

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
M. HOURIANI and N. HOURIANI,) OTA NO. 18032515
)
APPELLANT.)
)
_____)

TRANSCRIPT OF VIRTUAL PROCEEDINGS

State of California

Tuesday, May 18, 2021

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Virtual Proceedings,
taken in the State of California, commencing
at 1:13 p.m. and concluding at 1:58 p.m. on
Tuesday, May 18, 2021, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ RICHARD TAY

Panel Members: ALJ JOSHUA LAMBERT
ALJ KEITH LONG

For the Appellant: JOHN D. FAUCHER
F. HOURIANI

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
BRADLEY KRAGEL
MATTHEW MILLER

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I N D E X

E X H I B I T S

(Appellants' Exhibits 1-9 were received at page 6.)
(Department's Exhibits A-S were received at page 6.)

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F. Houriani	7	9		

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California; Tuesday, May 18, 2021

1:13 p.m.

JUDGE TAY: We will go on the record.

Good morning. Sorry. Good afternoon. We are opening the record in the Appeal of Mehrdad and Noushin Houriani before the Office of Tax Appeals, Case Number 18032515. The official location on the original Notice of Hearing Cerritos, California, and this hearing is being held electronically.

A panel of three judges is hearing this appeal, and we are coequal decision makers. My name is Richard Tay, and I will be acting as the lead judge for purposes of conducting this hearing. Also on the panel with me today are Judges Keith Long and Judge Josh Lambert.

Will the parties introduce themselves for the record, beginning with Appellant.

MR. FAUCHER: John Faucher on behalf of Appellants Mehrdad and Noushin Houriani.

JUDGE TAY: Thank you.

Mr. Kragel, I believe you need to unmute first, please.

MR. KRAGEL: Bradley Kragel on behalf of Respondent Franchise Tax Board.

MR. MILLER: Matthew Miller on behalf of

1 Respondent Franchise Tax Board.

2 JUDGE TAY: Thank you. The issue for today is
3 whether Appellants have shown Respondent erred in its
4 proposed assessment for the 2010 tax year.

5 Prior to the, hearing, we circulated the exhibits
6 submitted by both parties in a file we call "the hearing
7 binder." It contains Appellants' Exhibits 1 through 9 and
8 Respondent's Exhibits A through S. There were no
9 objections to admitting the exhibits into evidence. I
10 just want to confirm that.

11 Is that correct, Appellants?

12 MR. FAUCHER: That is correct.

13 JUDGE TAY: Thank you.

14 And Respondent?

15 MR. KRAGEL: That is correct.

16 JUDGE TAY: Thank you.

17 The exhibits will now be admitted into evidence.

18 (Appellants' Exhibits 1-9 were received
19 in evidence by the Administrative Law Judge.)

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

22 We will start with Appellants' presentation.

23 Appellants will have one-hour-and-twenty minutes. Before
24 Appellant begins, I'd like to swear in the witness.

25 So, Mr. Houriani, I'm going to read a statement,

1 and if you could please affirm after I ask the question.

2 Mr. Houriani, are you there?

3 MR. HOURIANI: Hello. Yes, I'm here.

4 JUDGE TAY: Okay. Great. Okay. Here we go.

5

6 F. HOURIANI,

7 produced as a witness, and having been first duly sworn by

8 the Administrative Law Judge, was examined and testified

9 as follows:

10

11 JUDGE TAY: Thank you.

12 Okay. Appellant, Mr. Faucher, I'll turn it over

13 to you.

14 MR. FAUCHER: Thank you, Your Honor.

15

16 DIRECT EXAMINATION

17 BY MR. FAUCHER:

18 Q First I'd like to ask, Mr. Houriani, can you tell

19 us what your relation is to the -- to the Appellant?

20 A Mehrdad Houriani is my brother, and we've been

21 partners for last 30 to 40 years. So we're not only just

22 brothers, we are partners.

23 Q In what kind of business?

24 A We are in the construction business. We do -- we

25 specialize in seismic retrofit.

1 Q Okay. Thank you. And what is United Management
2 Company?

3 A United Management Company is a company we own
4 that manages the properties that we own. We do not manage
5 properties outside of our properties, but manages our real
6 estate properties, even at the present time.

7 Q Okay. Did it manage the property that's at issue
8 in this case?

9 A Yes. It did.

10 Q Okay. And so who paid the expenses for the
11 property at issue in this case?

12 A United Management paid some of the expenses, such
13 as like, for instance, the home owner association or other
14 expenses was paid through United Management.

15 Q Okay. And when you say, "Paid through United
16 Management," who ultimately paid those expenses?

17 A Mehrdad. Mehrdad ultimately paid for it.

18 Q Okay. And how do you know this?

19 A Because we -- we owned it. We own United
20 Management, and whatever expenses that was paid through
21 United Management went directly to Mehrdad. And if there
22 were any expenses that was my expense, I paid for it.

23 Q Okay. All right. Thank you. And was United
24 Management incorporated?

25 A At the time, yes, it was incorporated.

1 Q Okay. All right. Thank you very much.

2 MR. FAUCHER: I am done with the witness. Does
3 the FTB wish to cross-examine?

4 JUDGE TAY: This is Judge Tay. Yes, I would like
5 to give opportunity for Respondent to cross-examine the
6 witness.

7 Mr. Kragel and Mr. Miller, do you have any
8 questions for Mr. Houriani?

9 MR. KRAGEL: Yes, I do, Judge. May I proceed?

10 JUDGE TAY: Please proceed.

11

12 CROSS-EXAMINATION

13 BY MR. KRAGEL: Mr. Houriani, can you hear me?

14 A Yes, I can.

15 Q Mr. Houriani, do you have access to the exhibits
16 that have been presented to the Court?

17 A No, sir.

18 Q Okay. Is United Management Company, is that the
19 same company as a company called United Management, Inc.?

20 A Yes, sir.

21 Q And that's a corporation; correct?

22 A Correct.

23 Q And do you recall when that corporation was
24 created?

25 A It's been a long time. I could not recall when

1 it was, but must be very long time.

2 Q Okay. Thank you. Do you recall who the
3 shareholders are of that corporation?

4 A It's Mehrdad and myself.

5 Q Okay. Do you recall what percentage of shares
6 that each of you own?

7 A 50, 50.

8 Q Okay. Do you have -- were shares, paper shares
9 issued to each of you?

10 A Yes, sir.

11 Q And do you have those available to you?

12 A If I look for it, yes, I can find it.

13 Q Okay. Thank you.

14 A Yes, sir.

15 Q Did United Management Company have employees?

16 A No, sir.

17 Q Did United Management Company, Inc. or United
18 Management Company file tax returns?

19 A I don't recall, sir.

20 Q Thank you. Do you have in your position or do
21 you know whether your brother has any written records that
22 shows his ownership interest in United Management Company
23 in 2004?

24 A I -- I -- I think he can get that from his CPA.

25 Q Okay. Do you have any records that you know of

1 that shows your brother's ownership interest in the
2 company?

3 A I believe our CPA has the paperwork. I -- I -- I
4 don't have it.

5 Q Do you know if there's such records that exist?

6 A Yes. There is such record that exist that we
7 have 50, 50, yes.

8 Q And what would the name of that record be?

9 A You know, I'm not familiar with the -- the name.
10 But, again, our CPA can -- can locate that.

11 Q And how did United Management Company earn money?

12 A For -- for the properties that they were managing
13 was collecting, like, few hundred dollars a month for the
14 management. And that was their -- how it got generated.

15 Q Okay. And how many properties was United
16 Management managing in 2004?

17 A One or two.

18 Q Okay. Do you recall the addresses of those
19 properties?

20 A Let me think. Let me think the address. I
21 can -- I can look at my records and find the address. I
22 don't recall exactly right now.

23 Q Okay. During the period 2004 to 2010, do you
24 have that period in mind?

25 A Yes, sir.

1 Q And do you recall that was the period that Aramro
2 is alleged to have owned the property at issue; correct?

3 A Yes, sir.

4 Q Okay. During that period, did United Management
5 Company own more than the one or two properties your --
6 excuse me. During that period 2004 to 2009, did United
7 Management Company manage any more than one or two
8 properties?

9 A No, it didn't.

10 Q Okay. And during that period 2004 to 2009, was
11 United Management Company -- did they have any source of
12 income other than management fees?

13 A No, sir.

14 Q Do you know how much it earned in management fees
15 each year during that period?

16 A It was -- it was below -- below \$10,000.

17 Q Okay. Thank you. Did anyone other than you and
18 your brother have ownership interest in United Management
19 Company during that period?

20 A No, sir.

21 Q Did United Management Company have its own bank
22 account during that period?

23 A Yes, it did.

24 Q Okay. Do you know that -- would you have the
25 records of the bank account records for United

1 Management's period -- excuse me. I'll start over.

2 Do you know if you have the bank records for
3 United Management Company during the period 2004 to 2010?

4 A I don't have the record myself, but I'm pretty
5 sure we can ask our -- our bank to produce it for us.

6 Q Is United Management Company, is that an existing
7 active corporation today?

8 A No, it's not.

9 Q Do you know when it stopped being active?

10 A Between 2012 to 2015.

11 Q Okay. Thank you. Do you possess any records
12 showing that your brother Mr. Mehrdad Houriani contributed
13 funds to United Management Company?

14 A I have to look for it. I -- it's been such a
15 long time. I think our CPA would have all the records,
16 and I can -- I can ask for them.

17 Q And what's your CPA's name?

18 A Harold Uman.

19 Q Thank you, Mr. Houriani. That's all the
20 questions I have.

21 A You're welcome, sir.

22 JUDGE TAY: This is Judge Tay. Thank you,
23 Respondent.

24 I'd like to open it up for my panel to ask any
25 questions they may have for Mr. Houriani. I'll start with

1 Judge Long. Do you have any questions?

2 JUDGE LONG: This is Judge Long. No questions.
3 Thank you.

4 JUDGE TAY: Thank you.

5 And Judge Lambert?

6 JUDGE LAMBERT: This is Judge Lambert. I don't
7 have any questions. Thanks.

8 JUDGE TAY: Thank you.

9 Mr. Faucher, I'm going to turn it over back to
10 you so that you can finish your presentation.

11 Mr. Houriani, thank you very much for coming
12 today.

13 MR. HOURIANI: You're welcome, sir.

14 MR. FAUCHER: Thank you.

15

16 PRESENTATION

17 MR. FAUCHER: So, Your Honor, our argument is
18 fairly simple. The FTB erred in its Notice of Proposed
19 Assessment. Because Aramro -- the transaction here is
20 they're saying that Aramro Delaware distributed this piece
21 of property to Mr. Houriani in 2010, and that this was a
22 corporate distribution. It wasn't because Aramro Delaware
23 was a sham corporation that should be disregarded.

24 It had -- it never got a tax identification
25 number. It never issued stock. It never paid any

1 franchise fees to the State of Delaware. It was
2 forfeited. It didn't exist at the time of the
3 transaction, and so the FTB should be treating this
4 transaction as if Mr. Houriani owned the property the
5 entire time, rather than getting a distribution in 2010.

6 And I think our argument is pretty well spelled
7 out in the -- in the briefs that we've done, and I would
8 rest on them for the rest of the argument.

9 JUDGE TAY: Thank you, Mr. Faucher. I'm going to
10 open it up to my panel to ask any questions they may have
11 or Appellant at this time. Before we do that, I'm just
12 going to ask kindly for Mr. Fred Houriani to mute his mic,
13 please, so that we can continue in the hearing without any
14 other audio interruptions.

15 Mr. Houriani, would you be able to mute your
16 microphone, please?

17 MR. HOURIANI: Yes, sir.

18 JUDGE TAY: Thank you. I appreciate it.

19 Judge Long, any questions for Appellants?

20 JUDGE LONG: This is Judge Long. No questions.

21 Thank you.

22 JUDGE TAY: Thank you.

23 And, Judge Lambert, any questions at this time
24 for Appellants?

25 JUDGE LAMBERT: This is Judge Lambert. I don't

1 have any questions at this time. Thanks.

2 JUDGE TAY: Thank you, Judge Lambert.

3 Okay. I'm going to allow Respondent to continue
4 with its presentation. Respondent requested 30 minutes.

5 So Mr. Kragel or Mr. Miller, please proceed
6 whenever you're ready.

7 MR. KRAGEL: Thank you, Judge.

8

9 PRESENTATION

10 MR. KRAGEL: Good afternoon, members of the
11 panel. As indicated my name is Bradley Kragel. I'm
12 representing Respondent, the Franchise Tax Board.

13 This matter raises one issue, whether Appellants
14 have shown that Respondent erred in a proposed assessment
15 for tax year 2010. Respondent determined that a
16 corporation owned by Appellant Mehrdad Houriani acquired a
17 parcel of real property in 2004. Six years later the
18 corporation transferred the property of Mr. Houriani. On
19 the same day Mr. Houriani sold the property to a third
20 party for approximately \$2.5 million. Based on those
21 transactions, the FTB determined that the corporation made
22 a taxable distribution to Appellants and assessed
23 additional tax on that basis.

24 The evidence submitted supports Respondent's
25 determination. The evidence shows that on

1 January 29, 2004, Aramro Corporation was incorporated in
2 Delaware. The corporation's office was located at 714
3 South Plymouth Boulevard in Los Angeles. In February 2004
4 the corporation entered into a contract to purchase real
5 property located in Los Angeles. The corporation borrowed
6 approximately \$780,000 from Pacific Western Bank to fund
7 part of the purchase price. The corporation, Appellant
8 Mr. Houriani, and the bank entered to a Hazardous
9 Substances Agreement. The agreement was signed by
10 Appellant Mr. Houriani as president of Aramro Corporation,
11 a Delaware corporation.

12 In March 2004 a Grant Deed was recorded showing
13 that the property was transferred to the corporation. The
14 Hazardous Substances Agreement was also recorded in the
15 official records of the Recorder's Office in Los Angeles
16 County. For tax year 2004 and tax year 2005, the bank
17 issued mortgage interest statements to the corporation.
18 In March 2005 the bank sent a letter to the corporation
19 enclosing documents to extend the loan in requesting
20 \$7,000 for loan fees and interest.

21 A company called United Management Company issued
22 a check on behalf of Aramro Corporation to the bank for
23 payment of the fees and interest. According to
24 Appellants' responses to the Information Document Request,
25 United Management was a fictitious business name used by

1 Appellant Mr. Houriani. From 2004 to 2009, the
2 Los Angeles County Tax Collector sent property tax
3 statements to the corporation, which showed the owner of
4 record was Aramro Corporation. The property taxes on the
5 property were also paid by United Management.

6 In February 2010 the corporation transferred the
7 property to Mr. Houriani by Quitclaim Deed. That deed is
8 in the record as Exhibit I. That same month, Mr. Houriani
9 entered into a Purchase and Sale Agreement, whereby, he
10 agreed to sell the property to another individual for
11 approximately \$2.5 million. In March 2010 a Quitclaim
12 Deed evidencing the transfer from the corporation to
13 Appellant Mr. Houriani was recorded in the official
14 records of Los Angeles County. On the same day the Grant
15 Deed was recorded transferring the property from Appellant
16 Mr. Houriani to the third party.

17 For tax year 2010 Appellants reported on their
18 individual tax return a capital gain based on the sale of
19 the property. Respondent examined Appellants' tax return
20 for tax year 2010 and determined that Appellants had
21 received a corporate distribution from Aramro Corporation.
22 Respondent issued a Notice of Proposed Assessment to
23 Appellant proposing additional tax based on the
24 distribution from the corporation.

25 In May 2015 Appellants filed a protest. During

1 the protest, Respondent determined that Appellant
2 Mr. Houriani made the down payment for the purchase of the
3 land, and the payment should be treated as a capital
4 contribution to the corporation. Respondent, therefore,
5 adjusted the amount of additional tax assessed against
6 Appellants from \$217,000 to \$172,000, the amount at issue.
7 In February 2018 Respondent issued a Notice of Action
8 assessing additional tax of \$172,000 based on a
9 distribution from Aramro in the amount of approximately
10 \$2 million.

11 Respondent's determination was based on the
12 California tax laws and provisions of the Internal Revenue
13 Code. California tax law is conformed to Internal Revenue
14 Code subchapter C relating to corporate distributions and
15 adjustments. California conforms to Internal Revenue Code
16 subchapter O relating to gain or loss on the disposition
17 of property. The Internal Revenue Code provides that a
18 distribution of property from a corporation to a
19 shareholder with respect to its stock must be treated in
20 the manner provided in Internal Revenue Code Section
21 301(c).

22 Section 301(c) provided in part that the portion
23 of the distribution, which is not a dividend, to the
24 extent that it exceeds the adjusted basis of the stock
25 shall be treated as gain from the sale or exchange of

1 property. Section 301(b) provides that the amount of any
2 distribution shall be the amount of money received plus
3 the fair market value of the other property received.
4 Fair market value is determined as of the date of
5 distribution.

6 The adjusted basis for determining the gain or
7 loss from the sale or disposition of property is the basis
8 determined under Section 1012, adjusted as provided in
9 1016. Section 1012 provides that the basis of property is
10 the cost of the property. Section 1016 provides that
11 adjustments to basis are made for expenditures, receipts,
12 losses, or other items properly chargeable to the capital
13 account.

14 In the present case the corporation distributed
15 and appreciated parcel of real property to Appellant
16 Mr. Houriani. Under the above referenced laws, Appellants
17 were required to treat the amount of the distribution that
18 exceeded their basis in the stock as gain on the exchange
19 of property. Based on the sale price of the property,
20 when sold by Appellants to the third property, Respondent
21 determined that the fair market value of the property was
22 \$2.5 million.

23 During audit Mr. Houriani presented evidence that
24 he paid \$426,500 down payment for the corporation's
25 purchase of the property. The FTB determined that the

1 payment would be equivalent of him contributing \$426,500
2 to the corporation and that amount constituted Appellants'
3 basis in the property. The fair market value of the
4 distributed property less the basis resulted in a
5 distribution of approximately \$2 million. The
6 distribution resulted in additional tax of approximately
7 \$172,000.

8 Appellants did not dispute the FTB's calculations
9 on the amount of additional tax. Instead, Appellants have
10 asserted that the corporation should be disregarded as a
11 sham, that the court -- or rather, that there's a lack of
12 jurisdiction, and that the corporation was merely acting
13 as an agent.

14 In regards to jurisdiction, Appellants have
15 failed to establish that there's a lack of jurisdiction.
16 Appellants' argument is somewhat uncertain, in that at one
17 point, they state that the FTB failed to obtain
18 jurisdiction over the Delaware Corporation. Later in
19 their argument, they cite cases having to deal with
20 jurisdiction in civil court. So it was not clear to
21 Respondent whether they are challenging the Franchise Tax
22 Board's Respondent's jurisdiction or the OTA's
23 jurisdiction. In either event, both have authority or
24 jurisdiction to address this matter.

25 Respondent's authority arises from California

1 Revenue and Taxation Code Sections 17041 and 19032.
2 Revenue and Taxation Code Section 17041 states that
3 California personal income tax is imposed upon the entire
4 taxable income of a resident of California regardless of
5 its source. Section 19032 states that as soon as
6 practicable after the return is filed, the Franchise Tax
7 Board shall examine and shall determine the correct amount
8 of the tax. Based on those statutes, Respondent believes
9 it has the authority for the Notice of Action issued to
10 Appellants in this case.

11 The OTA's jurisdiction arises under California
12 Code of Regulations Title 18 Section 30103, which provides
13 that the OTA has jurisdiction to hear and decide an appeal
14 that has been timely submitted to OTA pursuant to its
15 rules if any of the following circumstances apply,
16 including the circumstance with the FTB mails and Notice
17 of Action under proposed deficiency assessment of
18 additional tax. That's what happened here, and that's why
19 the OTA has jurisdiction.

20 Finally, on the jurisdiction argument, Respondent
21 points out that Appellants were the party who invoked
22 jurisdiction in this case, and if the OTA does not have
23 jurisdiction, then the Notice of Action cannot be reversed
24 in any event.

25 Appellants have also failed to established that

1 the corporation was a sham that should be disregarded.
2 The general rule is that a corporation and its
3 shareholders are treated as separate entities for tax
4 purposes. When taxpayers choose to conduct business
5 through a corporation, they will not be permitted
6 subsequently to deny the existence of the corporation for
7 tax purposes. And if a corporation was intended to or did
8 in fact act in it's own name with respect to property, its
9 ownership thereof will not be disregarded. Additional
10 case law to the same effect is set forth in our brief.

11 In the present case, the evidence show that the
12 corporation acquired real property in California shortly
13 after it was formed. The corporation borrowed money and
14 executed a Hazardous Substances Agreement in its own name.
15 The corporation held itself out as a valid corporation to
16 the bank, the escrow company, the notary public, and the
17 title insurance company. Records in the name of the
18 corporation were filed with the Los Angeles County
19 Recorder's Office in 2004 and 2010. The corporation
20 continuously owned the property from 2004 to 2010.the
21 corporation received tax statements from the Los Angeles
22 County Tax Recorder's Office.

23 There's no evidence indicating that the
24 Appellants ever notified the bank of the county that the
25 property was owned by someone other than the corporation.

1 Having elected to treat the corporation as a separate
2 entity and conducted business in the corporate name,
3 Appellants are not permitted subsequently to deny the
4 existence of the corporation.

5 Appellants have failed to establish that the
6 corporation was acting as their agent. The factors the
7 courts consider in determining whether an agency
8 relationship existed between a corporation and its
9 principle are set forth in Respondent's brief. As applied
10 to the present case, under those factors, there's no
11 evidence of an agency agreement between the corporation
12 and the balance. There's no evidence that the corporation
13 functioned as an agent and not as the principle in respect
14 to the property at issue.

15 There's no evidence that the corporation was held
16 out as the agent of Appellants in respect to the property.
17 There's no evidence the corporation operated in the name
18 of the Appellants. There's no evidence that the
19 corporation operated in the name of the Appellants.
20 There's no evidence that the corporation's business
21 purpose was the carrying on of the normal duties of an
22 agent. In short, Appellants have not produced any
23 evidence to support any of the factors showing an agency
24 relationship.

25 For all of the foregoing reasons, Respondent

1 request that the panel sustain Respondent's
2 determinations. If you have any questions, I'll do my
3 best to answer them.

4 JUDGE TAY: Thank you, Mr. Kragel.

5 I'd like to turn to my panel to see whether or
6 not they have any questions for Respondent at this time.
7 Judge Long?

8 JUDGE LONG: This is Judge Long. No questions.
9 Thank you.

10 JUDGE TAY: Thank you. Judge Lambert?

11 JUDGE LAMBERT: This is Judge Lambert. I had a
12 couple of questions. I guess if this corporation was
13 suspended or forfeited, and then it looks like it -- FTB
14 is stating that the property was sold, and it looks like
15 there's a Quitclaim Deed. So if it's suspended, how do we
16 see that the corporation could take such an action if it's
17 suspended?

18 MR. KRAGEL: Thank you, Judge. Under California
19 law, when a suspension operates to suspend a corporation's
20 powers, rights, and privileges under Revenue and Taxation
21 Code Section 23301. However, the suspension of those
22 rights and privileges doesn't preclude completely the
23 corporation from acting. During the suspension there's
24 another -- there's another statute that provides that
25 during the suspension or forfeiture period, contracts made

1 in California by the taxpayer are avoidable at the request
2 of a contracting party other than the taxpayer. And
3 that's Revenue and Taxation Code 23301.4.

4 So the corporation can still act notwithstanding
5 the suspension, and if the party with whom it contracts
6 wants to avoid the contract, it can do so. But the
7 suspended corporation itself cannot.

8 JUDGE LAMBERT: Okay. Thanks. And I had another
9 question as to whether -- when a taxpayer is asserting a
10 sham transaction or a sham corporation, is that -- do we
11 look -- would you say we look to it as same or different
12 standard as when a tax agency is asserting that there's a
13 sham corporation, basically, form over substance if you
14 make a corporation -- if you're held to that form,
15 usually, it's a tax agency that asserts that, I would
16 think. Do feel the -- is the standard different if the
17 taxpayer does that?

18 MR. KRAGEL: Yes, Judge. The standard is
19 different. The case law permits taxing agency to pierce
20 the corporate veil and disregard it if the evidence fails
21 to show that it was a legitimate corporation. But the
22 cases are pretty clear that the person, the taxpayer
23 acting or using the corporate form is not permitted to do
24 so.

25 JUDGE LAMBERT: So, basically, it's that you're

1 not permitted ever. Is it possible for the taxpayer to
2 ever assert that, and have that form not be the deciding
3 factor?

4 MR. KRAGEL: I don't know the answer to that off
5 the top of my head. I don't think so. But the cases I've
6 cited in the brief, I think, are all consistent that the
7 taxpayer is not permitted to disregard the corporate form
8 after having used the corporate form and done business
9 under the corporate name.

10 JUDGE LAMBERT: Okay. Thanks. I guess that's
11 like one of the questions we have in this appeal, perhaps.
12 Okay. That's all. Thanks.

13 JUDGE TAY: Thank you, Judge Lambert.

14 I'm going to move on and ask Mr. Faucher to
15 proceed with his rebuttal and closing.

16 Mr. Faucher, you have 10 minutes for your
17 rebuttal and closing. Please proceed whenever you're
18 ready.

19 MR. FAUCHER: Thank you, Your Honor.

20

21 CLOSING STATEMENT

22 MR. FAUCHER: With regard to jurisdiction, we
23 concede that the FTB had jurisdiction to issue it's Notice
24 of Proposed Assessment, and that the Office of Tax Appeals
25 has jurisdiction over this appeal.

1 With regard to the sham corporation, I would turn
2 the Judges' attention to Betty Sue Lukins versus
3 Commissioner. It's a tax case. Tax Court case, Tax Corp
4 Memo 1992-569, in which the taxpayer had a corporation
5 that owned a piece of property, and it was -- and
6 ultimately the Tax Court said -- told the IRS, you have to
7 disregard it because there was no business purpose for
8 this corporation. And we believe that this
9 situation falls -- that this case falls under the same
10 situation, that there was no real business purpose for the
11 corporation to own this piece of property. And,
12 therefore, should be disregarded.

13 I do wish to also point out that we -- we do
14 actually -- one other reason that we believe this -- the
15 assessment is wrong, is that there are a lot of expenses
16 that were not taken into account in the basis of this
17 property, which is what we were discussing about United
18 Management Corporation, that those -- those really should
19 be taken into account, and the basis should be much higher
20 than it is.

21 So for those reasons we -- we think that the
22 Notice of Proposed Assessment is erroneous and that the
23 Court should find the tax return correct as filed.

24 JUDGE TAY: Thank you, Mr. Faucher.

25 I'm going to open it up for a line of questions

1 from my panelists.

2 Judge Long, do you have any questions for either
3 party?

4 JUDGE LONG: This is Judge Long. Yes, I have a
5 request for Mr. Faucher with respect to the management
6 company expenses and the basis. Mr. Houriani answered
7 that United Management Company made a few hundred dollars
8 per month managing the properties that it managed during
9 this period. Is there anywhere in the briefing that gives
10 figures or evidence as to how much was paid to United
11 Management Company for the management of this property?

12 MR. FAUCHER: I do not believe that there is,
13 Your Honor. I'm not aware of it.

14 JUDGE LONG: Okay. Thank you.

15 JUDGE TAY: Judge Long, any further questions?

16 JUDGE LONG: This is Judge Long. Sorry. No
17 further questions.

18 JUDGE TAY: Okay. Thank you.

19 Judge Lambert, any questions for the parties?

20 JUDGE LAMBERT: This is Judge Lambert. I don't
21 have any questions. Thanks.

22 JUDGE TAY: Okay. I have a couple of questions.
23 Mr. Kragel, would you like to respond to Mr. Faucher's
24 assertion that Lukins versus Commissioner should control
25 this case?

1 MR. KRAGEL: Yes, Judge. Thank you for
2 permitting me to respond. In the Lukins case is
3 distinguishable. In that case, the individual involved
4 actually signed all of the documents relating to the
5 purchase and financing of the property in her own name.
6 And she made the payments of the property on checks on her
7 own personal account. The reason she took title to the
8 property in the name of an entity was to -- so that her
9 husband could not locate her and her son, because they
10 were involved in a contention relationship. So under
11 those circumstances the court determined that the
12 corporation wasn't a genuine business entity.

13 In the present case, Appellants did not produce
14 any records showing that they had some ulterior --
15 nonbusiness purpose for taking the property in the name of
16 the corporation. And as already explained at length, the
17 corporation actually took the property in its own name,
18 paid taxes in its own name, and so forth, as I have
19 already explained. So in Respondent's view that case is
20 distinguishable.

21 JUDGE TAY: Thank you, Mr. Kragel.

22 I think I'd like to give Mr. Faucher an
23 opportunity to respond to Franchise Tax Board, and then I
24 think I have one more question for Mr. Faucher.

25 MR. FAUCHER: Well, Your Honor, what I can say is

1 that the parties really did not have a business reason to
2 put this property in the name of the corporation. I
3 can't -- I can't speak any further than that. And so with
4 that, I'm going to leave it and wait for your question.

5 JUDGE TAY: Thank you, Mr. Faucher. My last
6 question is not related. Are there any other expenses? I
7 noticed that there was a loan for the property, and so I'm
8 not sure about the payments on that loan. If you could
9 just speak to that in regard to expenses paid for, maybe
10 on behalf of Aramro for this property.

11 MR. FAUCHER: Certainly, Your Honor. The loan
12 was -- there was a \$780,000 mortgage on the property that
13 was paid by checks by United Management Company, but they
14 effectively came from Mr. Houriani himself. And so
15 that's -- that should be part of the basis. They -- the
16 entire -- Mr. Houriani effectively paid the entire
17 purchase price of this property, which was, I think, close
18 to \$1.2 million. There were a variety of closing cost
19 that also should be taken into account and into the basis
20 as well. I do not have a compilation of them at the
21 moment.

22 JUDGE TAY: Mr. Faucher, do you have any
23 documentary evidence for those payments made by
24 Mr. Mehrdad Houriani?

25 MR. FAUCHER: At the moment I do not.

1 Mr. Fred Houriani tells me that he is seeking them at the
2 moment.

3 JUDGE TAY: Okay. Panelist, any further
4 questions? Judge Long?

5 JUDGE LONG: This is Judge Long. No further
6 questions.

7 JUDGE TAY: And sorry, again, Judge Lambert?

8 JUDGE LAMBERT: This is Judge Lambert. I guess,
9 yeah, one question for Appellant. If there's -- I guess
10 you stated no business purpose. I just wanted to know
11 what the purpose of the holding of the real property was
12 and then having a management company, United, work on it.

13 MR. FAUCHER: The purpose that they bought this
14 piece of land for was that the Hourianis expected to build
15 a house and live on it there. And for whatever reason,
16 after about six years, that project did not turn out, and
17 they had to sell it as raw land without any development on
18 it. But it was always intended to be a personal piece of
19 land for them.

20 JUDGE LAMBERT: I see. Thank you. No further
21 questions.

22 JUDGE TAY: Thank you, Judge Lambert.

23 This is Judge Tay. Sorry. I would like to keep
24 the record open for 30 days to give Appellant an
25 opportunity to provide documents and evidence consistent

1 with their presentation that Mr. Mehrdad Houriani
2 contributed -- or sorry -- paid much of the expenses for
3 this property to United Management Corporation or through
4 United Management Corporation. So I will keep the record
5 open for 30 days for Appellants to provide that to our
6 office. And Respondent will have an opportunity to
7 respond to those documents, if any.

8 With that, I believe we may conclude our hearing
9 today. I want to thank everyone for their presentations.
10 And, again, Appellants will have 30 days to provide more
11 documents and information, and, if any, Respondent will
12 have opportunity to respond. After that, we close the
13 record. And after we close the record, our written
14 decision, we will endeavor to issue it no later than 100
15 days from that date.

16 The hearing is now adjourned. Thank you everyone
17 again.

18 (Proceedings adjourned at 1:58 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 28th day of May, 2021.

ERNALYN M. ALONZO
HEARING REPORTER