

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
K. RAZA and S. RAZA,) OTA NO. 20076361
)
) APPELLANT.)
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TRANSCRIPT OF VIRTUAL PROCEEDINGS

State of California

Wednesday, April 21, 2021

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Virtual Proceedings,
taken in the State of California, commencing
at 10:09 a.m. and concluding at 10:49 a.m.,
on Wednesday, April 21, 2021, reported by
Ernalyne M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ NATASHA RALSTON

Panel Members: ALJ MIKE LE
ALJ NGUYEN DANG

For the Appellant: S. RAZA

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

GI JUNG NAM

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I N D E X

E X H I B I T S

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(Department's Exhibits A-I were received at page 6.)

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California; Wednesday, April 21, 2021

10:09 a.m.

JUDGE RALSTON: We are now on the record in the Office of Tax Appeals oral hearing for the Appeal of N. Raza and S. Raza, OTA Case Number 20076361. The date is April 21st, 2021, and the time is 10:09 a.m.

The Office of Tax Appeals will be conducting today's hearing electronically via Webex with the agreement of all parties and participants. I am Judge Natasha Ralston, and I am the lead Administrative Law Judge for this hearing. My co-panelist today are Judge Mike Le and Judge Nguyen Dang.

I'm going to ask the parties to please identify themselves and who they represent for the record.

Ms. Raza, can you please introduce yourself for the record.

MS. SHAHNAZ RAZA: I am Shahnaz Raza, and I'm the taxpayer appealing this case.

JUDGE RALSTON: Thank you.

And FTB, can you please introduce yourself for the record.

MR. NAM: My name is Gi Jung Nam for Franchise Tax Board. Please feel free to call me Gi.

JUDGE RALSTON: Thank you.

1 There are two issues to be decided in this
2 appeal. The first issue is whether Appellants have
3 established that their failure to timely pay was due to
4 reasonable cause. The second issue is whether Appellants
5 have established a basis to abate the estimated tax
6 penalty. The parties agree that this appeal was timely
7 filed, and, thus, the timeliness of this appeal is no
8 longer at issue.

9 Appellants have submitted Exhibits 1 through 5.
10 Appellants' exhibits will be admitted without objection.

11 (Appellant's Exhibits 1-5 were received
12 in evidence by the Administrative Law Judge.)

13 Respondent has submitted Exhibits A through I,
14 and Respondent's exhibits will also be submitted without
15 objection.

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

18 JUDGE RALSTON: So we're going to start with the
19 Appellants' case. Can I have both Ms. Razas raise their
20 right hand.

21

22 SHAHNAZ RAZA,

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

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NADIA RAZA,

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

JUDGE RALSTON: Thank you. Please present your case.

PRESENTATION

MS. SHAHNAZ RAZA: Okay. I will do my best to explain the events as clearly as possible. This may sound repetitive, and I will try to minimize any repetition.

I requested my accountant, John Dellasanta, for an extension for 2018 tax returns. John informed me taxes would have to be paid before an extension could be filed. I asked John if I could mail a check and was informed by John, Franchise Tax Board requires an electronic payment prior to filing an extension. I provided John with the bank routing number and account number.

The tax due at the time of filing the extension was \$10,753.99. John paid the taxes and filed for an extension on April 15, 2019. Tax returns were filed on May 22nd, 2019. I had no idea any tax was due, as I had already authorized John to pay the full amount of the taxes that were due at the time. John, instead of paying

1 \$10,753.99, erroneously made a payment of \$130.00.

2 MS. NADIA RAZA: \$130,000.

3 MS. SHAHNAZ RAZA: \$130,000.02, which is
4 reflected in Exhibit 4. I was not aware of this error, as
5 I did not receive a non-sufficient fund notice from the
6 bank since it was an electronic payment. When I noticed
7 the error online, I contacted John's office but was not
8 able to get in touch with him for quite some time.
9 Finally, when I was able to reach John, he informed me of
10 the error he had made and advised me to pay \$10,753.99.

11 On June 19th I paid Franchise Tax Board
12 \$10,753.99 electronically. This was the correct amount of
13 the tax due when the tax returns were filed. No
14 installment payments were made on -- on the payment of the
15 taxes. Franchise Tax Board has said in their exhibit that
16 the payments were made by installments, and I want to make
17 a correction to that that all the payments were made --
18 the payment were made in fall. There were no installment
19 payments made.

20 In addition to the above amount \$10,753.99, which
21 I have paid, I have paid Franchise Tax Board an additional
22 amount of \$1,300. The total amount paid to Franchise Tax
23 Board for 2018 taxes is \$12,033.99.

24 Please let me know if I need to slow down.

25 JUDGE RALSTON: You're speaking fine. Thank you.

1 MS. SHAHNAZ RAZA: Okay. Thank you.

2 I have not been able to understand the additional
3 charges by the Franchise Tax Board, but I went ahead and
4 paid the amount I was billed for in the demand letters
5 from Franchise Tax Board and on the advice of the
6 accountant. The issue was -- the issue of the delayed tax
7 payment was a result of a human error and not a deliberate
8 oversight by me or the accountant. Please refer to the
9 letter from John the accountant dated April 10, 2020, in
10 Exhibit 5.

11 Please note in that letter John states that this
12 error would not have occurred, and the payment would not
13 have been late if the taxpayer could have paid the taxes
14 by writing a check. Because Franchise Tax Board required
15 an electronic payment, the electronic payment resulted in
16 a typing error and, therefore, the taxes were late.

17 I have been a resident of California since 1970
18 and filed timely tax returns and in most of the years
19 received a refund from Franchise Tax Board. In this
20 situation, there was never a moment when I was ignoring or
21 neglecting paying the taxes. I was of the understanding
22 taxes are due by April 15th. In this situation taxes were
23 paid by April 15th. Payment was not late, but a human
24 error resulted in a delay.

25 I'm requesting Appeals Court to waive the late

1 penalties, late charges, and the penalties.
2 Payments for -- in addition, I have been make -- I have
3 also made the full amount of payment for 2020 tax returns
4 and also made \$11,000 payment for 2021, which is this
5 current tax year. So I've been making timely payments,
6 and this resulted because of a human error, and I'm
7 requesting the Appeals Court to waive the charges.

8 That is all I have to say.

9 JUDGE RALSTON: Thank you. Did your witness have
10 any testimony to give?

11

12 WITNESS TESTIMONY

13 MS. NADIA RAZA: Sure. So if I can add to that,
14 over the course of the last two years my mom has been
15 living very close to me. I've had two small children, so
16 she has spent quite a bit of time -- we've spent a lot of
17 time together. In this case, after the issue and my mom
18 finding out that John had made a mistake, I have heard her
19 talk about trying to contact John, trying to contact the
20 Franchise Tax Board to understand the situation numerous
21 times.

22 An element that my mom has not brought in in her
23 testimony is that John would be here today but,
24 unfortunately, he passed away. In 2018 John began to
25 suffer from a heart issue. He also did my brother's taxes

1 that year and made a mistake on my brother's taxes. My
2 brother received someone else's return.

3 Since his death, his secretary has shared with
4 his clients that John was in declining health. He was
5 difficult to get ahold of because he was not doing well,
6 and he did make mistakes on other people's taxes because
7 he would slip in and out of lucid states as his heart was
8 in failure, and he was not getting as much oxygen to his
9 entire body.

10 And so my mom has worked with John for 40 years.
11 They always had a very close relationship as his -- you
12 know, her accountant. And she was surprised that she was
13 not able to get ahold of him. Kept being persistent.
14 Kept being persistent. I was witnessing this, wondering,
15 you know, what was going on. And then we found out after
16 the fact that he was in failing health. I think this
17 matter is relevant to the situation because my mom was
18 being very diligent in trying to resolve the matter, to
19 understand the matter in a timely fashion.

20 JUDGE RALSTON: Thank you. Does that conclude
21 your testimony, Ms. Raza?

22 MS. NADIA RAZA: Is there anything else you want
23 to say?

24 MS. SHAHNAZ RAZA: It concludes my testimony,
25 yes.

1 JUDGE RALSTON: Thank you.

2 I'm going to turn to Respondent. Mr. Nam, did
3 you have any questions for either witness?

4 MR. NAM: No questions for Franchise Tax Board.

5 JUDGE RALSTON: Thank you.

6 I'm going to turn to my panel. Judge Le, did you
7 have any questions?

8 JUDGE LE: Yes, I do. This is a question for
9 Appellant. How often did you try to contact your
10 accountant, John? Was it weekly or daily or --

11 MS. SHAHNAZ RAZA: Not daily. Like twice a week.

12 JUDGE LE: Twice a week. I do have a second
13 question. And that is, did you -- when exactly did you
14 find out that the payment was dishonored?

15 MS. SHAHNAZ RAZA: I found out sometime in June
16 because it is a bank account that I did not receive any
17 letter from the bank saying there were non-sufficient
18 funds. It is a bank account that I do not use on a daily
19 basis. So one day when I logged on to the account,
20 sometime in June I believe -- and, you know, it's been
21 two -- now 2019, it's been two years. So if I am -- I'm
22 just going by my memory, you know, from two years ago.

23 When I looked at the amount, the amount on the
24 bank was like \$130,002. And I said what is going on?
25 \$130,002, where does this amount come from? So it didn't

1 make any sense to me. Like, by that time -- so sometime
2 in early June I was able to notice it, and then I tried to
3 follow up with John. And after the tax season, John's
4 office has very limited -- had very limited hours.

5 His office would only be open Monday through
6 Thursday from 9:00 a.m. to 1 p.m. So I would leave
7 message. I left message, like, twice a week for a few
8 weeks until finally John got in touch with me. And then
9 he looked at it, and he said, "Oh, I mistyped the amount."

10 JUDGE LE: This is Judge Le. Thank you. No
11 further questions.

12 JUDGE RALSTON: Thank you.

13 Judge Dang, did you have any questions?

14 JUDGE DANG: This is Judge Dang. Ms. Raza, at
15 what time did you become aware of John's health issues?

16 MS. SHAHNAZ RAZA: Oh, I do not become aware of
17 John's health issues. When I went to do my 2000 -- this
18 is 2000. When I went to do my 2019 tax returns, I noticed
19 that while John was doing the tax returns, he kind of,
20 like, just dosed off while doing the tax returns --

21 MS. NADIA RAZA: In front of her.

22 MS. SHAHNAZ RAZA: -- in front of me. And then
23 he kind of, like, came back and continued to do the work.
24 And so it felt kind of, like, not quite -- I mean, you
25 know, I worked in the medical field, and I have been

1 around doctors. But in my experience, I felt that was
2 not -- that was not a good sign that something was
3 happening.

4 But I didn't know about John's failing health
5 until late in November of -- or maybe sometimes in 2020 I
6 found out that he had had a heart attack. When I did --
7 when I went to do -- yeah. When I went to do my 2019 tax
8 returns, I found out that he had had a heart attack, and
9 he was still doing still great. And then in December I
10 got a call from his office saying that he had passed away.

11 And when I went to get some documents from the
12 office, and I mentioned to the secretary -- I had known
13 John for 40 years. So the secretary and everybody knew
14 me. It was like a family. He had -- John was my -- on my
15 living trust, John was my successor trustee. That's how
16 close we were. And so when I mentioned to the secretary
17 that, you know, last year when I came to get the taxes
18 done, John dosed off.

19 And she said, "Shahnaz, many clients mentioned
20 that. You are not the only one. He just didn't want
21 to -- his clients to know." At that time he probably
22 wasn't aware himself that he was in failing health until
23 he had the heart attack. And then he had the stents put
24 in and everything, and he succumbed.

25 JUDGE DANG: Thank you. This is Judge Dang

1 speaking again. My final question, Ms. Raza, after the
2 April 15th payment deadline had passed, did you make any
3 attempt to verify whether or not the electronic payment
4 had gone through?

5 MS. SHAHNAZ RAZA: No, I did not. Because in the
6 past years, all the years, it has never been an issue. I
7 only found out about it when I went online and looked at
8 that, and I still didn't understand what was happening.
9 So that's when I called John's office.

10 JUDGE DANG: Thank you. This is Judge Dang
11 speaking. I have no further questions.

12 JUDGE RALSTON: Thank you, Judge Dang.

13 This is Judge Ralston. We're now going to turn
14 to Respondent to present their case.

15 Mr. Nam, you have approximately 15 minutes.
16 Thank you.

17

18 PRESENTATION

19 MR. NAM: Hi. My name is Gi Jung Nam. I'm
20 representing Respondent Franchise Tax Board in this
21 appeal. We are here today to determine whether Appellants
22 have shown that they had reasonable cause for paying their
23 tax late and to determine whether Appellants provided a
24 basis to abate the estimated tax penalty.

25 Here Appellants -- where their tax return

1 preparer appeared to have erroneously added in an extra
2 zero in the return extension payment. And the payment was
3 dishonored for insufficient funds, not because the payment
4 was paid electronically. Respondent finds that Appellants
5 do not establish reasonable cause because they failed to
6 timely monitor their bank account to confirm that their
7 payment successfully withdrawn, and because they failed to
8 correct their error when they filed their return over a
9 month later.

10 As you can see in Exhibit E, the return reported
11 that they paid the dishonored payment and even requested a
12 refund, which included \$100,000 they were not entitled to.
13 Under a well-settled legal precedent discussed in
14 Respondent's brief, Appellants as taxpayers have the
15 responsibility of timely paying and monitoring their bank
16 account after making a tax payment. Reliance on a tax
17 preparer for making timely payment does not establish
18 reasonable cause.

19 An ordinary and prudent act in this case was to
20 monitor their bank account to make sure that the payment
21 was successfully withdrawn and to make the correct payment
22 when they later filed their return. Unfortunately, they
23 have not acted accordingly. Therefore, Appellants failed
24 to establish reasonable cause to abate the late payment
25 penalty.

1 As for the estimated tax penalty, Appellants
2 argue that they were unaware of the requirement of paying
3 estimated taxes. There is no legal authority to support
4 the estimated tax penalty to be abated for that reason.
5 And, unfortunately, considering all these facts, the law
6 does not allow us to abate the penalties at issue in this
7 appeal. Respondent heard very sympathetic stories
8 about -- regarding the tax preparer and about it being
9 human error. Unfortunately, as discussed, that does not
10 rise to establish reasonable cause. Respondent
11 respectfully request that you sustain its action.

12 Thank you. I'll be happy to answer any
13 questions.

14 JUDGE RALSTON: This is Judge Ralston. Thank
15 you.

16 Judge Le, did you have any questions for
17 Respondent?

18 JUDGE LE: This is Judge Le. I have no questions
19 for Respondent.

20 JUDGE RALSTON: Thank you.

21 Judge Dang, did you have any questions for
22 Respondent?

23 JUDGE DANG: Judge Dang. I have no questions.
24 Thank you.

25 JUDGE RALSTON: Okay. Ms. Raza, you have

1 approximately five minutes to make any closing remarks
2 that you would like.

3

4

CLOSING STATEMENT

5 MS. SHAHNAZ RAZA: The only thing I can say is
6 that I have made estimate -- I have made tax payments. I
7 made tax payments for -- estimated tax payments in full
8 for 2020 tax returns. And for 2021 also, I went ahead and
9 paid in full the amount. And you can see that from the
10 Franchise Tax Board history. I did not pull that
11 information and send it. And no, I have no further
12 questions. I'm just requesting that because of the human
13 error that the penalty should be waived. And also, I
14 would like explanation of the total amount of -- the
15 additional \$1,300 that I have paid for a total of
16 \$12,053.99.

17 So the last thing I want to say is that the
18 payment was paid on April 15th. It's just there was --
19 because of an error it didn't go through. And the
20 non-sufficient fund notice, normally a bank sends a
21 non-sufficient fund notice when you make a payment by
22 check. But because this payment was made electronically,
23 there was no notice that was sent.

24 And it's just, like, a one-time issue that that
25 happened, for which I'm requesting the Office of Tax

1 Appeals to wave the penalty and the late fees. That's all
2 I have to say. Thank you very much.

3 JUDGE RALSTON: This is Judge Ralston. Thank
4 you. I did have a couple of questions for you, Ms. Raza.
5 First, the tax return at issue was a joint return with
6 your spouse; correct?

7 MS. SHAHNAZ RAZA: Yes.

8 JUDGE RALSTON: Yes. And I believe the evidence
9 indicates that either you or your spouse were over 62 and
10 retired at the time the return was filed or during that
11 year; is that correct?

12 MS. SHAHNAZ RAZA: That is correct, yes. I'm 76
13 now.

14 JUDGE RALSTON: Thank you. And you both were
15 retired at the time the -- or you were retired during the
16 year the return was filed?

17 MS. SHAHNAZ RAZA: Yes, I retired in 2012.

18 JUDGE RALSTON: And your spouse as well?

19 MS. SHAHNAZ RAZA: My spouse retired much earlier
20 than me. He retired -- yes. Yes, he retired.

21 JUDGE RALSTON: Okay. Thank you.

22 Judge Le, did you have any further questions?

23 JUDGE LE: This is Judge Le. I do not. Thank
24 you.

25 JUDGE RALSTON: Thank you.

1 JUDGE DANG: I'm sorry, Judge Ralston. You are
2 muted and unable to hear you.

3 JUDGE RALSTON: I apologize. Judge Dang, did you
4 have any additional questions?

5 JUDGE DANG: This is Judge Dang speaking. I do
6 not have any further questions. Thank you.

7 JUDGE RALSTON: This is Judge Ralston. Thank
8 you.

9 Just bear with me a second. Thank you everyone
10 for your participation today. This concludes our hearing.

11 MR. NAM: Judge Ralston?

12 MS. SHAHNAZ RAZA: I --

13 JUDGE RALSTON: Am I muted again?

14 MR. NAM: No. I wanted to -- I'll first allow
15 Appellants to speak, but I would like an opportunity to
16 address just a few things if that's permitted?

17 JUDGE RALSTON: Yes. Please state your name
18 again, and you can go ahead and say what you wanted to
19 confirm.

20 MS. SHAHNAZ RAZA: Okay. This is Shahnaz. And
21 the only thing I wanted to say is that if there's any
22 correspondence that occurs between Office of Tax Appeals
23 and/or the Franchise Tax Board, please forward the mail to
24 my daughter's address because I'm not at my residence, and
25 I will not be at my residence until the middle of June.

1 And --

2 JUDGE RALSTON: Okay. This is Judge Ralston. I
3 just want to stop you right there and make sure that you
4 don't reveal any personal information on the record, but
5 we can work with you after the hearing to get your contact
6 information.

7 MS. SHAHNAZ RAZA: Okay. Thank you. That's all.

8 JUDGE RALSTON: Thank you.

9 And Mr. -- this is Judge Ralston. Mr. Nam, you
10 had something you wanted to add?

11 MR. NAM: Yes. If the Judges would like,
12 Franchise Tax Board would like to make available prior
13 compliance history regarding the estimated tax penalty for
14 Appellants. And also, if Appellants would like an
15 explanation of the amount at issue, I addressed that in
16 Respondent's opening brief, but I would be happy to
17 provide that additional explanation for the Judges or the
18 Appellants regarding questions about amounts that are at
19 issue.

20 JUDGE RALSTON: This is Judge Ralston again. I'm
21 going to take a five-minute recess. So if everyone could
22 hold tight, I do want to confer with my panel members for
23 a few minutes. So we're going to take a five-minute
24 recess everyone. Thank you.

25 (There is a pause in the proceedings.)

1 JUDGE RALSTON: So we are ready to go back on the
2 record. Thank you everyone for your patience. I just
3 want to cover a couple of things.

4 Ms. Raza, I see that your witness is no longer
5 here. Did we need to wait for her to come back, or are
6 you ready to proceed?

7 MS. SHAHNAZ RAZA: No. We do not need for her to
8 come back. She needed to go attend to the kids.

9 JUDGE RALSTON: Okay. This is Judge Ralston.
10 Thank you, Ms. Raza. Ms. Raza, if you want to change your
11 address, you should have our e-mail information. So if
12 you could contact OTA via e-mail and you can let them know
13 that you want your -- to update your contact information.
14 That way we can make sure the decision gets to you timely.

15 MS. SHAHNAZ RAZA: Okay. Thank you. I will do
16 that.

17 JUDGE RALSTON: Thank you.

18 This is Judge Ralston again. Thank you everyone
19 for your participation. This concludes the hearing.

20 Thank you, Mr. Nam. We're going to go ahead and
21 close the record today, but thank you for offering to
22 provide additional information.

23 So the Judges will meet and decide this case
24 based on the documents and testimony that have been
25 presented, and we will mail a written decision no later

1 than 100 days after the close of the hearing.

2 This record is now closed, and the matter is
3 submitted for decision.

4 (Proceedings adjourned at 10:49 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 26th day of April, 2021.

ERNALYN M. ALONZO
HEARING REPORTER