

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
O. GELIKMAN and G. FISCH,) OTA NO. 21088442
APPELLANT.)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Friday, January 27, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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O. GELIKMAN and G. FISCH,) OTA NO. 21088442
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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:03 p.m. and concluding at 1:21 p.m. on
Friday, January 27, 2023, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Administrative Law Judge: MIKE LE

For the Appellant: O. GELIKMAN

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

ERIC YADAO

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I N D E X

E X H I B I T S

(Appellants' Exhibits 1-4 were received in Judge Le's minutes and orders.)

(Department's Exhibits A, C-H were received in Judge Le's minutes and orders.)

P R E S E N T A T I O N

	<u>P A G E</u>
By Mr. Gelikman	7
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C L O S I N G S T A T E M E N T

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By Mr. Gelikman	16

1 California; Friday, January 27, 2023

2 1:03 p.m.

3
4 JUDGE LE: We are opening the record in the
5 Appeal of Gelikman and Fisch. This is matter is being
6 held before the Office of Tax Appeals, OTA case number is
7 21088442. Today's date is Friday, January 27, 2023, and
8 the time is 1:03 p.m. This hearing is being conducted
9 electronically with the agreement of the parties.

10 I am Administrative Law Judge Mike Le, and I will
11 be hearing and deciding this case pursuant to the
12 procedures of OTA's Small Case Program.

13 Now, for introductions for the record, will the
14 parties please state their names and who they represent,
15 starting with Respondent.

16 MR. YADAO: Good afternoon. Eric Yadao with the
17 Franchise Tax Board.

18 JUDGE LE: This is Judge Le. Thank you,
19 Mr. Yadao.

20 And for Appellants.

21 MR. GELIKMAN: Paul Gelikman.

22 JUDGE LE: Thank you, Mr. Gelikman.

23 Let's move on to my minutes and orders. As
24 discussed with the parties at a second prehearing
25 conference on December 12, 2022 and notated in my minutes

1 and orders, the issue in this matter is whether Appellants
2 have established reasonable cause to abate the
3 late-payment penalty.

4 Appellant-husband, Mr. Gelikman, will testify as
5 a witness. The parties do not dispute the facts in this
6 case, except for one, the bank account information that
7 was inputted into Respondent's WebPay website; and two,
8 Appellants' contact with Respondent on June 6, 2021.

9 Appellants' Exhibits 1 through 4 were entered
10 into the record in my minutes and orders. Respondent's
11 Exhibits A and C through H entered into the record in my
12 minutes and orders. OTA has removed Respondent's Exhibit
13 B from the record and sealed Exhibit H.

14 This oral hearing will begin with Appellants'
15 preparation and witness testimony for up to 10 minutes.
16 Does anyone have any questions before we begin?

17 Respondent, any questions?

18 MR. YADAO: No questions from the Franchise Tax
19 Board. Thank you.

20 JUDGE LE: Thank you.

21 And turning one more time Mr. Gelikman. Any
22 questions before we begin with your testimony?

23 MR. GELIKMAN: No questions.

24 JUDGE LE: Okay. This is Judge Le. Thank you.

25 At this time, Mr. Gelikman, would you raise your

1 right hand.

2

3 O. GELIKMAN,

4 produced as a witness, and having been first duly sworn by
5 the Administrative Law Judge, was examined and testified
6 as follows:

7

8 JUDGE LE: Thank you. You have up to 10 minutes
9 for your presentation and testimony, starting at 1:05 p.m.
10 Please proceed.

11 MR. GELIKMAN: Thank you. This is Oleg Gelikman.
12 Can everyone hear me, okay?

13 JUDGE LE: Yes.

14 MR. GELIKMAN: This is a presentational of facts.

15 THE STENOGRAPHER: Sorry to interrupt, but can I
16 please have you speak up. You're a little soft for me.

17 MR. GELIKMAN: Okay. I'll move my microphone.
18 Is this better.

19 THE STENOGRAPHER: Yes. Thank you.

20

21 PRESENTATION

22 MR. GELIKMAN: Yes. This is Oleg Gelikman, and
23 I'll be stating the facts of my appeal of the Denial of
24 the Claim For Refund From Late-Payment Penalties from FTB.
25 In my mind the matter stands as follows:

1 On 5/15/21, I used FTB WebPay to schedule a
2 payment in the full amount levied. Following the Judge's
3 instructions, I will be admitting all the numbers since
4 they are available in the briefs. I was issued a
5 confirmation number, which both on the FTB website and
6 later in the email that I provided. And they featured
7 bank information, routing number, and the checking account
8 number.

9 Then at that point nothing seemed to be amiss.
10 When looking at my bank statement, I noticed that no draw
11 on my account occurred. On June 6th, I phoned FTB, could
12 not have a live operator, and received a message asking
13 me -- heard a message asking to call later. Then I
14 engaged in the chat with a representative called Elijah,
15 and he informed me that there were some irregularities in
16 the account, instructed me to obtain an ID that could only
17 be dispatched by U.S. mail.

18 So eventually I do receive this ID instruction.
19 I log into the system, and I find that no credit has been
20 posted for my obligation and that additional late
21 penalties were assessed in the amount \$922.06. So at this
22 point, I proceed to pay -- to schedule a payment using the
23 same system, which is FTB WebPay, and I immediately pay my
24 original obligation plus this levy, this penalty, and then
25 proceed later on to file an appeal with FTB.

1 Thereupon, FTB examined my presentation and my
2 arguments and denied them, upon which I then submit the
3 appeal of this denial of which this hearing is the final
4 step. So these are simply the facts of the case as they
5 stand in my mind. Now, I have just two points to add to
6 the following.

7 Why do I think that this denial was wrong? I
8 think I demonstrated my goodwill by scheduling the
9 statement -- the original payment in a timely manner. My
10 account was fully funded. I have received confirmations.
11 I have examined them. I have found that there was nothing
12 wrong with them. I made a reasonable effort to correct
13 whatever happened in the meantime by examining my bank
14 statement, getting in touch with FTB through phone calls,
15 chat, U.S. mail. I have not -- my arguments have not been
16 met with any kind of understanding and, therefore, this
17 appeal is reasonable.

18 And to support my position, I'd like to reiterate
19 that it seems to me that the process as it stands affords
20 a taxpayer who is eager to pay, eager to correct, eager to
21 pay the penalty, which I emphasize I paid on 6/24/2021.
22 I've not delayed that payment. I have paid already this
23 penalty that I consider excessively hash. That system
24 does not afford a taxpayer who is willing to perform all
25 of the obligations, even pay preemptively whatever late

1 charge that was assessed due to some kind of problem in
2 the system, since the second payment and that levy went
3 through without a problem.

4 That system does not afford any leeway, any
5 mechanism that would be what I would consider within
6 reason. And that standard comes simply from the current
7 practices that we encounter, that when something goes
8 wrong in the system, there is some kind of backup plan
9 that allows the pair to know that something occurred, and
10 they have an opportunity to take corrective actions. Had
11 such a mechanism existed, none of this extended taxing
12 time-consuming proceeding would have been necessary
13 because I think I demonstrated my good will in excess.

14 Thank you.

15 JUDGE LE: This is Judge Le. Thank you,
16 Mr. Gelikman for your presentation and testimony.

17 Let me turn to Respondent Franchise Tax Board.

18 Mr. Yadao, do you have any questions for the
19 witness?

20 MR. YADAO: Eric Yadao with the Franchise Tax
21 Board. No questions. Thank you.

22 JUDGE LE: Thank you, Mr. Yadao.

23 I do have a few questions myself. I think you
24 might have touched on this. What prompted you to call the
25 FTB on June 6, 2021?

1 MR. GELIKMAN: I looked at my bank statement in
2 print. I receive them in print. So I received a bank
3 statement --

4 JUDGE LE: Thank you.

5 MR. GELIKMAN: -- and I found no record of this
6 very substantive amount being drawn from the account.

7 JUDGE LE: Thank you. And when you called the
8 FTB on June 6th, can you tell me what happened on that
9 phone call?

10 MR. GELIKMAN: All lines were busy. I was
11 instructed to call later. I tried again. Same message.
12 So I sent -- that same day I sent a letter in which I
13 inquired as to why the funds have not been drawn. That
14 letter was included in my original appeal.

15 JUDGE LE: This is Judge Le. Thank you. I see
16 the letter in the record. The letter in the record is
17 dated June 6, 2021, but it's not signed. Can you tell me
18 why there wasn't a signature on it?

19 MR. GELIKMAN: Yeah. Because that is a printout
20 from my computer. I sent the letter that day and -- so
21 through U.S. mail. So it is not signed because that's a
22 printout from my computer.

23 JUDGE LE: This is Judge Le. So the signed
24 version actually went to the FTB --

25 MR. GELIKMAN: Yes.

1 JUDGE LE: -- is that what you're saying?

2 MR. GELIKMAN: Yes. Yes. Yes.

3 JUDGE LE: Thank you. That's all the questions I
4 have right now.

5 Let's turn to Respondent.

6 Mr. Yadao, it's now your turn for your
7 presentation. You have up to five minutes, starting at
8 1:14 p.m. Please proceed.

9

10 PRESENTATION

11 MR. YADAO: Good afternoon. Eric Yadao with the
12 Franchise Tax Board.

13 Appellants have not established that their
14 failure to timely pay their tax is due to reasonable
15 cause. Two precedential opinions by the Office of Tax
16 Appeals support that conclusion, namely the Appeal of
17 Scanlon and the Appeal of Friedman, which held that the
18 failure to timely remit the balance due on a tax liability
19 caused by an oversight does not by itself constitute
20 reasonable cause.

21 Lack of notice from the FTB of a failed payment
22 does not negate Appellant's duty of prudence and due care
23 to verify that their scheduled payments were successful,
24 and reasonably prudent taxpayers exercising due care and
25 diligence are expected to monitor their bank account and

1 quickly ascertain whether a scheduled electronic payment
2 from their account to FTB was, in fact, paid.

3 Appellants' facts are similar, if not identical
4 to taxpayers in Scanlon and Friedman. Appellants
5 attempted timely payment of their tax by electronic
6 payment but mistakenly entered an incorrect account
7 number. Appellants did not follow the electronic payment
8 instructions which advises taxpayers to allow up to two
9 business days for their bank account to reflect payment
10 and to monitor their account to confirm payment is made.

11 As to Appellants' argument that FTB's WebPayment
12 obscures their account number and, therefore, they were
13 unable to confirm their information, they've offered no
14 evidence to support that argument. In support that the
15 opposite is true, FTB has included a declaration signed
16 under penalty of perjury from its employee with
17 responsibility and knowledge of electronic payment
18 processes, attesting to the fact that the account number
19 is actually entered twice by the payor and is not obscured
20 until after the taxpayer selects the submit button.

21 FTB has also included an un-redacted WebPayment
22 screen as Exhibit H to show that Appellant's payment
23 failed because they entered one too many digits in their
24 account number. And if you refer to Exhibit H, you'll see
25 three lines on that printout. The first two lines are the

1 incorrect account number reflecting the rejection of the
2 payment, and a third line which reflects that the payment
3 was later made on 6/25. And you can see the bank account
4 number on that third line carries one digit less than the
5 two transactions above it.

6 Given Appellant's oversight entering incorrect
7 account information and their failure to monitor their
8 bank account to ensure their payment transmitted as
9 scheduled, FTB request that you apply the precedential
10 opinions of Scanlon and Friedman and sustain FTB's
11 position denying Appellant's claim for refund of the
12 late-payment penalty.

13 I'm happy to answer any questions you may have.

14 JUDGE LE: Thank you. This is Judge Le. I do
15 have a question -- a few questions, I believe. I guess
16 first, what more would you have liked Appellants to have
17 done in order to meet the reasonably prudent taxpayer
18 standard?

19 MR. YADAO: Well, as our payment instructions
20 suggest, when you get the confirmation that the payment is
21 scheduled, that's not a confirmation that the payment is
22 made. That's why we instruct the taxpayers to monitor
23 their bank account and expect that the payment should
24 clear their account within two days.

25 Even by Appellant's own testimony, he says he

1 didn't -- he waited approximately three weeks to reach out
2 to Franchise Tax Board, June 6. However, there's no
3 record of that. The only record we have is he signed up
4 for a My FTB account on June 8th, and we sent
5 correspondence in reply to that. Subsequently, it took
6 him approximately six weeks to make payment of that tax as
7 well as the penalty at that time.

8 JUDGE LE: Thank you. The cases that were cited,
9 Appeal of Scanlon and Appeal of Friedman, it seems like in
10 those cases the taxpayer took eight months or longer from
11 the date that they tried to make payment to the date they
12 actually made payment. And for Appellants' case they made
13 payment, I think you said, within six weeks. Should that
14 be a fact that may distinguish Appellants' case from those
15 cases that were cited?

16 MR. YADAO: I don't think so, Judge. So the way
17 the law is drafted is even if it's one or two days late,
18 the penalty would apply unless reasonable cause is
19 established. So the law is not drafted to say, unless you
20 pay within six weeks the penalty applies.

21 JUDGE LE: Thank you.

22 This is Judge Le. No further questions at this
23 time. Let me now turn to Appellant for their rebuttal to
24 Respondent's arguments.

25 Mr. Gelikman, you have up to 5 minutes starting

1 at 1:19 p.m.

2 MR. GELIKMAN: Thank you, Judge Le.

3

4 CLOSING STATEMENT

5 MR. GELIKMAN: I reject the assertion that the
6 wrong number was entered on 5/15/2021.

7 JUDGE LE: This is Judge Le. Thank you. Does
8 that conclude your rebuttal?

9 MR. GELIKMAN: Yes.

10 JUDGE LE: Okay. I do have an additional
11 question for Respondent. Appellant says that they tried
12 to call the FTB on June 6 but was not able to get through.
13 I think they mentioned call volume or whatnot. Is that
14 something that would happen, say on a day that there would
15 be a high call volume and a taxpayer wouldn't be able to
16 get through?

17 MR. YADAO: I don't know the answer to that,
18 Judge.

19 JUDGE LE: Okay. Thank you.

20 That's all the questions from me. Thank you
21 everyone for being here today. I have no further
22 questions myself. So I believe that concludes our
23 hearing, unless anybody has anything else they want to
24 say.

25 Respondent, any final remarks?

1 MR. YADAO: Eric Yadao, Franchise Tax Board. No
2 further questions or comments. Thank you.

3 JUDGE LE: Thank you.

4 And for Appellant, Mr. Gelikman, any final
5 remarks before I submit this case?

6 MR. GELIKMAN: Oleg Gelikman. No further
7 questions. Thank you.

8 JUDGE LE: This is Judge Le. Thank you everyone,
9 again, for coming in today.

10 This case is submitted on January 27, 2023, and
11 the record is now closed.

12 I will decide this case later on, and I will send
13 the parties a written opinion of my decision within
14 100 days. Today's hearing in the Appeal of Gelikman and
15 Fisch is now adjourned.

16 Thank you and goodbye.

17 (Proceedings adjourned at 1:21 p.m.)
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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for
the State of California, do hereby certify:

That the foregoing transcript of proceedings was
taken before me at the time and place set forth, that the
testimony and proceedings were reported stenographically
by me and later transcribed by computer-aided
transcription under my direction and supervision, that the
foregoing is a true record of the testimony and
proceedings taken at that time.

I further certify that I am in no way interested
in the outcome of said action.

I have hereunto subscribed my name this 2nd day
of March, 2023.

ERNALYN M. ALONZO
HEARING REPORTER