

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
G. COHEN,) OTA NO. 21067933
)
)
 APPELLANT.)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, March 23, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 11:10 a.m. and concluding at 11:37 a.m. on
Wednesday, March 23, 2022, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and for
the State of California.

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APPEARANCES:

Panel Lead: ALJ KENNETH GAST

Panel Members: ALJ SHERIENE RIDENOUR
ALJ TOMMY LEUNG

For the Appellant: GABRIEL
TONY NAVARRO

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

CHRISTOPHER TUTTLE
MARIA BROSTERHOUS

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-12 were received at page 7.)
(Department's Exhibits A-N were received at page 7.)

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California; Wednesday, March 23, 2022

11:10 a.m.

JUDGE GAST: Why don't we go on the record. This is the appeal of Cohen, OTA Case Number 21067933. Today is Wednesday, March 23rd, 2022, and the time is approximately 11:10 a.m. We are holding this hearing electronically with the agreement of all of the parties.

My name is Kenny Gast, and I am the lead Administrative Law Judges for this appeal. With me today are Administrative Law Judges Sheriene Ridenour and Tommy Leung.

At this point, I'd like to ask the parties to please identify yourself by stating your full name, first and last name, for the record, beginning with Appellant.

GABRIEL: My name is Gabriel. I'm the name holder of the registered business entity Gabriel Lazar Cohen. If you'd like a full name -- would you like a full name?

JUDGE GAST: Yes, please.

GABRIEL: Great. My surname is Cohen, and my given name is Gabriel Lazar. I do not have a legal name.

JUDGE GAST: Thank you. And would you like to be called Gabriel for this hearing?

GABRIEL: You can call me Gabriel or Gabe,

1 whichever suits you.

2 JUDGE GAST: Okay. Thank you very much.

3 And Franchise Tax Board?

4 MR. TUTTLE: Hello. I'm Topher Tuttle.

5 MS. BROSTERHOUS: And I'm Maria Brosterhous.

6 JUDGE GAST: Thank you.

7 And the representative for Cohen has joined, Tony
8 Navarro; is that correct?

9 GABRIEL: Has he? I'm not seeing him on the
10 screen here.

11 JUDGE GAST: I see him. I see him on the screen.

12 Mr. Navarro, can you hear us?

13 Okay. Why don't we take a quick recess for about
14 three minutes so that we can get his tech working. So
15 please mute your microphone and your video, and we will
16 try to get Mr. Navarro's tech working. Thank you.

17 GABRIEL: All right.

18 (There was a pause in the proceedings.)

19 JUDGE GAST: Okay. Mr. Navarro, you are the
20 representative for Cohen in this appeal, and we were just
21 going over basic introductions for the parties. So would
22 you please introduce yourself by stating your full name,
23 first and last, for the record.

24 MR. NAVARRO: Yes. Tony Navarro, Enrolled Agent.

25 JUDGE RIDENOUR: Judge Gast, if I may interrupt.

1 Is our stenographer back?

2 JUDGE GAST: Let me check.

3 Ms. Alonzo, are you back?

4 THE HEARING REPORTER: I'm so sorry. I did not
5 have my video on, but I have been reporting. Thank you.

6 JUDGE GAST: Okay. Thank you very much.

7 Okay. Thank you, Mr. Navarro.

8 Since we have the parties names for the record,
9 why don't we move on to the issue for this appeal. The
10 issue is whether Appellant has shown that the Franchise
11 Tax Board improperly denied Appellant's refund claim for
12 the 2017 tax year.

13 Now the exhibits, with respect to the evidentiary
14 record Appellant, has provided Exhibits 1 through 12, and
15 FTB did not object to the admissibility of these exhibits.
16 Therefore, these exhibits are entered into the record.

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

19 And FTB provided Exhibits A through N. Appellant
20 has not objected to the admissibility of these exhibits.
21 Therefore, these exhibits are entered into the record.

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

24 Now, at this point, I want to begin the parties'
25 presentations. And for Appellant either, Gabriel or

1 Mr. Navarro, you can, you know, participate in the
2 presentation for Appellant. You'll have 15 to 20 minutes.
3 If you don't need that much time, you don't have to use
4 all that time. If you need a little more time, you can
5 get a little more time as well. So if you are ready to
6 proceed with your presentation, please go ahead.

7 GABRIEL: Yes. I'm ready Judge Gast. I will
8 read a prepared statement. I can begin at any time.

9 JUDGE GAST: This is Judge Gast. Please begin.
10

11 PRESENTATION

12 GABRIEL: This is Gabriel. Thank you to the
13 Judges for being here today to help resolve this issue.
14 It's unfortunate that a hearing is necessary to resolve an
15 easily fixed clerical error on the part of Franchise Tax
16 Board. I will do my best to demonstrate the body of proof
17 in favor of Gabriel Lazar Cohen in a way that everyone can
18 understand. I would like to take a moment to ensure that
19 the Judges are properly informed, since this is an
20 uncommon circumstance but a legal one. You probably
21 already know this, so you will be able to help the FTB
22 employees understand.

23 Gabriel Lazar Cohen is not me.

24 Sorry. I'm hearing something in the background.

25 JUDGE GAST: Mr. Navarro, this is Judge Gast.

1 Can you please mute your microphone so we don't have
2 feedback.

3 Yes. You're muted now. Thank you.

4 GABRIEL: This is Gabriel. Shall I continue?

5 JUDGE GAST: This is Judge Gast. Yes, please.

6 GABRIEL: This is Gabriel. Okay. Gabriel Lazar
7 Cohen is not me. That is not my name. That is a legal
8 name. Legal names are created by the State for use in
9 commerce. My real name is a surname and a given name,
10 which is not a legal name and cannot be used in commerce
11 as it is not recognized by the legal system for such
12 purposes. Only a legal name can be identified by the
13 legal system.

14 All states require that any name used to transact
15 business for a profit must be registered, and all have
16 their own version of this requirement somewhere in their
17 statutes. State of California has this in its Business
18 and Profession Code Section 17900. Legal names are
19 exempted from this requirement, but I chose to register it
20 anyway with the Minnesota Secretary of State. Minnesota
21 is the only state which allows a living man with a surname
22 and a given name to be the name holder, rather than the
23 owner, as that would be legally impossible.

24 Once that legal name is registered, it is no
25 longer in contract with State of California. Only my name

1 is in the name holder field of the assumed name
2 certificate, the principal document provided in Exhibit 2
3 of the Appellant exhibit log. Gabriel Lazar Cohen may
4 transact business legally for a profit without
5 interference from any entities it is not in contract with.
6 It is a private entity, not a public one, meaning it is
7 not a franchise like an unregistered legal name is.

8 The registration of the legal name Gabriel Lazar
9 Cohen creates the assumed business name, Gabriel Lazar
10 Cohen, the very same name. The business bank account that
11 Gabriel Lazar Cohen holds connects this assumed business
12 name to the tax identifier number associated with it, as
13 well as further proving that it is a business name and not
14 a personal name. Gabriel Lazar Cohen has always been a
15 legal fiction. It is the registration of that name that
16 changes the nature of it and who controls it.

17 I will now describe the series of events
18 regarding the 2017 dispute. In July of 2019, Gabriel
19 Lazar Cohen received a letter from Franchise Tax Board,
20 Exhibit A in the Respondent log. The letter incorrectly
21 claimed that this business entity had a personal income
22 tax liability and owed funds to Franchise Tax Board based
23 on nontaxable business income it earned from Etsy
24 Incorporated. This misunderstanding was due to an
25 automated reporting process between Franchise Tax Board

1 and credit card processing companies, in this case, Etsy
2 Incorporated. These companies have no ability to
3 distinguish between registered and unregistered entities.

4 Gabriel Lazar Cohen, a registered business
5 entity, was treated as though it were unregistered. Once
6 made aware of this, Franchise Tax Board should have
7 resolved the error immediately. Exhibit B is my response
8 to Franchise Tax Board. I explained that Gabriel Lazar
9 Cohen was not my name but a business entity registered
10 with the Minnesota Secretary of State with myself as the
11 name holder. And since I did not have a legal name, there
12 was no personal name that FTB could legally tax.

13 I gave a detailed and descriptive explanation in
14 order to alleviate the confusion immediately, and included
15 the government issued identity documents to prove that
16 everything in my letter was true. When initially handling
17 the 2017 dispute, I was under the mistaken impression that
18 Franchise Tax Board, being a publicly accountable agency,
19 was strict in its adherence to the law. If I had known
20 this wasn't the case, my business would have hired an
21 enrolled agent much sooner.

22 Upon receiving Exhibits C and E, I was not
23 certain how to deal with the situation. Franchise Tax
24 Board was deliberately disregarding the evidence I was
25 providing, and the issue quickly escalated. I sent a

1 letter to their legal division informing them of their
2 error and providing another copy of the business
3 documents, the assumed name certificate and the
4 certificate of existence and registration. I received no
5 response.

6 I filled out and returned the questionnaire in
7 Exhibit F making sure to avoid perjuring my business
8 entity, since all of Franchise Tax Board's forms confound
9 living men and nonliving entities. As the dispute
10 festered, I contacted the Taxpayer Advocacy Group as seen
11 in Exhibit K, but they provided no help. Facing coercion
12 and threats, Gabriel Lazar Cohen was forced to act against
13 its financial interest and pay the un-owed amount. I
14 could not take any chances at jeopardizing its good
15 standing and simply had to protect it from further damage.

16 My intention was to dispose of the problem and
17 pursue reimbursement when my business was no longer in
18 direct danger. Two months later an identical dispute
19 began, this time for 2018 tax year. The events of this
20 dispute are all explained in Exhibit 12 of the Appellant
21 exhibit log, but in the interest of having this on the
22 verbal record, I will explain these events again.

23 Exhibit 6 is the initial demand letter my
24 business received from Franchise Tax Board's filing
25 enforcement section. Exhibit 7 was the questionnaire,

1 included with the Exhibit 6 letter, filled out and
2 returned. Exhibit 8 is a letter from the Business
3 Division requesting bank statements for the 2018 tax year.
4 Note that Franchise Tax Board was no longer demanding but
5 requesting documentation. Exhibit 9 is the full year's
6 business bank statements for 2018 provided to the Business
7 Division with Exhibit 10 being the proof of receipt.

8 FTB's date stamp on this receipt reads
9 October 23rd, 2020. Exhibit 11 is the Proposed Assessment
10 Notice from the filing enforcement section, dated
11 October 28th, 2020, in which it says, quote, "As of this
12 notice date, we have no record of receiving your tax
13 return or information establishing that you do not have a
14 filing requirement," unquote. Exhibit 10 proves this
15 statement to be untrue.

16 After this assessment was received, my business
17 entity hired Tony Navarro as a mediator so that the 2018
18 dispute would not end up like the 2017 one. On
19 December 11th, 2020, a conference call was made to
20 Business Division. Tony Navarro facilitated this call,
21 which I also participated in. The FTB representative was
22 uncooperative and frequently confounded Gabriel Lazar
23 Cohen and myself. I eventually convinced him to speak to
24 a superior, but he still gave no indication that he was
25 able or willing to resolve the dispute or undertake

1 actions to that end.

2 Finally, Exhibit 5 is the confirmation letter
3 dated December 3rd, 2020, received December 15th, 2020, in
4 which Franchise Tax Board formally ceased its dispute. As
5 I stated in Exhibit 12 -- my apologies for this one
6 exhibit being out of sequence as it was previously
7 included just by itself. The FTB representative in the
8 December 11th call made no mention of this letter, which
9 would have already been in the mail by then, even though
10 he repeatedly referenced other communications, which did
11 show up in the computer database.

12 With the 2018 dispute resolved, I began the
13 process of obtaining a resolution to the 2017 dispute;
14 Exhibit L in the Respondent log. It is illogical that
15 Franchise Tax Board would treat the two disputes
16 differently. The identical nature of the two and
17 Franchise Tax Board's inconsistent handling of them is
18 self-evident.

19 Mr. Tuttle made several incorrect statements in
20 his initial brief, which he will undoubtedly reuse in his
21 statement today. I will preemptively correct these for
22 the record. The letter begins with Dear Mr. Cohen. There
23 is no Mr. Cohen. That is not me, and it's not the
24 business entity either. There is Gabriel Lazar Cohen, the
25 registered business, and there is me, the name holder.

1 And my name is Gabriel Lazar. That is not a legal name.
2 It is a given name. You can call me Gabriel or Gabe, but
3 my name is not Mr. Cohen, and it's not Mr. Lazar either.

4 There are instances throughout the letter of the
5 words your or you, which are too numerous to call
6 attention to. These are all incorrect. Gabriel Lazar
7 Cohen is not me. "You" should instead be "it". In the
8 section inappropriately titled "Facts", Mr. Tuttle claims
9 that the business entity received sufficient income to
10 prompt a return filing retirement. That's not true.
11 Gabriel Lazar Cohen is a pass-through entity with no
12 filing requirement, regardless of how much income it
13 earns.

14 On the top of page 2 of the letter, it says that
15 I contested that the income was generated by a business.
16 Perhaps he meant contended instead of contested. I did not
17 contest it. I proved it. Following this it says that I
18 contended that the business was a separate legal entity.
19 That's not correct either. The word separate indicates
20 that there's more than one of something. There isn't.
21 There is just the entity. That's it.

22 The sole proprietorship is the assumed business
23 name, Gabriel Lazar Cohen. The sole proprietor is the
24 registered legal name, Gabriel Lazar Cohen, neither one of
25 which is me. There is no legal distinction between the

1 two. I am not the sole proprietor. I am the name holder
2 of that registered business entity.

3 At the bottom of page 2, there is another
4 improper usage of the word contend. The correct word here
5 is prove. I proved that the income was business income
6 and not personal income. The proof is the assumed name
7 certificate and the business bank account statements. At
8 the top of page 3, the sentence begins with, "California
9 residents." Anything that applies to California residents
10 is irrelevant in this case because Gabriel Lazar Cohen is
11 not a California resident. It can't be because it doesn't
12 reside anywhere. It is a legal fiction.

13 Line 3 states, "Within California." Again,
14 Gabriel Lazar Cohen is a legal fiction. It does not and
15 cannot transact business in a location. It's a non-living
16 entity and all of its revenue is generated through
17 electronic transactions. Paragraph 2 here also
18 incorrectly states, "As a California resident you are
19 required"... Gabriel Lazar Cohen is not a California
20 resident as it is a non-living legal entity. I am not a
21 California resident either, as I do not have a legal name
22 and, therefore, no civil existence.

23 The second to last paragraph states, "To date you
24 have not provided evidence to contradict FTB's
25 assessment." That's not true. I provided this evidence

1 multiple times. The employees of Franchise Tax Board,
2 including Mr. Tuttle, ignored the evidence, but it was
3 repeatedly provided. The separate business entity theory
4 is repeated shortly thereafter, as well as a claim that
5 the income belongs to me personally.

6 The income does not and cannot belong to me.
7 That would be legally impossible. It belongs to Gabriel
8 Lazar Cohen. Income can only belong to a legal entity,
9 not to a living man. Once again, the business bank
10 account statements prove this claim to be wrong. Since I
11 have already provided ample proof that the amount in
12 question was not legally owed in the first place, this
13 renders the delinquent filing penalty section and interest
14 section on page 4 irrelevant.

15 The final incorrect statement is Mr. Tuttle's
16 conclusion in which he says, quote, "Since you have failed
17 to demonstrate error in FTB's proposed assessment, and you
18 have not established any grounds for abatement of the
19 delinquent filing penalty or interest, FTB's action
20 denying your claim for refund must be sustained," unquote.
21 This statement is disproven by Mr. Tuttle's very own
22 exhibit log, which provide numerous examples of Gabriel
23 Lazar Cohen's business documents that evidence its legal
24 standing.

25 That is all I have to say for now. Thank you for

1 your time.

2 JUDGE GAST: Thank you. This is Judge Gast.
3 Does that conclude your presentation?

4 GABRIEL: That includes part one. I was informed
5 that I would speak, then Mr. Tuttle would get to speak,
6 and I would get to read a shorter concluding statement; is
7 that correct?

8 JUDGE GAST: That is correct, yes.

9 Mr. Navarro, do you have anything you would like
10 to present as well? You are muted.

11 MR. NAVARRO: Yes. I appreciate it. That is --
12 the statement as presented is in agreement with the facts
13 that I know.

14 JUDGE GAST: Okay. Thank you, Mr. Navarro.

15 MR. NAVARRO: Thank you.

16 JUDGE GAST: Okay. At this point I'd like to
17 turn it over to the Franchise Tax Board for its
18 presentation.

19 Mr. Tuttle, whenever you're ready, you may begin.

20 MR. TUTTLE: Thank you.

21

22 PRESENTATION

23 MR. TUTTLE: Good morning. My name is Topher
24 Tuttle, and I'm representing Respondent Franchise Tax
25 Board today. With me is Maria Brosterhous, also with the

1 Franchise Tax Board.

2 The issue in this case is whether Appellant has
3 demonstrated error in Respondent's assessment such that
4 its claim for refund should be granted. This case arises
5 from payment information Respondent received, which
6 indicated that Etsy Inc. reported paying Appellant
7 approximately \$35,000 during tax year 2017. After
8 Appellant failed to file an income tax return or otherwise
9 demonstrate why he did not need to file, Respondent issued
10 a proposed assessment based on the income Appellant
11 received from Etsy Inc. Appellant subsequently paid the
12 amount due and filed the claim for refund.

13 Under California law, residents are taxed on
14 their entire taxable income, and income from a business
15 carried on within California is sourced to California.
16 The law also requires every individual subject to tax to
17 file a tax return if the individual meets specific filing
18 thresholds. On the tax return the individual must
19 specifically state the items of their gross income from
20 all sources and any deductions and credits allowable.
21 Thus, an individual who received gross income or adjusted
22 gross income in excess of the threshold levels for the
23 appeal year must file a tax return.

24 In this case, Appellant received gross income
25 which exceeds the 2017 filing thresholds. As a result

1 Appellant was required to file a tax return for tax year
2 2017. When Appellant did not file, Respondent properly
3 made an assessment based on an estimate of Appellant's
4 income. When Appellant later paid the balance due,
5 Respondent properly denied Appellant's claim for refund.

6 Appellant has made a misguided argument that his
7 sole proprietorship is a separate entity. Although
8 Appellant has registered a business name with the
9 Minnesota Secretary of State, he has not demonstrated that
10 the business was incorporated, organized into a limited
11 liability company, or otherwise establish as a separate
12 business entity for tax purposes. It is noteworthy that
13 the payments reported by Etsy Inc. were tied to
14 Appellant's personal tax ID number, and that no business
15 income tax return was filed by Appellant's business.

16 For California income tax purposes, a sole
17 proprietorship operates as an individual. This requires
18 the individual to report all business income or losses on
19 their individual income tax return. Since Appellant has
20 failed to demonstrate error in Respondent's proposed
21 assessment, Appellant has also failed to demonstrate that
22 his claim for refund should be granted. As a result,
23 Respondent's action denying Appellant's claim for refund
24 should be sustained.

25 Thank you.

1 JUDGE GAST: This is Judge Gast. Thank you,
2 Mr. Tuttle.

3 At this point I'm going to turn it over to my
4 co-panelist to see if they have any questions for the
5 parties. I'm going to ask first Judge Ridenour.

6 Do you have any question?

7 JUDGE RIDENOUR: Hello. This is Judge Ridenour.
8 No questions. Thank you very much.

9 JUDGE GAST: This is Judge Gast speaking. Thank
10 you.

11 Judge Leung, do you have any questions for the
12 parties?

13 JUDGE LEUNG: This is Judge Leung. Judge Gast, I
14 have no questions. Thank you.

15 JUDGE GAST: Thank you very much, Judge Leung.

16 And, Gabriel, you will have the last word.
17 You'll have five minutes on rebuttal here, and you may
18 proceed whenever you're ready.

19

20 CLOSING STATEMENT

21 GABRIEL: This is Gabriel. To Mr. Tuttle,
22 refusing to acknowledge legal facts doesn't make them any
23 less true, nor does it make them go away. Likewise,
24 bogging down the proceedings with irrelevant or untrue
25 statements will not accomplish anything productive for

1 your party. There are enough legal professionals present
2 to review the facts and facilitate a legal resolution.

3 To the Judges, I have presented all the facts,
4 including a complete body of proof regarding everything
5 used to resolve the identical issue for the 2018 tax year.
6 Franchise Tax Board's entire position relies on one
7 premise, that I am Gabriel Lazar Cohen. I have repeatedly
8 proven with government issued documents that I am not.

9 This dispute is not about anything more than a
10 clerical error caused by excessive automation without
11 human oversight. Franchise Tax Board's resolution of the
12 2018 dispute proves that Gabriel Lazar Cohen does not
13 legally owe a personal income tax for 2017 either, and
14 that Franchise Tax Board is legally obligated to return
15 the funds.

16 Coercion, tort, and unjust enrichment are all
17 serious offenses to commit against a registered business
18 entity, and ignorance of the law is no excuse. Failing a
19 legal outcome in this setting, Gabriel Lazar Cohen will
20 have the prima facia evidence to prove that Franchise Tax
21 Board deliberately disregarded the law having been made
22 aware of it ad nauseam and in front of a panel of
23 Administrative Law Judges no less.

24 I hope this hearing is not just another dead end
25 and that a legal outcome can be reached. It would be

1 preferable to resolve such a simple dispute without having
2 to resort to legal action.

3 That is the end of my statement. Thank you.

4 JUDGE GAST: This is Judge Gast speaking. Thank
5 you.

6 I'm going to turn to my co-panelists one more
7 time to see if they have any questions for the parties
8 before we conclude the hearing.

9 Judge Ridenour?

10 JUDGE RIDENOUR: This is Judge Ridenour. No
11 questions. Thank you very much.

12 JUDGE GAST: Thank you.

13 And Judge Leung?

14 JUDGE LEUNG: This is Judge Leung. I have no
15 questions. Thank you.

16 JUDGE GAST: Thank you.

17 And I do not have any questions myself. So at
18 this point, this concludes the hearing, and I want to
19 thank the parties for their presentations. We will meet
20 and decide the case based on the arguments and documents
21 presented. We will issue our written decision no later
22 than 100 days from today.

23 The case is submitted, and the record is now
24 closed.

25 (Proceedings adjourned at 11:37 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 7th day of April, 2022.

ERNALYN M. ALONZO
HEARING REPORTER