers and failed to remit such tax
21 when due. Specifically, by a preponderance of the
22 evidence, the four elements that must be met for personal
23 liability to attach under Section 6829 of the Revenue and
24 Taxation Code are: One, the corporation must be
25 terminated; two, the corporation must have collected sales

1 tax reimbursement; three, the person must have been
2 responsible for the payment of Sales and Use Tax; and
3 four, the person's failure to pay must have been willful.

4 The first two elements are not in dispute. In
5 this case, Appellant filed South Bay's Sales and Use Tax
6 Returns on January 31st, 2012, reporting tax due of
7 approximately \$32,000, Exhibit C, Dual G. The reported
8 taxes went unpaid. When compliance staff contacted
9 Appellant by phone on July 17th, 2012, as shown in
10 Exhibit C, Dual A-1 and H, the Department learned from the
11 Appellant that the company had closed six months earlier.

12 As to the third element, responsible person means
13 that any person having control or supervision of, or who
14 was charged with the responsibility for the filing of
15 returns or the payment of tax, or who had a duty to act
16 for the corporation in complying with any provisions of
17 the sale and use tax law when the taxes became due. In
18 this case, there's ample evidence that Appellant was a
19 person responsible for handling South Bay's Sales and Use
20 Tax matters throughout the liability period.

21 As shown in South Bay's seller's application and
22 Secretary of State filings, Appellant was the president,
23 CEO, secretary, CFO, and agent with no other corporate
24 officers. And that's shown in Exhibit C, Dual E, B, and
25 C. Further, Appellant submitted South Bay's only Sales

1 and Use Tax Returns for 2011, again, Exhibit C, Dual G,
2 the 401 electronic filing.

3 Appellant asserts that he was only a manager of
4 the business, and that Mr. Todd Hill was the owner of the
5 company. While there is some support to show that
6 Mr. Hill was a financial backer, the company was
7 Appellant's. He was the sole officer. He registered it
8 with the Department. He ran the business. He collected
9 the tax and kept it and used it to pay other debts. The
10 involvement of Mr. Hill does not negate that Appellant was
11 a responsible person for South Bay's sales use tax
12 compliance.

13 As to the fourth element, willfulness, Appellant
14 argues that the Department hasn't established that his
15 failure to pay was willful and that it's unfair to hold
16 him personally liable. Failure to pay is willful if the
17 person had knowledge that the taxes were not being paid
18 and had the authority and ability to pay the taxes but
19 failed to do so. A person can be willful even though
20 there was no bad purpose or motive.

21 By virtue of his role as the sole officer of
22 South Bay and as only the signer on South Bay's checking
23 account as shown in the business bank documents,
24 Exhibit E. Appellant had the authority to pay the taxes
25 or cause them to be paid.

1 As to knowledge, the evidence shows that
2 Appellant knew that South Bay's taxes were not being paid,
3 as Exhibit C, Dual G, the electronic revenue record 401
4 shows. As president of South Bay, he submitted a Sales
5 and Use Tax Returns on January 31st, 2012, yet, did not
6 make any payment.

7 Finally, as to the ability to pay taxes, South
8 Bay had funds available to pay the taxes. During the
9 relatively short liability period, the company reported
10 approximately \$373,000 in sales and collected sale tax
11 reimbursement from its customers. That was available to
12 pay the sales tax liability, yet the corporation failed to
13 remit the taxes to the State.

14 Instead those funds were used to pay other
15 creditors; rents of approximately \$15,000, utilities and
16 payroll of employees, including himself, of \$86,000, per
17 the EDD records. And that's Exhibit C, Dual I, J, and F.
18 Whether due to Appellant's own decisions to pay other
19 credits instead of the State or his deferral to Mr. Hill,
20 the evidence establishes that Appellant willfully failed
21 to pay or cause to be paid the taxes collected and owed to
22 the State.

23 Based on the evidence of the record, the
24 Department has clearly met its burden of proving the
25 elements of imposing personal liability to Appellant and,

1 therefore, the appeal should be denied.

2 Thank you.

3 JUDGE KWEE: Thank you.

4 And I did have one question or clarification for
5 CDTFA. And I was looking at your Exhibit A, the decision
6 and recommendation. And on page 11 when it's talking
7 about why he isn't willful, it says, "Mr. Hill was not an
8 owner or an officer of South Bay." That's on page 11 of
9 the decision and recommendation. And I'm wondering if
10 CDTFA has any documentation here that shows what the
11 ownership -- reflects what the ownership of the
12 corporation was and who the owners were of the
13 corporation?

14 MS. PALEY: What we do have is the Secretary of
15 State incorporation records as well as the seller's permit
16 as reference. Again, we don't dispute that Mr. Hill
17 apparently was a financial backer, but we don't have any
18 evidence as to ownership interest.

19 JUDGE KWEE: Okay. So then --

20 MS. PALEY: Other than that it establishes that
21 Mr. Gasich was responsible. And it is quite unfortunate
22 if he -- I think he used the terms "unfortunately and
23 unwittingly involved". But he availed himself of that.
24 He put himself as the owner of that company. He was all
25 of the things. There was no one else listed.

1 JUDGE KWEE: Okay. So I just -- CDTFA doesn't
2 have information on what the shareholder percentage was
3 for this corporation?

4 MS. PALEY: Correct.

5 JUDGE KWEE: Okay. Thank you.

6 Do either of the panel members have any further
7 questions today?

8 JUDGE RIDENOUR: No.

9 JUDGE ANGEJA: I may have missed it, but what's
10 CDTFA's response to Appellant's allegations that Mr. Hill
11 was in charge? I call it the "kingpin defense". His
12 signature appears on checks, but he's got some evidence
13 and testimony that he needed the permission of Mr. Hill
14 before he could do anything. And I didn't hear the
15 rebuttal to that.

16 MS. PALEY: Well, given the fact that he is the
17 only signer listed on the bank account, if he surrendered
18 that to Mr. Hill that -- that is on him. But, ultimately,
19 as the CEO and CFO and all of the things, he -- he has
20 ultimate responsible for that. And, again, it is
21 unfortunate if he then surrendered to that. But he took
22 that responsibility and that duty and that responsibility
23 when he took those titles and took that position. Those
24 things have meaning, and that is why they matter in a
25 company.

1 JUDGE ANGEJA: So then I have a follow-up
2 question for Mr. Gasich. How is it -- I mean, they are
3 essentially saying when you've got an officer that can
4 delegate to somebody under them, right? And in this case,
5 they delegate -- their position is that it was delegated
6 uphill.

7 What is Mr. Hill's authority over you if he's got
8 no paper -- his signature doesn't appear on anything.
9 He's not an officer. In other words, how is it that he
10 exerted the authority? What would be the consequence if
11 you disobeyed his --

12 MR. GASICH: I probably would have gotten fired.
13 So I mean, I was protecting my job. I mean, I needed -- I
14 needed the money.

15 JUDGE ANGEJA: Do we have any documentary
16 evidence that he had that type of power? I understand
17 that's the argument, but there's no fingerprints of that.

18 MR. GASICH: Well, he was the, you know, he was
19 the -- he was the one that founded the company, you know.
20 I had no idea that this company even existed until he
21 called me and -- and brought me in to, you know, to use me
22 in a certain sense to, you know, for his own, you know,
23 for his own gain. So yeah, I didn't have any -- any
24 control over -- you know, everything had to go through
25 him.

1 JUDGE ANGEJA: And obviously if he owned
2 100 percent of the company, he's got that power.

3 MR. GASICH: Yeah.

4 JUDGE ANGEJA: Do we have evidence of ownership,
5 stock certificates? Anything?

6 MR. GASICH: Everybody knew. If I had -- if I
7 had all the employees here, they would all under oath tell
8 you he was the owner. I mean, he -- he called all the
9 shots. I -- I understand that I had responsibilities as
10 the CEO. I thought he would do the right thing and not --

11 You know, I didn't think I would get into this
12 kind of nonsense. I -- I mean dealing with him and all
13 the things I went through, working with him was -- was
14 hard enough. I mean, that's why I left the company
15 because it was -- I could see it was not -- he was not the
16 type of guy I wanted to be involved with.

17 JUDGE ANGEJA: Okay.

18 JUDGE KWEE: So with Appellant's testimony that
19 he left the corporation in September of 2011, you know,
20 obviously CDTFA billed for -- through the end of 2011.
21 I'm just wondering if there's any evidence on the record
22 indicating that he continued working after the date that
23 he claims, and what CDTFA's position on that is? If they
24 could identify anything that led them to believe that was
25 the case.

1 MS. PALEY: We have the filing of the return. So
2 we know at least that he's involved at that time. Other
3 than that we -- we don't have an affirmative surrender of
4 his position. There could have been a filing indicating,
5 "I am no longer involved with this corporation." We do
6 not have that whatsoever. So we have evidence of
7 involvement, but we don't have evidence of departure.

8 JUDGE KWEE: Okay. So as far as phone contacts,
9 ACMS contacts for the billings, did -- was there any
10 communication with him during that time period or after
11 that time period?

12 MS. PALEY: He was on a yearly filing basis based
13 upon the fact that they estimated \$1,000 of income a
14 month. So they put them on a yearly filing. So the
15 filing was due in January.

16 JUDGE KWEE: Okay. Are there any further
17 questions? Okay. I believe we are ready to move onto
18 closing arguments. I'll turn it over to Mr. Gasich.

19 You have five minutes to make any final points
20 that you would like to make today.

21 MR. GASICH: Regarding the \$80,000 for the EDD,
22 is that what they're saying that I -- is that the income
23 that -- that's being -- that's not just income?

24 MS. PALEY: Correct.

25 MR. GASICH: Okay. Yeah. Because I made nowhere

1 near that. But -- yeah. No. I think I've stated
2 everything I need to say. Thank you.

3 JUDGE KWEE: Okay. Thank you.

4 And CDTFA, would you like to make a closing
5 argument before we conclude today?

6 MS. PALEY: No. Thank you.

7 JUDGE KWEE: Okay. Then we're ready to end. Is
8 the panel ready to close? Okay.

9 So this case is submitted on January 28th, 2020
10 [sic]. The record is now closed. Thank you everyone for
11 coming in today.

12 MR. GASICH: Thank you.

13 JUDGE KWEE: So the judges are going to meet and
14 decide your appeal after today, and we'll send you a
15 written decision within 100 days of today.

16 Today's hearing in the appeal of Jon -- Lance Jon
17 Gasich is now adjourned. And we'll have a brief
18 five-minute recess before we call the next appeal matter.
19 Thank you.

20 (Proceedings adjourned at 10:45 a.m.)

21 (Proceedings reopened at 10:50 a.m.)

22 JUDGE KWEE: Okay. We're going to briefly reopen
23 the record in the appeal of Lance Jon Gasich, OTA Case
24 Number 19034563. The time is 9:50 -- 10:50. Sorry.

25 So one of the parties requested that we reopen

1 the record to make a final comment.

2 So I'll turn it over to Mr. Gasich.

3 MR. GASICH: Thank you. I hate to break into
4 your time off there. But something came to mind and that
5 was regarding the, you know, the tax -- the tax liability
6 with the corporation. I never benefited from any of
7 the -- either the liability or the, you know, the
8 write-off of -- of my any of that. It was not anything
9 that was ever -- that came through me.

10 So I -- I think that, you know, determining
11 ownership that -- that would have been something that I
12 would have surely taken advantage of would be the, you
13 know, the business expense write-off. Which I never had
14 any -- I didn't know anything about it. I don't know what
15 the numbers were.

16 JUDGE KWEE: Okay. Thank you.

17 Would CDTFA like to respond to the final point
18 raised?

19 MS. PALEY: No. Thank you.

20 JUDGE KWEE: Okay. And do either member?

21 JUDGE ANGEJA: No. I don't.

22 JUDGE KWEE: Do you have any question?

23 JUDGE RIDENOUR: No. I don't.

24 JUDGE KWEE: Okay. So we're ready to close the
25 record again in this hearing. The case is submitted on

1 January 29th, 2020. Correction. I previously said the
2 28th. It's actually the 29th. And the hearing of the
3 appeal of Lance Jon Gasich is now adjourned, and we will
4 have a brief recess before the next appeal matter.

5 Thank you.

6 (Proceedings adjourned at 10:54 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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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 25th day
of February, 2020.

ERNALYN M. ALONZO
HEARING REPORTER