

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
G. COHEN

) OTA Case No. 21067933
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant:

Tony Navarro, Enrolled Agent
Gabriel Lazar, Nameholder of
Gabriel Lazar Cohen

For Respondent:

Christopher T. Tuttle, Tax Counsel III

K. GAST, Administrative Law Judge: On April 12, 2022, Office of Tax Appeals (OTA) issued an Opinion sustaining respondent Franchise Tax Board’s (FTB) denial of appellant’s claim for refund for the 2017 tax year. Appellant timely filed a petition for rehearing (petition) under Revenue and Taxation Code (R&TC) section 19048. Upon consideration of appellant’s petition, OTA concludes appellant has not established a basis for a rehearing.

A rehearing may be granted where one of the following six grounds exists, and the substantial rights of the complaining party (here, appellant) are materially affected: (1) an irregularity in the appeal proceedings which occurred prior to issuance of the Opinion and prevented fair consideration of the appeal; (2) an accident or surprise which occurred during the appeal proceedings and prior to the issuance of the Opinion, which ordinary caution could not have prevented; (3) newly discovered, relevant evidence, which the filing party could not have reasonably discovered and provided prior to issuance of the Opinion; (4) insufficient evidence to justify the Opinion; (5) the Opinion is contrary to law; or (6) an error in law in the appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6).)

Appellant argues three grounds to support the petition: (1) there was an irregularity in the appeal proceedings that occurred prior to issuance of the Opinion and prevented fair

consideration of the appeal; (2) there is insufficient evidence to justify the Opinion; and (3) the Opinion is contrary to law. Since appellant’s contentions to support each of the three grounds are essentially related, OTA addresses them together.

For the first ground, an irregularity in the proceedings has been defined as any departure by OTA from the due and orderly method of disposition of an action by which the substantial rights of a party (here, appellant) have been materially affected. (*Appeal of Graham and Smith*, 2018-OTA-154P.) For the second ground, to find that there is an insufficiency of evidence to justify the Opinion, OTA must find that, after weighing the evidence in the record, including reasonable inferences based on that evidence, OTA clearly should have reached a different conclusion. (*Appeals of Swat-Fame, Inc., et al.*, 2020-OTA-045P.) For the third ground, “the ‘contrary to law’ standard of review shall involve a review of the Opinion for consistency with the law.” (Cal. Code Regs., tit. 18, § 30604(b).) To find that the Opinion is contrary to law, OTA must determine whether the Opinion is unsupported by any substantial evidence, which requires a review of the Opinion to indulge in all legitimate and reasonable inferences to uphold it. (*Appeals of Swat-Fame, Inc., et al., supra.*) The relevant question is not over the quality or nature of the reasoning behind the Opinion, but whether the Opinion can or cannot be valid according to the law. (*Ibid.*) In its review, OTA considers the evidence in the light most favorable to the prevailing party (here, FTB). (*Ibid.*)

Appellant essentially renews contentions in the underlying appeal, but this time recasts them as allegations that OTA used “falsified testimony” in the Opinion. For example, appellant contends the Opinion incorrectly determined the sole proprietorship, Gabriel Lazar Cohen, was solely owned by an individual named Gabriel. Appellant reasons this cannot be true because the sole proprietorship has no owner but rather has a “nameholder.” As another example, appellant further contends, “A living man cannot be a taxpayer, only a person can, whether registered or not, and whether or not any tax liability exists regarding it. GABRIEL LAZAR COHEN is a person, a registered person.” (All caps in original.) For these reasons and others, appellant argues the three grounds noted above support granting the petition.

However, as determined in the Opinion, appellant’s contentions are frivolous and without merit. Therefore, OTA did not commit an irregularity in the appeal proceedings prior to issuance of the Opinion, there is sufficient evidence to justify the Opinion, and the Opinion is not contrary to law. In short, appellant’s dissatisfaction with the Opinion and attempt to reargue the same

issue does not constitute grounds for a rehearing. (*Appeal of Graham and Smith, supra.*)
Consequently, OTA denies appellant’s petition.¹

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Kenneth Gast
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Kenneth Gast
Administrative Law Judge

We concur:

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Cheryl L. Akin
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Cheryl L. Akin
Administrative Law Judge

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Keith T. Long
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Keith T. Long
Administrative Law Judge

Date Issued: 7/1/2022

¹ As OTA advised in the Opinion, appellant is advised again that OTA has the statutory authority to impose a penalty of up to \$5,000 if it finds that an appeal before it has been instituted or maintained primarily for delay or that a taxpayer’s position in the appeal is frivolous or groundless. (R&TC, § 19714; see also Cal. Code Regs., tit. 18, § 30217.) Although OTA did not impose that penalty in this proceeding, appellant’s positions in this appeal suggest that such a penalty may be warranted in the future should appellant file another appeal with OTA raising the same or similar issues.