

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
F. BAHENA and T. BAHENA,) OTA NO. 19054731
)
APPELLANT.)
)
_____)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, November 17, 2020

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
400 R Street, Cerritos, California, 95811,
commencing at 10:20 a.m. and concluding
at 10:58 a.m. on Tuesday, November 17, 2020,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ ELLIOTT SCOTT EWING

Panel Members: ALJ ANDREW KWEE
ALJ RICHARD TAY

For the Appellant: F. BAHENA
T. BAHENA

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

JOEL SMITH

Spanish Interpreter: CLARA GARZON

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-10 were received at page 8.)
(Department's Exhibits S-J were received at 8.)

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

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By Mr. Bahena	9
By Mr. Smith	13

1 Sacramento, California; Tuesday, November 17, 2020

2 10:20 a.m.

3

4 JUDGE EWING: We are now going to go on the
5 record.

6 We are now on the record on the appeal of
7 F. Bahena and T. Bahena, OTA Case Number 19054731.

8 Before we proceed, we have an interpreter on this
9 appeal. I need to qualify and swear in the interpreter.

10 Clara, could you please state your name, and
11 briefly state what your qualifications as a Spanish
12 language interpreter are.

13 THE INTERPRETER: My name is Clara Garzon, and I
14 am a qualified Spanish interpreter.

15 JUDGE EWING: Okay. And Clara, please raise your
16 right hand and repeat after me.

17

18 CLARA GARZON,
19 produced as an interpreter, and having been first duly
20 sworn by the Administrative Law Judge, translated from
21 Spanish to English and English to Spanish:

22

23 JUDGE EWING: Thank you, Clara.

24 Today is Tuesday, November 17th, 2020,
25 approximately -- I'm sorry -- 10:20 a.m. This appeal was

1 intended to be heard in person in Cerritos, California,
2 but is instead, with the consent of the parties, being
3 held by Webex video conference today.

4 I am the lead Administrative Law Judge Elliot
5 Scott Ewing, and with me today are Judge Richard Tay and
6 Judge Andrew Kwee. The three of us will be hearing the
7 matter this morning.

8 Thank you. I am the lead ALJ, meaning I will be
9 conducting the proceedings but my co-panelists are all
10 equal participants and will be reviewing the evidence,
11 asking questions, and reaching a determination in this
12 case. Please note that Judge Kwee has replaced
13 Judge Ralston on this panel.

14 Appellants, do you have any objections to this
15 replacement?

16 MR. BAHENA: No.

17 JUDGE EWING: Mr. Smith, do you have any
18 objections?

19 MR. SMITH: Joel Smith. I do not have any
20 objections.

21 JUDGE EWING: Thank you.

22 Okay. To the parties you're going to spell and
23 state your names and who you represent for the recorder,
24 starting with the Appellants Mr. and Mrs. Bahena.

25 Mrs. Bahena, please go first.

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TEODORA BAHENA,

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

JUDGE EWING: Okay. Very good. Thank you.

The sole issue in this appeal is whether Appellants filed their claim for refund before the expiration of the statute of limitations.

Mr. And Mrs. Bahena, is this your understanding?

MR. BAHENA: Yes.

JUDGE EWING: Mr. Smith, is this also your understanding.

MR. SMITH: Joel Smith. Yes.

JUDGE EWING: Okay. Regarding exhibits, Appellants have submitted Exhibits 1 through 10, which are admitted into evidence without objection. Respondent FTB has submitted Exhibits A through J, which are also admitted into evidence without objection.

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

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

JUDGE EWING: Very good. Any questions at this point?

1 MR. BAHENA: No.

2 JUDGE EWING: Okay. Now, we'll start with
3 Appellants opening presentation. You have 15 minutes.

4 Mr. And Mrs. Bahena, you are welcome to begin if
5 you are ready.

6 And excuse me. Let me also say that you are
7 welcome to speak in the narrative and simply discuss your
8 position on the issue and the argument you wish to make.

9 MR. BAHENA: I don't know what to say.

10 JUDGE EWING: Okay. The issue in this appeal is
11 whether your claim for refund was filed before the
12 expiration of the statute of limits. Did you want to
13 discuss why you believe that the claim for refund was
14 filed before the expiration of the statute of limitations,
15 or that the statute of limitations was put on hold?

16 MR. BAHENA: So you want me to say it orally,
17 verbally?

18 JUDGE EWING: Yes.

19

20 PRESENTATION

21 MR. BAHENA: So the matter is that in 2000 --
22 back in 2006 when I wanted to file my taxes, I was trying
23 to reach the person that I always file my taxes with, but
24 I couldn't get a hold of her, and I couldn't find her.
25 So, therefore, I did not file any taxes until either 2013

1 or 2014. I can't recall exactly. So like I said, I
2 wasn't able to get a hold of the person who would normally
3 do my income taxes. And it wasn't until 2013 or 2014 that
4 I finally found somebody in Santa Clara. And that person
5 told me that it was late to file for any -- to claim for
6 any refund of my taxes that I needed to file in 2006.

7 And so like I said, I finally found this person
8 that was able to help me with filing my income taxes. And
9 that person said that I can actually claim for a refund
10 from previous years because I owe -- I didn't owe money.
11 On the contrary, there was a refund that was owed to me
12 from back then. And currently I am unemployed. Only my
13 wife is working. I have a daughter who is not well.
14 She's going through psychological therapy because of the
15 whole Corona virus that has affected everybody.

16 So that's why I have filed a claim for refund
17 because it's money that I have earned, and that I feel
18 that I should get refunded. And so I had -- I did have a
19 state attorney. It was an attorney that was assigned to
20 me by the state, but he decided to no longer represent me.
21 So I truly apologize if I am not being clear as to what my
22 petition is, but all I want to do is able to get a refund
23 for the taxes that were filed a while ago.

24 Thank you so much. I hope you can understand me,
25 and please excuse me.

1 JUDGE EWING: Well, we do understand you, and we
2 thank you for the presentation.

3 MR. BAHENA: Thank you.

4 JUDGE EWING: So I'm going to ask my fellow ALJs
5 if they have any questions. Judge Kwee?

6 JUDGE KWEE: Yes. Thank you. I do have a couple
7 of questions. So just so I'm understanding what happened,
8 I understand that you didn't file a return for 2006?

9 MR. BAHENA: That is correct.

10 JUDGE KWEE: And as a result, FTB estimated your
11 income based on your mortgage payment. And based on the
12 assessment, you didn't appeal that assessment, and FTB
13 collected the taxes on that assessment over the years.
14 But in 2013 that's when you first claimed the refund for
15 the 2006 payment.

16 MR. BAHENA: So I don't know if it was the
17 refunds that were collected, but it wasn't until 2013 that
18 I filed my taxes. And the tax person that prepared my
19 taxes said that I didn't owe any money.

20 JUDGE KWEE: Okay. So my question is, why didn't
21 you claim a refund for the amounts early before 2013? Is
22 it only because you weren't able to find a tax preparer?

23 MR. BAHENA: So, yeah. I was not able to file
24 any taxes before 2013 because the person who used to do
25 them up to 2006, she left. I couldn't -- I didn't know

1 her whereabouts, and she took all of the copies of my
2 previous income taxes.

3 JUDGE KWEE: Okay. So the briefing material you
4 provided had also said that Mr. Bahena was suffering from
5 a medical disability and that was why he wasn't able --
6 that was also why he wasn't able to file earlier. Is that
7 no longer your position?

8 MR. BAHENA: Yeah. I was very, very ill back
9 then. Back then I lost my business. I lost my job, and I
10 was very ill.

11 JUDGE KWEE: So was there anything that would
12 have prevented your wife Mr. Bahena from addressing the
13 assessments with FTB during this time period?

14 MR. BAHENA: Would you like her to answer, or
15 would you like him to answer?

16 JUDGE KWEE: Either of you may answer however you
17 prefer.

18 MRS. BAHENA: Yes, there was an impediment
19 because he was the one that was taking care of everything
20 related to the taxes with the tax person.

21 JUDGE KWEE: Okay. But was your spouse suffering
22 from any disability, or was she not authorized to act on
23 your behalf during this time period?

24 MR. BAHENA: Yeah, she was authorized.

25 JUDGE KWEE: Okay. Thank you. Those were my

1 questions. I'll turn it back to the lead judge at this
2 point.

3 JUDGE EWING: Thank you, Judge Kwee.

4 Judge Tay, do you have any questions?

5 JUDGE TAY: This is Judge Tay. I have no
6 questions.

7 JUDGE EWING: Okay. And I do not have any
8 questions at this point. So we will move on to Respondent
9 FTB's presentation.

10 Mr. Smith, you have 10 minutes. Feel free to
11 begin.

12 MR. SMITH: Joel Smith. Thank you.

13

14 PRESENTATION

15 MR. SMITH: As Judge Kwee fleshed out, following
16 Notices of Proposed Assessment to Appellants, Respondent
17 received payments between May 15th, 2009, and
18 August 26, 2011, for Appellants 2006 tax year.

19 THE INTERPRETER: I'm sorry. It was August to --
20 what year in August was that?

21 MR. SMITH: Joel Smith. August 26th, 2011.

22 On January 28th, 2013, Appellants filed their
23 joint original 2006 California tax return claiming a
24 refund. California law requires that taxpayers file a
25 claim for refund within four years of the date a timely

1 return is filed or one year from the date of payment.
2 Unfortunately, the Appellants did not file their claim for
3 refund within the statutory period.

4 Please note there is an error on page 3 of
5 Respondent's opening brief when discussing the one-year
6 statute of limitations. Respondent identified Appellants'
7 most recent payment for the 2006 tax year as
8 February 11th, 2011, instead of August 26th, 2011.

9 THE INTERPRETER: I'm sorry. I'm having a really
10 hard time listening to you, Mr. Smith. Can you give me
11 the dates again, please?

12 MR. SMITH: Yeah. February 11th, 2011, instead
13 of August 26th, 2011.

14 This error does not affect the application of the
15 statute of limitations in this appeal, as Appellants filed
16 their claim for refund on January 28th, 2013; more than
17 one year after the August 26th, 2011, payment. During
18 briefing Appellants argued the statute of limitations
19 should be suspended due to financial disability under
20 Revenue & Taxation Code Section 19316.

21 To be considered financially disabled, taxpayers
22 must show they were unable to manage their financial
23 affairs due to a physical or mental impairment that is
24 considered terminal or expected to last for a continuous
25 period of at least 12 months. Admittedly, this is a high

1 standard imposed by the legislature. Under Section 19316,
2 Respondent created Form 1564 to assist taxpayers in making
3 a financial disability claim. This form is not required,
4 but the elements in the form are necessary for taxpayers
5 to establish a financial disability.

6 Here, Respondent does not question the veracity
7 of Appellant husband's physical ailments. However,
8 Appellants have not provided the information necessary to
9 establish Appellant husband was financially disabled as
10 defined under Section 19316. The statute of limitations
11 is -- excuse me. Section 19316 is the only statutory
12 grounds to hold the statute of limitations. Appellants'
13 difficulty with tax preparers is not a consideration to
14 toll the statute of limitations.

15 Finally, Appellants' filing history shows they
16 filed tax returns for the 2009, 2010, and 2011 tax years
17 during the relevant time period to file a timely claim for
18 refund for the 2006 tax year. In conclusion, Appellants
19 have not shown the statute of limitations should be tolled
20 for the 2006 tax years. As such, based on the evidence in
21 the record and statutory authority, Respondent request you
22 sustain its position.

23 I can answer any questions you may have. Thank
24 you.

25 THE INTERPRETER: Judge Ewing -- he's on mute.

1 JUDGE EWING: I apologize for that.

2 Thank you, Mr. Smith.

3 Can you hear me now?

4 THE INTERPRETER: Yes. Thank you.

5 JUDGE EWING: This is Judge Ewing. I want to
6 clarify one thing you said, Mr. Smith, regarding the date
7 of the most recent payment being August 26th, 2011, and
8 that's instead of February 11th, 2011, as indicated in
9 your brief. And can you confirm that would have been the
10 most recent payment of the payments that were applied to
11 this tax year for which the claim for refund was filed?

12 MR. SMITH: Joel Smith. Yes, I can confirm that
13 is the date that was provided on the first page of the
14 brief. It can also be found on page 6 of Exhibit E.

15 JUDGE EWING: Okay. Thank you for clarifying
16 that.

17 Judge Kwee, do you have any questions?

18 JUDGE KWEE: This is Judge Kwee. Yes, just a
19 couple of quick questions for the Franchise Tax Board. I
20 just wanted to clarify the scope of FTB's position. Does
21 FTB dispute that there was, in fact, an overpayment made
22 by Appellant, or are you not addressing that because of
23 the statute of limitations?

24 MR. SMITH: Joel Smith. Respondent does not
25 dispute there was an overpayment. It's not at issue as

1 we're discussing statute of limitations for refund.

2 JUDGE KWEE: Okay. So I understand it, FTB's
3 position is the only issue is that 19316 doesn't apply
4 because Mrs. Bahena was authorized to act, and she was not
5 disabled. And that's the only reasoning preventing a
6 refund?

7 MR. SMITH: Joel Smith. There are a number of
8 items on Form 1564 which have not been met, the items that
9 you mentioned, as well as a physician's affidavit
10 outlining the period of time in which Appellant husband is
11 financially disabled. There just isn't really much
12 information in the record otherwise.

13 JUDGE KWEE: Okay. Thank you.

14 JUDGE EWING: This is Judge Ewing. Thank you,
15 Judge Kwee.

16 Judge Tay, do you have any questions?

17 JUDGE TAY: This Judge Tay I have no questions.

18 JUDGE EWING: Okay. Thank you, Judge Tay.

19 Now, Appellants have the opportunity to make a
20 closing presentation. They indicated they might need five
21 minutes to do.

22 Mr. And Mrs. Bahena, would you like to make a
23 closing presentation -- I'm sorry -- or otherwise make any
24 comments that you would like to make?

25 MR. BAHENA: So I do understand that there is --

1 you know, I had little difficult -- I had difficulty in
2 filing my taxes, and I filed my taxes late. And I'm
3 really not knowledgeable about the whole process and the
4 whole system as to when I had to file my taxes or how long
5 I had, the period that I had.

6 So I'm only asking if, you know, if there's any
7 way that I can get a reimbursement. If not, then I can
8 understand. But I do want to highlight the fact that I
9 didn't -- I wasn't aware of the process, and I didn't know
10 the time frame or the dates that I can file.

11 JUDGE EWING: Okay. Any additional comments?

12 MR. BAHENA: No. I think that's everything that
13 I want to say. And thank you for listening to me.

14 JUDGE EWING: And thank you very much for taking
15 the time to explain your case to us and the thoughtful
16 comments you shared.

17 MR. BAHENA: Thank you.

18 JUDGE EWING: Okay. Judge Kwee, do you have any
19 questions at this point?

20 JUDGE KWEE: This is Judge Kwee. I have no
21 further questions. Thank you.

22 JUDGE EWING: Judge Tay, do you have any
23 questions at this point?

24 JUDGE TAY: This is Judge Tay. No questions.
25 Thank you.

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JUDGE EWING: Thank you.

So now we have your evidence and the information you provided today. We appreciate very much the time that you've taken to meet with us. And this will conclude the hearing.

The judges will meet and decide the case based on the documents and testimony presented and admitted as evidence today. We will send both parties our written decision no later than 100 days from today.

Thank you also to our interpreter Clara. We very much appreciate your help today.

THE INTERPRETER: Thank you very much.

JUDGE EWING: Thank you to Lynne, our stenographer for today's hearing. And thank you to my fellow judges on this panel, Judge Kwee and Judge Tay.

The record is now closed.

(Proceedings adjourned at 10:58 a.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 25th day of November, 2020.

ERNALYN M. ALONZO
HEARING REPORTER