OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18083556
	) CDTFA Account No. 100-384723
MATRIX CAB PARTS, INC.	) CDTFA Case ID 595388
	)
	)
	)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Patrick E. McGinnis, Attorney

For Respondent: Jarrett Noble, Tax Counsel III

M. GEARY, Administrative Law Judge: On June 4, 2020, we issued an opinion (Opinion) in this appeal sustaining a decision issued by respondent California Department of Tax and Fee Administration, which denied appellant's petition for redetermination of a Notice of Determination (NOD) of a tax liability of $74,886.99, plus applicable interest, for the period January 1, 2008, through December 31, 2010 (liability period). Pursuant to the California Code of Regulations, title 18, (Regulation) section 30602, appellant filed a timely petition for rehearing (PFR). Upon consideration of the matters stated therein, we find that appellant has not established grounds for a new hearing. (Cal. Code Regs., tit. 18, § 30604; *Appeal of Do*, 2018-OTA-002P.)

Regulation section 30604, subdivisions (a)-(e), provides that a rehearing may be granted where one of the following grounds exists and the rights of the complaining party are materially affected: (1) an irregularity in the proceedings by which the party was prevented from having a fair consideration of its case; (2) an accident or surprise that occurred during the proceedings and prior to the issuance of the written opinion, which ordinary prudence could not have guarded against; (3) newly discovered, relevant evidence, which the party could not, with reasonable diligence, have discovered and produced prior to the issuance of the written opinion; (4)

insufficient evidence to justify the written opinion, or the opinion is contrary to law; or (5) an error in law during the proceedings. (*Appeal of Do*, *supra*.)

Here, the PFR does not state the grounds relied upon. There is no mention of Regulation section 30604 at all. Instead, the PFR states that appellant requests a hearing on the issue of interpretation and review of regulations and to allow the statement of its owner, T. Abiad.

Regulation section 30604 does not provide for a rehearing to interpret and review applicable regulations. We have tried to understand the legal substance of appellant's argument and note that the PFR also states that the Opinion blindly accepts information contained in the audit work papers as sufficient to establish facts, that the regulations "put unreviewable and unrealistic discretion in the hands of an auditor," and that the Office of Tax Appeals (OTA) "gives great latitude to an auditor that did a sloppy job." These allegations indicate that appellant argues that there was insufficient evidence to justify the written opinion, or the opinion is contrary to law. (Cal. Code Regs., tit. 18, § 30604(d).)

The two grounds (for a PFR) identified in Regulation section 30604(d), insufficiency of the evidence and a result which is contrary to law, are stated in the disjunctive. In analyzing the first ground, we must reweigh the evidence and grant a rehearing if we are "convinced from the entire record, including reasonable inferences therefrom," that we should have reached a different decision. (Code Civ. Pro., § 657.[1]) A decision in favor of appellant on the second ground, the opinion being contrary to law, does not require us to reweigh the evidence; rather, it requires a finding that the opinion is unsupported by any substantial evidence, that is, that the record would justify a directed verdict against the prevailing party. (*Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 906.) The correct analysis of the second ground requires us to view the evidence in a light most favorable to the prevailing party, and to indulge in all legitimate and reasonable inferences to uphold the opinion if possible. (*Id.* at p. 907.) It does not require us to examine the quality or nature of the reasoning behind the opinion, but only whether that opinion is valid according to the law. (*Appeal of Martinez Steel Corporation*, 2020-OTA-074P.)

[1] Regulation section 30604 is essentially based upon the provisions of Code of Civil Procedure (CCP) section 657. (See *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654 [State Board of Equalization (SBE) utilizes CCP 657 in determining grounds for rehearing]; *Appeal of Do, supra* [OTA adopts SBE's grounds for rehearing].) Therefore, the language of CCP section 657 and case law pertaining to the operation of the statute are persuasive authority in interpreting the provisions contained in this regulation.

Regarding the sufficiency of the evidence, appellant at least implies, without providing specifics, that this panel blindly accepted information contained in the audit work papers as sufficient to establish the facts upon which it based the Opinion. This was not the case. Appellant knew that respondent offered the audit work papers into evidence, and appellant interposed no objections to the admission of the evidence.[2] OTA did not (and does not) blindly accept the statements of a party as alone sufficient to establish facts. On the other hand, we are entitled to rely upon such evidence, giving it the weight that we deem appropriate. (Cal. Code Regs., tit. 18, § 30102(w).) In the Opinion, we found that respondent's evidence was sufficient to carry its minimal burden of showing a reasonable and rational basis for the determination. It was appellant who failed to provide the necessary proof, asserting the truth of facts without providing any credible evidence in support and essentially admitting the facts that support the Opinion's findings and conclusions. We conclude the PFR does not establish appellant's right to a rehearing on the ground of the insufficiency of the evidence to support the Opinion.

Appellant supports its assertion that the Opinion is contrary to law by making arguments that appear to find little support in the evidence or law and variations of the arguments already rejected by us in the Opinion. Appellant argues here that we should not apply what it refers to as the "mathematical formula of 10 to 15 [percent]" to determine whether work performed by appellant was fabrication or repair of used items, and instead should have looked at the totality of the circumstances to decide whether appellant performed fabrication labor. We find no reference in any of the relevant regulations or in the Opinion to the "10 to 15 percent" range.[3] We applied no such mathematical formula. Rather, we evaluated the totality of the evidence and determined that the facts established that appellant provided taxable fabrication labor. There was no evidence that the cabinets were used. On the contrary, appellant conceded that the cabinets were manufactured incorrectly by others, and customers (construction contractors) hired appellant to alter the cabinets so they would fit. This is a classic example of fabrication labor.

[2] Appellant had submitted 83 pages of hearing exhibits and respondent had submitted 412 pages of hearing exhibits before appellant waived its right to a hearing. OTA had previously ordered the parties to submit objections to proposed evidence in writing by October 21, 2019. No objections were submitted.

[3] While Regulation sections 1524 (Manufacturers of Personal Property) and 1546 (Installing, Repairing, Reconditioning in General) contain language indicating that the taxpayer is considered the retailer of supplies, parts, or materials used when the retail value thereof is more than 10 percent of the total price of the work performed, this formula has nothing to do with a determination whether work is fabrication or repair.

Appellant's argument that it is entitled to a new hearing to present the testimony of its owner, T. Abiad, reflects a lack of understanding of Regulation section 30604. A party's desire to present evidence different than what it presented at the hearing is not a ground for a rehearing unless that proposed new evidence is newly discovered and likely to lead to a different result, and the proponent shows that the evidence could not have been discovered in time to present it at the hearing. (Cal. Code Regs., tit. 18, § 30604(c); *Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708, 727-724.) Since there is no question that the testimony of T. Abiad could have been presented at a hearing if appellant had not waived its right to a hearing, we conclude that a rehearing on this ground is not warranted.[4]

Appellant's other arguments in support of the PFR have already been rejected in the Opinion. We continue to find them unpersuasive. A party's dissatisfaction with the outcome of a hearing and desire to make the same arguments again are not grounds for a rehearing. (*Appeal of Graham and Smith*, 2018-OTA-154P.) Appellant has not shown that the Opinion is contrary to law.

The PFR is denied.

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Michael F. Geary
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Michael F. Geary
Administrative Law Judge

We concur:

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Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

DocuSigned by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

Date issued: 11/17/2020

[4] We note that appellant also argued in its briefs filed before issuance of the Opinion that respondent had not given adequate consideration to the "testimony" of T. Abiad, but no such evidence was in the record.