

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
C. FELIPE JR. AND T. FELIPE,) OTA NO. 18053219
)
APPELLANT.)
)
_____)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, August 18, 2020

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
12900 Park Plaza Dr., Suite 300, Cerritos,
California, 91401, commencing at 10:00 a.m.
and concluding at 12:08 p.m. on Tuesday,
August 18, 2020, reported by Ernalyn M. Alonzo,
Hearing Reporter, in and for the State of
California.

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APPEARANCES:

Panel Lead: JUDGE JEFFREY MARGOLIS

Panel Members: JUDGE KENNY GAST
JUDGE NGUYEN DANG

For the Appellant: CARLITO FELIPE JR.
MARK BERNSLEY

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
DAVID HUNTER
MARGUERITE MOSNIER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-25 were received at page 10.)
(Department's Exhibits A-S were received at page 10.)

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1 Cerritos, California; Tuesday, August 18, 2020

2 10:00 a.m.

3

4 JUDGE MARGOLIS: Okay. Let's go on the record
5 then.

6 My name is Jeffrey Margolis, and I'm the lead
7 Administrative Law Judge in the appeal of
8 Carlito Felipe Jr. and Teresa Felipe. The date is
9 August 18th, 2020, and the time is approximately
10 10:00 a.m.

11 I'm joined by my colleagues today Judges Gast and
12 Dang. Although I'll be acting as the lead Administrative
13 Judge for purposes of conducting this hearing, all three
14 of the ALJs will have an equal responsibility for and an
15 equal say in deciding this appeal.

16 Now, I ask that the parties and their counsel
17 each identify themselves for the record, beginning with
18 Mr. Felipe.

19 Mr. Felipe, please state your full name for the
20 record.

21 MR. BERNSELY: Do you want Mr. Felipe or counsel?

22 JUDGE MARGOLIS: I asked for Mr. Felipe first
23 just to be sure he's still on online.

24 MR. FELIPE: I'm online.

25 JUDGE MARGOLIS: Okay. Thank you, Mr. Felipe.

1 Mr. Bernsley, introduce yourself for the record.

2 MR. BERNSLEY: My name is Mark Bernsley, and I am
3 counsel for Mr. Felipe the Appellant in this proceeding.

4 JUDGE MARGOLIS: Mr. Bernsley, do you have any
5 other parties or witnesses here today with you?

6 MR. BERNSLEY: No, just Mr. Felipe. Unless --
7 excuse me, Your Honor. Unless -- I will mention at the
8 end of my opening statement that there are some matters to
9 which you may want my testimony. Although, I don't think
10 it's necessary. But I'll explain what that is, and then
11 you can let me know if you want me to testify as to those
12 issues.

13 JUDGE MARGOLIS: That's fine. We already
14 discussed that possibility at the prehearing conference.
15 Thank you for mentioning it, though.

16 MR. BERNSLEY: Sure.

17 JUDGE MARGOLIS: Now, could counsel for
18 Respondent, FTB, please introduce themselves.

19 MR. HUNTER: Sure. Nice to see you as always,
20 Your Honor. David Hunter on behalf of Franchise Tax
21 Board. Also on the screen with me is Marguerite Mosnier.
22 I'm available to answer any questions you may have.

23 JUDGE MARGOLIS: Okay. Good morning to both of
24 you.

25 Now, I want to make sure we agree on the issues,

1 and there were some settlements or resolutions of issues
2 beforehand. I want to make sure we're on the same page
3 with that. So please follow along and let me know if you
4 have any disagreements.

5 Years at issue are the years 2009 through 2014.
6 For those years the Franchise Tax Board issued notices of
7 action determining deficiencies in taxes for all years,
8 and for some of those years' penalties. With respect to
9 the deficiencies claimed to be owed, Appellant's now agree
10 that the original disallowances of claimed casualty and
11 theft loss deductions in the notices of action are to be
12 sustained in full.

13 Is that correct, Mr. Bernsley? Mr. Bernsley?
14 Mr. Bernsley are you there?

15 MR. BERNSLEY: Yes, I'm here.

16 JUDGE MARGOLIS: Okay. I just wanted to make --
17 I wanted to get your confirmation that for all the years
18 at issue, the originally claimed casualty and theft loss
19 deductions are going to be disallowed in full; is that
20 correct?

21 MR. BERNSLEY: Subject to the allowance of the
22 loss on the foreclosure.

23 JUDGE MARGOLIS: Right. I'm going to get to
24 that. Now, for the year 2009, the Franchise Tax Board
25 originally proposed to disallow \$114,052.00 loss claimed

1 by Appellants. The FTB -- and the FTB also allowed a 1231
2 loss of \$75,075. It's my understanding that the FTB now
3 agrees to allow both of those amounts.

4 Is that what you've done, Mr. Hunter?

5 MR. HUNTER: That's correct, Your Honor.

6 [TECHNICAL DIFFICULTIES]

7 JUDGE MARGOLIS: Okay. I had a little trouble
8 hearing that. So you're allowing -- you're basically
9 allowing the originally disallowed Schedule C loss and
10 continuing to allow the Schedule 1231 loss; correct?

11 MR. HUNTER: That is correct.

12 JUDGE MARGOLIS: Okay. I did note in reviewing
13 the figures for today there's -- the total was actually
14 \$156,627 not \$617. So I'll make that correction then. I
15 think there's a \$10 error there. You add up those two
16 adjustments, Mr. Hunter.

17 MR. HUNTER: Yes, Your Honor.

18 JUDGE MARGOLIS: Okay. Now, there's also what is
19 in dispute and that we need to decide today is to whether
20 or not Appellants are entitled to deduct, as either a
21 theft embezzlement loss or as an itemized deduction a
22 \$25,792 payment that Appellants paid by check to an Allan
23 Samson.

24 Then the other issues in dispute relate to
25 penalties. The FTB has proposed penalties for the year

1 2011 through 2014, which are accuracy-related penalties.
2 And they've also proposed late filing penalties for the
3 years 2011 and 2013. It's my understanding that the only
4 issues in dispute are the penalties and the remaining --
5 and the disallowance of the check paid to Allan Samson; is
6 that correct?

7 Mr. Bernsley, is that correct? Mr. Bernsley, do
8 you agree or disagree?

9 MR. BERNSELEY: Yeah, that's correct.

10 JUDGE MARGOLIS: Okay. Mr. Hunter, is that
11 correct?

12 MR. HUNTER: Yes, Judge Margolis, that's correct.

13 JUDGE MARGOLIS: Okay. Thank you very much for
14 indulging me in going over that.

15 Now, I want to briefly go over the exhibits that
16 have been offered into admission -- into evidence by each
17 party. At our prehearing conference I offered
18 Mr. Bernsley the opportunity to review the exhibits
19 further before he agrees -- to decide whether he agrees to
20 admit them or not.

21 Mr. Bernsley, we have Respondents Exhibits A
22 through S. Do you have any objections to any of those
23 documents being admitted into evidence?

24 MR. BERNSELEY: I don't have any objections,
25 Your Honor.

1 JUDGE MARGOLIS: Okay. Thank you.

2 Mr. Hunter, we have Exhibits 1 through 25. Do
3 you have any objection to those exhibits being admitted
4 into evidence?

5 MR. HUNTER: No objection.

6 JUDGE MARGOLIS: Okay. And I previously ruled
7 that Mr. Felipe's declaration, Exhibit 26, will not be
8 admitted because Mr. Felipe will be able to testify here
9 today. With that, the exhibits that we previously
10 discussed and stated will be admitted in evidence.

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

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

15 Okay. We've taken care of the preliminaries.

16 Mr. Bernsley, you have ten minutes to do your
17 opening statement. You may begin whenever you're ready.

18 MR. BERNSLEY: Okay. There appears to be a delay
19 from when I turn off the mute button. Can you hear me?

20 JUDGE MARGOLIS: Yes. We can hear you fine.

21 MR. BERNSLEY: Okay. Yes, Your Honor just gone
22 over the issue, so I won't repeat those.

23 JUDGE MARGOLIS: Mr. Bernsley, can you hold it
24 for one second. I just want to make sure everyone has
25 their mics -- Mr. Felipe you may want -- oh, do you have

1 a mute button you're phone, Mr. Felipe, that you can press
2 or no?

3 MR. FELIPE: No. But I can hear you well.

4 JUDGE MARGOLIS: That's fine. I have some
5 construction in my neighborhood. So that might be the
6 cause of some of the problem here.

7 Okay. Mr. Bernsley, please proceed.

8

9

OPENING STATEMENT

10 MR. BERNSELEY: The evidence will show the
11 following. The Felipes are Filipino immigrants who work
12 in the health care industry. They don't have any
13 significant understanding. In fact, they -- they barely
14 understand the tax laws at all, other than they need to
15 file returns. Their lives, other than their work, revolve
16 around the Filipino community.

17 In 2005 through 2006, the economy was robust, and
18 Carlito Felipe received advice to purchase an investment
19 rental property in Nevada, which he ultimately did. The
20 following year the Felipes also purchased a new home here
21 in California. They invested all their funds into
22 purchasing the properties and then making improvements,
23 furnishing the homes, and the like.

24 When the economy tanked in 2008, the Felipes'
25 work hours were cut back reducing their income, such that

1 they could no longer service the mortgages. In 2009 the
2 lenders foreclosed. The Felipes were wiped out and filed
3 for bankruptcy. They lost everything. They were referred
4 in their community to a return preparer who identified as
5 Lourdes, L-o-u-r-d-e-s, Samson. Although, I now believe
6 that not to be her real first name.

7 Ms. Samson was part of the Filipino Community.
8 She came recommended by people that the Felipes trusted,
9 and she represented that she knew what she was doing as a
10 return preparer. The Felipes believed her, and engaged
11 her to do their returns. The Felipes acted in good faith,
12 provided all the information that they had, and they held
13 back nothing. Ms. Samson prepared the Felipes' returns.
14 She took a very long time to do that through no fault of
15 the Felipes.

16 Mr. Felipes called and inquired on several
17 occasions each time being told that she was being careful
18 and thorough and that they should be patient and not to
19 worry. The Felipes trusted her and believed that she was
20 acting in his and his wife's interest.

21 When the returns were finished, Ms. Samson
22 provided the returns and assured the Felipes that they
23 were correctly prepared. They promptly signed and filed
24 the returns. Ms. Samson told Mr. Felipe that she wanted
25 to be paid by a check to her son, and he accommodated her,

1 paying her that way making a check payable to Allan
2 Samson.

3 Now, as I explained earlier, if it please the
4 panel, I can testify to two additional issues, although,
5 it may not necessary. The first addresses Ms. Samson
6 being a real person and not a fiction as initially alleged
7 by counsel for the FTB. That is in any declaration, but
8 if the panel wants my testimony on it, I'm happy to give
9 it.

10 The second matter addresses the fact of
11 disbarment of Mr. Reyes, the Felipes' bankruptcy lawyer.
12 Because I addressed the first matter, as I said, it's in
13 Exhibit 19. The second matter also involves official
14 records which the panel could also take judicial notice
15 of. So I will I defer to the panel on whether they want
16 my testimony. In either case I will address the
17 significance of these issues in closing, and I'll be happy
18 to answer any questions in the nature of cross-examination
19 or otherwise as to those matters.

20 But that is essentially the Appellants' case.
21 Thank you, Your Honor.

22 JUDGE MARGOLIS: Thank you Mr. Bernsley. With
23 respect to the two items that you've said that you may
24 wish to testify, but I -- I don't -- well, I'm not sure if
25 FTB still contends that Ms. Samson is a fiction.

1 Mr. Hunter, do you still contend that?

2 MR. HUNTER: I never contended that, and I
3 believe that issue is not in dispute.

4 JUDGE MARGOLIS: Mr. Hunter, you need to get
5 closer to the microphone.

6 MR. HUNTER: That issue is not in dispute.

7 JUDGE MARGOLIS: Okay. Thank you.

8 MR. HUNTER: She's a real person.

9 JUDGE MARGOLIS: Okay. Good.

10 Mr. Bernsley, I don't recall anything about
11 Mr. Reyes, the bankruptcy attorney, being disbarred. I
12 don't particularly know why it's relevant. So we can ask
13 you later why if you want to testify as to that.

14 MR. BERNSELEY: I can address that briefly --

15 JUDGE MARGOLIS: Okay. Go ahead.

16 MR. BERNSELEY: -- at this moment, if you would
17 like, Your Honor.

18 So you understand the history of how it came up,
19 I was trying to get a little more information about -- is
20 it Exhibit 19? I don't -- Exhibit 14, the complaint that
21 was filed. Mr. Reyes was both Mr. Felipe's bankruptcy
22 counsel and was the named counsel on this complaint. And
23 when one looks at the exhibits, you will see that
24 Mr. Reyes, who is also a member of -- or was a member of
25 Mr. Felipe's community, that it took him -- the bankruptcy

1 documents are not done right. He wasn't a member of the
2 Nevada Bar. He was disbarred in California.

3 And so it's one more indication of how there are
4 certain people in close communities that prey on the trust
5 of these people. And, although, Mr. Reyes' actions are
6 not relevant to the taxes per se, they do provide light on
7 the kinds of action of Ms. Samson and Mr. Reyes and how
8 they prey on the community who trust the people that --
9 who trust these people as -- as being able to provide
10 sound advice and good service. And that doesn't always
11 happen.

12 JUDGE MARGOLIS: I'll give you the opportunity to
13 testify to that if you wish after Mr. Felipe testifies.

14 Mr. Hunter, you're opening statement, please.

15 MR. HUNTER: Sure. Thank you.

16

17 OPENING STATEMENT

18 MR. HUNTER: We've made introductions. And
19 Judge Margolis, you've already clarified the issues in
20 this case. And we know that this case --

21 JUDGE MARGOLIS: Mr. Hunter, our court reporter
22 is having trouble hearing you, as am I. Can you really
23 make an effort to get closer. I'm sorry that we're having
24 these issues.

25 MR. HUNTER: Take it from the top.

1 We've already made our introductions, counsel of
2 record in this case. The panel has already clarified the
3 issues in dispute that remain in this case. We know that
4 this case involves disallowed theft losses for years 2009
5 through 2014, and penalties that remain for 2011 and 2014.
6 We know that Appellants purchased rental property in
7 Nevada and lost it during the recession. There is no
8 dispute that they hired Ms. Samson, Lourdes or Maria, to
9 prepare their tax returns.

10 Ms. Samson agreed to prepare Appellants' income
11 tax returns for a fee of 20 percent of whatever refund
12 they were to receive. That's in Appellants' opening brief
13 and also the protest letter that that is their contention.
14 Ms. Samson incorrectly prepared their returns; reported
15 \$1.7 million in theft losses that were false. Based on
16 the complaint for alleged real estate violations committed
17 by their lender, and the facts and evidence will show this
18 complaint was never filed.

19 We will speak about this lawyer. This complaint
20 was used to serve as the basis for the theft losses that
21 were reported on the returns for the tax years at issue.
22 These theft loss deductions substantially understated the
23 Appellants' taxable income and netted them over \$132,000
24 in California tax refunds. Over half a million in tax
25 refunds, if you combine this amount with the federal tax

1 refunds they received. Appellants also filed their
2 returns late.

3 Other three issues that remain unresolved; let's
4 talk about the claimed deduction for repayment. It would
5 be \$25,792 made to Allan Samson, Ms. Samson's son. In
6 fact, Appellants indicate that they paid a total of
7 \$61,000 to Allan Samson or Ms. Samson for the preparation
8 of their tax returns. In order to deduct this payment
9 Internal Revenue Code Section 212 provides that this
10 payment must meet the ordinary and necessary test.

11 Here Appellants failed because there's no tax
12 preparer information on the returns. They signed the
13 returns themselves. There's no proof that's Ms. Samson
14 was competent tax preparer. Indeed, Appellants now refer
15 to her as an unscrupulous tax preparer. It's not
16 reasonable to claim you paid someone \$25,000 -- at least
17 for one year at issue -- if they're not equipped to do the
18 job.

19 Also, the expense must be reasonable in amount
20 and bearing approximate relation to the purpose of the
21 expenditure and the determination of whether this expense
22 is unreasonable is based on the facts and circumstances of
23 the case. Now, this is a huge payment of \$25,000. And
24 it's not reasonable given the nature of these tax returns.
25 Sure there's a couple of extra schedules, but that is a

1 huge amount. And again, there's no research here other
2 than a referral that Ms. Samson was competent to do work.

3 In an alternative, Appellants claimed they were
4 robbed by Ms. Samson. Theft is deemed to include larceny,
5 embezzlement, and robbery. To qualify as a theft loss
6 within the meaning of Internal Revenue Code 165, the
7 taxpayer needs to prove that the loss resulted from a
8 taking of property that is illegal under the law of the
9 state where it occurred, and that it was done with
10 criminal intent.

11 Here there's no theft. Ms. Samson had no
12 criminal intent to steal Appellants' money. They paid her
13 to do a job, and she did it. She did it wrong. This is a
14 claim for disgorgement of fees or malfeasance when a
15 professional performs work incorrectly, then you have a
16 professional liability action.

17 We all know that deductions are a manner of
18 legislative grace. The legislature did not intend to
19 award Appellants with a \$25,000 deduction for claiming
20 half a million dollars in unearned tax refunds. The
21 bottom line is that their beef is with Ms. Samson.

22 As it relates to the penalties, first we'll speak
23 about the accuracy-related penalty. Revenue & Taxation
24 Code Section 19164, which incorporates provision of
25 Internal Revenue Code Section 6662 provides for an

1 accuracy-related penalty of 20 percent, which is imposed
2 when taxpayers understate their taxable income by more
3 than 10 percent or \$5,000.

4 The tax court has held that the government's
5 assessment of this penalty is proper when it meets its
6 burden of proof by showing that the understatement is
7 substantial, meaning these numbers. In this case, the
8 accuracy-related penalty was mechanically applied. The
9 numbers were met for all the tax years at issue. But
10 because Appellants were in bankruptcy for 2009 and 2010,
11 the accuracy-related penalty -- the penalties were
12 withdrawn.

13 Previously a constitutional argument was raised
14 regarding the imposition of this penalty. And this is
15 easily dispensed with because OTA Regulation Section 30104
16 thinks that the OTA or Office of Tax Appeals -- sorry --
17 does not have jurisdiction to consider whether a
18 California statute is under the Constitution.

19 As you just heard, Appellants appear to be
20 raising the defense of reasonable cause in the imposition
21 of the accuracy-related penalty. This means that
22 Appellants exercise ordinary business care and prudence.

23 In order to qualify for the reasonable cause or
24 reliance on a professional tax adviser defense, Appellants
25 must demonstrate that they: One, provided necessary and

1 accurate -- accurate information to their adviser; two,
2 that the tax advisor had sufficient experience,
3 Ms. Alonzo, sufficient experience to justify this
4 reliance; and three, Appellants actually relied in good
5 faith on this tax adviser's judgment.

6 The regulation which interpreted this defense
7 provide that all facts and circumstances must be taken
8 into account when determining whether a taxpayer has
9 reasonably relied in good faith and advice from their tax
10 preparer. Here we don't have a case of missing records or
11 failure to support deductions that were taken on a tax
12 return. Here the fact and evidence show that Appellants
13 claimed deductions that they were not entitled to at all.
14 And they admit it.

15 The IRS provides that a practitioner, tax
16 adviser, tax preparer should not charge an unconscionable
17 fee. Here Appellants indicate that they paid Ms. Samson
18 \$61,000. Also the IRS provides that the tax preparer can
19 only charge a contingency fee if the fee is related to
20 services rendered in connection with an IRS examination.
21 This was not an audit or examination. This was filing of
22 tax returns for six years.

23 Ms. Samson is not a registered tax preparer to be
24 able to practice before the Internal Revenue Service, and
25 she charged these huge fees which violated the applicable

1 rules. Whatever advice she provided to Appellants cannot
2 be relied on in good faith. Because if we look at the
3 best evidence of the knowledge of Appellants' tax
4 reporting obligations, we can look at their prior tax
5 returns for years 2006 to 2008, which are Respondent's
6 Exhibits Q, R, and S.

7 These are the returns that the Appellants filed
8 before the tax years at issue. Appellants are both
9 nurses. They make a substantial income. For these three
10 tax years they reported an average-combined wage income of
11 \$296,000, average California taxable income of \$224,000,
12 average annual California tax liability of \$16,000, after
13 all the deductions, and an average tax bill due of \$4,600.
14 That's how life was.

15 Now beginning with 2009, when Appellants hired
16 Ms. Samson, instead of owing \$4,600 a year, they're now
17 receiving an average California tax refund of \$22,000 per
18 year. They're getting money back. Not to mention on
19 their federal returns, their refunds are averaging \$67,000
20 per year. So just look at the record.

21 The facts and the evidence in this case will show
22 that their prior tax return filing with a bonafide tax
23 preparer indicates that Appellants knew what a reasonable
24 fee was. They knew what their tax reporting should be,
25 and what their liability would be for a normal year, et

1 cetera. It's disingenuous for them now to say that they
2 had no idea about their tax liability, and they simply
3 relied on Ms. Samson to take this improper tax reporting
4 position.

5 This was a payoff. She promised them huge
6 refunds in exchange for 20 percent. They paid her \$61,000
7 and received half a million dollars. Those are your
8 numbers in this case. Appellants have thus failed to
9 prove up the defendants of reasonable cause or reliance on
10 a tax professional to Respondent's imposition of the
11 accuracy-related penalty.

12 Finally, regarding the late filing penalty,
13 Appellants filed their 2011 tax return 17 months late and
14 their 2013 tax return 10 months late. Revenue & Taxation
15 Code Section 19131 provides that Respondent shall impose a
16 late filing penalty when a taxpayer fails to file a tax
17 return on or before its due date, unless the taxpayer
18 establishes that the late filing was due to reasonable
19 cause and not due to local neglect.

20 Well, I just went through these tax -- Appellants
21 cannot establish reasonable cause in this case. They have
22 to show that their failure to timely file their return
23 occurred despite the exercise of ordinary business care
24 and prudence. Hiring to someone to prepare -- prepare
25 your taxes when they have not demonstrated their

1 competency to do so is not exercising ordinary business
2 care and prudence.

3 You have to follow up with your tax prepare. You
4 have to be knowledgeable about the deadlines. Filing your
5 tax returns is a nondelegable duty. The responsibility
6 remain with the Appellants. They signed the returns.

7 Through the above reasons, Respondent's denial of
8 this claimed deduction for tax preparation fees or theft
9 loss and the imposition of the accuracy-related penalty
10 and the late filing penalties must be sustained.

11 Thank you.

12 JUDGE MARGOLIS: Thank you. Mr. Hunter there's
13 one point you made that I may have missed. I didn't
14 understand what you were saying about -- something about
15 the prior years' return issues you introduced as exhibits
16 R and S, I believe. That shows that the taxpayers knew
17 what a reasonable tax preparation fee is. Is there
18 something in the tax returns that shows that? Or what's
19 your basis for that statement?

20 MR. HUNTER: We'll get into that on cross.

21 JUDGE MARGOLIS: Okay. Thank you.

22 And now we'll go to testimony by Mr. Felipe.
23 Mr. Felipe, before you begin your testimony, I need to
24 swear you in.

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CARLITO FELIPE,

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

JUDGE MARGOLIS: Okay. You may begin your examination Mr. Bernsley.

DIRECT EXAMINATION

BY MR. BERNSELEY:

Q Mr. Felipe, I'm going to begin asking you some questions now. What do you do for a living?

A I'm a clinical lab scientist with a hospital, Providence Tarzana.

Q And what does your wife do?

A She's an R.N.

Q Okay. So she's a nurse.

A Right.

Q As a clinical lab scientist, what does that entail? Would you explain just in layman's terms, please. Don't get too technical. Explain the kind of stuff you do as a clinical lab scientist?

A I work at the lab. We do examination of everything from blood, urine, everything, you know, to analyze and the patient's condition to help out physicians

1 to analyze the condition and report it.

2 Q Thank you. Now, were you born in the United
3 States?

4 A No. I was born in the Philippines.

5 Q And how old were you when you came to the United
6 States?

7 A I think that was way back in 1980. I was
8 approximately 25 years old at that time.

9 Q Would you describe what the Filipino Community is
10 like in the U.S., at least as far as you've experienced
11 it?

12 A Well, in a Filipino Community as far as I'm
13 concerned about, we have like a bonding. And as much as
14 possibility if ever, especially, in your own community, we
15 help out each other by if ever some people needs help with
16 regards to, you know, services. We refer to them to those
17 kinds of people to give a good intention of helping them
18 out.

19 Q And do you spend a lot of your time with other
20 Filipinos in the community?

21 A Oh, yeah, we do. We do parties sometimes,
22 especially, when there's a church meeting. Especially,
23 when my sons were on the school, we usually attend those
24 kinds of meetings for the community.

25 Q What percent of your friends are Filipino?

1 A Oh, it's 85 percent.

2 Q And what percentage of your associates at work
3 are Filipino?

4 A Same thing. Almost like 80 percent.

5 Q Would you say you have certain level of trust of
6 the people in the community?

7 A Well, we do. The thing is especially when your
8 friends or your relatives introduces somebody and make
9 referrals. We do -- I mean, we don't exactly, like, trust
10 them right away. But we go by their credentials and
11 things like that. And if ever it's, you know, it's -- I
12 mean, acceptable to me we do get them for, you know, to do
13 some services for other people and us.

14 Q Okay. I'm going to switch gears a little bit now
15 and ask you to tell us about the house in Nevada that you
16 purchased in 2005, I believe it was?

17 A Yeah. That was the time that the -- I mean, the
18 real estate was booming and some friends of ours -- well,
19 Elia, our close friend recommended that we investment in
20 real estate because they say it's good and it's cheap and
21 it's easy qualify. And we can have it, you know, equity
22 after that, and have it rented if you don't want to stay
23 in it.

24 And that we agree, you know. And they
25 represented the papers to us, and it was really a, you

1 know, a good one too. As we see it it's a good investment
2 for us.

3 Q So you purchased that property as an investment;
4 is that correct?

5 A Uh-huh. That's it.

6 Q And the person that recommended the property and
7 helped you with the purchase, was he Filipino?

8 A Yes. He's a Filipino. He's a Realtor.

9 Q Okay. Would you look at Exhibits 8 and 9,
10 please, in the exhibit binder?

11 A Yeah, I got it. Uh-huh.

12 Q Are those documents related to your purchase of
13 the Nevada house?

14 A Yes, that's true.

15 Q And in the upper-left box of Exhibit 9, there's a
16 reference to an earnest money deposit of \$31,000. Did you
17 pay that?

18 A Base on -- yes. Uh-huh. The deposit you mean?

19 Q Yes.

20 A I -- I can't really remember how I paid it. And
21 the thing is if it's like I borrow or something, but I
22 made a payment, I think, on that thing.

23 Q Would you look at Exhibit 10?

24 A Oh, it's, like, the check from Washington Mutual.

25 Q Yeah. Do you recognize that document?

1 A Honestly, this I can't remember even, you know.
2 It doesn't look like \$31,000 to me. It looks like only --
3 yeah, but so far, it's been a long time. I can't remember
4 if, you know, this is -- I remember the check, but the
5 amount I couldn't really, you know, say.

6 Q You can't read it?

7 A Yeah, I can't read it.

8 Q Okay. Do you know if that's a receipt for the
9 check that you gave for the Nevada house, or you just
10 don't know?

11 A I can't remember honestly. You know, it's been a
12 while.

13 Q Okay. Did you buy another house in 2006?

14 A Yeah. It's our primary home in West Hills.

15 Q Okay. Would you look at Exhibit 11?

16 A Yeah, I got it. Okay.

17 Q And is that the escrow closing statement for the
18 West Hills home?

19 A Yeah. As far as I remember, it was.

20 Q And that property was intended to be your
21 personal residence?

22 A Right. My primary residence.

23 Q And as far as you know, the numbers on there
24 correctly reflect what they say they are?

25 A Yes.

1 Q Okay. So what happened to you financially in
2 2007, 2008?

3 A Well, that's the time that the market crashed,
4 and everybody was effected and even especially the health
5 care, you know. We were -- they reduced our hours. They
6 tried to flex us, and it really greatly affected our
7 financial standing. That's why I'm -- you know, everybody
8 was, like, what's going to happen and what is the best
9 thing to do.

10 And eventually we -- unfortunately, we really
11 have to give up everything just to survive, you know.
12 Especially, with my kids going to school and, you know,
13 expense in the house, we really can't really sustain, you
14 know, the amount of monthly payment that we have to put in
15 on these houses, unfortunately.

16 Q I apologize. I want to go back and ask you one
17 other question. After you purchased the two houses, the
18 one in Nevada and the one in West Hills, did you spend
19 additional sums for fixing it up, furnishing, fixtures?

20 A Oh, yeah. We did everything, especially, with
21 our primary house and the Nevada too, because we were
22 going to have it rented. So we were advised by the
23 realtor to have it furnished and everything and do --
24 because if ever you don't do improvement, especially, the
25 surrounding of the house, you get penalized.

1 So we don't have any choice but, you know, to put
2 up money again just to improve all the properties,
3 provide, you know, with the appliances and things like
4 that; carpeting, you know, window shades, and -- same
5 thing with our new house now, with the primary house.
6 It's much more improvement that we did because we relying
7 on the real estate going up, and we were so happy to
8 purchase this house, you know.

9 Q So when you lost the houses in foreclose -- well,
10 let me just clarify. Did you indeed lose both houses in
11 foreclosure?

12 A Yeah.

13 Q Okay. Do you recall when that was?

14 A It was -- I think that was like when the market
15 went down. And after a year, I can't really sustain the
16 monthly payment. I mean, it's so hard for us to lose both
17 houses especially, you know, the primary house that we put
18 in the money. You know, everything was, like, wiped out
19 in our finances. Everything. Our 401 were gone. I mean,
20 without my siblings helping me out to stand up again and,
21 you know, startup I don't know what would happen to us at
22 that time. It was devastating to our financial standing.

23 Q So when -- when you suffered the foreclosures --
24 and, again, the banks foreclosed on both of these homes;
25 is that correct?

1 A Correct.

2 Q In addition to the actual houses, did you -- did
3 you also lose everything that you put into the houses; the
4 furnishing, the fixtures, and all of that?

5 A Yeah. All our savings were put into those
6 houses, you know, because we were relying, you know, as
7 advised by the realtor. Oh, it's going to be a good
8 investment and everything. You're going to be -- you
9 know, you won't regret purchasing these houses. It's
10 still an investment for us.

11 Q So were the foreclosures the end of your
12 financial troubles?

13 A Well, it was. But the things I was telling you
14 about, my siblings were kind enough to lend us money to
15 start up again. And I really had to find another job just
16 to make up for it, you know. It was really hard. I mean,
17 it's a sacrifice. Especially, when your kids are going to
18 school. And, you know, the expenses of the houses it's
19 really hard, but I had made my decision to get back, you
20 know, on my feet and to start all over again.

21 Q Did you end up doing a bankruptcy?

22 A Yes.

23 Q And who was your bankruptcy lawyer?

24 A Mr. Reyes.

25 Q Would you -- would you take a look at Exhibit 14?

1 A Yeah. I got it here.

2 Q Okay.

3 A Reyes.

4 Q Could you explain where that document came from
5 and how it came into your possessions?

6 A As far as I remember this document -- I mean, the
7 papers that Mr. Reyes provide us during our bankruptcy.
8 Yeah. This was -- uh-huh.

9 Q So this was among the papers that Mr. Reyes gave
10 you --

11 A Right.

12 Q -- during or at the end of your bankruptcy?

13 A Hm-hm.

14 Q Okay. Were you aware that Mr. Reyes had to file
15 your bankruptcy multiple times?

16 A No. I was shocked when you told me about that.
17 I never realized it. We were -- that's why when you told
18 me about us filing five bankruptcies, I was, what is that?
19 I mean I don't even know that could happen, you know. And
20 he did -- he explain it to me that he -- there's five
21 filed and one went through or something. I don't know.
22 He didn't even tell it to us in what was going on. But as
23 far as I am concerned when he filed the bankruptcy it's
24 just once, you know, under his.

25 Q I understand. Would you -- would you explain to

1 the panel how you learned about Lourdes Samson?

2 A Yeah. Lourdes Samson was introduced to us by a
3 coworker and a friend of mine at work. And as he
4 explained it to me, she's -- she's a good preparer, a
5 qualified one and everything. And for some reason, you
6 know, because I trusted my friend too. I said okay.
7 Maybe I give her a chance to do it because that's the way
8 he explained it to me.

9 And for reason in my heart, maybe I give her a
10 chance to do my taxes, you know. And anyway she does a
11 good job. She belong to -- as she explained it. She
12 belong to a big congregation of Christians, and she's the
13 one preparing for almost everybody there. So I agreed
14 on -- you know.

15 Q What was the problem with your old preparer?

16 A Well, the thing my preparer was way far. And the
17 thing is I was -- by that time, I was working two jobs.
18 And it's kind of hard for me to, you know, find my time,
19 especially, with the kids and school activities and things
20 like that. Maybe I said it would be more, like,
21 convenient for me if it's closer to my -- to our place,
22 and that's why I agreed.

23 Q When you say far, where was the former preparer?

24 A I think that was in Pasadena. I think it's
25 Pasadena.

1 Q Was it Long Beach? Did you tell me Long Beach?

2 A I think it's that -- is it Long Beach?

3 Q Or is that --

4 A Yeah, I think it's Long Beach. I'm sorry. Yeah.

5 That's Long Beach. And I said that guy is so busy too.

6 It's so hard to find time for, you know, to make an

7 appointment. I said maybe I'll switch, you know, try this

8 Lourdes Samson and see what's, you know, going to happen.

9 If she's really good, you know, I'll stay with her.

10 Q Now, did you believe Ms. Samson to be competent?

11 A Well, as I explained, my friend was telling me

12 about her doing a good congregation and trusting her. I

13 didn't -- I mean, I gave her the chance to do my taxes,

14 you know. And uh --

15 Q What --

16 A -- it seems like she's good.

17 Q What inquiries or actions did you make or take to

18 satisfy yourself that she was likely to be able to do the

19 job?

20 A Well, after that my friend recommend it to her.

21 I asked around and eventually one of my coworkers that has

22 a friend in Encino hospital, and she told me that the

23 guy [sic] that she worked with is the same tax preparer

24 that my friend recommended. So I said she might be good,

25 you know. I mean, for some reason it's -- it's -- why

1 other people would trust her, especially, in our line of
2 work and, really, we are close, you know. Because
3 people -- most of us work two jobs just to make up things,
4 and I relied on that information.

5 Q So did you end up hiring Ms. Samson to do your
6 returns?

7 A Yes.

8 Q Did you provide her with all of your information
9 and materials that you had?

10 A You know, everything that she demanded from me
11 I -- I mean, I gave it to her assuming everything would be
12 done right. And everything that she needs, I provide
13 everything.

14 Q Did Ms. Samson ever suggest to you that she was
15 going to put any figure on your return that would not be
16 accurate?

17 A No. I for me as a person, I have been working,
18 you know -- I've been working here since 1980. I'm a
19 person that -- I mean, I try my best to, you know, do
20 everything right, especially, with my family, especially,
21 with my kids, you know. It's going to be hard for me at
22 the end if I do things not in the proper way.

23 So as much as possible, you know, I pay what is
24 due. Everything is done right. I mean, as far as I'm
25 concerned, I raise my kids right, you know. I mean,

1 honestly, I don't want those people that are not good.

2 Q Did you explain that to Ms. Samson?

3 A Yeah. I'd always tell her. I told her, you
4 know, every time we meet, with every papers that I gave
5 her, this is all the things you need. It's going to
6 be done right because I don't want to be in trouble, you
7 know, at the end, you know, if you don't do it right. And
8 she said, "Yeah, I'll do it. As far as I'm concerned,
9 I'll do it the best of my way and do it correctly."

10 Q And she led you to believe that she could do it
11 correctly?

12 A Yes.

13 Q Now, did she explain that her fee would be based
14 on the amount of the -- any refund that you got?

15 A On the first that she was saying -- you know,
16 we'll see always. It's always like that. She said, we'll
17 see, you know, what things we could do and maybe at that
18 time pay me -- I mean, I -- I can't remember how -- how
19 much was that one was before that she was a person --
20 pay-wise.

21 I said I thought it was, you know, it was right.
22 I don't know. It's -- for me I really don't know anything
23 about taxes. That's why I trust people to do things for
24 them because they're more professional in what they do,
25 you know. And I was -- I trust her.

1 Q How long did it take her to prepare your returns?

2 A Yeah, that's the question. It took a while for
3 her to do things. Whenever I call her and ask her about
4 my taxes, it's almost due. Oh, it's okay. I'm, you know,
5 I'm still working on it. I'm trying my best to do it
6 correctly. And for me, you know, I trusted her. Because
7 the thing is I put my trust in her hoping that everything
8 is done correctly, and it took a while, you know. I
9 always bug her, honestly. Even my wife was bugging me and
10 I had to bug her again and again, you know, to -- to file
11 my taxes.

12 Q So you were concerned about how long it was
13 taking?

14 A Oh, yeah. My goodness. I tell you I'm a person
15 that does everything in time. If I do it, I always do it
16 in advance so I can program myself. And I have to be, you
17 know, I have my itinerary done correctly.

18 Q And, again, what did she say about how long it
19 was taking?

20 A She say, "Oh, I'm doing my best to do it
21 correctly. Just stay put, and I'll let you know when it's
22 ready because I'm doing a lot of things too." That's what
23 she said. "I'm doing a lot of taxes for other people".
24 So I didn't -- okay. I said okay. Just do it correctly.

25 Q Did she advise you as to whether the delay was

1 okay?

2 A Yeah. That's what she said. It's okay. You
3 know, don't worry about it. That's always -- that's
4 always what she said to me, you know. People are waiting
5 too, you know, for their returns, and you're not the only
6 one. So I put -- you know, I trusted her words.

7 Q So you believed her?

8 A Yeah.

9 Q Did you ever consider changing preparers?

10 A Yeah, that's the thing. Me and my wife was
11 discussing about it. But the thing is, at that time, I
12 was so busy doing work, and she was busy doing the same
13 thing with the kids and, you know, work at the same time.
14 I said if we find another one where can we get one that's,
15 you know, being referred by some people?

16 And that's just going to walk through and just
17 get that tax preparer to do our things. It's going to be
18 another -- it's going to be from -- it's going to be
19 starting all over again. It was already delayed. If I
20 find another person to do it, it would be another delay,
21 you know. That's what on my mind was.

22 Q When -- did there come a time when Ms. Samson
23 finally finished and said she was prepared to give you the
24 returns that she had prepared?

25 A Oh, yeah. I was so happy. I said, oh, my

1 goodness. Finally, you know. And when I -- when she
2 called me about that -- okay. Is it ready, and is it
3 ready to file? She said, "Yes." But I made sure because
4 my wife bugs me all the time. Don't, you know, do
5 anything that's not correct. Make sure that everything is
6 done right. We waited for this long. It has to be done
7 right and correct.

8 Q So did you review your returns?

9 A Yeah, we did but for me it looks okay. You know,
10 she said she had all the computations attached to it. And
11 I believe her because, obviously, I don't know anything
12 about taxes. That's why I get people to trust to do my
13 taxes.

14 Q And did you and your wife sign your returns?

15 A Yeah, we did.

16 Q And about how long was it between the time that
17 Ms. Samson gave you your returns and when you actually
18 sent them in and filed them? Do you recall approximately
19 how long?

20 A As soon as she called me, I picked up the taxes,
21 sign it, and send it out, you know. Because I know it's
22 been late already, and I don't want to be late again if I
23 file it late. So as soon as I got the taxes me and my
24 wife signed it, and we mailed it.

25 Q Did you and your wife believe your returns were

1 correct and complete when you signed them?

2 A Yes. Because we provided her everything that,
3 you know, she demanded and says -- she says documentation
4 she said was all done with it, and I believe her.

5 Q Would you look at Exhibit 16, please?

6 A Oh, the Chase thing?

7 Q Yes. Do you recognize that check?

8 A Yeah, it was --

9 Q What was -- yes. What was that check issued for?

10 A It's a payment for her preparing my taxes, but it
11 was -- but she told me to pay it to her -- under her son's
12 name. Which I didn't know why, but I just followed her
13 instructions.

14 Q And why did it say "Tax Fees Audit
15 Reconciliation"? Do you know what that means?

16 A No. Honestly, I don't know about -- what's the
17 all this reconciliation.

18 Q Did she tell you to put that on the check?

19 A Yeah.

20 Q Do you have any relationship to Allan Samson?

21 A No. It's her son.

22 Q Do you even know him?

23 A No. I see him, but he's a young guy. I mean, I
24 don't really -- if I don't know the person I don't usually
25 talk and, you know, mingle with them. I just go there

1 file my taxes, go out, and, you know, that's it.

2 Q Is there any other reason, other than your tax
3 return, that you would give money to Mr. Samson?

4 A No way. I won't. Strictly business. And that's
5 her services.

6 MR. BERNSELY: I have no further questions.

7 JUDGE MARGOLIS: Mr. Hunter, any
8 cross-examination?

9 MR. HUNTER: Yes. Thank you, Judge Margolis.

10

11

CROSS-EXAMINATION

12 BY MR. HUNTER:

13 Q Hello, Mr. Felipe. Can you hear me, sir?

14 A Yeah. How are you? I'm good.

15 Q We're doing great. Just we'll move this along at
16 this administrative hearing. I just want to clarify some
17 things regarding your testimony this morning and ask
18 couple of questions of my own, if I may?

19 A Sure.

20 Q You described how you came to the United States
21 in 1980. Have you been working as a nurse ever since?

22 A Yeah. From the start I have been working.

23 Q And --

24 MR. BERNSELY: Let me -- I have an objection.

25 He's -- he's not a nurse. He never testified he was a

1 nurse. So --

2 MR. FELIPE: I'm a medical lab clinical
3 scientist.

4 BY MR. HUNTER:

5 Q Okay. And how about Ms. Felipe?

6 A My wife is an RN.

7 Q Okay. Did you -- where did you get your
8 education?

9 A Oh, Philippines.

10 Q How many years?

11 A It's a B.S. course, medical -- I mean, Bachelor
12 of Science in Medical Technology. It took us almost five
13 years for that.

14 Q And how about your wife?

15 A She's a registered nurse too in the Philippines.
16 And when took -- when she came over here in 1982, we took
17 the board. I mean, I took the board, and we passed it.

18 Q Okay. And she also -- is that correct?

19 A I could hardly hear you.

20 Q She also -- in the Philippines?

21 A A what?

22 JUDGE MARGOLIS: Mr. Hunter. Mr. Hunter, if I
23 can make a suggestion. If you can turn the volume down
24 that you hear at, I think there would be less feedback
25 when you talk.

1 MR. HUNTER: I have it to 30. Now, Mr. Felipe,
2 can you hear me better?

3 MR. FELIPE: Yes, I do. Yeah.

4 MR. HUNTER: Okay. Thank you, Judge Margolis.
5 Thanks so much for that.

6 BY MR. HUNTER:

7 Q In any event, Mr. Felipe -- and, again, she's
8 not -- but you're wife attended a school in the
9 Philippines; is that correct?

10 A Right.

11 Q And do you recall how many years?

12 A Five years for her and additional one year for
13 her BSN.

14 Q Got it. We discussed the property that you
15 purchased in Nevada. I'll just ask you. How much did you
16 buy the property for?

17 A I think that was approximately about -- if I
18 could remember, it's like \$300,000 something or between
19 \$320,000 to \$350,000.

20 Q Okay. And that was the price. By the time the
21 property was foreclosed on, say in 2009, how much did you
22 have into it?

23 A Come again? What was the question?

24 Q How much did you have into the house; all the
25 work that you did. You described that you did a lot of

1 work?

2 A Yeah. We -- this home improvement. We're
3 required -- the homeowners requires through the loan
4 provide us with, you know, those shades and things like
5 that. And I put up for furniture and upgrades, I think
6 approximately between \$30 to \$50,000 on that one. Because
7 I have to upgrade that because they did a lousy job and
8 put up appliances and, you know, those furniture.

9 Q I understand. Did you rent out the property?

10 A Yeah. We rented it for -- from -- I think after
11 six months after we finished all the improvements and
12 until the time that, you know, the market crashed. And
13 the renter just took off and didn't pay us. So we were --
14 we don't -- we don't know what to do with that anymore
15 because we're in -- in the first place it's our first time
16 to do that kind of thing to have a house rented. It was
17 through a broker that we went through.

18 Q Ah, I understand. So who kept the records for
19 that rental property while you had it?

20 A What's your question again? Can you repeat it,
21 please?

22 Q Who kept the records for the rental property?

23 A Oh, it was -- it was a broker, like, a manager,
24 you know, that she manages all the renters in that
25 specific community.

1 Q Okay. Fair enough. Now, let's focus on
2 something I have alluded to, which was the tax returns
3 that were prepared on your behalf for years 2006, '07, and
4 '08. I call them the "prior year returns".

5 A Uh-huh.

6 Q Do you recall this tax professional's name?

7 A Yeah, I do.

8 Q Was it Pilaro?

9 A What's a -- what?

10 Q Was it Pilar?

11 A Pilaro. Yeah. Pilaro -- I forgot the last name.

12 Q How much did you pay her to handle your returns?

13 A She had a standard fee. I think about \$500 or
14 \$600 for each preparer and it all depends how much work
15 they do.

16 Q Okay. Thank you. That answers my question.
17 Then you moved onto Ms. Samson; is that correct?

18 A Yes.

19 Q In your paperwork or in a brief before the Office
20 of Tax Appeals, it states that your agreement was to pay
21 her 20 percent of any refund earned?

22 A That's what she told us to do.

23 Q Well, did you agree with that? Did you sign onto
24 that bill?

25 A Well, when we -- I asked my friend about the fee

1 that, she was, "Me too," and she says, "Yes." She say
2 she's charging the same to her and some other people that
3 she does their taxes. So I agree with her.

4 Q Okay. Again, this agreement was it in writing?

5 A In writing when -- yeah, I think I signed my
6 papers with her.

7 Q Which states that she would be paid 20 percent of
8 your refund?

9 A As far as I'm concerned, I remember she writing
10 it off but, like, in the formal thing signed. No. She
11 said to me, "Oh, this is the one I've been" -- she showed
12 me all those other taxes that she does with other people.
13 That's the way she charge things. So yeah.

14 Q Okay. I'm with you. Now, I'll try to speed it
15 up here. I don't have much more.

16 A Okay.

17 Q You described for us earlier that your financial
18 standing went down, lets say, in the beginning of 2009 is
19 that --

20 A Yeah.

21 Q -- the gist of what you said?

22 A Yeah. That's true. It's -- at that time,
23 really, I was so depressed. I tell you honestly. Because
24 the things that I saved -- the thing my wife and I saved
25 was all gone. I mean, it was down the drain. I mean,

1 here we are, you know, with my kids going to school I
2 don't know what to do anymore, you know.

3 Q Okay. Now, the property that you purchased and
4 then subsequently lost, that property was located in West
5 Hills, California; that's correct?

6 A Right.

7 Q The other property you purchased and went to
8 foreclosure that was in Nevada; is that correct?

9 A Yeah. Uh-huh. And then after that this --

10 Q Is that correct?

11 A Yeah.

12 Q But this entire time for the period at issue, you
13 still remained -- you still resided at 20211 Gifford
14 Street in Winnetka, California; is that correct?

15 A Yeah. Yeah. We kept that house because the
16 thing -- the realtor that was handling the West Hills
17 property was planning to sell my house, this house too.
18 And on that one --

19 Q Okay. Mr. Felipe, I got it. I just wanted to
20 clarify you had a house.

21 A Yeah.

22 Q Now, for 2009 you and your wife together reported
23 earning wage income of \$343,000. Do you recall that?

24 A I think so. Yeah, we did.

25 Q 2010, \$338,000. Does that sound right?

1 A Yeah. That was the time we -- I have a full-time
2 job.

3 Q I'm sorry. I'm just trying to speed it up.

4 A Okay.

5 Q 2011, \$372,000; is that correct?

6 A Yeah.

7 Q 2012, \$368,000; is that correct?

8 A I think so, yes.

9 Q 2013, \$361,000?

10 A Uh-huh.

11 Q And 2014, \$296,000; is that right?

12 A Right.

13 Q Okay. When you had your tax returns prepared by
14 Pilaro, you paid her \$500 a year. And in the end, you and
15 Mrs. Felipes owed on average about \$4,000 per year in
16 taxes. And now let's go into 2009 when you hired
17 Ms. Samson. What changed in terms of your wage income?

18 A Well, at least we -- we tried to get back on your
19 feet. That's the thing, and we're trying to -- with all
20 the expenses I'm having with my three kids. It's just --
21 I mean, just right that I, you know -- and did right when
22 I worked my job and my wife too. And at least we're able
23 to afford, you know, the expenses that we're incurring.

24 Q I -- okay. And --

25 JUDGE MARGOLIS: Mr. Hunter. Mr. Hunter, could

1 you try to move along. We've already -- I think the tax
2 returns and excerpts are already in evidence. So it would
3 be helpful to move along.

4 MR. HUNTER: All right. Thank you,
5 Judge Margolis. I -- I understand.

6 JUDGE MARGOLIS: Take a minute. Take a minute.
7 I don't mean to rush you, but we're getting close to our
8 allocated time for this hearing.

9 MR. HUNTER: I got you. So I -- and, again,
10 forgive me. This could have been discussed -- Mr. Felipe?

11 MR. FELIPE: Yes, I could hear you.

12 BY MR. HUNTER:

13 Q Okay. So going from owing the State of
14 California \$4,600 a year to receiving \$20,000 a year back
15 in a refund, that seemed okay to you?

16 A Oh, yeah. I'll be happy because I know I'm
17 working two jobs, and having that kind of refund I'll be
18 happy.

19 Q Were you working two jobs before? The income --

20 A Ever since I started in 1982 -- 1982 I was
21 working one job. From the time I got married I have to
22 work two jobs. Everything since, you know, until now I'm
23 working two jobs.

24 Q Okay. I understand, sir. Again, I don't mean to
25 repetitive?

1 A No. I understand because people always surprise
2 when they hear me about working two jobs all this time. I
3 said I have to, you know, support my family.

4 Q I understand. One last question for you, sir,
5 which is something brought up about the check and that
6 you -- or the payment that was made to Mr. Samson on
7 behalf of Ms. Samson and a notation which we audit a
8 reconciliation. Were you audited by the federal
9 government for your 2009 through 2014 tax returns?

10 A I don't think so. No.

11 MR. HUNTER: Okay. And that completes my
12 cross-examination, Judge Margolis.

13 JUDGE MARGOLIS: Okay. Thank you.

14 Mr. Bernsley, do you have any redirect?

15 MR. BERNSLEY: Yes, just a couple of questions.

16

17 REDIRECT EXAMINATION

18 BY MR. BERNSLEY:

19 Q Mr. Felipe?

20 A Yes.

21 Q You testified about your education. Did your
22 education include courses in taxes?

23 A No. It's purely clinical.

24 Q Right. Did it include any courses in finance?

25 A No. I don't -- I don't understand finance.

1 That's why I stay with my job -- I mean --

2 Q Did it include any courses in accounting?

3 A No. I hate numbers.

4 Q Okay. Now, Mr. Hunter was asking you about your
5 prior year returns.

6 A Hm-hm.

7 Q Did you suffer any major losses in those years
8 like you did in the later years?

9 A That was specifically -- well, the first time
10 when the Northridge earthquake did, we lost our house
11 there too, you know, to foreclosure. Everything was the
12 same thing, you know, that wipe out. So it's hard. I
13 mean --

14 Q So that goes back to the Northridge earthquake;
15 correct?

16 A Uh-huh. Right. Uh-huh.

17 Q Okay. So when you had Ms. Samson prepare your
18 returns for the years that are at issue, you had these
19 major losses from the two houses and all the money you put
20 into them; is that correct?

21 A Yes.

22 Q And that was a big difference between those and
23 the returns that your prior return preparer Mr. Pilaro
24 prepared for you?

25 A Oh, yeah. Uh-huh. It is. That's why I said,

1 you know, when the --when she showed me all the things
2 that she was doing with the other people, I said maybe
3 she's doing it right. She has more knowledge about taxes
4 that other people -- that my taxpayer didn't know. That's
5 why I always, you know, didn't get anything.

6 MR. BERNSELEY: Okay. Thank you. That's the end
7 of my redirect.

8 JUDGE MARGOLIS: Anything further, Mr. Hunter?

9 MR. HUNTER: No, Your Honor. We're good.

10 JUDGE MARGOLIS: Okay. Let me ask my
11 co-panelists. Judge Dang, do you have any questions for
12 the witness or for counsel. Let's combine this now.

13 JUDGE DANG: Sure. This is Judge Dang speaking.
14 I just have a few questions for you, Mr. Felipe.

15 MR. FELIPE: Sure.

16 JUDGE DANG: Regarding Exhibit 16, which years
17 return this payment for? That's the Chase check that's
18 \$25,792.04?

19 MR. FELIPE: That's was for Ms. Samson's service
20 doing my taxes. But she instructed me to put it under her
21 son's name since it was -- might be easier for them to get
22 the money or something because it's a cashier's check.

23 Judge Dang: Okay. And which years was that
24 payment for? Which year's return did she assist you with?

25 MR. FELIPE: For everything that she did.

1 Judge Dang: Okay. And before you retained
2 Ms. Samson to prepare your returns you had another
3 preparer; I believe Mr. Hunter mentioned. How much were
4 you paying that individual, if you can recall?

5 MR. FELIPE: If I remember, it all depends on the
6 work they do. But I think the minimum that they charge
7 was like \$500 to \$600.

8 JUDGE DANG: And this was a flat fee.

9 MR. FELIPE: There was one time that I had to pay
10 them, like, \$700 because they said it's additional charges
11 for the time because they go by the hour too.

12 JUDGE DANG: Okay. So it was based on an hourly
13 billing?

14 MR. FELIPE: Right.

15 JUDGE DANG: Okay. And when you retained
16 Ms. Samson, it seems that she was charging you on a
17 percentage based on how much money you were to be
18 refunded. And this amount appeared to be significantly
19 higher than what you were paying your previous preparer.
20 Did you find that to be suspicious?

21 MR. FELIPE: Yeah, I knew this were -- in the
22 first time she told me about it, "I think that's too
23 much," I told her with that. But when she showed me other
24 people that were, you know, that she was preparing. And
25 even my friend and my coworker's friend in Encino, and she

1 was charging the same thing. I said maybe it's -- that's
2 the way it is.

3 I mean, how would I know? I don't study it. I'm
4 really relying on people that I trust. So that's why
5 we -- here she is doing people in the congregation,
6 Christian, and she must be doing it right, you know. So
7 that's why I relied on her and trusted her. This I
8 regret, honestly.

9 JUDGE DANG: Okay thank, you Mr. Felipe. I don't
10 have any further questions for you.

11 I just have one brief question for Franchise Tax
12 Board. Mr. Hunter, during your opening presentation it
13 appeared that you -- the Franchise Tax Board may be
14 conceding that the Samson individual had assisted
15 Appellant with the filing of the returns for the periods
16 that are at issue; is that correct? Or am I
17 misunderstanding your presentation?

18 MR. HUNTER: Yeah. Just by way of a quick
19 background, Judge Dang. I'm the second tax counsel
20 handling this case. And when this case initially came up,
21 there was no connection. There was no -- besides checks
22 that were written, there was nothing in the record that
23 established the existence of Ms. Samson. It wasn't there.

24 However, subsequent to that, counsel for
25 Appellants believed contacted Ms. Samson and they -- she

1 does exist. There's no doubt in my mind that this person
2 exist. But the timeline and procedural posture of this
3 case at first what could have been a quasi-issue has been
4 dispensed of with the declaration submitted by
5 Mr. Bernsley.

6 JUDGE DANG: Would it be safe to say that the
7 Franchise Tax Board accepts the fact that Samson assisted
8 the Appellant with the filing of the returns. Whether or
9 not she actually filed those returns, she did in some way
10 provide some assistance to them.

11 MR. HUNTER: I'm -- I mean, I have nothing to --
12 I cannot dispute that. You have to just believe that she
13 prepared the returns. I believe that whether or not it
14 was competent operation or not, that is that issue. But
15 yes, that's the taxpayer's testimony.

16 JUDGE DANG: Okay. And if she did assist the
17 taxpayer in some way in some manner with the preparation
18 of the returns, Franchise Tax Board's position is that
19 those fees would be deductible under IRC Section 12212.

20 MR. HUNTER: No.

21 JUDGE DANG: No. Because they're not reasonable.

22 MR. HUNTER: There's not ordinary and necessary
23 and they're excessive. I mean, we -- you're talking
24 about -- and that's -- the issue here is that tax returns
25 needed to be prepared. Okay. It's something that we all

1 have to do. So an ordinary and prudent business-person
2 would hire a competent professional to have these returns
3 prepared.

4 And we have notices to taxpayers, and the IRS
5 does as well that say, hey, if you're going to hire
6 someone to prepare your taxes, do your homework. See if
7 they are registered with the Internal Revenue Service.
8 Look at their track record. Just don't ask around. Do
9 your homework because the taxpayer is ultimately on the
10 line with the tax liability if something is reported
11 incorrectly and also for penalties.

12 So if you have a tax preparer that prepares the
13 return, if the return is prepared incorrectly, again,
14 that's between taxpayer and the tax preparer. In terms of
15 being an ordinary and necessary expense, we're now in a
16 completely different universe from that due to the amount
17 paid. It's more than \$25,000 that's just here at issue.
18 The total we have here is \$61,000.

19 JUDGE DANG: I'm sorry. Let me clarify my
20 question. I understand what the Franchise Tax Board is
21 arguing. I was just wondering as far as the scope of the
22 services provided, would that fall within the meaning of
23 IRC Section 212?

24 MS. MOSNIER: Judge Dang, this is Marguerite
25 Mosnier, if I could respond to that. I think it's very

1 difficult to think that the taxpayers in this appeal would
2 be entitled to any deduction for fees paid when the
3 returns that were filed for the years at issue do not bear
4 any indication that they were prepared by anyone other
5 than the taxpayers.

6 There's no indication of payments directly to a
7 preparer, and there's no indication that a preparer
8 prepared and then signed and took responsibilities for the
9 contents of those returns. And I think those facts are
10 critical in the analysis, whether a deduction might be
11 otherwise be allowed.

12 JUDGE DANG: If an individual or professional
13 were, to say, provide simply legal services but not to
14 actually prepare any items within the return, would
15 something like that qualify for the deduction?

16 MR. HUNTER: I have had that case before.
17 Judge Dang, just to clarify your question. Let's say
18 we're not talking about a tax preparer; we're speaking of
19 an attorney that's hired to handle the case; is that
20 correct?

21 JUDGE DANG: Okay. Yes. Let's say that's the
22 case.

23 MR. HUNTER: And the attorney makes a mistake,
24 and it's a malpractice. But the taxpayer still paid the
25 attorney for those services despite them being deficient.

1 Is that our hypothetical?

2 JUDGE DANG: Sure.

3 MR. HUNTER: Okay. When that happens the
4 taxpayer or the client has a complaint against the
5 attorney for professional negligence because the attorney
6 breached the local standard of care. And the element of
7 that would explain for this disgorgement,
8 d-i-s-g-o-r-g-e-m-e-n-t, disgorgement of fees, because the
9 fees were not directly earned, messed up. And that's a
10 cause -- a component of a damage against the attorney.

11 So while the taxpayer, let's say, wrote off those
12 fees, then the taxpayer has the ability to recoup those
13 fees from the attorney. On top of that if -- if the fee
14 is exorbitant or just, let's say, \$50,000 for a simple
15 eviction of a one-bedroom apartment, that would also come
16 into play in terms of was this an ordinary and necessary
17 expense. Was this expense reasonable fall under the gamut
18 to Revenue Code Section 230.

19 JUDGE DANG: Okay. Thank you, Mr. Hunter. I
20 don't want to take up too much time with this, but as I
21 look at the language of the statute -- and, again, I'm
22 looking at Internal Revenue Code Section 212(3), it seems
23 to be very broadly written. It states that, "Any ordinary
24 necessary expenses paid or incurred during the taxable
25 year in connection with the determination, collection, or

1 refund ever any tax."

2 That seems to include a broad variety of services
3 related to that. And whether or not the individual
4 actually prepared the return or took responsibility for
5 items on the return, I'm not seeing where that would come
6 into play. If you just wanted to respond briefly, that
7 would be my final question.

8 MS. MOSNIER: Judge Dang, this is Marguerite
9 Mosnier. This is not an issue that has raised so far in
10 this field. And so neither Mr. Hunter nor I have done any
11 research on it to see how maybe the tax court has
12 interpreted that provision of the Internal Revenue Code,
13 but we would be happy to do that. I think the Franchise
14 Tax Board it not comfortable committing to a position on
15 that issue until we -- until we could do some research on
16 it.

17 JUDGE MARGOLIS: Okay. Thank you very much. Any
18 further questions, Judge Dang?

19 JUDGE DANG: I don't have any further questions.
20 I'll defer to you as to whether or not you'd like to
21 request a briefing on this issue.

22 JUDGE MARGOLIS: Thank you.

23 Judge Gast, any questions?

24 JUDGE GAST: This is Judge Gast. I do not have
25 any questions.

1 JUDGE MARGOLIS: I have just two questions, I
2 believe, first for the taxpayer. I want to make it clear
3 on this. Was there a written fee agreement with
4 Ms. Samson or not?

5 MR. FELIPE: Hello.

6 JUDGE MARGOLIS: Mr. Felipe, did you sign a
7 written fee agreement with Ms. Samson?

8 MR. FELIPE: Yeah. I did sign with her. She
9 asked me to sign before I -- I gave her the check.

10 JUDGE MARGOLIS: And that agreement called for
11 the payment of the 20 percent fee?

12 MR. FELIPE: -- what is due for her. That's what
13 she said.

14 JUDGE MARGOLIS: And is that the agreement that
15 called for the payment of a 20 percent fee based on the
16 refunds?

17 MR. FELIPE: Yes. Uh-huh.

18 JUDGE MARGOLIS: And following up on that, so the
19 \$25,792 amount that you paid to her in 2014 that
20 Judge Dang referred to, why is that such a specific
21 amount?

22 MR. FELIPE: That's -- that's what she said.
23 It's the whole years that she worked on. That's from the
24 2009 to '14. That's her payment for the services that she
25 rendered on me.

1 JUDGE MARGOLIS: What was that amount based on?

2 MR. FELIPE: I think that's the 20 percent.

3 JUDGE MARGOLIS: Of the --

4 MR. FELIPE: Of the --

5 JUDGE MARGOLIS: And you just paid another
6 \$40,000 to her as well?

7 MR. FELIPE: No. As far as I remember just the
8 \$25,000 is the one I gave her.

9 JUDGE MARGOLIS: But you gave her more money in
10 later years; correct?

11 MR. FELIPE: After -- I can't remember. Let me
12 see. I think this was -- because I keep all the -- I keep
13 all tracks before the check, and I gave, you know, what I
14 remember was the \$25,000 I gave her for the services that
15 she rendered on me to doing my taxes from '09 to 2014.
16 Then after that when everything was right -- I mean, and
17 this came up, you know, I think there's something going
18 on. That's why I stop her doing my taxes.

19 JUDGE MARGOLIS: Okay.

20 MR. FELIPE: And I -- you are the FTB, right?

21 JUDGE MARGOLIS: I'm sorry. What was your
22 question?

23 MR. FELIPE: You're the Franchise Tax Board? Do
24 you have --

25 JUDGE MARGOLIS: No. This is Judge Margolis.

1 MR. FELIPE: Oh, I'm sorry.

2 JUDGE MARGOLIS: It's okay.

3 MR. FELIPE: I was about to ask if you have like
4 a hotline that I -- you know, people like me that rely on
5 these people should have a hotline that we could inquire
6 about this kind of, you know, anomaly and this fraud.
7 Because, honestly, we didn't know anything about this.
8 And I mean in our hospital we have this kind of things
9 that if ever there's like something on -- you know,
10 there's going on and we know about it, and we should
11 report it. And we don't have a number for that. How do
12 we manage to go after these people?

13 JUDGE MARGOLIS: Okay. Thank you,
14 Mr. Sampson [sic].

15 Mr. Hunter, I have one question for you. What
16 authority do you have for the proposition that contingent
17 agreement to pay accounting fees makes that unreasonable?

18 MR. HUNTER: Sorry about that, Judge Margolis. I
19 had to hit my mute button here. My authority is Treasury
20 Department Circular Number 230.

21 JUDGE MARGOLIS: Can you give me that authority
22 again?

23 MR. HUNTER: It's from the IRS. It's labeled
24 Treasury Circular Number 230. And I believe I can follow
25 up with this if you wish, but there's a companion website

1 which the IRS gives notice to taxpayers. I don't want to
2 paraphrase, but do your research and check the background
3 of your tax preparer before you hire them to do the job.

4 The federal government and my agency are well
5 aware that there are folks out there that may prepare
6 taxes improperly, and the pain may come home through the
7 taxpayer in terms of increased assessments and penalties.
8 So we would like them to be aware of that.

9 JUDGE MARGOLIS: Okay. Thank you. Okay. We --
10 for that reference.

11 Unless my panelist disagree, I don't think we
12 need any further briefing in this matter.

13 Does -- Mr. Bernsley, we asked a few questions of
14 your client. Do you want to ask any further ones before
15 we close the testimonial portion, or can we move on from
16 this witness?

17 MR. BERNSELEY: No. I don't have any further
18 questions for my client. But I would like to take a
19 moment and address a few things because the -- the
20 engagement between the panel and Mr. Hunter raised some
21 issues that I think crossed over into argument. And I
22 would --

23 JUDGE MARGOLIS: We did. Well, you'll get an
24 opportunity -- you'll both get an opportunity to provide a
25 closing argument. Let me just finish with the current

1 witness.

2 Mr. Hunter, do you have any further questions of
3 Mr. Felipe?

4 MR. HUNTER: Briefly.

5

6

RECROSS EXAMINATION

7 BY MR. HUNTER:

8 Q Mr. Felipe, can you hear me, sir?

9 A Yes, sir.

10 Q In response to the judge's questioning, you
11 indicated that the \$25,000 sent to Allan Samson is the
12 only payment you recall making. Is that what you said?

13 A As far as I remember, I think that's the one I
14 did. That's the one that was on file on the binder that
15 Mark Bernsley prepared. Because I submitted everything
16 to, him, and that's -- you know, I don't keep any records
17 other than that.

18 Q Okay. But I'm asking you, sir. Did you pay her
19 more than that?

20 A No.

21 Q The \$4,800 in April of 2015?

22 A I can't remember that anymore because it's -- I
23 don't see any record of that that I could see on the
24 binder. Sorry, but I cannot remember anymore.

25 Q \$11,000 in January of 2016?

1 JUDGE MARGOLIS: Mr. Hunter, he doesn't remember.

2 MR. HUNTER: Okay. I can schedule that if -- if
3 required by the panel. Thank you. No more questions.

4 JUDGE MARGOLIS: Thank you.

5 Okay. Mr. Bernsley, do you want to testify as to
6 Mr. Reyes and your interactions with him or --

7 MR. BERNSLEY: Well, I --

8 JUDGE MARGOLIS: -- do the parties just want to
9 take it -- go ahead.

10 MR. BERNSLEY: I'll be happy to explain what I
11 know.

12 JUDGE MARGOLIS: You'll have to go under oath
13 first.

14 MR. BERNSLEY: I'm sorry.

15

16 MARK BERNSLEY,

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 MARGOLIS: Okay. Please add whatever you
22 want as far as testimony.

23

24 DIRECT TESTIMONY

25 MR. BERNSLEY: Sure. I just want to explain that

1 in the -- I called I tried to reach Mr. Reyes. I was
2 unable to reach him. His bar number was on the complaint
3 that's in exhibit in this case, and I looked him up on the
4 California State Bar website and found that he had been
5 disbarred.

6 I compared that to the bankruptcy filing
7 information that's also in exhibit in this case and saw
8 how many times he had to file in order to get one
9 bankruptcy to stick, which is apparent from the pacer
10 filing that, again, is in exhibit. And so that,
11 obviously, provides the basis for that I explained in my
12 opening statement and will cover briefly in my closing as
13 well. But I did want to make the Court aware of
14 Mr. Reyes' disbarment.

15 JUDGE MARGOLIS: Okay. Thank you.

16 Mr. Hunter, do you have any questions of
17 Mr. Bernsley about what he just testified to?

18 MR. HUNTER: No. I've looked that Carlo, the
19 attorney that drafted that return. I'm also aware that he
20 was disbarred. The return itself is -- on its face, it
21 could not be filed in Nevada. There's no such court in
22 Nevada. I don't have any questions for Mr. Bernsley.

23 JUDGE MARGOLIS: Okay. Well, then let's move on
24 to closing arguments. I believe we've already gotten
25 quite a bit in your opening argument. So hopefully it can

1 be brief.

2 Mr. Bernsley, you can go first.

3

4

CLOSING STATEMENT

5 MR. BERNSELEY: Okay. I do want to go a little
6 bit out of order because of some of the things that were
7 raised by Mr. Hunter, and they were two issues. One,
8 Mr. Hunter raised circular 230. Circular 230 regulates
9 professionals that practice before the Internal Revenue
10 Service. It does not regulate what fees are deductible if
11 paid by taxpayers.

12 And so while I haven't, again, investigated this
13 in great detail, I probably wouldn't argue that what
14 Ms. Samson did and probably what she charged was -- may
15 have been unethical in being based on a percentage.
16 There's no indication that I'm aware of that suggest that
17 merely because it's a percentage that it is nondeductible,
18 which is the issue here. And I'll further address that
19 amount later in my closing.

20 Judge Dang also asked about the services of an
21 attorney. And given a hypothetical of an attorney who is
22 consulted during a preparation of a return and engaged for
23 the purposes of preparing advice, indeed under
24 Section 212(3), the fees paid to the attorney would indeed
25 be deductible as in connection with the determination of

1 the tax.

2 And let's assume that the fee charged was
3 excessive. It would be still be deductible. What
4 frequently happens in excessive payment cases where a
5 portion is not deductible, it usually involves a payment
6 where, for example, between a family member where there is
7 a business transaction, but the amount paid is excessive.
8 So a portion of that payment recharacterized as something
9 personal and, therefore, not allowable.

10 The tax law does generally does not get involved
11 in arm's length transactions and evaluating whether the
12 fee paid is reasonable or unreasonable, unless the
13 unreasonableness is -- has some ulterior or some furtive
14 purpose that suggest it's not really what it purports to
15 be. None of those types of analyses apply in this case
16 with respect to the amounts paid to Ms. Samson.

17 So the thing that's important here is this is not
18 a case where there were deductions or omitted income
19 deductions that were purely fictional, where if the
20 taxpayer looked at his return and it suggest he -- he lost
21 a boat that he never owned. And, of course, he should
22 notice something like that.

23 This was a case where an unsophisticated, at
24 least from financial accounting and tax perspective had
25 real losses. Lost a lot of money and had no idea what

1 that's supposed to look like on a return. These were real
2 losses. And, although, for tax purposes the amount that's
3 allowable may be substantially less than what was claimed,
4 that's not something that would be apparent to a good
5 portion of lay taxpayers.

6 Mr. Hunter also raised the issue of the disparity
7 between the prior year, the group of returns and the group
8 of returns that are at issue. But, again, we're talking
9 about the distinction based on some very real and
10 significant losses. And -- and that makes a significant
11 difference, and I -- well, I'll come back to the fee.

12 So the Felipes had reasonable cause both for the
13 errors on their return and for the late filing. They
14 timely provided all material to Ms. Samson in time to have
15 the returns prepared properly. They believed that she was
16 competent. There was no indication that she was
17 incompetent.

18 Now, Mr. Hunter again talks about registered
19 return preparers. There's no such thing as a registered
20 return preparer. There are -- there are qualifications to
21 represent people before the Internal Revenue Service, for
22 example, in connection with the audit, with an audit, or
23 somewhere there's representation before the administrative
24 agencies. But for return preparation itself, there is no
25 registry. There is no qualification. Anybody who

1 purports to be a preparer can legally prepare tax returns.

2 Now, ethically, they're supposed to have training
3 and know what they're doing. But for most lay taxpayers,
4 there's no way to check up on them. You can of -- if you
5 go to a CPA which is going to cost you a lot more money,
6 you can look up and see whether the person is really a
7 certified public accountant. But for -- or you might be
8 able to find out if somebody is an enrolled agent. But,
9 again, the enrolled agency is not required to prepare
10 returns that's required in order to represent the taxpayer
11 before the administrative body.

12 So there is no such registration. There is no
13 repository where somebody can look up the qualification of
14 a return preparer. Whether and how losses effect taxes is
15 not -- is something way beyond the knowledge of the
16 Felipes. They had no particular expertise. And, again,
17 these were real losses.

18 Ms. Samson came highly recommended to the
19 Felipes. They provided all information. There really
20 wasn't much more that they could do. And, again, as I
21 stressed in the beginning in my opening statement, I think
22 it's important to appreciate that the Felipes are part of
23 an ethnic community that trust and relies on each other.
24 And, again, that trust is sometimes abused.

25 It's clear to me and retrospect that Ms. Samson

1 was either incompetent or a con artist who took advantage
2 of the Felipes and others or both. But this appears to be
3 something that's all too common in close communities.
4 Mr. Reyes, again, he was the bankruptcy lawyer. He also
5 appears to have been incompetent and unable to prepare a
6 bankruptcy petition competently. He prepared this filing
7 in Nevada. Again, there's no indication that it was filed
8 as Mr. Hunter said, and I don't disagree with that.

9 But the significance of that, again, would not
10 necessarily be clear to the Felipes who -- who basically
11 took that as part of the document package they received
12 and gave it all to Ms. Samson. And that provided an
13 opportunity, whether through ignorance, incompetence,
14 or -- or opportunity to provide a basis for losses. But,
15 again, that's not something that would be apparent to a
16 lay person.

17 Excuse me one second. The FTB argued in its
18 brief -- not necessarily in this hearing -- but in their
19 brief that it publishes a pamphlet warning taxpayers about
20 unscrupulous return preparers. Now, I think that the FTB
21 knows of this kind of problem and has chosen to penalize
22 the taxpayers who are victimized instead of addressing the
23 problem by further regulation. I just -- I think that's
24 not only inappropriate, I think it's outrageous.

25 The State could require registration of return

1 preparers, but it doesn't. It could make a list available
2 online. And more, importantly, it could print on the form
3 itself that the taxpayer should not sign and file their
4 return or pay their return preparer unless the preparer
5 has signed the return. Now, the preparer is supposed to
6 sign the return. There's no disagreement about that. But
7 when he doesn't -- when he or she doesn't, that's not
8 something that a taxpayer is aware of or has any reason to
9 appreciate the significance of that. And there's nothing
10 on return to suggest otherwise.

11 Now, I'm aware of no authority that suggest that
12 the failure to sign a return, which is indeed a violation
13 for a return preparer, but that only matters if the return
14 preparer is one who is trying to obey the law in the first
15 place. But there's no indication that I'm aware of that
16 the failure to provide or a signature on the return as the
17 preparer makes the payment to the preparer nondeductible.

18 Now, I don't disagree that it could raise the
19 question whether there really was a return preparer, but
20 there's absolutely no evidence in this case that
21 Ms. Samson did not prepare the return just because she
22 didn't sign it. And, in fact, the only evidence in this
23 case is that she did indeed prepare the return.

24 She, again, continued to tell the Felipes that
25 she was being careful. She was being thorough, that they

1 should be patient. And they believed her, and they
2 followed her advice as the professional. So they thought
3 that she was. And when she said be patient, they were.
4 And when she finally did present the returns, they signed
5 and got them filed as soon as possible. They didn't
6 delay.

7 Mr. Hunter argues that the fee was unreasonable.
8 I have two comments. First of all, there's absolutely no
9 evidence in the record to suggest it was unreasonable.
10 Just because it went up substantially does not make it
11 unreasonable. I suggest that many people pay this much
12 and more for the preparation of sophisticated return.

13 And in any event, there's no evidence that the
14 amount was unreasonable. And it's not clear to me that if
15 one had the opinion that it was unreasonable. Again,
16 unless there was some basis for recharacterizing all or a
17 portion of the amount, it's not clear to me that it would
18 make it not deductible. If indeed it was an amount that
19 was truly and legitimately paid for tax return services,
20 it would be deductible.

21 And, again, if and to the extent this was some
22 sort of nefarious plot on the part of Ms. Samson, which I
23 can't say is not a possibility. Because if one knows that
24 their compensation is going to be based on a refund, they
25 clearly have a motivation to have the refund to be as big

1 as possible. Which is probably one of the reasons why in
2 Circular 230 it's unethical for a return preparer to do
3 that. Because it creates a conflict between their duty to
4 prepare an honest return and their interest in getting as
5 big a fee as possible.

6 But if she was unscrupulous and did this
7 intentionally in order to increase her fee, then that
8 would indeed be unlawful and a matter of embezzlement
9 based on misrepresentation that her interest was, in fact,
10 the interest of the taxpayers and that the return was
11 properly and honestly prepared. So there are, again,
12 alternative theories for the deduction of that amount.

13 And with that, I will conclude my closing
14 statement. Thank you for the opportunity to present it.
15 And I turn it back to you, Judge Margolis.

16 JUDGE MARGOLIS: Thank you.

17 Mr. Hunter, your closing if you have one.

18 MR. HUNTER: Yes, I have one. Thank you very
19 much. It will be brief.

20 JUDGE MARGOLIS: Thank you.

21

22 CLOSING STATEMENT

23 MR. HUNTER: As Judge Dang clarified the facts
24 and evidence show that Appellants hired Ms. Samson to
25 prepare their tax returns for the years at issue. The

1 facts in evidence also show that she was not fit for the
2 job. On Appellants behalf, she claimed theft losses
3 related to the Nevada property that were improper and now
4 conceded by Appellants.

5 Appellants' representative repeated the phrase
6 "real losses". There is one real loss, and that occurred
7 in 2009 and Respondent accepts that reported loss.
8 Appellant concedes that. For all the other years at
9 issue, it's fake news. Appellants concede as much.
10 Ms. Samson cost Appellants big money in terms of
11 undeserved refunds, which now must be returned.

12 In terms of this \$25,000 payment being an
13 ordinary and necessary expense, Ms. Samson's work was so
14 bad they now claim that she stole from them, giving rise
15 to a theft. Those are two inconsistent positions. How
16 could something be ordinary and necessary when they're
17 being robbed. This is not theft. This is malfeasance.
18 This is someone who held themselves out to be a tax
19 preparer, albeit not an enrolled agent, which cost the
20 taxpayers of money in terms of the assessment giving rise
21 to this case.

22 The penalties were properly imposed. As a matter
23 of fact, this is not a case of Respondent penalizing
24 taxpayers for being the victim of an unscrupulous tax
25 preparer. These penalties are established by the

1 legislature. It's the law. It is a natural byproduct of
2 a reporting position that is taken incorrectly. And in
3 this case, it was mechanically applied. Appellants
4 provide no legal basis to abate the accuracy-related
5 penalty and the delinquent filing penalty.

6 And such Respondent's action must be sustained.
7 Thank you for your time.

8 JUDGE MARGOLIS: Thank you.

9 Mr. Bernsley, you have up to five minutes for
10 final rebuttal argument.

11 MR. BERNSELEY: Thank you, Your Honor.

12

13 REBUTTAL STATEMENT

14 MR. BERNSELEY: So, again, with respect to the
15 multiple year issue, the Felipes lost a lot of money.
16 They didn't know what this was supposed to look like. The
17 professionals on this call can all appreciate the
18 impropriety of some of the things that were done on the
19 Felipes' returns. I'm not suggesting and the reason we've
20 conceded those issues is because of that.

21 The issue here really is whether the taxpayer
22 knew that this was -- that these things were -- knew or
23 should have known that these things -- these deductions
24 were all improper and essentially was a co-conspirator in
25 filing an inaccurate return. And there's no -- there's no

1 evidence that suggest that. Mr. Hunter wants you to
2 believe that just because of the numbers. And it's just
3 not borne out by the facts.

4 These were unsophisticated taxpayers. Again,
5 they suffered real losses, and they didn't know what this
6 was supposed to look like on their returns. One other
7 thing that's in the brief, and I don't disagree with
8 Mr. Hunter. I just want to make clear that I don't
9 disagree with Mr. Hunter that your panel cannot consider
10 the unconstitutionality of the penalties. But I think
11 it's incumbent upon me just to have the issue raised so
12 that it's clear that it hasn't been waived. But I agree
13 with Mr. Hunter that the panel cannot rule on that issue.
14 I just want to make that clear on the record.

15 Again, these taxpayers had an honest belief that
16 they were filing accurate returns, and they were just
17 wronged. And that concludes my rebuttal.

18 JUDGE MARGOLIS: Okay. Thank you very much.

19 I want to thank the witness and counsel for
20 attending the hearing and your cooperation with the
21 prehearing procedures. It was very helpful. Does anyone
22 have any final questions of the panel before -- or me or
23 the panel before we go on about the procedure? Okay.
24 Well --

25 JUDGE DANG: This is Judge Dang speaking.

1 JUDGE MARGOLIS: Yes.

2 JUDGE DANG: I just had one quick clarification
3 for the Franchise Tax Board. And I apologize if I'm
4 asking again, but I'm still a little confused. Is the
5 Franchise Tax Board conceding that Samson had prepared
6 Appellants' returns for the periods at issue?

7 MS. MOSNIER: Judge Dang, this is Marguerite
8 Mosnier. Oh, excuse me. David go ahead.

9 MR. HUNTER: The evidence --

10 JUDGE MARGOLIS: Mr. Hunter proceed.

11 MR. HUNTER: -- shows that Appellants paid
12 Ms. Samson or her son money to prepare their returns. My
13 issue is the term "prepare". Prepare. She fabricated
14 \$1.3 million in losses. Based on the complaint, it was
15 fraudulent. To me, I cannot stomach that she did not
16 prepare returns accurately. However, this turns on
17 whether or not she was the right person for the job in
18 terms of being reasonable and rely on her qualification on
19 preparing those returns.

20 And I'll hand it off to my co-panelist,
21 Marguerite Mosnier.

22 JUDGE DANG: Would you concede to fraudulently
23 prepared then?

24 MR. HUNTER: I'm not making a misconception.

25 JUDGE DANG: Okay.

1 MR. HUNTER: I cannot raise the reasonable
2 reliance defense to the accuracy-related penalty. But is
3 this fraud? That is not case I have on my plate.

4 JUDGE DANG: Thank you.

5 JUDGE MARGOLIS: Okay. Mr. Bernsley, I just want
6 to give you an opportunity to respond, if you wish to. I
7 think we've gone over this but go ahead.

8 MR. BERNSELEY: Thank you. One quick point. It
9 seems to me that the FTB is arguing that because the
10 Felipes' returns were prepared -- at least arguably
11 incompetently -- that the fees paid to her would not be
12 deductible, and I'm aware of no authority for that
13 conclusion.

14 JUDGE MARGOLIS: Okay. Thank you all very much
15 for your attendance today and your testimony. We'll now
16 close the record in this case and submit the matter for
17 decision after -- later today. And we will -- the judges
18 will confer among ourselves and ultimately, we will
19 prepare a written decision which will be issued to you
20 within 100 days from today.

21 This hearing is now concluded, and we are
22 adjourned. Thank you very much.

23 (Proceedings adjourned at 12:08 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 9th day of September, 2020.

ERNALYN M. ALONZO
HEARING REPORTER