

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
M. KRAUSS and I. KRAUSS,) OTA NO. 18011166
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, November 17, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 10:14 a.m. and concluding at 10:56 a.m.
on Thursday, November 17, 2022, reported by
Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ RICHARD TAY

Panel Members: ALJ JOSHUA LAMBERT
ALJ EDDY LAM

For the Appellant: JOSEPH B. SPRUNG

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
SONIA WOODRUFF
NATHAN HALL

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-8 were received at page 6.)
(Department's Exhibits A-O were received at page 6.)

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California; Thursday, November 17, 2022

10:14 a.m.

JUDGE TAY: We are opening the record in the Appeal of Krauss before the Office of Tax Appeals, Case Number 18011166. The hearing is being convened virtually on November 17th, 2022. It is 10:14 a.m. Today's case is being heard and decided equally by a panel of three judges.

My name is Judge Richard Tay, and I will be acting as the lead judge for the purpose of conducting this hearing. Also on the panel with me today are Judges Josh Lambert and Eddy Lam.

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

MR. SPRUNG: Joseph Sprung.

JUDGE TAY: Thank you.

And Respondent.

MS. WOODRUFF: Sonia Woodruff.

MR. HALL: Nathan Hall on behalf of Respondent.

JUDGE TAY: Thank you.

The issue we will discuss today is whether Appellants have shown that Respondent erred in disallowing a charitable deduction in the amount of \$1,456,550 for the 2019 tax year. Prior to the hearing we circulated the

1 exhibits submitted by both parties in a file we call a
2 hearing binder. It contains Appellant's Exhibits 1
3 through 8 and Respondent's Exhibits A through O. There
4 were no objections to admitting the exhibits into
5 evidence.

6 Is that right, Appellant?

7 MR. SPRUNG: Correct.

8 JUDGE TAY: And Respondent?

9 MS. WOODRUFF: That's correct.

10 JUDGE TAY: Thank you.

11 The exhibits will now be admitted into evidence.

12 (Appellant's Exhibits 1-8 were received
13 in evidence by the Administrative Law Judge.)

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

16 I would like to begin our presentations. We will
17 start with opening statements. Before we begin, I would
18 like to swear in Mr. Sprung who will be testifying.

19 So Mr. Sprung, if you would please raise your
20 right hand.

21
22 JOSEPH B. SPRUNG,
23 produced as a witness, and having been first duly sworn by
24 the Administrative Law Judge, was examined and testified
25 as follows:

1 JUDGE TAY: Okay. Thank you. Mr. Sprung, you
2 have 10 minutes for your opening statement. Please begin
3 whenever you're ready.
4

5 OPENING STATEMENT

6 MR. SPRUNG: Okay. Basically, this deals with a
7 situation whether my company JBS Financial or its
8 affiliates are able to receive funds as a bank and have --
9 my companies have always acted in effect as a quasi-bank
10 for people like Milton Krauss, for people that are in the
11 hedge fund or sell information to the hedge fund business.

12 As I have shown in my -- in my exhibits, my
13 companies have invested for the client before and have
14 shown a fantastic -- have shown at least an equal or
15 greater than return on their investments, both personally
16 and through the foundation. And this was during a period
17 when individuals and companies were reluctant to keep too
18 many funds in one place at the same time, particularly,
19 since this came right after the Bernie Madoff situation.

20 And I have shown the proof of that where I was
21 listed -- named in a bunch of newspaper articles where we
22 were smart enough not to have invested with Madoff where
23 the organizations I belong to people have lost -- had lost
24 tons of money. And I'm a very trusted individual that
25 people invest with.

1 The Krauss Charitable Foundation invested
2 \$1.5 million into my company to be held on behalf of the
3 foundation and provided a return that was greater than any
4 other investment that the foundation had. In fact, the
5 first return on the investment was a check for \$75,000
6 that was received and cashed by the foundation in 2010,
7 which was three years before this audit commenced.

8 Now, my question is to the State and to
9 Ms. Woodruff. Why, if this was not a bona fide
10 transaction, would my companies have sent the check to the
11 Krauss Foundation for \$75,000 if this was not a bona fide
12 investment on the behalf of the foundation. That is
13 really the crux of what the matter is. And I think I've
14 submitted enough proof to show that I am definitely in a
15 position to handle these types of investments.

16 We've handled them before. There's never been
17 one complaint about me or my companies. In fact, I have
18 letters commending me and my companies for my over
19 35 years in business, and it was a bona fide investment.
20 The client that year made approximately \$20 million, has
21 done a tremendous amount of good for the State of
22 California for the amount he has donated to organizations
23 within California. And a lot of that was possible from
24 investments he has made through me. Okay.

25 Thank you.

1 JUDGE TAY: Thank you, Mr. Sprung. I'm going to
2 turn to FTB for 5 minutes for their opening statement, and
3 then, Mr. Sprung, I'll go back to you and you'll have
4 15 minutes to make your presentation. Okay.

5 So Respondent, you have 5 minutes. Please
6 proceed whenever you're ready.

7

8 OPENING STATEMENT

9 MS. WOODRUFF: All right. Thank you, Judge Tay
10 and Panel members.

11 My name is Sonia Woodruff, and I'm joined this
12 morning by my co-counsel, Nathan Hall, and we represent
13 the Franchise Tax Board in this matter.

14 This case asks whether Appellants had satisfied
15 their burden of proof in showing error in Respondent's
16 assessment of additional tax, or they have not shown they
17 actually transferred \$1.5 million to their private
18 foundation, the Krauss Charitable Foundation. They argue
19 that two transfers of \$750,000 to their personal broker
20 and accountant, Mr. Joseph Sprung, were actually intended
21 to be held for the foundation.

22 However, the foundation did not issue any sort of
23 contemporaneous written acknowledgment of the donation as
24 required by law. The funds were held in commingled
25 accounts with money from other investors and never

1 separated into a named account for the foundation.

2 There's no proof Mr. Sprung was acting as an agent on
3 behalf of the foundation in holding those funds, rather
4 than as a personal investment for the Appellants.

5 Appellants have failed to show that they
6 contributed \$1.5 million to their foundation in 2009, and
7 they cannot deduct amount as a charitable contribution.
8 IRC Section 170(a)(1) provides the charitable contribution
9 shall be allowable only if verified under regulations
10 prescribed by the secretary. Taxpayers have to conform to
11 the substantiation requirements imposed by the
12 regulations.

13 So today I will explain why the facts in this
14 case reflect that number one, Appellants failed to satisfy
15 the contemporaneous written acknowledgement requirement.
16 Number two, Appellants have failed to show they gave
17 dominion and control over the \$1.5 million over to the
18 private foundation. Number three, they failed to show
19 Mr. Sprung was an authorized agent of the foundation and
20 the funds were kept in a separately named account --
21 foundation account.

22 And finally, I will explain why Appellants cannot
23 avail themselves of a substance over form argument because
24 the facts simply do not show that the claimed \$1.5 million
25 was handed over to the foundation in 2009.

1 Thank you.

2 JUDGE TAY: Thank you, Respondent.

3 I'm going to move over to Appellants, again, for
4 their presentation.

5 Mr. Sprung, you have 15 minutes to make your
6 presentation. Please begin whenever you are ready.

7

8 PRESENTATION

9 MR. SPRUNG: I could use the full 15 minutes in
10 order to make my presentations, but I think the fact that
11 Ms. Woodruff and the State are making the claim that I'm
12 not -- that's a call -- do banks comingle funds? When you
13 put your money into a bank, are those funds segregated?
14 There's a separate account that was kept, a ledger for the
15 Krauss Charitable Foundation. And if this was not the
16 case, why would my organization write -- pay the Krauss
17 Charitable Foundation a return on their investment if
18 these funds were not in half -- made not by the Krauss'
19 but by the Krauss Charitable Foundation.

20 You have a copy of my check of \$75,000 that was
21 written on December 20th, 2010, to the foundation from my
22 organization. Why, in fact, would that have been made if
23 this was not an investment from the foundation -- from the
24 foundation -- on behalf of the foundation? This was
25 done -- these checks were issued three years prior to the

1 conducting of the audit.

2 That's all I need to say for -- in terms of my
3 presentation because everything else is, you know,
4 irrelevant, I think.

5 JUDGE TAY: Okay. Mr. Sprung, does that
6 conclude, then, your presentation?

7 MR. SPRUNG: That was my presentation.

8 JUDGE TAY: Thank you.

9 I'm going to turn to my panelists to see if they
10 have any questions right now for Mr. Sprung.

11 Judge Lambert, I'm going to turn to you first.
12 Do you have any questions?

13 JUDGE LAMBERT: This is Judge Lambert. I have no
14 questions at the time. Thanks.

15 JUDGE TAY: Thank you.

16 And Judge Lam, do you have any questions?

17 JUDGE LAM: Sorry. I was on mute. No, I do not
18 have any questions. Thank you.

19 JUDGE TAY: I have one question for Mr. Sprung.
20 When -- so to -- so I understand the facts, the Krausses,
21 they transferred about \$1.5 million to your companies, and
22 that was free and clear of any restrictions. In other
23 words, they were not owners of those funds anymore; is
24 that correct?

25 MR. SPRUNG: 100 percent correct. They were the

1 owners of the funds, and those funds were invested for
2 them to investment and to -- for the foundation. The
3 Krauss' charitable -- the Krausses sent the money to the
4 foundation as a donation for the Krauss Charitable
5 Foundation for me to invest on behalf of the foundation.
6 I received -- my companies received the 1.5 and the
7 returns on that investment had all been paid to the
8 foundation in subsequent years.

9 JUDGE TAY: Okay. So did the Krausses have any
10 right to withdraw from those funds?

11 MR. SPRUNG: The Krausses themselves? No
12 absolutely not. No. It was the foundation. The only
13 people that could have withdrawn from that is the
14 foundation.

15 JUDGE TAY: Okay. Are there any documents in the
16 record that can attest to what you're testifying to right
17 now?

18 MR. SPRUNG: I think there were letters that --
19 from the foundation telling me to invest the -- on behalf
20 of the foundation, and the fact that they received my
21 checks, the return on the investment. Why would I send
22 money to the foundation if this was not an investment on
23 behalf of the foundation?

24 JUDGE TAY: Okay. Thank you, Mr. Sprung.

25 Let's see. I'm going to move on and allow

1 Respondent 15 minutes for its presentation.

2 Ms. Woodruff, please begin whenever you're ready.

3 MS. WOODRUFF: All right. Thank you, Judge Tay.

4

5 PRESENTATION

6 MS. WOODRUFF: This assessment in this case stems
7 from Respondent's denial of a \$1.5 million claimed
8 charitable contribution deduction. And Appellants haven't
9 shown that they ever actually gave that amount to the
10 Krauss Charitable Foundation. They claimed over \$5
11 million in charitable contributions on Schedule A of their
12 2009 personal income tax returns. Appellants private
13 foundation, the Krauss Charitable Foundation, indicated
14 that it received a total of \$5 million in contributions in
15 the same year.

16 During Respondent's audit and protest
17 proceedings, however, Appellants were only able to show
18 that approximately \$3.6 million actually went to the
19 foundation's account, leaving more than \$1.4 million
20 missing from the foundation's only known named account of
21 record, and that was the Wells Fargo Bank account.
22 Appellants later claimed that this amount should have
23 actually been \$1.5 million and provided personal bank
24 statements reflecting two withdrawals of \$750,000 in
25 December of 2009.

1 There's no check or other document to show
2 exactly where these amounts were deposited. Appellants
3 maintained that they transferred the funds to JBS, which
4 included entities operated by Mr. Sprung. Appellants
5 provided reconciliation reports from JBS reflecting
6 \$750,000 paid to Chelsea Equities Corporation and \$750,000
7 to Adlor Equities LLC. The Krauss Foundation does not
8 appear to control or operate or have a stake or interest
9 in either of these companies.

10 So because these transfers do not appear to be
11 transfers to a charitable organization, meeting the
12 requirements of Internal Revenue Code Section 170,
13 Respondent denied the contribution deduction for those
14 amounts. Under Internal Revenue Code Section 170(a)(1), a
15 charitable contribution shall be allowable only if
16 verified under regulations prescribed by the secretary.
17 Proof of the charitable contribution is specifically
18 required by the Internal Revenue Code. Those requirements
19 include a contemporaneous written acknowledgement from the
20 donee organization.

21 IRC Section 170(f)(8)(a) provides that generally
22 no deduction shall be allowed under subsection (a) for any
23 contribution of \$250,000 or more, unless the taxpayer
24 substantiates that contribution by a contemporaneous
25 written acknowledgment that meets the requirements of

1 subparagraph (b). Subparagraph (b) then provides that the
2 acknowledgment must include the amount of cash in a
3 statement of whether the organization provided any goods
4 or services as consideration for that contribution.

5 Subparagraph (c) then provides the timing rules
6 for when a taxpayer must obtain this acknowledgment, and
7 that's generally before the due date of the return or the
8 date the return was actually filed. Now, in tax year 2009
9 this acknowledgment was not required if the donee
10 organization included those statements in its information
11 return filed for the year. Here, Appellants could not
12 show any contemporaneous written acknowledgment showing
13 that the foundation actually received those funds, and
14 that no goods or services were offered in exchange.

15 Similarly, the foundation's Form 990 also did not
16 reflect this specific information regarding the claimed
17 charitable contribution. Accordingly, Appellant's failed
18 to meet the specific documentation requirements of IRC
19 Section 170 and may not claim a deduction for the claim to
20 \$1.5 million. Second, Appellants did not comply with the
21 regulations underlying Internal Revenue Code Section 170,
22 which provide additional rules related to charitable
23 gifts.

24 Treasury Regs Section 1.17 A-1(b), requires a
25 contribution to a charity to be unconditionally delivered.

1 The donor must transfer all dominion and control over the
2 property to a donee. Retaining any amount of dominion or
3 control over the gift renders it incomplete. Here
4 Appellants argue they paid \$1.5 million to their
5 foundation but transferring those amounts to their
6 personal broker, although all of the foundation's
7 remaining investments were in a separate Wells Fargo Bank
8 account.

9 Appellants' broker Mr. Sprung has stated that the
10 \$1.5 million was not kept in a separately named account
11 for the foundation. Instead, the funds were deposited
12 into two existing accounts held by the broker for Chelsea
13 Equities Corporation and Adlor Equities LLC. The
14 ownership structure of these companies is not clear.
15 However, they do not appear to have been controlled by the
16 Krauss Charitable Foundation.

17 So it has to be noted that Appellants also
18 conduct a personal trading and consulting business under
19 the name of Chelsea Trading. And so it's reasonable to
20 assume that Appellants' personal business may be
21 associated with one of the companies to which \$750,000 was
22 deposited and claimed as a charitable contribution. But
23 this fact cast further doubt over the question of whether
24 the Krauss Charitable Foundation ever had any actual
25 control or dominion over the funds deposited with JBS.

1 But regardless of the relationship of the
2 business entities involved, it's clear that Appellants did
3 not relinquish dominion and control over this \$1.5 million
4 to their foundation. The money went instead to business
5 entities operated by Appellants' investment manager,
6 Mr. Sprung. And there's no documentary evidence that the
7 foundation had any legal claim or control over these
8 significant funds.

9 Third, Appellants argue that Mr. Sprung acted as
10 an agent in merely holding the funds on behalf of the
11 foundation. And they cite to Treasury Reg Section
12 170 A-(1)(b) in noting that the delivery of a stock
13 certificate to an agent or broker will be considered a
14 completed gift for purposes of the timing of that gift.
15 First, the language of that regulation specifically
16 applies to stock certificates, rather than to cash
17 donations.

18 But second, and perhaps more importantly, there
19 is no evidence that Mr. Sprung was acting on behalf of the
20 foundation in accepting the \$1.5 million in cash from
21 Appellants. Mr. Sprung also acted as the personal
22 accountant and investment manager for Appellants. And so
23 it's uncertain whether he held that money for the benefit
24 of the Appellants individually or for their private
25 foundation.

1 Furthermore, Mr. Sprung alleges he acted as an
2 agent for the foundation just as Wells Fargo Bank acted as
3 an agent for the foundation in holding a separately
4 identified and named account in the name of the Krauss
5 Charitable Foundation. But this assertion is just not
6 corroborated by the facts. In Exhibit A attached to
7 Respondent's additional brief, Mr. Sprung states that the
8 \$1.5 million was included with commingled investments
9 allocated to various investors.

10 He states that no formal bank or brokerage
11 account was opened in the foundation's name and, rather, a
12 virtual account was reported on the books and records of
13 the investment manager. This informal arrangement cannot
14 be compared to the formalities of a titled bank account
15 held with a bank or other financial institution. The only
16 documents Appellants have supplied as proof of the
17 foundation's interest in the \$1.5 million held with JBS
18 are two reconciliation statements for Adlor Equities and
19 Chelsea Equities. Appellants provided the first of these
20 reconciliation sheets during Respondent's audit, and those
21 documents included the note, "JS Leasing Krauss FTN," next
22 to \$750,000 deposit.

23 Later on in the second set of reconciliation
24 sheets that was provided, about two years later, and the
25 note stated, "Investment Krauss FDN." No explanation has

1 been given for the disparity between these
2 reconciliations. But really, neither document can
3 substantiate that these funds were held in a separately
4 named account for the benefit of the foundation.
5 Especially, given the informality of the arrangement and
6 Mr. Sprung's additional statements about commingling funds
7 from various investors.

8 Now, I would like to briefly turn to Appellants'
9 substance over form argument, which was included in their
10 letter of June 23rd, 2017. Generally, substance over form
11 is a doctrine in tax law that's most often traced back to
12 Gregory v Helvering, which can be found at 293 U.S. 465.
13 And that's a 1935 U.S. Supreme Court decision. In that
14 case the court decided -- found that the doctrine applies
15 when the transaction on its face lies outside the plain
16 intent of the statute and respecting the transaction would
17 be to exalt artifice above reality and to deprive the
18 statutory provision in question of all serious purpose.

19 In these cases where the transaction on its face
20 lies outside the plain intent of the statute, a court can
21 look to the actual substance of the transaction rather
22 than the contrived form and decide the real tax effect.
23 It should be noted that several courts have found that a
24 taxpayer may have less freedom than the commissioner to
25 ignore the transactional form that they themselves have

1 adopted for their transaction.

2 I have a few cites -- citations for that notion.
3 If you'll bear with me, I'm just going to read those into
4 the record. Bolger v. Commissioner 59 T.C. 760, Norwest
5 Corporate v. Commissioner 111 T.C. at 145, Estate of
6 Durkin v. Commissioner 99 T.C. at 571, and Coleman v.
7 Commissioner 87 T.C. 178. In order to prevail in an
8 argument in which a taxpayer disavows the form they chose
9 for their transaction, courts have required strong proof
10 from a taxpayer.

11 Under the strong proof rule, a taxpayer must
12 present strong proof, which is more than a preponderance
13 of the evidence for the court to disregard the form in
14 which the taxpayer cast a transaction. And once again I
15 have a couple of citations here. That's Estate of Rogers
16 v. Commissioner 445 F2nd 1020 and O'Malley v. Commissioner
17 T.C. memo 2007-79.

18 In this case Appellants have failed to satisfy
19 their ordinary burden of proof to show that they actually
20 donated these funds to their foundation, let alone the
21 strong proof or proof beyond a preponderance of the
22 evidence that's required to make a showing of substance
23 over form. In this case, the taxpayers chose to withdraw
24 funds and deposit it with their personal investment
25 manager, rather than to deposit it in a separately named

1 foundation bank or brokerage account and without any
2 acknowledgment indicating receipt by the foundation.

3 They could have withdrawn the funds from
4 Mr. Sprung at any time. They provided no written contract
5 or account forms to show that Mr. Sprung was acting as an
6 agent of the foundation. Furthermore, charitable
7 contribution deductions under IRC Section 170 require
8 strict compliance with the substantiation requirements and
9 the underlying regulations. As stated previously,
10 Section 170 A(1) expressly states a charitable
11 contribution shall be allowable only if verified under
12 regulations prescribed by the secretary.

13 So, in other words, in order to claim a
14 charitable contribution deduction, the form matters. The
15 taxpayers must follow the structure laid out in the code
16 and the regulations. If Appellants were intending instead
17 to argue a substantial compliance argument rather than
18 substance over form, courts have indicated that the
19 contemporaneous written acknowledgment requirement is a
20 strict one, and substantial performance is not sufficient
21 to escape that provision of the law. And that's Steve
22 Dirken and Via Real cases cited in Respondent's briefing.

23 The requirements for claiming a charitable
24 contribution and for operating private foundations are
25 strict, and they do require close adherence. While

1 questions such as who received the funds and where and
2 whether it was acknowledged may seem overly particular,
3 these requirements reflect the facts that such deductions
4 are a matter of legislative grace. Taxpayers must comply
5 in order to claim the significant tax benefits afforded
6 with charitable giving.

7 Here, Appellants have failed to show that they
8 complied with the code or the regulations, and their
9 claimed deductions of \$1.5 million should be denied.

10 Thank you. And I'm happy to respond to any
11 questions you may have.

12 JUDGE TAY: Thank you, Ms. Woodruff.

13 Before I turn to Appellants for their rebuttal,
14 I'm going to turn to my panelists.

15 Judge Lambert, any questions for Respondent?

16 JUDGE LAMBERT: This is Judge Lambert. I have no
17 questions at the time. Thanks.

18 JUDGE TAY: Thank you, Judge Lambert.

19 Judge Lam, any questions for Respondent?

20 JUDGE LAM: This is Judge Lam. I don't have any
21 questions. Thank you.

22 JUDGE TAY: Thank you.

23 I don't have any questions either at this time.

24 Mr. Sprung, I'm going to turn to you for
25 Appellants' rebuttal. You have 10 minutes. Please begin

1 whenever you're ready.

2

3 CLOSING STATEMENT

4 MR. SPRUNG: Okay. I'm just -- my rebuttal is
5 going to result in just one saying that there was no
6 substantiation given at the time of the gift. The State
7 has a copy of a letter that was sent to the Krausses on
8 December 30th, 2019, and I'm going to read this letter.

9 Krauss, please be advised that we have been
10 instructed by Melvin Krauss to allocate the investment
11 described below from his personal accounts to the Krauss
12 Charitable Foundation, effective December 21st, 2019.
13 Ownership of this investment and all books and records and
14 that all distributions proceeds related to this investment
15 from here on and will be paid to the foundation at the
16 above address or at such other address or addresses as you
17 shall from time to time advise us in writing.

18 The investment transferred to the foundation is
19 \$1.5 million having a fair market value as of the date of
20 day in the amount of \$1.5. This clearly adheres to
21 Regulation 1.7-1/B -- A and B and, therefore, the
22 deduction should be allowed.

23 JUDGE TAY: Thank you, Mr. Sprung. Would you
24 point -- sorry. Is this letter you just read into the
25 record -- just read right now, is that one of the exhibits

1 that we have in our hearing binder.

2 MR. SPRUNG: Yes.

3 JUDGE TAY: Can you point us to which one that
4 one is.

5 MR. SPRUNG: It is dated December 31st. It's on
6 Exhibit Number 4. I'm sorry.

7 JUDGE TAY: Exhibit 4. Okay. Thank you very
8 much. Does that conclude your rebuttal?

9 MR. SPRUNG: Yes. I mean, what else can I say?
10 I mean, they gave \$1.5. They told me -- it was invested
11 on behalf of the foundation. The foundation received a
12 return on the investment prior to any even indication of
13 an audit. Foundation client was ordered by the IRS, and
14 no change came from the IRS. So I can't say -- you know,
15 I have nothing else to say.

16 JUDGE TAY: Thank you, Mr. Sprung.

17 I will ask Respondent to speak to Exhibit 4 of
18 Appellants' additional brief, if you will.

19 And then I will turn to my panel as for any
20 questions that they might have.

21 Ms. Woodruff, will you speak to that letter?

22 MS. WOODRUFF: Yes. I am just taking a look at
23 it here. So it was that Exhibit Number 4?

24 JUDGE TAY: Yes, I believe so.

25 MS. WOODRUFF: Sorry. Hunting for that. I'm

1 having trouble finding that. Would that -- is that in the
2 appeals binder?

3 JUDGE TAY: Yes. It's in the hearing binder. I
4 have it as Exhibit 4 attached to Appellants' additional
5 brief submitted -- or dated June 23rd. It's page 79 out
6 of the 197 in the hearing binder.

7 MS. WOODRUFF: Okay. Yeah. And I think the main
8 issue that we have here is just the fact that there wasn't
9 a specifically named account. So we can't look to, you
10 know, account records like we would have for the Wells
11 Fargo Bank account that has a bank statement, you know, in
12 the name of the Krauss Charitable Foundation. All we have
13 here is a letter from Mr. Sprung who, it's not clear was
14 acting on behalf of the foundation.

15 We don't have any agreement or contract showing
16 that the foundation had engaged Mr. Sprung in the same way
17 that the foundation would have such documents for the
18 Wells Fargo Bank. When they opened their accounts, they
19 would have had to submit documents, show that they, you
20 know, were an actual foundation and opened up an actual
21 account.

22 There's just an informality to this that requires
23 a little bit more as far as, you know, showing where the
24 money was actually was kept and held and accounted for,
25 especially, given that Mr. Sprung was also acting as their

1 personal broker and investment advisor -- or excuse me --
2 their personal accountant.

3 MR. SPRUNG: Can I rebut that a little bit? Am I
4 allowed to?

5 JUDGE TAY: Sure, Mr. Sprung. Please go ahead.

6 MR. SPRUNG: Okay. If you look at my other
7 exhibits and look at what was going on in the world at
8 that point, I think at the end of 2008 was the Bernie
9 Madoff situation. And if you saw, as part of my exhibits,
10 how I was cited by Fortune and Bloomberg and the New York
11 Post as someone who did not investment. That was at a
12 time when everybody was petrified to invest and put too
13 much money into one bank account because the banks were
14 having problems.

15 So what I did was try and separate as much as
16 possible to risk from investing too much in one account.
17 That was my thinking back then in 2009. I can't prove it.
18 But if you look at the record and you could see how my
19 stellar reputation and business acumen had protected all
20 of my clients and all my investors.

21 JUDGE TAY: Okay. Thank you, Mr. Sprung.

22 I'm going to turn to my panelist to see if they
23 have any questions, first to Judge Lambert.

24 Judge Lambert, do you have any questions for
25 either of the parties?

1 JUDGE LAMBERT: This is Judge Lambert. This is
2 for Mr. Sprung. The letters from -- I guess what is being
3 alleged to be the agent to the principal, is there any
4 communication from the alleged principal of this agency
5 relationship, or any statements or communication
6 manifesting this agency relationship that's from the
7 foundation itself?

8 MR. SPRUNG: The letter was from me to the
9 foundation, you know, the foundation.

10 JUDGE LAMBERT: I'm wondering if there's anything
11 from the foundation itself, though, in response or to
12 affirm this agency relationship instead of just from you
13 to the foundation.

14 MR. SPRUNG: Oh, that I don't have that. I don't
15 have anything like that on me.

16 JUDGE LAMBERT: Okay. Thanks. That was my only
17 question. Thank you.

18 JUDGE TAY: Thank you, Judge Lambert.

19 I'll turn to Judge Lam.

20 Any questions for the parties?

21 JUDGE LAM: This is Judge Lam. I don't have any
22 questions. Thank you.

23 JUDGE TAY: Okay. Thank you.

24 I have one question for Respondent.

25 Ms. Woodruff, is there any legal authority that

1 requires the funds given in an investment like this to be
2 in a separate account? Any -- you talk about formalities,
3 so is there any legal authority for that specific
4 formality?

5 MS. WOODRUFF: Well, we do have the treasury regs
6 which require dominion and control to be handed over to
7 the foundation. So that's really where I'm basing this.
8 You know, we need to be able to show that dominion and
9 control was actually given over to the foundation. And so
10 just factually, it's very difficult to trace this to the
11 foundation and then to Mr. Sprung acting as an agent of
12 the foundation.

13 You know, if the funds had gone to the foundation
14 and we saw receipt of that and acknowledgment, and then
15 they had chosen -- the foundation had chosen to engage
16 Mr. Sprung, that would have been a different scenario.
17 But because we don't see any of that formality here, it's
18 very difficult to trace what actually happened.

19 MR. SPRUNG: Well, maybe the foundation didn't
20 want to pour more money into the foundation where all
21 these -- a lot of these banks were going under. And the
22 foundation already had \$6 million cash in its foundation,
23 and that's why they did it that way. Remember what was
24 going on in 2008 and 2009.

25 JUDGE TAY: Okay. And then one last question I

1 have for Respondent. The -- it seems like the foundation
2 did report \$5 million of a contribution on their -- on its
3 tax return; is that correct?

4 MS. WOODRUFF: Yes, it does appear to have
5 reported \$5 million on its 990 PF of contributions.

6 JUDGE TAY: Would you just speak to that briefly,
7 if you have anything about that.

8 MS. WOODRUFF: Yeah. You know, I believe
9 Appellants were also acting as, you know, the president of
10 the foundation as well. So it's possible that -- and I
11 think Mr. Sprung may have acted as the accountant as well.
12 So it is possible that the parties believed that this was
13 a contribution to the foundation.

14 However, dominion and control was never handed
15 over, and we never saw that written -- contemporaneous
16 written acknowledgment happen. So, in fact, the funds
17 were never actually transferred over to the foundation.

18 MR. SPRUNG: They cashed the check of the \$75,000
19 that was paid to the foundation as a return, I guess that
20 doesn't constitute dominion and control to the foundation?

21 JUDGE TAY: Hold not, Mr. Sprung. I'm going
22 to -- so we'll ask the questions to the parties.

23 MR. SPRUNG: I apologize.

24 JUDGE TAY: That's okay. I will allow you to
25 respond to Respondent's statement there, if there's

1 anything more that you have to add. But I will just ask
2 that you direct all the questions to the panel as opposed
3 to Respondent's counsel.

4 Is there anything else you would like to add your
5 rebuttal?

6 MS. WOODRUFF: Was that directed to me?

7 JUDGE TAY: Sorry. That was to Mr. Sprung.

8 MS. WOODRUFF: Oh, okay.

9 MR. SPRUNG: Oh, all right. I'm going to --

10 JUDGE TAY: Just to respond to Ms. Woodruff's
11 statement now.

12 MR. SPRUNG: The fact that when somebody deals
13 with their broker, anytime when you do, let's say, do a
14 trade over the phone and say buy me 10 million shares of
15 Tesla, there's no written confirmation that you ordered
16 that -- that control. When the Krausses gave me that
17 money, they told me put this -- and this is their
18 charitable donation, and it's to be invested on behalf of
19 the foundation. They didn't want to put any more money
20 into Wells Fargo Bank, particularly, at that time in 2009.
21 Period. A lot of people were doing -- a lot of people
22 were doing that.

23 JUDGE TAY: Okay.

24 MR. SPRUNG: I was the one that was cited by the
25 newspapers as someone that was smart enough not to get

1 caught with their pants down, and that's why they did it
2 that way. And why in fact they received a check -- you
3 know, received returns on that investment if it wasn't a
4 bona fide investment on behalf of the foundation.

5 JUDGE TAY: Okay. Thank you, Mr. Sprung.

6 I have no further questions. So I think I can
7 conclude our hearing for today.

8 MS. WOODRUFF: Judge Tay, I'm sorry interpret.

9 JUDGE TAY: Yes.

10 MS. WOODRUFF: May I just respond to that last
11 point that Mr. Sprung has made because he has raised it a
12 couple of times.

13 JUDGE TAY: Please go ahead.

14 MS. WOODRUFF: Thank you.

15 As for the payment made to the foundation of the
16 income, the \$75,000, I was under the impression there
17 was -- it was a different amount. But that amount came
18 from J.S. Leasing and was paid to the foundation. So it
19 can't even be traced back to the two -- the two companies,
20 Chelsea Equities and Adlor Equities.

21 MR. SPRUNG: All affiliates of JBS Financial.

22 JUDGE TAY: Mr. Sprung. I'm going to ask you
23 to -- let's allow Ms. Woodruff to finish, and then I'll
24 give you an opportunity to respond.

25 MR. SPRUNG: Okay.

1 MS. WOODRUFF: So it's unclear where those funds
2 were coming from. Again, as Mr. Sprung has said that
3 those companies reflected the monies from several
4 different investors, it's really hard to say whether those
5 were coming from Appellants. Were they coming from
6 Appellants' investment with Mr. Sprung? It's really just
7 not clear. We just don't have enough information about
8 that transfer to see what that payment actually meant.

9 JUDGE TAY: Okay. Thank you, Ms. Woodruff.

10 Mr. Sprung, I'll give you an opportunity to
11 respond, if you would like.

12 MR. SPRUNG: Okay. The only investment that the
13 Krauss foundation made to JBS Financial or any of its
14 affiliates, and we gave the State a list of all of our
15 affiliates. And those affiliates are all listed on the
16 tax return that I file with the IRS as affiliates of JBS
17 Financial. And J.S. Leasing was the company that paid at
18 -- the investments to all the investors at that point.

19 JUDGE TAY: Okay. Thank you very much.

20 MR. SPRUNG: Okay.

21 JUDGE TAY: Okay. I think we can now conclude
22 our hearing unless there's anything else that the parties
23 would like to add.

24 MR. SPRUNG: No.

25 JUDGE TAY: Respondent?

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MS. WOODRUFF: Nothing more here.

JUDGE TAY: Okay. All right. Thank you everyone for their presentation. The record in this appeal is now closed and the appeal will be submitted for decision. We will endeavor to send you our written decision no later than 100 days from today.

The hearing is adjourned.

Thank you again everyone, and I just want to wish everyone a happy holidays. The next hearing will begin at 1:00 p.m.

(Proceedings adjourned at 10:56 a.m.)