

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
J. GOLDSTEIN,) OTA NO. 20025885
)
APPELLANT.)
)
_____)

TRANSCRIPT OF VIRTUAL PROCEEDINGS

State of California

Wednesday, September 29, 2021

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Virtual Proceedings,
taken in the State of California, commencing
at 9:32 a.m. and concluding at 11:36 a.m. on
Wednesday, September 29, 2021, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead:	ALJ JOSHUA ALDRICH
Panel Members:	ALJ ANDREW WONG ALJ SHERIENE RIDENOUR
For the Appellant:	WARREN NEMIROFF J. GOLDSTEIN
For the Respondent:	STATE OF CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION JOSEPH BONIWELL CARY HUXSOLL JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-20 were received at page 9.)
(Department's Exhibits A-CC were received at page 9)

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California; Wednesday, September 29, 2021

9:32 a.m.

JUDGE ALDRICH: This is Josh Aldrich. We're opening the record in James Eugene Goldstein before the Office of Tax Appeals, OTA Case Number 20025885. Today's date is Wednesday, September 29th, 2021, and the time is approximately 9:32 a.m. This hearing is noticed for a virtual hearing with the agreement of the parties.

Today's hearing is being heard by three Administrative Law Judges. My name is Josh Aldrich, and I'm the lead judge for purposes of conducting the hearing.

At this point I'd like my co-panelists to introduce themselves, beginning with Judge Andrew Wong.

JUDGE WONG: Good morning this is Judge Wong.

JUDGE ALDRICH: Thank you.

And Judge Sheriene Ridenour.

JUDGE RIDENOUR: Good morning. This is Judge Ridenour.

JUDGE ALDRICH: We three will deliberate and decide the issues presented. Any panel member may ask questions or otherwise participate to ensure that we have all the information needed to decide this appeal. I would like to remind today's participants and viewers that the Office of Tax Appeals is not a court. We are an

1 independent appeals body. We do not engage in ex parte
2 communications with either party. Our opinion will be
3 based on the parties' arguments, the admitted evidence,
4 and the relevant law. We have read the parties'
5 submissions, and we are looking forward to hearing your
6 arguments today.

7 For Appellant I believe we have attorney Warren
8 Nemiroff --

9 MR. NEMIROFF: Yeah.

10 JUDGE ALDRICH: -- as well as Appellant
11 Mr. Goldstein. And that's correct?

12 MR. GOLDSTEIN: Yes.

13 MR. NEMIROFF: Yes.

14 JUDGE ALDRICH: All right. And for Respondent
15 for the Department, I believe we have Joseph Boniwell, Tax
16 Counsel III, Cary C. Huxsoll, Tax Counsel IV, and Jason
17 Parker Chief of Headquarters Operations for the
18 Department; is that correct?

19 MR. BONIWELL: This is Joseph Boniwell, and
20 that's correct.

21 JUDGE ALDRICH: Okay. So the issues to be
22 decided today or in our opinion that's issued
23 subsequently, rather, is whether James Goldstein is
24 personally liable as a responsible person pursuant to
25 Revenue & Taxation Code Section 6829 for the unpaid sales

1 tax liabilities of National Imaging Company or NIC, doing
2 business as Reseda Mobil Incorporated for the remaining
3 disputed period of July 11th, 2005, through April 24th,
4 2007. It's undisputed that NIC ceased business activities
5 on April 24th, 2007. It's also undisputed that sales tax
6 reimbursement was collected by NIC.

7 Revenue & Taxation Code Section 6829(b),
8 responsible person remains at issue, and Revenue &
9 Taxation Code 6829(a) and (d), willfulness, remains at
10 issue. Also, whether adjustments are warranted to NIC's
11 unpaid sales tax liabilities, whether the imposition of
12 the fraud penalty against NIC was warranted, and whether
13 relief from the late prepayment and finality penalties
14 against NIC are warranted.

15 Mr. Nemiroff, is that correct?

16 MR. NEMIROFF: That's correct.

17 JUDGE ALDRICH: And Department?

18 MR. BONIWELL: This is Joseph Boniwell, and
19 that's correct.

20 JUDGE ALDRICH: All right. Regarding witnesses,
21 we have Mr. Goldstein as a witness, and the Department
22 will not be calling any witnesses.

23 Is that correct, Mr. Nemiroff?

24 MR. NEMIROFF: That's correct.

25 JUDGE ALDRICH: And Department?

1 MR. BONIWELL: This is Joseph Boniwell, and
2 that's correct.

3 JUDGE ALDRICH: Okay. I'd like to go ahead and
4 swear in the witness.

5 When you're ready, Mr. Goldstein, could you
6 please raise your right hand.

7

8 J. GOLDSTEIN,

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

12

13 JUDGE ALDRICH: Thank you.

14 Next, we'll discuss exhibits. The Department
15 exhibits are identified as A through BB, and Appellant's
16 exhibits are identified as 1 through 19. These exhibits
17 were admitted into the record pursuant to our
18 September 9th, 2021, minutes and orders without objections
19 from either party. Exhibit CC was subsequently submitted
20 timely by the Department, with updated liabilities, and
21 Appellant resubmitted a timely signed statement under
22 penalty of perjury, which we'll label as Exhibit 20.

23 Is there any objection to admitting CC and
24 Exhibit 20 into evidence, Appellant's Counsel?

25 MR. NEMIROFF: No.

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JUDGE ALDRICH: And Department?

MR. BONIWELL: This is Joseph Boniwell. No objection.

JUDGE ALDRICH: Thank you.

So Exhibits A through CC for Department are admitted, and Exhibits 1 through 20 for Appellant are admitted.

(Appellant's Exhibits 1-20 were received in evidence by the administrative Law Judge.)

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

To give you an idea of how this hearing will proceed, we plan for the hearing to proceed as follows: Appellant's opening statement, which we estimated at 75 minutes. During that time, Appellant's witness will provide testimony under oath. Next, the Department will present a combined opening and closing for approximately 25 minutes. Appellant will then have 15 minutes to present a closing statement or to rebut Department's argument.

Please note that the Department may ask questions of the witness, and the panel may ask questions of either party or the witness. Does anyone have questions at this point before we proceed to presentations?

Mr. Nemiroff?

1 MR. NEMIROFF: No, I do not.

2 JUDGE ALDRICH: Okay. And Department?

3 MR. BONIWELL: This is Joseph Boniwell. I don't
4 have any questions. Thank you.

5 JUDGE ALDRICH: Thank you.

6 This is Judge Aldrich. Mr. Nemiroff, when you're
7 ready, please proceed with your presentation.

8 MR. NEMIROFF: Your Honor -- Your Honors, I would
9 like to waive opening statement and get right into
10 questioning the witness myself at the present time.

11 JUDGE ALDRICH: Please proceed.

12 MR. NEMIROFF: All right.

13

14 DIRECT EXAMINATION

15 BY MR. NEMIROFF:

16 Q Mr. Goldstein, you're there?

17 A Yes, I am.

18 Q All right. Before you worked at the gas station,
19 what was your profession and roughly your income?

20 A I owned a jewelry store off Ventura Boulevard.
21 Income at that time was seasonal. So, you know, it was,
22 you know, maybe around 30, \$40,000. It was a tough time
23 in the jewelry business. So income was, you know, not
24 where we would like to see it back then, but it was a
25 struggling business, a lot of compensation on Ventura

1 Boulevard.

2 Q So you weren't doing very well?

3 A No. I was struggling a little bit.

4 Q All right. How did you meet the principal, the
5 one who settled with the State?

6 A So his wife was a customer at my jewelry store,
7 and she had come in to design a ring. So I was working
8 with her, and she kept talking about her husband. And he
9 wanted to -- they just moved here from Chicago. And they
10 were looking to make new friends. And, you know, she
11 thought I would have things in common with her husband.
12 So when the order was finalized, I had called her to come
13 pick up the order, and she had brought her husband and
14 introduced me to him, and we got talking.

15 And, you know, he came back a couple of days
16 later, and we had lunch and talked about, you know,
17 different things. And we had a few things in common. I
18 mean, we both wanted to, you know, do more things in our
19 lives and make more money. But he was struggling also
20 because he was just new in the area and didn't know really
21 anybody. So I introduced him to people, and we became
22 friends. And that's how it started.

23 Q Well, why did he need your help at a gas station?

24 A So after, you know, being friends for, you know,
25 I would say six months to a year, he decided he wanted to

1 buy this gas station. And I was still going through the
2 roller coaster ride in my jewelry business. And he's in
3 the Army Reserve, so he can get called on duty for two,
4 three months at a time and come back. And so, you know,
5 he wanted somebody that he can trust, you know, help with
6 running the business for him.

7 He approached me on that and, you know, he had
8 known that I was struggling a little bit in the jewelry
9 business and asked me if I would want to help, you know,
10 work in a gas station. Which, you know, wasn't something
11 I really wanted to do, but it really was very helpful at
12 the time. Because, you know, making \$500 a week back then
13 was -- and my rent at the jewelry store was \$1,500 a
14 month.

15 So it almost ensured that I could keep my
16 business going. So I did it for my business more than his
17 business because that income was going to help me out at
18 that time. And I was a single guy but, you know, I was
19 always really devoted to business. And, you know, I'm a
20 very honest individual, and I've never -- you know, I ran
21 that business with honesty, integrity, and passion. You
22 know, I wanted to be successful. So I was trying all
23 angles to make it work.

24 Q Well, what position did he offer you at the gas
25 station?

1 A So he needed, you know, somebody to oversee the
2 employees, to hire and fire employees, to make sure that
3 they're on schedule coming there on time. And the thing I
4 liked about it is I can do that earlier. My store didn't
5 open until 10:00 o'clock in the morning. And I was closed
6 on Mondays at the store, so that allowed me morning time
7 to be able to address gas station stuff.

8 So I would go at 7:00, 7:30 in the morning,
9 something like that. I would make sure that, you know,
10 the procedures and everything was being done. He kind of
11 put a system together of it running, and I kind of oversaw
12 that system on how it was being run on a daily basis.
13 Even though he was still in control over, you know, he had
14 a laptop with cameras in the gas station. So he can
15 oversee what was going on anywhere he was at. So we would
16 talk every day.

17 He would tell me what his concerns were, if he
18 saw something happening on the night before on the night
19 shift because it was open 24 hours. So, you know, what to
20 do and how to handle it and things like that. So he
21 needed a body there when he was gone was mostly the reason
22 why he asked me to help him.

23 Q But you ended up getting into a position where it
24 looked like you were the responsible party?

25 A I did. And, you know, it's -- in hindsight I

1 wish I knew then what I know now. But I was very naive in
2 putting myself in a position that I didn't understand.
3 Really, I thought I was helping a friend out to save a
4 business. I didn't realize --

5 Q Well, why did he put you in that position?

6 A It was the only way to save his business at the
7 time to keep it going.

8 Q Why?

9 A So he got caught kiting checks, which I knew
10 nothing about. I didn't know what that even meant at the
11 time. We got a letter -- he got a letter. He showed it
12 to me, and they were telling him that he had to close the
13 accounts within 60 days. So he said, you know, if I could
14 put you on the corporation, then you can open an account
15 and be a signer there and save the business for me. And
16 then I'll work out the logistics and, you know, take it
17 all -- you know, change it when -- you know, I don't know
18 if there was a time period where you're on Check Systems
19 and it goes away, or how it really works.

20 But he told me that he would work on it and
21 figure out a way to, you know, get the accounts and
22 everything back in his name. And so at that particular
23 time, you know, the accountant showed up with a piece of
24 paper. And it looked like a corporate paper that wasn't
25 filled in yet. She asked me to sign it. I trusted the

1 accountant. I'd known her before her working at the
2 station.

3 I introduced Nick to the accountant lady. She
4 was a friend of mine from before. So I trusted what she
5 was doing. And I never saw those complete documents,
6 because for two years I signed a blank document that she
7 gave me to be put as an officer on the corporation. The
8 first time I saw --

9 Q Well, did the oil company know this was going on?

10 A No. No. The oil company wouldn't approve
11 something like that. There's a process with the oil
12 companies to be a partner or even an owner of a station.
13 It's a long --

14 Q So -- so according to the oil company. You
15 weren't the responsible party?

16 A No. No. I never was the responsible party
17 according to Mobil.

18 Q Only he was?

19 A Only he was. Only he can be because it's a big
20 qualification to become a dealer for Mobil. It's not
21 anybody can do it.

22 Q Okay. So were you told by him that this was
23 going to be only for a short period of time?

24 A Yes.

25 Q And what made it longer than his original

1 promise?

2 A Well, he was gone for a while and then he became
3 ill. And when he became ill it was from overly drinking.
4 He had an alcoholic problem. I, as a friend, was being
5 patient. I didn't really want to do it anymore, but I was
6 being patient. And I really liked the staff that we had
7 working there, and I wanted to make sure that they were
8 all okay. And that's what kept me doing it for longer
9 than I wanted to do it.

10 But it wasn't something that I really wanted to
11 do. I kind of got stuck after a while, and I couldn't
12 just walk away until towards the end before he closed. I
13 had no choice. I just had to because I -- I was
14 feeling -- I was feeling very confused about what was
15 going on.

16 Q Did you ever sign a contract?

17 A No.

18 Q Did he ever tell you what your exposure was for
19 doing this?

20 A He never told me what the exposure was. Because
21 in my mind set, just being put on a corporation isn't
22 going to make me an owner of a business. I didn't know
23 that I would be responsible for taxes or anything else.
24 Every single --

25 Q The accountant never tells you that?

1 A No. And, you know, he was paying taxes on a
2 regular basis. I think the issue here was he wasn't
3 paying enough taxes. So when you're in my shoes and
4 you're seeing the taxes being paid every single month and,
5 you know, the majority of the taxes directly taken by
6 Mobil on credit card. So you don't see the majority of
7 the tax. You're just paying the cash difference that you
8 collect of taxes.

9 So in that regard, I never felt like there was
10 anything to worry about or that I had to look into
11 anything because everything seemed to be running pretty
12 smooth. And it was helping me out, you know, making a
13 couple of thousand dollars a month to, kind of, assure the
14 rent in my jewelry store. So that's -- you know, I didn't
15 have that knowledge. I didn't really --

16 Q How did you get paid?

17 A He paid me with a check, you know, every week,
18 \$500 a week.

19 Q He gave you \$500 a week?

20 A Yes.

21 Q Okay. And for how many years?

22 A I believe it was almost three years, like, shy of
23 three years.

24 Q Okay. Did the oil company ever call you and say,
25 "What are you doing on these minutes?"

1 A No. No.

2 Q So they never knew what was going on?

3 A No, I don't believe so. And if they did, they
4 would have called him, not me.

5 Q Okay. All right. What are you doing -- when did
6 you leave the oil company? When did you leave the
7 station?

8 A I left right after I saw that he -- he needed --
9 when the audit came, he showed me the paper from the State
10 Board. It was addressed to him and --

11 Q Not to you?

12 A Not to me. It was addressed to him, and it was
13 for these time periods of audit. And he said, you know,
14 what do you think we should do here? You know, what would
15 you do? I said, well, personally because it's a lot --
16 you know, three years of auditing, talk to the accountant
17 and see how, you know, you can go about this. So he
18 talked to the accountant. She referred him to a lady that
19 just handles audits. She's a professional in this audit
20 stuff.

21 He took all the documents and records to her, and
22 paid her, I believe it was 5 or \$6,000 to do this
23 procedure; to also get, you know, in contact with the
24 State Board so they can have a meeting together on this
25 audit and come to a conclusion with it. When I left was

1 when a time has gone by, and I'm kind of waiting to see
2 what's happening with this, you know, going on.

3 And I'm still conducting what I have to do with
4 my responsibilities, and I hadn't heard from him. I
5 called him a couple of times. He didn't call me back. So
6 I called the lady that he had hired to do the auditing.
7 And she had told me, "He came and picked up all the books
8 and records and fired me." That's --

9 Q Fired you?

10 A He fired her from the --

11 Q He fired her?

12 A Yes. And so that's when I decided -- you know, I
13 got a hold of him and I said, so why would you do that and
14 not, you know, work with the State Board? You paid this
15 lady. And he says, "It's not your problem. It's not your
16 business. You have nothing to do with this. You know, I
17 don't answer to you or, you know, I'm hiring an attorney.
18 And I'm not paying the State Board a dime on this."

19 A And that was my last day. I stopped going in
20 after that.

21 Q And when was that?

22 A So I believe it was maybe two or three weeks
23 after he received that letter, whenever that letter was
24 dated. I don't remember the exact date, but I remember
25 that process because I had a knot in my stomach that, you

1 know, something didn't feel right about all this. And I
2 believe several weeks or a couple of months later or maybe
3 a month later, I got the same letter with my name on it.
4 And that's when, you know, I got, you know, really, you
5 know, scared and frightened because I didn't know how to
6 handle a situation like that.

7 I called the State Board directly. I went to the
8 Van Nuys office. I sat with a couple of gentlemen there,
9 explained to them my position that, you know, why I was
10 put on the corporation. And I -- and they told me, you
11 know, we'll get back to you. And, you know, and, you
12 know, I went through the whole, you know, process with the
13 hearing that we did prior to this.

14 Q Yes.

15 A And when that hearing had happened, you know, I
16 was sick. I had diverticulitis. I had over a 101
17 temperature. But I was so -- this has been the hardest
18 thing in my life to deal with, and it's been going on for
19 so long. It -- it -- it -- I just wanted to get it over
20 with, whatever, you know happened. But it was really
21 strenuous on me because I've never owed any kind of money
22 to the State Board, IRS, or anything like that. I've
23 always been a straight shooter. I'm not a criminal of any
24 sort. I've never committed fraud or any of those kinds of
25 things in my life.

1 That's not who I am or what I'm about. But being
2 put in that position was very, very hard on me, being
3 responsible for this. But at the time of the hearing,
4 I -- you know, I showed up. My attorney, Mr. Nemiroff,
5 was there. We presented the case and about three quarters
6 down the road of the case, they stopped the hearing and
7 told me that Mr. Moore had his attorney call at the
8 hearing there and talking about settlement.

9 So I figured at that point that, you know, the
10 settlement was happening. They didn't tell us anything
11 about the settlement. They didn't tell us any -- what the
12 settlement was or how it was going to be done or anything.
13 So they just said, you know, to wait and see what happens
14 with the settlement. And I think three or four years went
15 by, and I'm thinking to myself -- because he had always
16 assured me this was his problem, his station, his deal.
17 It wasn't mine, that he was taking care of the situation.

18 I figured the settlement was taking care of the
19 obligation until, like, I think four years later. I got
20 another letter and talked to Warren about it, and here we
21 are today.

22 Q At that hearing, were you told for the first time
23 that he was settling with the State?

24 A Yes, I was. And, you know, I had two Board
25 members at that hearing come up to me afterwards. They

1 told me that they felt like I was a patsy there, that I
2 did a good job with the hearing. They didn't believe in
3 their hearts that I was really a responsible person for
4 this, that they were glad he had called to settle the
5 situation. And they shook my hand. And I -- in my heart
6 I felt like it was, you know, over because he was
7 settling.

8 Q And what time -- do you remember the year of that
9 hearing?

10 A I believe it was -- was it 2000? I think we have
11 it somewhere. Is it 2012?

12 Q Yeah. So it's been a long, long time?

13 A Yes. And this has been hanging over my head. I
14 can't tell you how stressful and I -- Warren, you know how
15 stressful it's been for me.

16 Q Yeah.

17 A I mean, this is --

18 Q Have you gone through a bankruptcy because of
19 this?

20 A I've gone through a bankruptcy, yes. And that
21 was -- you know, also the jewelry store was, you know, not
22 doing well. The economy was changing. You know, it was
23 a -- it was a tough time, and this was added to that kind
24 of stress on me. I went through a very life changing
25 stuff there. And I'm sure everybody has in their life at

1 some point or another, but it just seems like for me it's
2 been going on now for -- since 2008 until now.

3 And I'm the kind of guy that if I felt
4 responsible, and if I did something wrong here, I don't
5 care what the price would be. I would pay the price
6 because I felt -- because I didn't do -- I didn't have
7 control of anything. It wasn't my business. It wasn't my
8 paperwork that I can control. If that was my business,
9 would I let this guy just take it and go to an accountant?

10 It, you know, it doesn't make sense. Even the
11 State Board investigation, so interviewing the accountants
12 and interviewing people that were a part of this case
13 that, you know, all, you know, different facts that, you
14 know, the State Board came up with that proves that I
15 wasn't in charge. You know, they have in their own
16 statement that he went to the accountant, and they
17 interviewed her. He took the paperwork and fired her.
18 You know, that was from their -- the State Board's
19 investigation. That wasn't just something I had said.

20 And --

21 Q And that accountant never represented you; right?

22 A No. And that accountant there, she -- you know,
23 when I had talked to her and asked her what was going on,
24 and I asked her did she, you know, finalized figures. She
25 said she was close. There was about a \$60,000 difference

1 for the three years of the audit. And she couldn't
2 understand why he did what he did with firing her, taking
3 all the paperwork, and disappearing.

4 That's where we're at, you know. It's -- it's
5 gut wrenching to know that you could owe this amount of
6 money when it -- I -- it -- that would just ruin me,
7 especially, at this point.

8 Q Let me ask you this question. What does the
9 State say you owe for this onerous job you took on?

10 A I believe it's in the 300 and some-odd thousand
11 dollars. It's for --

12 Q \$300,000 or more?

13 A Over. Over \$300,000 with penalties, and I
14 believe fraud is in there. And I think there --

15 JUDGE ALDRICH: Can I pause you there? Just --
16 sorry.

17 MR. GOLDSTEIN: Yeah.

18 JUDGE ALDRICH: I believe we lost Mr. Boniwell.

19 MR. GOLDSTEIN: Oh, yeah.

20 JUDGE ALDRICH: Can somebody from --

21 MR. NEMIROFF: Hello.

22 JUDGE ALDRICH: Hi, Mr. Nemiroff. Yeah, we lost
23 connectivity with the Department's counsel. I think maybe
24 now would be a good time to take a five-minute recess to
25 see if we can reestablish that connection for that --

1 MR. NEMIROFF: I have to stay on the phone;
2 right?

3 JUDGE ALDRICH: You have to stay on the phone,
4 but what you can do is you mute your phone. So use the
5 star-6 or the asterisk-6 feature.

6 And for everyone that's appearing by video, I'd
7 ask that you mute yourself, and you turn off our video
8 until -- for five minutes and see if we can get this
9 resolved. Okay?

10 MR. NEMIROFF: Well, I'll just -- I'll just stay
11 on the phone the way I am.

12 JUDGE ALDRICH: Okay. Well, all right.
13 Five-minute recess and see if we can get Mr. Boniwell
14 back.

15 (There is a pause in the proceedings.)

16 JUDGE ALDRICH: Mr. Nemiroff, I'm going to return
17 it to you -- we're back on the record -- to continue with
18 your questioning.

19 MR. NEMIROFF: Yes. I'm actually very close to
20 concluding my questioning.

21 BY MR. NEMIROFF:

22 Q Mr. Goldstein, you there?

23 A Yes.

24 Q Okay. Were you informed at any time that the
25 principal in this case had settled with the government for

1 \$100,000?

2 A Yes. I was informed of that.

3 Q Who informed you of that?

4 A There was a gentleman that called me from -- I
5 guess he was an attorney and told me that he wanted to --
6 told me he settled the case for Nick Moore for \$100,000
7 and would I be interested in having him represent me. And
8 I said, "Well, I have my own attorney but, you know, I
9 will talk to my attorney." And that's really where that
10 came from, which I didn't really understand that.

11 Q Okay.

12 A But that was the first time I heard it, anyway.

13 Q All right. And do you know, roughly, what time
14 you were informed of that?

15 A I know -- so maybe three or four years after the
16 hearing that we had. So if that hearing was in 2012, so
17 it was maybe, like, 2015 or '16, something like that.

18 Q All right. So it's by now, you know, five or
19 six years ago?

20 A Yes.

21 MR. NEMIROFF: All right. Okay. Well, I am done
22 with my questioning. Mr. Goldstein, would you like to add
23 things?

24

25

WITNESS TESTIMONY

1 THE WITNESS: Yes, I would. I just want to,
2 first of all, thank everybody on this panel for hearing
3 this case. This has been, you know, very stressful and
4 very hard on me because my character isn't about not being
5 responsible or, you know, having accountability for
6 something I've done wrong. If I felt like I did something
7 wrong, I definitely would not have carried this on my
8 shoulders for this long. I would have handled it in
9 whatever way I could to -- but, you know, of course you
10 heard it all before.

11 But I want to just explain a few things to you,
12 so you have more of an understanding of the process of
13 owning a gas station. Number one, you know, there's stuff
14 in the exhibits that we'll go over, but I want to -- I
15 sent you guys my exhibits. And, you know, one of the
16 processes of owning a station is you have to be trained by
17 Mobil. You have to work at the corporate station for
18 three to four weeks before they can approve you to be a
19 dealer.

20 You have to have anywhere from \$250,000 to
21 \$500,000 of liquid cash. Even though there was a station
22 that, you know, you could want to buy or not want to buy,
23 nothing gets approved until you go through this process
24 with Mobil. It's a very rigorous process. It's not that
25 anybody can do it or any dealer can just hand over a gas

1 station to somebody else without Mobil's approval. It's a
2 big process and it takes quite a bit of time, three or
3 four months, to be able to be approved to be able to
4 purchase a station.

5 That was one of the reasons in my mind I never
6 looked at it as my responsibility because just putting my
7 name on a corporation, I didn't realize at the time what
8 the repercussions would be, obviously. It's not something
9 that I knew anything about at the time or would know that
10 I would end up in this position this many years later. I
11 know it sounds naive and, you know, maybe stupid on my
12 part. But I guess I was at the time because I trusted a
13 friend. And I was kind of desperate for a little bit more
14 income, and maybe those distorted looking at a bigger
15 picture.

16 But I didn't realize that this could happen to me
17 where I'm at today. One of the things that, you know, I
18 want to address in my exhibits is the National Imaging
19 Articles of Corporation for Mr. Nick Moore with the
20 California State on July 3rd, 2000, which is Exhibit 1 on
21 my exhibits. Exhibit 1 shows that Mr. Moore had this
22 corporation even before purchasing the station. I mean,
23 this was his corporation from past businesses that he did
24 under this corporation. So I just want to bring that to
25 you guys' attention that this corporation wasn't open at

1 the time of the station or the time where my name was put
2 on the corporation. So that was, you know, Exhibit 1.

3 Also in Exhibit 2, you know, proof of the
4 permits. I mean, you know, these permits that Mobil has
5 to approve, plus the city, those permits were never
6 changed into my name. If I had bought a business or owned
7 a business, all those permits, all the responsibilities of
8 a business would be on my shoulders. That never changed
9 hands. That's why I never felt like there was anything
10 going on that was wrong because it wasn't my business.

11 The business resumed, you know, the way it was
12 from the beginning of me just doing my couple of hours,
13 two or three hours of duties a day and moving on, not
14 knowing the responsibilities of putting your name on a
15 corporation what could happen; also not knowing that I was
16 the only officer on the corporation. I didn't know that
17 until the State Board brought it in and showed me the
18 copies. And that was that they were filled in afterwards.
19 In one of my exhibits we'll go over when we get to that,
20 and I'll show you the difference there. So the proof of
21 the permits on, you know, from the city, you know, there
22 was nothing that was changed; none of the utilities, none
23 of anything that was changed on that.

24 So we get into Exhibit 3, which is, you know, the
25 process of becoming a dealer. And here it shows, you

1 know, what the process of that was and what you have to go
2 through to be a dealer. And that's why I put that into
3 evidence also. All these qualifications and signed
4 contracts and everything that was on here was all done
5 with Mr. Nick Moore. Any kind of transfer of business,
6 there's documents that you would have to sign. You'd have
7 to get approvals from Mobil. None of that had taken
8 place.

9 I mean, there was no sale of a business there. I
10 mean, that -- that was not in existence in what --
11 anything that I could ever see. And even, you know,
12 the -- the rent that the State Board had said, you know, I
13 was responsible for writing rent checks. Well, rent was
14 paid from the gas loads that they added on to the invoices
15 that was electronically taken out of the account. Which
16 it states in this contract, the rent from starting date of
17 \$480,000 a year, and it goes down to \$120,000 a year
18 throughout the years of the duration of this contract.

19 So they found a piece of paper for a lot in the
20 back that I -- that there was a separate account that was
21 used for U-Haul that I signed for those checks. They were
22 \$500 a month to rent the property in the back because he
23 wanted to start a U-Haul business there, and it was an
24 empty lot in the back. And that lease that was found by
25 the State Board that is connecting me to this has nothing

1 to do with the station.

2 That was a separate entity that was in the back.
3 I mean, you're not paying \$500 a month to rent the land of
4 the station. That is impossible. But that's all a part
5 of this lease in this exhibit, and I wanted to bring it to
6 your attention because, you know --

7 MR. NEMIROFF: It's okay.

8 MR. GOLDSTEIN: -- the State Board claims it was,
9 you know, me who made the lease to the station, and that's
10 not the way it works. Also, that they had talked to the
11 landlord, that the landlord, you know, stated that, you
12 know, I was the go-to person on the lease. And that was
13 to the back lease, not to the front, you know, the station
14 lease. So I just wanted to bring that to your attention
15 because that was what that was about. So that was a part
16 of the Exhibit 3.

17 So it just shows you that he was the responsible
18 party. There was no way that I could have been the
19 responsible party in Mobil's eyes and any vendor's eyes
20 and, you know, with utility bills or any of that. I mean,
21 anybody who buys a business, wouldn't you think they would
22 change all that so the person who sold them the business
23 is no longer responsible. So that's not how this
24 happened. So in my mind, I never felt there was a change
25 in any way other than my name being on a corporation and

1 me signing the checks because this gentleman couldn't do
2 it anymore.

3 If we go to Exhibit 18, the Determination of
4 Liability reference letter of September 12th of 2007,
5 which is Exhibit 19, that I had direct dealing with
6 Exxon-Mobil or made lease payments. Those are what I'm
7 talking about those lease payments. Those were to a
8 property in the back for U-Haul. That wasn't for the
9 Mobil station itself. And it was a separate kind of
10 entity. So, you know, these -- these -- there's a big
11 difference of a Mobil lease and what the true rent was to
12 \$500 a month in payments for this back lot. So I wanted
13 to clarify that because, you know, my name was attached to
14 that lease in the back.

15 But anyway so -- and the landlord also had
16 mentioned that, you know, they had direct contact with me
17 about the Mobil station. Well, it was a trust, number
18 one. It wasn't a direct person that you're dealing with,
19 one person. There were several people that were taking
20 care of the trust. But I had never spoken to them about
21 the land lease or Mobil because they didn't -- it wasn't
22 our lease. It was a Mobil lease. We had a lease with
23 Mobil. They had -- he had a lease with Mobil and, you
24 know, the lease, you know, for the back lot was the only
25 thing I've ever talked to a person about there.

1 You couldn't talk about any other lease. My name
2 wasn't on the lease. I wasn't the responsible party. And
3 they would never want to talk to me about something like
4 that because they have to talk to Mobil, not to the person
5 there. Because the dealer there, which is Nick Moore, was
6 paying Mobil the rent, not the landlord. So that part of
7 it I just want to -- you know, we have documentation that
8 kind of shows all of that, and I'm sure you guys have
9 looked at some of this stuff.

10 You know, we talked about my role, you know, of
11 my daily role of working two or three hours. I have in
12 Exhibit 4 my timesheets that I would turn in for the hours
13 that I put in. They were handwritten timesheets. He
14 would go off of that to pay me. Sometimes I go above and
15 beyond if he needed extra help. After I closed the
16 jeweler store, I would stop by for an hour or two to see
17 if there were any issues that would arise if he was out of
18 town. But if he was in town, he handled it all. I didn't
19 have to stop by.

20 So in Exhibit 5, it also -- I'm showing you here
21 that the actual letter that came from the bank about
22 closing the account and kiting was the issue here. I
23 didn't know what kiting was. And when I asked what kiting
24 was, my -- the explanation I got is he had paid a check
25 from his personal account to the business account, and

1 that check had bounced. So he bounced the check to
2 himself, and the bank saw that. And I guess that's an
3 illegal thing.

4 I really didn't know much about it back then.
5 After, I looked into it more and talked to the bank. And
6 I even asked him, like, "How could you do that?"

7 And he's like, "Well, I just forgot to make a
8 deposit over here, and that's what happened."

9 And so it made it feel like it was just a
10 mistake. It wasn't something deliberate that he was
11 doing. And he got this letter. And he didn't come to me
12 right away, but after a couple of days he called me into
13 his office. He said, "You know, I have a real problem
14 here to save the business. If I could put you on the
15 corporation, I'll have Connie come over, sign a corporate
16 paper. We'll send it over to the bank. You can go to the
17 bank and open up a new account for us so I can resume my
18 business to save this business. Because if I don't have a
19 bank account, Mobil is gonna just take away my dealership
20 license."

21 And so I was kind of put on the spot not knowing
22 the repercussions of what could happen, not knowing that.
23 Because I had no indication at the time anything was
24 really truly wrong, he made it sound like he made a
25 mistake with this putting a deposit without, you know,

1 bouncing a check to himself. And this is how this
2 occurred. So I finally agreed.

3 Connie showed up. There was a blank piece of
4 paper there. I signed it. She said, "I'll go back to the
5 office and fill it up, and then I'll fax it over to the
6 bank." I said okay. I went to the bank after a couple of
7 hours, or I think it had to be filed. And then I had to
8 go to the bank. They sent it to the bank. I never saw
9 that piece of paper at all until the State Board showed it
10 to me.

11 And the following, right before the year ended,
12 she had showed up, and she say, "Remember that paper you
13 signed for the corporation? I need you to sign another
14 one for next year."

15 I said okay, and I signed it. And it was -- and
16 she goes, "I'll fill it back up when I get back to the
17 office." I said okay.

18 Those were things that I didn't feel at the time
19 were dishonest things or were going to get me into trouble
20 or anything else because the accountant was on board, and
21 we were doing it to save the business. And it wasn't
22 something like ownership was changing hands, or not
23 changing hands, or things like that were happening. I
24 mean, that wasn't -- not -- none of the roles really
25 changed after that. Everything kept running the same way.

1 He kept -- you know, he was there every day until
2 he got sick. He was on the computer every day, talking
3 with the counter person, talking with me over the laptop,
4 or calling me telling me I need you to do this. I need
5 you to do that, you know, and taking orders from my boss.
6 I mean, this is something that I didn't look -- think he
7 was ever going to come back on me at.

8 So on Exhibit 6 is, you know, a letter from
9 Connie stating how the procedures and how things were
10 happening. So just to let you know the procedures. When
11 a gas load comes to the station, they drop the gas load.
12 They go to the front desk, and they leave an invoice for
13 that load. So that invoice, the front counter person puts
14 it in a file underneath the counter there. Once a week
15 Connie would come pick up that file, or Nick would take it
16 to her. When he was sick, I would take it to her.

17 So now, after I was put on the corporation, I
18 started to have to make those checks for the difference.
19 So Mobil got the majority of the taxes paid to them
20 because of electronic money taken out of the account
21 because they collected all the credit card stuff. And the
22 cash difference is what I had to write a check for at the
23 time. So she would come in and say here's the figures.
24 This is the chunk I need, and I would write the check and
25 hand it to her. She would send it in.

1 I didn't have the access to the figures or felt
2 like I needed to look at figures. I also didn't feel it
3 was my responsibility just because my name was on the
4 corporation, not knowing that it is like, you know, why
5 I'm here today, obviously. So it was a big mistake on my
6 part, but I didn't know at the time it was. I was just
7 doing what I thought was the right thing to do at the
8 time.

9 So, you know, Connie wrote a letter stating -- I
10 mean, I didn't -- never dealt with taxes with her. The
11 only thing I would do is drop off paperwork of those
12 invoices. The rest of the stuff she would come and, you
13 know, look at the checks, the payouts, you know, bills,
14 that kind of stuff. And all that kind of stuff was always
15 taken to her office. Nothing kept there at the station.
16 So I didn't have access to that stuff. All the invoices
17 to the gas loads, all the stuff there, that was all piled
18 in her office.

19 Also, in your investigation, the State Board
20 investigation, it shows when they talked to Connie that
21 she said, "He came and took the paperwork from me and
22 hired the other lady, Ms. Fukazai [sic]," I think her name
23 was, "that handled the audit stuff."

24 And he took all the paperwork from her and took
25 it to, I believe, Diane Fukazai was her name. And so your

1 investigation also indicates that paperwork was taken from
2 Connie's office to this lady to accommodate the audit from
3 the State Board. And that he had taken all that paperwork
4 and fired her and disappeared with that paperwork. And
5 so, you know, I don't want to, you know, make it -- I'm
6 trying to make a flow in the time periods, but sometimes
7 I'm a little bit off. If it gets confusing, you guys can
8 stop and ask me questions about it.

9 But on -- so Exhibit 8 is the actual letter from
10 Connie that, you know, talked about the -- how, you know,
11 things were handled with me and why I was put on the
12 corporation. She also iterated in this letter because of
13 Check Systems, and the time frame shows that was, you
14 know, pretty correct on that. You know, things like the
15 State saying that they settled or things that, you know,
16 had transpired, you know, I was so fed up at one point I
17 told Mr. Nemiroff, you know, I just want this out of my
18 hair. It's too stressful. I don't -- you know, I can't
19 live knowing I got, you know, this huge debt.

20 You know, is there a way I can just get this out
21 of my hair? So he explained, well, maybe we can try to
22 settle it and see where we can go with that, you know. We
23 called the settlement committee. Mr. Warren handled it.
24 We offered them, you know, I believe it was \$20,000. I
25 was willing to lose \$20,000 more on top of everything I

1 lost, you know, just to get this out of my hair because it
2 was so stressful. I didn't know what could happen.

3 You know, you hear nightmare stories of them
4 taking your belongings and things like that. I don't
5 know, you know, what, you know, could be. But having
6 something weighing on you like this was a tremendous
7 thing, and I wanted to finish it. I never got -- we never
8 got a call back. We never got any kind of correspondence
9 on it. I felt like I was treated so unfair by the State
10 Board. I mean, this guy was the responsible party. They
11 proved he committed fraud by taking the paperwork and not
12 addressing the State Board at any time, other than with an
13 attorney.

14 And all the State Board, you know, letters and
15 their investigation always showed him as being the
16 president and being the owner of the station until he
17 hired an attorney. Then all of a sudden, my name came up.
18 And the only thing I can think of is those things that
19 weren't filed with the State, you know, they made sure
20 they were put in there saying that, you know, he's the
21 responsible party for these years to make his settlement
22 either less or whatever it is.

23 So I was -- I think from my perspective it was
24 like getting thrown under the bus when Mr. Moore assured
25 me that he would -- this is not my business. It's -- I

1 shouldn't -- you know, he doesn't want to talk to me about
2 it. It's not -- you know, when I got the letter from the
3 State Board showing my name on the corporation was months
4 afterwards. And, you know, I felt like, you know, they're
5 not -- he's not cooperating with the State Board, so
6 they're coming after me. And until he hired an attorney
7 is when that started happening.

8 I didn't get one of the first letters like he
9 did. It came months after. So I felt like nothing was
10 being fair. And a big part of that, I was very
11 intimidated because Mr. Moore's wife is one of the lead
12 counsels for, at that time, Baxter Company. And she,
13 through all of this, she got a big sign-on bonus and s big
14 raise to be the lead counsel for Amgen. So I felt
15 hopeless that, you know, she's a very powerful woman.
16 They have a lot of money, and I didn't know where to go
17 with this, you know.

18 I want to sue him for this and, you know, for
19 this because of the things. And I -- I just couldn't. I
20 didn't have the means to, the funds to, or the
21 understanding of the responsibilities here, until I
22 started spending some of my money. I hired a CPA that was
23 a professional at this kind of stuff, who explained to me,
24 who wrote a letter to the State Board. I talked to
25 different attorneys, and then talked to Mr. Warren

1 Nemiroff and ended up hiring Mr. Warren to help me
2 represent.

3 And I have to tell you. I mean, this has cost me
4 a lot of money to this point, but Mr. Warren has been, you
5 know, very fair in knowing that, you know, I'm a patsy
6 here with this kind of situation. And he hasn't taken
7 advantage of me at all financially with this. He's been a
8 big help with, you know, me being able to afford his
9 services with this. So I just wanted to put that in there
10 for you guys to know. I mean, it's been a real nightmare
11 for me.

12 So as we move on in Exhibit 10, Mr. Joseph Yang
13 who was one of the HQ Chief Headquarters Operation. So,
14 you know, in his investigation there, there were things.
15 You know, a lot of this information that I got was from
16 the State Board's, you know, investigations. And one of
17 the things, you know, that had come up with that
18 investigation was talking to Diane Fukushima about the
19 audit, things that came up. You know, there was an unpaid
20 balance, roughly, around \$60,000. I think the State
21 Board's amount was around \$130,000 that was unpaid.

22 I know that the State Board had to do evaluations
23 on what they thought the tax was because there was no
24 other paperwork to go off of. So they did their
25 investigations, and they didn't -- and I understand, you

1 know, how hard that could be for the State Board to do,
2 but they did it. Did but the numbers, I felt, were very
3 exaggerated. But it really isn't my business.

4 So I mean, that -- you know, they say you make 20
5 cents a gallon. I've never seen a gas station in that
6 location make more than 7 to 8 cents a gallon on, you
7 know, profit. It's a very tight margin. You've got a lot
8 of competition in the area there. So I have not seen it.
9 Maybe Mr. Moore raised prices, what I felt, afterwards to
10 sell the last couple of loads. Maybe he was making 20
11 cents a gallon at the time. But when I was present there,
12 I never saw that.

13 You know, in -- in the investigation also, it
14 shows that Mr. Moore was buying the cigarettes from Costco
15 with supplying the store. He was using his personal
16 Costco card. He was -- all of this stuff implements him
17 to the last day. Even the, you know -- let's see. In
18 exhibit -- there was one part in the exhibit that show the
19 final paperwork with Mobil. I mean, that was with
20 Mr. Moore. I wasn't present there. I was gone at that
21 time when, you know, they sent him a letter to, you know,
22 shut the business down; that he couldn't be a part of
23 Mobil and that kind of stuff.

24 So, I mean, those are, you know, there's a lot of
25 facts here in all these exhibits that I had shown you.

1 And even in the exhibits that you guys have, you know,
2 there's a lot of things in there that show he was the
3 owner until the end. I mean, if -- just because my name
4 was on the corporation didn't mean that was my
5 responsibility, that the station was. You know, there's a
6 big difference of buying the business and being
7 responsible for it on how you handle it.

8 There's no way I would let somebody else handle
9 the taxes or things I would be responsible for. Plus, I
10 didn't know until he took the books and records from the
11 auditor that he was even thinking of closing the station
12 or even, you know, doing anything like that. That was,
13 you know, a surprise to me afterwards.

14 So, you know, there was things. And after the
15 fact of your investigation, I saw more fraudulent things
16 that Mr. Nick Moore did. It wasn't just putting me on a
17 corporation as the sucker there. But, you know, there was
18 forged signatures. My signatures were forged in several
19 documents. And I put those in exhibits, Exhibit 14. On
20 some of those tax things that were signed, you could
21 notice there's a big difference from that signature to my
22 regular signature.

23 There were also payments that were made to the
24 State Board from the accountant that I had no knowledge of
25 because I wasn't privy to that stuff, you know, that she

1 paid from her personal account, you know. And we have
2 copies of these exhibits here that I sent over to you.

3 JUDGE ALDRICH: Mr. Goldstein?

4 MR. GOLDSTEIN: Yes.

5 JUDGE ALDRICH: Mr. Goldstein, sorry to
6 interrupt. I'm just giving you a 15-minute warning so
7 that way you can be sure to highlight the areas that you
8 want to cover before your time runs out.

9 MR. GOLDSTEIN: Thank you for that.

10 So one of the main things that, you know, I have
11 a big problem with is, you know, how can the State Board
12 settle with the person that they investigated that prove
13 fraud by taking documents, not cooperating with the State
14 Board, just hires an attorney, and all of a sudden settles
15 it. And then puts me as a responsible party also, and not
16 talk about what his settlement was. I mean -- and how
17 they came up with this figure to settle with him, and how
18 they can make me responsible just because my name was on
19 the corporation.

20 All the proof shows that the business day-to-day
21 was still running by him in every aspect. So I'm very
22 confused there. That's another part of where I felt very
23 unfair and treated by the State Board. Number one, they
24 wouldn't talk settlement with me, even though, you know,
25 they did with him. Number two, you know, all the

1 investigations. The fraud was laid on him. I never had
2 the paperwork to be able to commit fraud or any of these
3 kinds of things.

4 Plus, that's not in my character. I mean, that's
5 not what I would do in a situation. I'm a person that
6 would handle things head on. I'm not -- I don't run from
7 situations. This guy was an alcoholic. He ran from
8 situations. He put signatures on documents that weren't
9 my signatures that I didn't see until the State Board
10 presented it to me. I've never seen these documents
11 before like this.

12 I didn't know that the accountant paid for
13 certain taxes out of her personal account. You know,
14 these are things that were brought to my attention from
15 the State Board under their investigation. So, you know,
16 this is -- it's very hard for me to believe that somebody
17 that can own a business, pay somebody to manage or help
18 with the business, \$500 a week, put their name on a
19 corporation, stop paying taxes, and have them be the
20 person responsible for that, and them coming out smelling
21 like a rose. It's such a bad, you know -- and maybe I was
22 really dumb to be put in that position, but at that time I
23 didn't know that.

24 I feel dumb now knowing all this, and I feel very
25 stupid that I put myself in that position. But at that

1 time, I want you to realize that I had no knowledge of
2 what was really going on because it wasn't done in front
3 of me. I didn't know that he was shorting taxes. How --
4 how could I, you know? It was, you know -- it was -- it
5 was very hard to believe that there was that much
6 difference of unpaid taxes that he didn't pay.

7 But anyway, I just want to, you know, let you
8 know that, you know, this problem has caused a lot of
9 stress in my life. It cost me a lot of money in my life.
10 I made a huge mistake. I admit my mistakes. I'm not
11 trying to run from my mistakes. I just would like for you
12 guys to understand that it's very hard to believe that
13 such a mistake that I made of a couple of signatures on
14 corporate papers or some signatures on some tax returns --
15 State Board returns, I should say, which I never seen IRS
16 tax returns or anything filed, by the way.

17 But anyway this is, you know, a nightmare for
18 somebody that was making \$500 a week to be responsible for
19 hundreds of thousands of dollars. It really seems to be
20 very unfair. But I respect what you guys do, and I know
21 you guys have a hard decision in front of you. And I just
22 am pleading to you guys to please understand the position.
23 And I wouldn't fight so hard for this many years if I felt
24 like I had done something wrong. I would never have taken
25 it to here. I would have just dealt with it. I didn't

1 know I did something wrong, and I feel like I was
2 definitely taken advantage of.

3 And I think your investigation really shows that.
4 A name on a corporation, I understand, has
5 responsibilities. But it's this type -- amount of
6 responsibilities is very unfair, you know, especially, the
7 way things were unfolding in this situation.

8 So I hope and pray to God that you release me
9 from this obligation. And I want to thank everybody for
10 the time. I hope I was clear in what I was talking about,
11 and I hope you guys can feel the pain I've been through
12 with this whole situation. And thank you for listening.

13 JUDGE ALDRICH: Thank you, Mr. Goldstein.

14 Mr. Nemiroff, does your conclude the opening
15 combined with witness testimony? I believe you're muted,
16 Mr. Nemiroff. The function to unmute is -- there you go.

17 MR. NEMIROFF: I'm back. Can you hear me?

18 JUDGE ALDRICH: Yeah, I can hear you.

19 MR. NEMIROFF: All right. So I don't think I
20 could say anything that could add to that. I'll save it
21 for my closing statement.

22 JUDGE ALDRICH: Thank you.

23 Department, are you prepared to present your
24 combined opening and closing?

25 MR. BONIWELL: Yes. This is Joseph Boniwell. We

1 are.

2 JUDGE ALDRICH: And after your opening and
3 closing, I believe the panel will have questions for
4 Mr. Goldstein.

5 And so please be prepared to take questions at
6 that time, Mr. Goldstein.

7 MR. GOLDSTEIN: Yes.

8 JUDGE ALDRICH: But Department, you can proceed
9 when you're ready.

10 MR. BONIWELL: Thank you.

11

12 PRESENTATION

13 MR. BONIWELL: So the primary issue in this
14 appeal as we've been discussing, concerns whether
15 Appellant can be held liable as the responsible person for
16 the unpaid tax, interest, fraud penalty, and a finality
17 penalty of National Imaging Company doing business as
18 Reseda Mobil Incorporated for the period of July 11th,
19 2005, through April 24th, 2007.

20 The Department is maintaining its position that
21 Appellant is liable as a responsible person, pursuant to
22 Revenue & Taxation Code Section 6829, for the unpaid
23 liabilities of NIC for the liability period. Pursuant to
24 Section 6829 and Regulation 1702.5, there are four
25 elements that must be met in order to impose responsible

1 person liability on Appellant.

2 First, NIC's business activities must have
3 terminated. Second, NIC must have collected sales tax
4 reimbursement on its retail sales of tangible personal
5 property. And third, Appellant must have been a
6 responsible person for NIC sales and use tax compliance
7 during the liability. And fourth, Appellant as the
8 responsible person for NIC must have willfully failed to
9 pay or cause to be paid the taxes due.

10 So as discussed at the prehearing conference and
11 earlier in today's hearing, it is undisputed that NIC
12 ceased business activities on April 24th, 2007. And it is
13 also undisputed that NIC collected sales tax reimbursement
14 on its retail sales of tangible personal property. As a
15 result, the remaining issues with respect to Appellant's
16 liability are: Whether Appellant is a responsible person
17 under Section 6829 subdivision (b); and whether Appellant
18 was willful in his nonpayment of NIC's liabilities,
19 pursuant to Section 6829 subdivisions (a) and (d).

20 Under the sales and use tax law, a responsible
21 person includes any officer, manager, employee, director,
22 or any other person having control or supervision of, or
23 who is charged with the responsibility for the filing of
24 returns or payment of tax, or who has the duty to act for
25 the corporation in complying with the various provisions

1 of the sales and use tax law. And here there is
2 substantial evidence demonstrating that Appellant was a
3 responsible person for NIC during the liability period.

4 So first, the Appellant signed as president a
5 July 1st, 2005, statement of information that was filed
6 with the Secretary of State's Office and identified him as
7 CEO, secretary, CFO, and director of NIC.

8 I just want to make sure you can still hear me
9 because my video is being weird.

10 MR. GOLDSTEIN: Yes.

11 MR. NEMIROFF: I can here.

12 MR. BONIWELL: Yes. Okay.

13 JUDGE ALDRICH: Thank you.

14 MR. BONIWELL: So you can hear me?

15 MR. NEMIROFF: I can hear you.

16 JUDGE ALDRICH: Yes.

17 MR. BONIWELL: Okay. Thank you. Sorry.

18 And that Statement of Information is the
19 Department's Exhibit T.

20 Appellant signed a second Statement of
21 Information as president on May 11th, 2006, which
22 similarly identified him as CEO, secretary, CFO, and
23 director of NIC; and this is the Department's Exhibit T.
24 And under the California Corporations Code Section 321
25 subdivision (a), a president of a corporation is the

1 general manager and chief executive officer of the
2 corporation, unless otherwise provided in the by-laws.

3 And as discussed in the case of Commercial
4 Security Company versus Modesto Drug Company, a chief
5 executive officer is presumed to have broad, implied, and
6 actual authority to do all acts customarily connected with
7 the business, including ensuring compliance with the sales
8 and use tax law, even if that responsibility is delegated
9 to others.

10 As such, here Appellant as president of NIC had
11 broad, implied, and actual authority to do all acts
12 associated with NIC's business, including ensuring
13 compliance of the sales and use tax laws. Now, Appellant
14 contends in his testimony today and his declaration, that
15 he was presented with a blank statement of information
16 that he signed. It was later filled out, and he was
17 unaware that he would be listed as every officer.
18 However, as Appellant stated in previous submissions, you
19 know, he agreed to become an officer of the corporation.
20 And as explained in his declaration with regard to the
21 second statement of information, he signed it with the
22 understanding that he would be continuing as president of
23 NIC.

24 Further, even if he signed the form before it was
25 completed, Appellant new that being added to the Statement

1 of Information would make him NIC's sole corporate
2 officer. The form is clearly used to denote corporate
3 officers, and Appellant was a sophisticated businessperson
4 who was concurrently the president of James G. Jewelry
5 Design, Incorporated, a retail business that had an active
6 seller's permit from 1996 through 2012.

7 And based on Appellant's statements in the record
8 and the documentation that we have, he knew he was the
9 only person to be listed on the Statement of Information.
10 And as such, he'll be acting as the sole corporate officer
11 of NIC. Now, Appellant's understanding that he was the
12 president and a corporate officer of NIC is consistent
13 with his signing the Statement of Information as
14 president, as well as a fictitious name statement filing
15 as president that was recorded in L.A. County on
16 April 27th, 2006. And it's the Departments Exhibit U, and
17 sales and use tax returns as president and owner of NIC.

18 Appellant signed the sales and use tax returns
19 for the third quarter of 2005, the fourth quarter of 2005,
20 the first quarter of 2006, the second quarter of 2006 as
21 president, the third quarter of 2006 as owner, the fourth
22 quarter of 2006 as owner, and the first quarter of 2007.
23 These are in Department's Exhibit P. Appellant contends
24 that the signatures on a few of these returns -- on two of
25 the returns, third quarter '06 and the first quarter of

1 '07, are inconsistent with his signature.

2 Appellant hasn't provided any analysis from a
3 handwriting expert to support his assertions. And this is
4 the first time that Appellant is arguing that the
5 signature on the third quarter of 2006 return is
6 inauthentic. However, Appellant signed the related check
7 for third quarter of 2006, which was made out to the Board
8 of Equalization for \$2,315 and dated October 31st, 2006,
9 which is the same date as the third quarter 2006 return.

10 And as just referenced, Appellant signed at least
11 nine other checks made out to the Board of Equalization
12 during the liability period. This is Department's
13 Exhibit Q. Appellant concedes that he had check signing
14 authority. And based on the evidence submitted during the
15 liability period, Appellant was the only person with check
16 signing authority for NIC. And his role as president of
17 NIC meant he was responsible for ensuring compliance of
18 sales and use tax law.

19 And further, his testimony as to his role in how
20 checks were prepared has changed throughout the appeals
21 process, and it calls into question his credibility. But
22 the evidence demonstrates that Appellant was directly
23 involved in NIC's sales and use tax matters. And in
24 addition to signing returns and signing checks to the
25 Department, Appellant communicated with the Department

1 concerning NIC's outstanding sales and use tax liabilities
2 several times throughout the liability period. These
3 conversations are included in the Department's Exhibit R.

4 Now a couple, for example, on March 17th, 2006,
5 the Appellant spoke with the Department regarding NIC's
6 outstanding balance due. And The Appellant stated that
7 his accountant had finished the return, and he'll be
8 meeting with his accountant and will have his accountant
9 call back. Now, this conversation demonstrates that
10 Appellant was aware of NIC's sales and use tax compliance
11 issues. He was involved in NIC's sales and use tax, and
12 that he as president was directing the work of the
13 accountant that prepared NIC's returns.

14 Also, on March 19th, 2007, Appellant called the
15 Department, and he informed it that he was a corporate
16 officer for NIC. He was made aware at that time of NIC's
17 liabilities for an earlier period, and he explained that
18 he was not yet involved in the business during that time.
19 This demonstrates that during the time that Appellant was
20 a corporate officer, namely, during the liability period,
21 he viewed himself as someone responsible for sales and use
22 tax matters to such an extent that he called the
23 Department to ensure that it was up to date on who was
24 responsible for the business.

25 And finally, Appellant also represented himself

1 as the landlord for Reseda Mobil and executed a lease
2 contract on behalf of Reseda Mobil. Exhibit B is the copy
3 of the lease agreement signed by Appellant leasing out a
4 three-day work area at the business location for \$2,500 a
5 month starting March 15th, 2007. The totality of the
6 evidence demonstrates that from July 11th, 2005, through
7 April 4th, 2007, Appellant was the responsible person for
8 NIC.

9 Appellant's testimony and statement as to how he
10 became president of NIC and a corporate officer have
11 changed throughout the appeals process, calling into
12 question the voracity of his testimony. However, what
13 remains abundantly clear is that Appellant was a
14 responsible person for NIC because he was the president of
15 NIC with no apparent limitation on his authority. And he
16 had broad, implied, and actual authority to do all acts
17 connected with the operation of NIC, which included
18 ensuring NIC's compliance with the sales and use tax laws.

19 Consistent with his authority as president,
20 Appellant signed returns and related checks. He
21 communicated with the Department on sales and use tax
22 matters and entered into contracts on behalf of NIC.
23 Appellant unequivocally was the responsible person for NIC
24 with a duty to act for the corporation in complying with
25 all provisions of the sales and use tax law.

1 The fourth eliminate of responsible person
2 liability requires the determination that Appellant was
3 willful in his nonpayment of NIC's liabilities. A
4 responsible person's failure to pay the taxes due or cause
5 the taxes due to be paid is willful if the three
6 requirements are met.

7 First, on or after the date the taxes came due,
8 the responsible person had actual knowledge that the taxes
9 were due but not being paid. Second, the responsible
10 person had authority to pay the taxes or cause them to be
11 paid on the date the taxes came due, and when the
12 responsible person had actual knowledge. And third, when
13 the responsible person had actual knowledge, the
14 responsible person had the ability to pay the taxes but
15 chose not to do so.

16 Here, NIC's taxes at issue became due on the due
17 date that its returns were due, on or before the last day
18 of the month following each quarterly period. And those
19 dates fall quarterly between October 31st, 2005, for the
20 third quarter 2005, through April 30th, 2007, for the
21 second quarter of 2007. On or after these dates,
22 Appellant had actual knowledge that the taxes due but not
23 being paid.

24 The Department's audit shows that for each
25 quarter during the period of January 1st, 2005, through

1 April 24th, 2007, NIC reported taxable sales that were
2 significantly less than the cost of gas it purchased for
3 that quarter as reflected by NIC's gas purchase invoices
4 from Exxon-Mobil. Over the entire period, NIC reported
5 total taxable sales of just over \$5 million, which was
6 over \$2 million less than the cost of fuel purchased by
7 NIC for the same period.

8 As president of NIC, Appellant signed returns,
9 throughout the liability period, certifying that each
10 return, including any accompanying schedule of statements,
11 had been examined by him, and to the best of his knowledge
12 and belief, was a true, correct, and complete return.
13 Appellant's knowledge of NIC's fuel cost and sales are
14 corroborated by his argument at the appeals conference,
15 which was documented in Exhibit A and reiterated today,
16 whereby, Appellant specifically argued that the Department
17 improperly based its figures in the audit, and that the
18 company profit margin for gasoline was only 7 to 8 cents.

19 Appellant was aware of the profit margins on the
20 gasoline, and he had access to the fuel records. And he
21 testified today that he would take the records to the
22 accountant when Mr. Moore was not involved in the
23 business. Given the foregoing, Appellant as president and
24 day-to-day operator of NIC, knew NIC sold fuel at retail
25 at a higher price than it paid. And based on his attested

1 review of the returns, he knew that NIC was underreporting
2 its taxable measure for each period when it reports a
3 taxable measure that was less than its cost of fuel.

4 With regard to Appellant's authority to pay the
5 taxes due or cause them to be paid, the evidence already
6 discussed establishes that NIC -- that Appellant was NIC's
7 president and only corporate officer beginning
8 July 11th, 2005. Appellant conceded he opened Reseda
9 Mobil bank accounts in his name to operate NIC finances,
10 and that he had the authority to sign NIC's checks as
11 corroborated by the checks in evidence.

12 As such, Appellant as NIC's president, with no
13 apparent limitation on his authority, had broad, implied,
14 and actual authority to do all acts connected with NIC's
15 business, including the authority to pay the taxes due or
16 cause them to be paid to the Department, which he failed
17 to do. Appellant had this authority throughout the entire
18 liability period while he was a responsible person, and on
19 or after the dates the taxes came due, when he had actual
20 knowledge that the taxes were due.

21 Finally, the evidence establishes that Appellant
22 had the ability to pay the taxes due but chose not to do
23 so -- chose not to. Because, despite his knowledge of
24 NIC's sales and use tax liabilities, he chose to pay NIC's
25 creditors and not the Department. Per the hearing

1 transcript from 2012, Appellant stated that he signed
2 checks to pay vendors. You know, specifically during the
3 audit, records of NIC's fuel supplier indicated that from
4 January 1st, 2005, through April 24th, 2007, NIC purchased
5 over \$7 million worth of fuel, averaging \$788,000 per
6 quarter.

7 And this is in addition to payments NIC made to
8 Exxon-Mobil for the prepayment of sales tax on gasoline
9 purchases for the period of third quarter 2005 through the
10 first quarter of 2007 for \$292,257. Wages -- and also
11 wages paid during this period totaling just about -- just
12 over \$56,000. Appellant had knowledge that the taxes were
13 due and not being paid and the authority and ability to
14 pay the taxes when they came due. As such, as a
15 responsible person for NIC, he was willful in his
16 nonpayment of NIC's tax liability and should be held
17 personally liable for NIC's outstanding liabilities
18 pursuant to Revenue & Taxation Code Section 6829.

19 Now, I just want to take a step back and address
20 Appellant disputing signatures on certain returns. In his
21 declaration he disputed the signature on the third quarter
22 '06 returns and the first quarter '07 return. As I
23 mentioned, there was no return filed for the second
24 quarter of 2007. However, the evidence discussed today
25 establishes the Appellant as the responsible person for

1 NIC's tax compliance beginning July 2005.

2 Appellant knew the cost of fuel. Appellant
3 signed returns stating that sales were significantly less
4 than the purchase of fuel. Appellant issued checks to the
5 Department to make payments on these amounts. Appellant
6 knew additional taxes were owed but not paid to the
7 liability period. Appellant has not raised any meritable
8 [sic] contentions concerning the underlying audit
9 liability of NIC, including the applicable penalties.
10 There's no basis for adjustment to these amounts. And
11 we'd like to note for the record that the prepayment
12 penalty is not at issue in this appeal.

13 Now, I would also like to note with regard to
14 Mr. Moore's settlement, which was spoken about at length.
15 You know, generally, we note that the settlement of a
16 corporate officer's liability would reduce the underlying
17 corporate liability for the period for which the officer
18 was being held liable. Now, as explained in Footnote 2 of
19 the Department's Exhibit B, Mr. Moore entered into a
20 settlement with the Department. And the payments he made
21 pursuant to that settlement were applied towards NIC's
22 unpaid tax liabilities for periods prior to the periods
23 remaining at issue in Appellant's case. Meaning, they
24 were applied to periods prior to July 11th, 2005, and had
25 no impact on the liability tax from NIC to Appellant.

1 As such, for the foregoing reasons and in
2 accordance with the Department's briefing, we request this
3 appeal be denied. Thank you.

4 JUDGE ALDRICH: Thank you, Department. Would the
5 Department like an opportunity to cross-examine the
6 witness?

7 MR. BONIWELL: This is Joseph Boniwell. No.
8 Thank you.

9 JUDGE ALDRICH: Thank you.

10 At this point, I'd like to turn over questioning
11 to my panel members.

12 Judge Wong, did you have any questions for either
13 the parties or the witness?

14 JUDGE WONG: Yes. Thank you.

15 This is Judge Wong. I just had a question for
16 both parties, but maybe I'll direct it first to CDTFA. Is
17 NIC still in existence as a corporate entity, or has it
18 been dissolved or suspended? Do we know?

19 MR. BONIWELL: This is Joseph Boniwell. I don't
20 have a current corporate status in front of me, but I'm
21 happy to find that out for you.

22 JUDGE WONG: Sure.

23 Mr. Goldstein, do you know what happened to NIC
24 as a corporate entity?

25 MR. GOLDSTEIN: No. Like I really stated from

1 the beginning of this, I had no knowledge. The
2 corporation was his corporation before and it -- I had no
3 knowledge that I was the only corporate officer, even
4 though the State Board wants to claim that I did know that
5 I was the only -- I was told I was being added onto the
6 corporation, not taking over the corporation.

7 And whoever closed that, had to have been
8 Mr. Nick Moore that closed that corporation, because I
9 didn't. And I didn't have anything to do with that after
10 I left the business. So I have no knowledge of that
11 corporation to this point, but it would be interesting to
12 see who closed it out.

13 JUDGE WONG: Thank you. I had another question
14 for CDTFA about Exhibit G. Could you speak to the
15 significance or insignificance of Exhibit G or what it
16 represents?

17 MR. BONIWELL: Yeah. Yes. Yes. So Exhibit G
18 was discussed in the Department's Exhibit B. And
19 Exhibit G really goes hand-in-hand with Exhibit H. So on
20 July 1st, 2005, Appellant signed as president the
21 Statement of Information that made him the CEO, secretary,
22 CFO, and director of NIC. And then per Exhibit B,
23 Footnote 19, on July 10th, 2005, Mr. Moore signed his
24 resignation, position of secretary, as president and
25 secretary of NIC, and that's Exhibit H.

1 And he sold his shares of stock in the
2 corporation. And that's what is demonstrated by
3 Exhibit G, is that his hundred-thousand dollars -- his
4 100,000 shares of stock that he owned in the corporation
5 were listed as being sold on this Department of
6 Corporations form.

7 JUDGE WONG: This is Judge Wong. Do we know to
8 whom he sold those shares -- to whom Mr. Moore sold those
9 shares?

10 MR. BONIWELL: It's not apparent to us to whom he
11 sold the shares. But what is apparent is that as of that
12 date on July 10th, 2005, these documents show that
13 Mr. Moore, you know, resigned his position, gave up his
14 ownership in the corporation. And that on July 1st, 2005,
15 Appellant signed the document becoming president of the
16 corporation.

17 MR. GOLDSTEIN: But do we know when those
18 files -- that paperwork were filed?

19 JUDGE WONG: This is Judge Wong. Mr. Goldstein,
20 did you purchase those shares?

21 MR. GOLDSTEIN: No, I've never seen any shares.
22 And when I read that those shares were sold for \$1, that's
23 ridiculous. I mean, I've never seen stocks or shares or
24 anything like that. That was never a discussion because I
25 wasn't buying the business. That wasn't my business. I

1 was put on there for a reason, and that was because of
2 Check Systems, and I agreed to help a friend. Everything
3 that, you know, the State Board is claiming that I knew
4 knowledge of before, how would I know if I don't have all
5 the receipts?

6 And don't even know how to figure out what the
7 difference would be to what was owed to the State Board.
8 I signed checks according to what my boss wanted me to do.
9 And I was following my boss' directions. I didn't feel
10 like it was still my responsibility at all because I
11 didn't know the rules of a corporation and know that I
12 would be held responsible.

13 If I did know that, I wouldn't have agreed to do
14 any of this. I didn't benefit by this. This has only
15 hurt me throughout my life. This wasn't like I made money
16 by putting my rear end on the line here. I mean, this --
17 this was a nightmare that has unfolded in my life from a
18 mistake of being put on a corporation. Which honest
19 truth, I'm telling you that I didn't even know I was all
20 these officers until the State Board sent copies. I saw
21 their exhibits and copies from the State Board. I never
22 seen those copies before that putting me as all. I didn't
23 know he resigned from the corporation. I had no knowledge
24 of this stuff.

25 JUDGE WONG: This is Judge Wong.

1 MR. GOLDSTEIN: I didn't dig into it because I
2 didn't know, feel I had to.

3 JUDGE WONG: This is Judge Wong. Mr. Goldstein,
4 do you have any knowledge of who might have purchased
5 those shares, if you know?

6 MR. GOLDSTEIN: I really don't. I mean, I wish I
7 did, but I don't. And I don't -- I really don't think any
8 person --

9 JUDGE RIDENOUR: This is Judge Ridenour. I hate
10 to interrupt this response, but it looks like we lost the
11 CDTFA's rep again. If we could just take a moment to
12 maybe get Mr. Boniwell again before we commence with his
13 response, please.

14 Judge Aldrich, do you want to --

15 JUDGE ALDRICH: Mr. Boniwell, can you hear us?

16 MR. BONIWELL: Yes.

17 JUDGE RIDENOUR: Okay. Sounds good.

18 JUDGE ALDRICH: I believe that was Mr. Nemiroff.
19 Mr. Boniwell --

20 MR. HUXSOLL: This is Mr. Huxsoll. This is Cary
21 Huxsoll. I believe Mr. Boniwell can still hear, yes.

22 JUDGE ALDRICH: Okay. Then we'll proceed.

23 JUDGE RIDENOUR: Okay. Sounds good. My
24 apologies.

25 JUDGE WONG: Oh, Mr. Goldstein, would you like to

1 finish your response?

2 MR. GOLDSTEIN: Yeah. I mean, as I stated
3 before, I mean, I know it looks bad like I would have
4 knowledge of this. But the way things were laid out,
5 because the accountant handled the issues. She'd show up.
6 Here's the amount of the check. You need to write a check
7 for that amount. I didn't know it was short. Why would I
8 put myself in a position if it was short?

9 The State Board had talked about me talking to
10 the State Board about a settlement prior to this. Yes, I
11 did. As Mr. Moore would say, can you call the State
12 Board? Put me on a payment plan for this obligation that
13 they say, you know, there's a difference there. And the
14 accountant assured me that wouldn't happen again.
15 Mr. Moore assured me it wouldn't happen again. I did
16 question that with them. They assured me it wouldn't
17 happen again. It was a mistake in their accounting, and
18 that payment plan.

19 And I took charge of it because I'm not running
20 or hiding from any of this. I didn't feel like I was
21 doing anything wrong by addressing the State Board. And I
22 still don't feel like I've done anything wrong to warrant
23 the dollar amount of what this obligation is. I mean,
24 it's mind boggling. But at the same time, at that
25 particular time, I had no reason to ask more questions or

1 think that there was anything going on that was wrong.
2 Because every month there was a check going out to the
3 State Board. Whether there was a difference, I wasn't
4 aware of that difference.

5 I didn't know. And they certainly weren't going
6 to tell me that they shorted. Mr. Moore was still
7 handling all aspects of the business. Just because my
8 name was on the paperwork didn't mean that anything
9 changed to the day-to-day operations.

10 JUDGE WONG: Thank you, Mr. Goldstein. I had a
11 few questions that I would like to get your thoughts on
12 some of the exhibits.

13 MR. GOLDSTEIN: Sure.

14 JUDGE WONG: The first exhibit I was wondering
15 about -- pull it up -- is Exhibit W. This is a letter
16 from, apparently, an employee of NIC.

17 MR. GOLDSTEIN: Yes.

18 JUDGE WONG: Hold on. And she says --

19 MR. GOLDSTEIN: It's a he.

20 JUDGE WONG: Oh, she. Sorry. He. My apologies.

21 MR. GOLDSTEIN: He. His name is Lalith.

22 JUDGE WONG: Okay. Thank you for that. I,
23 quote, "I was working at Reseda Mobil when Mr. Moore," and
24 yourself, "took over the gas station from the previous
25 owners in December 2001."

1 Could you address why this individual mentions
2 that both Mr. Moore and yourself took over the gas
3 station?

4 MR. GOLDSTEIN: Well, I didn't really start
5 working there until after that. But I was, you know, I
6 knew, you know, I was taking care of these employees, so I
7 built up a relationship. I also want to explain to you
8 that this letter was put together by Mr. Moore, and he
9 just came and signed it and didn't know the reason of what
10 he was signing this letter for.

11 And this gentleman worked the night shift, so the
12 graveyard shift. I would see him every morning when I
13 came in because his shift broke at that time. I think he
14 saw that -- you know, we explain to him about the
15 corporation and that there was new bank accounts and
16 things like that. And, you know, he knew there was some
17 sort of change there because of the situation with Check
18 Systems. So he was privy to some of the stuff, but I was
19 the one that corresponded with him.

20 They were four guys that were -- Sarah Lonkine,
21 from Sri Lanka. And they were great human beings, and I
22 worked, you know, very hard with them to, you know,
23 improve everything in the station, do better to show
24 Mr. Nick Moore we're all working together to do things,
25 and bring in sales up, and making sure everything was, you

1 know, up to par. But from the beginning when he first
2 took over that station, I wasn't there every day.

3 I started later on, but I would stop by and, you
4 know, visit Mr. Moore, you know, kind of go into the back
5 office with Mr. Moore. So they thought I was, you know, a
6 part of the station from the beginning. But I didn't
7 really start until, you know, I believe, you know, maybe
8 six or seven months after that.

9 So and I wasn't coming in every day in the
10 beginning. I started out just coming in a couple of days
11 a week because he was there. And the only time I started
12 coming in more every day is when he started -- he got
13 deployed to Afghanistan for, like, three months. And so I
14 started coming in every day. And then the time where the
15 corporation -- I got put on the corporation, he got ill.

16 He was -- you know, him and I were, you know,
17 having a little bit of differences. I was trying to help
18 him. He had an alcohol problem. You know. I was trying
19 to help him as a friend to, you know, get help and, you
20 know, go to get sober. And so those things were in play
21 at the same time as me being put on the corporation and
22 things like this. So there was a -- you know, it's hard
23 to explain, but when you're devoted to -- I'm the kind of
24 guy that if I make a commitment, I want to do the best I
25 can in the commitment.

1 I wasn't there to take advantage of anything or,
2 you know, to -- it was basically to keep my store open and
3 to try to save my personal business that, you know, I went
4 to school for, learn diamonds. You know, I went to GIA
5 and became a gemologist. Those are things that I was
6 trying to save by using, you know, this income every month
7 to save that store. There was no ill tension here.

8 I didn't know that it was being shorted no matter
9 what the State Board will tell you on this. Because, you
10 know, how could I know if checks were being paid out every
11 single month, you know? How could I? How could I figure
12 out those figures? Only an accountant could really do
13 that. And knowing the price of gas prices, well,
14 that's -- not only is it on the invoice, it's posted every
15 single day on a, you know, a website that you can go to at
16 Mobil.

17 That's -- the prices are posted on there, so you
18 adjust your prices according to their prices. So you have
19 to kind of look forward to the next price of load to
20 adjust your prices so you don't lose money in case they
21 raise prices by five cents on the next load. You kind of
22 already have knowledge of that before it happens. So, you
23 know, those are the things that I did. I didn't know the
24 differences, what happened to the profit, or what was owed
25 because there was also the chunk of sales tax is taken

1 electronically through credit cards, which --

2 JUDGE WONG: Mr. Goldstein?

3 MR. GOLDSTEIN: Yes.

4 JUDGE WONG: Thank you. I think you've answered
5 my question. I have a couple of more.

6 MR. GOLDSTEIN: Sure.

7 JUDGE WONG: I had a question about Exhibit, I
8 believe it's R. This is CDTFA's ACMS System Log. It's a
9 log of calls that they make to individuals. I forget what
10 ACMS stands for, Automated Call Management System or
11 something. In any case, in 2000 -- there's two entries
12 that I wanted to ask you about. In 2003 and 2004 CDTFA
13 called you, and in their notes of the call you refer to
14 Mr. Moore as your partner. And I was just wondering what
15 you meant by that.

16 MR. GOLDSTEIN: Well, I meant like he told me to
17 handle this situation. I called to handle it the best way
18 I can. They asked me what my -- I didn't know what to say
19 is my association for them to talk to me. You know, I
20 wasn't a corporate officer. I wasn't on the, you know,
21 anything to do. I had said that for them to be able to
22 talk to me, not knowing there would be repercussions or
23 that it was even a recorded conversation.

24 And I believe that was for outstanding -- a
25 difference of an audit that came a year before. And that

1 was the time I put him on a payment plan. But I was told
2 by him to handle the situation for him. So I acted as a
3 partner, I guess, on the phone, but the truth is I was
4 taking orders from my boss. I mean, that's really what it
5 came down to.

6 JUDGE WONG: Thank you, Mr. Goldstein. And my
7 last question has to do with another entry in the ACMS
8 call log. Let's see. Oh, I'm sorry. That's incorrect.
9 I think it's Exhibit W. It's 414 -- it's a 414Z. It's a
10 form that an auditor writes down just the history of every
11 contact with taxpayers. And there's an entry here from --
12 let's see. I'm sorry. It's -- the 414Z is -- let me try
13 to pull that up.

14 Maybe CDTFA, do you know what 414Z exhibit -- oh,
15 Exhibit N. My apologies. And it's from June 22nd, 2007.
16 CDTFA called Exxon-Mobil territory manager. The territory
17 manager told auditor that the last time he met with
18 Mr. Moore and Mr. Goldstein was May 1st, 2007. He,
19 referring to the territory manager -- Exxon territory
20 manager -- believed that they were partners. And the
21 contact person with Exxon-Mobil was Mr. Moore. Do you
22 recall that meeting with the territory -- Exxon territory
23 manager, Mr. Goldstein?

24 MR. GOLDSTEIN: So I wasn't there for this
25 meeting. I -- I'm surprised that he thought it was me.

1 But I believe it was the -- either Lalith for one of the
2 employees there that were there. Because at that time
3 when they met it was for, I believe, closing the station.
4 At that time I wasn't privy to that. I wasn't a part of
5 that. I was already, you know, gone.

6 I don't remember any recollection of meeting this
7 gentleman at the time and, especially, with Mr. Moore. So
8 I don't remember that at all. The first time I knew about
9 it was reading it in your exhibits. I had no knowledge of
10 that beforehand.

11 JUDGE WONG: Thank you, Mr. Goldstein. That's
12 all the questions I had for now.

13 JUDGE ALDRICH: This is Judge Aldrich.
14 Judge Ridenour, did you have any questions?

15 JUDGE RIDENOUR: Yes. Thank you very much.
16 Actually, I just have one quick question for
17 Mr. Goldstein.

18 With regards to the alleged forgery of the
19 returns and payments, I was wondering if you filed a
20 police report?

21 MR. GOLDSTEIN: No, I didn't. I didn't. Like I
22 said, I didn't see those until years later, until the
23 State Board presented it to me. So that's why I haven't
24 done anything. The attorney didn't advise me to do that
25 when those things came up, and I would have if I needed

1 to. I just I didn't know that those signatures were put
2 on until way years after. And I don't think they would be
3 any repercussion even if I did file a police report for
4 him.

5 I mean, people with money and power of, you know,
6 very powerful attorneys can get out of things. And then
7 little people like us, we get -- get treated totally
8 different, you know. Even talking settlement or even
9 trying to -- you know, you just feel defeated with this.
10 And even though I have to go with my heart and my gut and
11 knowing I did everything that I could to be honest about
12 all of this, and I'm still being honest about everything
13 that I'm saying to you guys.

14 I never knew there was shorting of that on a
15 regular base. I didn't know that I was going to be
16 president or CEO or all the officers with him not being on
17 the corporation. I wouldn't agree to do that. I was told
18 I was being added to the corporation.

19 JUDGE RIDENOUR: Thank you, Mr. Goldstein.

20 MR. GOLDSTEIN: Those were things that were
21 significant. And even, you know, with you guys saying
22 that, you know, we were partners. I mean, you know, that
23 came up in a conversation. It could have been just for me
24 to let the State Board give me, you know, direction and
25 put Mr. Moore on a payment plan. But it wasn't in

1 documents or any legalities. I never paid money to be a
2 partner. I never, you know, did any of those things.

3 I've owned businesses before and after. There's
4 a procedure that you take and responsibility that you
5 take. And I get now, knowing what I know, how stupid I
6 was to have done what I did, you know. It's --

7 JUDGE RIDENOUR: Mr. Goldstein, I don't want to
8 stop you. You've answered my question.

9 MR. GOLDSTEIN: Okay.

10 JUDGE RIDENOUR: I just --

11 MR. GOLDSTEIN: I'm sorry.

12 JUDGE RIDENOUR: No. No apologies. I was just
13 inquiring as to whether or not you filed a police report.
14 I diligently listened to your testimony and have taken
15 notes. So I do know it's all -- you know, I have listened
16 to everything, as my panel members have as well, so yes.

17 MR. GOLDSTEIN: Thank you.

18 JUDGE RIDENOUR: Of course. Definitely. Thank
19 you. No further questions.

20 JUDGE ALDRICH: Hi, this is Judge Aldrich. Yeah,
21 I had a question for Mr. Goldstein. So in your
22 Exhibit 19, I believe it's 102 in your exhibit packet, but
23 it's the letter from Heidi Galke. I'm not sure how to say
24 her name. But it's a September 12, 2007, letter.

25 MR. GOLDSTEIN: Are you talking about the letter

1 from the accountant, from Connie Fukushima?

2 JUDGE ALDRICH: No. It's from the -- I believe
3 she is a Successor Trustee. It's your Exhibit 19.

4 MR. GOLDSTEIN: My Exhibit 19?

5 JUDGE ALDRICH: Maybe I have the wrong exhibit.

6 MR. GOLDSTEIN: Let me see 19. Letter regarding
7 the accountant in 2002 to vacate the lot behind the
8 station. Yes.

9 JUDGE ALDRICH: Yeah. And so I was looking at
10 Item No. 2 in that letter. And it says, "National Imaging
11 Company -- James Goldstein -- as far as I remember was the
12 Mobil Station operator and such would have had direct
13 dealings with Exxon-Mobil."

14 I was just wondering if you could speak to that
15 item.

16 MR. GOLDSTEIN: Yes. Number one, she wouldn't
17 ever have knowledge if I had direct contact with
18 Exxon-Mobil because Exxon-Mobil carried the lease with
19 her, not the station, not Nick Moore. So my connection
20 with her was for the back lot behind the station and had
21 nothing to do with the front part, you know, with
22 Exxon-Mobil.

23 So, you know, direct dealings with Exxon-Mobil,
24 this is a trust that several people talked to about in the
25 trust. That you recall, you know, you wouldn't talk to

1 the same person sometimes. So I don't know how they would
2 have knowledge, but there was no reason for me, especially
3 at that time, to have direct knowledge with Mobil because
4 Mr. Moore was the only person that ever really did.

5 They wouldn't talk to anyone other than the owner
6 of the business, you know. They're not going to talk
7 to -- you know, they would treat me like a manager like
8 they treat the employees there. They wouldn't treat me
9 any different than that. And when the rep came to visit
10 the station at any time, Mr. Moore had to be present
11 there, not -- he's not going to talk to the managers or
12 the employees of the station. He wanted to talk to the
13 owner of the station. That's the way it is with Mobil.

14 So, yeah. I -- I don't believe that she would
15 have any such knowledge of any kind of communication
16 between myself and Mobil or even Nick Moore and Mobil.
17 So, yeah. I mean, I don't understand why that was even
18 put in there, but it is what it is. And that's as honest
19 as I can be with that. The only communication I had with
20 her was that -- the lot in the back. It was just an empty
21 lot that Mr. Nick Moore wanted for U-Haul, and so I set it
22 up for him.

23 JUDGE ALDRICH: Thank you, Mr. Goldstein.

24 At this point do my panel members have any
25 further questions? You can give me a non-verbal shake of

1 the head yes or no. Yeah, I'm seeing Judge Wong has a
2 couple of questions. I'm going to turn it over to him.

3 JUDGE WONG: Yes. This is Judge Wong. Thank
4 you. Sorry. I just had two questions. One for
5 Mr. Goldstein and then one for CDTFA.

6 Mr. Goldstein your Exhibit 3 is a franchise
7 agreement from Mobil.

8 MR. GOLDSTEIN: Yes.

9 JUDGE WONG: Where did you get that?

10 MR. GOLDSTEIN: So I had -- at the -- when I
11 found out that the station was being closed, I went and I
12 had personal -- you know there was a filing cabinet with
13 my personal bills because I use that office, you know,
14 every morning. So I would write personal bills or things
15 like that. So I went to the filing cabinet to take my
16 personal stuff out of there, and he had already taken all
17 of the paperwork. You know, that was already after the
18 audit procedure was happening.

19 That franchise agreement was in a file there, and
20 I wanted to take it to see what, you know, what was done
21 in this. So I happen to take that and a copy of the
22 business license and things like that. So that's where I
23 got that from originally.

24 JUDGE WONG: This is Judge Wong. Thank you.
25 Thank you.

1 And last question for CDTFA. I just wanted to
2 see if I could summarize your argument with respect to the
3 knowledge sub element of willfulness. It's basically
4 that's the NIC bought a lot of gasoline, and then they
5 underreported that by a massive amount. And Mr. Goldstein
6 is the sole corporate officer left standing, and so he
7 must have known that there was underreporting. Is that an
8 accurate summary?

9 MR. BONIWELL: I think I would like to specify a
10 little bit.

11 JUDGE WONG: Absolutely.

12 MR. BONIWELL: So yeah, the massive
13 underreporting. Over the period, NIC reported taxable
14 sales of over \$5 million, which was over \$2 million less
15 than the cost of fuel that was purchased over the same
16 period. That's what you were saying. And as president of
17 NIC and sometimes its owner, he would sign, you know,
18 returns throughout the liability period. And each of
19 those signatures, he was certifying on each return and any
20 accompanying schedules and statement that the return had
21 been examined by him and to the best of his knowledge
22 believed was a true, correct, and complete return. So he
23 knew the information on the return, and he knew that that
24 information was underreporting.

25 And Appellant's knowledge of the fuel cost and

1 sales, you know, was corroborated by his argument today
2 and earlier where he specifically argued that the
3 Department was improperly basing its figures in audit, and
4 that the company profit margin for gasoline was only seven
5 to eight cents. He was aware of the profit margins on the
6 gasoline, and he had access to the fuel records. He was
7 just explaining how he could go into the office, go into
8 the file and find business records.

9 And he testified today that, you know, he was the
10 one that would go in and take control of the records and
11 give them to the accountant when Mr. Moore was involved in
12 the business. So kind of based on the totality of this
13 evidence, you know, as president and day-to-day operator
14 of NIC, he knew that NIC sold fuel at retail for a higher
15 price than it paid. And based on his attested review of
16 the returns, he knew that NIC was underreporting its
17 taxable measure for each period, when it reported a
18 taxable measure that was less than its cost of fuel.

19 JUDGE WONG: Thank you. No further question.

20 MR. GOLDSTEIN: Can I ask a question? You know,
21 you keep saying that I knew that --

22 JUDGE ALDRICH: Mr. Goldstein, if you have a
23 question, you know, you can feel free to direct it at me.

24 MR. GOLDSTEIN: Okay.

25 JUDGE ALDRICH: But the Department is just making

1 argument, whereas, you're providing testimony. So --

2 MR. GOLDSTEIN: I'm sorry.

3 JUDGE ALDRICH: It's okay.

4 MR. GOLDSTEIN: Yeah. I just -- it's just
5 frustrating because I'm telling you I didn't know the
6 difference. It takes math. It takes an accountant to
7 figure out what you owe, and I wasn't an accountant. And
8 that's the reason why that paperwork went to an accountant
9 every single time, and she came up with the numbers. How
10 would I know it was being shorted until an audit happened?
11 It's impossible to know unless I was doing the accounting,
12 and that wasn't my role. I didn't do the accounting.

13 JUDGE ALDRICH: Thank you, Mr. Goldstein.

14 At this point, I think we're going to turn it
15 over to the rebuttal or closing statement for Appellant.

16 Mr. Nemiroff, are you prepared to provide that?
17

18 CLOSING STATEMENT

19 MR. NEMIROFF: Definitely. Anyone who knows
20 anything about a gas station knows you have to have
21 certain financial requirements to have any form of
22 interest in that gas station. Now, during my career,
23 which is more than 30 years, I have seen numerous times
24 when secretaries or officers for a corporation get held
25 liable for employment taxes and things like that by the

1 IRS, simply because they sign checks or have ostensible
2 authority.

3 And invariably when I go through the audit
4 process, the IRS goes back to the true owner. Now, my
5 client made \$24,000 a year. He had no financial interest
6 in this entity. He got put on here for reasons which he
7 explained about as well as could be explained. Meaning,
8 the man he was dealing with was a fraud. And I cannot
9 believe, either in good conscious or common sense, that
10 the State of California is going to impose a tax of
11 \$360,000 or more on a man with no financial interest in
12 this entity, who made an insignificant amount of money,
13 simply because he signed a few pieces of paper.

14 That's insane. I don't know what went through
15 the settlement negotiations with the true owner, nor did I
16 know have -- who bought the stock, presuming it was a
17 legitimate transfer. But one thing is certain. This man
18 never had a financial interest in this entity. This man
19 was a prop for a fraud. And yet, the State want to charge
20 him with \$360,000 or more in monies for something that is
21 totally beyond his financial realm.

22 What I think happened here is the State now has
23 nobody to go against because they let the true party off
24 the hook, and they've been chasing this man for more than
25 10 years. That's preposterous. It's a travesty. And

1 frankly, the State in every regard should be ashamed of
2 himself and should rule in his favor today. Is that clear
3 enough? Anybody there?

4 JUDGE ALDRICH: Yeah. Thank you, Mr. Nemiroff.

5 MR. NEMIROFF: Jesus Christ. Hello?

6 JUDGE ALDRICH: Hello. Mr. Nemiroff? I believe
7 you've unintentionally muted yourself. Mr. Nemiroff, if
8 you could press asterisk 6 to unmute.

9 MR. NEMIROFF: Hello.

10 JUDGE ALDRICH: Hello. I can hear you again.

11 MR. NEMIROFF: Okay.

12 JUDGE ALDRICH: You cut off after --

13 MR. NEMIROFF: Did you hear anything I just said?

14 JUDGE ALDRICH: So you cut off after you said,
15 "Is that clear enough."

16 MR. NEMIROFF: In that case then, I guess I
17 ended.

18 JUDGE ALDRICH: Okay. So is there anything else
19 you would like to add before we conclude, Mr. Nemiroff?

20 MR. NEMIROFF: No. I think that's about it.

21 JUDGE ALDRICH: Okay. So thank you, everyone,
22 for your time and for being flexible with the hearing
23 format. We're ready to conclude the hearing. The record
24 is now closed.

25 The judges will meet and decide the case based

1 off the evidence and the arguments presented today, and we
2 will send both parties our written decision no later than
3 100 days from today.

4 MR. NEMIROFF: Thank you.

5 JUDGE ALDRICH: There are more hearings today.
6 In fact, I believe Judge Wong and Judge Ridenour are on
7 the panel in the next hearing. Shortly we will take a
8 recess.

9 But before we do, I'd like to remind the
10 participants in the next hearing to exit this Webex
11 session and to use the previously provided link for the
12 next hearing when appropriate.

13 Thank you very much, everyone.

14 MR. GOLDSTEIN: I just want to thank all the
15 judges.

16 JUDGE ALDRICH: Thank you.

17 MR. GOLDSTEIN: Thank you for hearing this case,
18 and I hope it works out. Thank you so much.

19 JUDGE RIDENOUR: You're very welcome,
20 Mr. Goldstein. Thank you from everybody as well. Thank
21 you.

22 MR. NEMIROFF: Thank you.

23 (Proceedings adjourned at 11:36 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 27th day of October, 2021.

ERNALYN M. ALONZO
HEARING REPORTER