

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,           )  
   )  
F. FALL,   ) OTA NO. 20106827  
   )  
                                    APPELLANT.     )  
   )  
   )

## TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, May 9, 2023

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Proceedings,  
taken at 12900 Park Plaza Dr., Suite 300,  
Cerritos, California, 91401, commencing at  
1:35 p.m. and concluding at 3:06 p.m. on  
Tuesday, May 9, 2023, reported by  
Ernaly 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 KWEE  
ALJ MICHAEL GEARY

For the Appellant: MICHELE WEISS  
F. FALL  
S. MARGOLIS

For the Respondent: STATE OF CALIFORNIA  
DEPARTMENT OF TAX AND  
FEE DEPARTMENT  
  
COURTNEY DANIELS  
CHAD BACCHUS  
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-14 were received at page 8.)

(Department's Exhibits A-K were received at page 8.)

OPENING STATEMENT

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WITNESSES:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Ms. Fall	15			
Mr. Margolis	24			

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1 Cerritos, California; Tuesday, May 9, 2023

2 1:35 p.m.

3  
4 JUDGE ALDRICH: This is Judge Aldrich. We're  
5 opening the record in the Appeal of F. Fall before the  
6 Office of Tax Appeals, OTA Case Number 20106827. Today's  
7 date is Tuesday, May 9th, 2023, and it's approximately  
8 1:35 p.m. This hearing is being conducted in Cerritos,  
9 California, and is also being live streamed on OTA's  
10 YouTube channel.

11 The hearing is being heard by a panel of three  
12 Administrative Law Judges. My name is Josh Aldrich. I'm  
13 the lead for purposes of conducting the hearing. I'm  
14 joined by Judges Michael Geary and Andrew Kwee. During  
15 the hearing the panel members may ask questions or  
16 otherwise participant to ensure that we have all the  
17 information needed to decide this appeal. After the  
18 conclusion of the hearing, we three will deliberate and  
19 decide the issue presented.

20 As a reminder the Office of Tax Appeals is not a  
21 court. It's an independent appeals body. The panel does  
22 not engage in ex parte communications with either party.  
23 Our opinion will be based on the parties' arguments, the  
24 admitted evidence, and the relevant law. And we've read  
25 the parties submissions, and we are looking forward to

1       hearing your oral argument today.

2               Who is present for Appellant?

3               MS. WEISS:  Michele Weiss.

4               JUDGE ALDRICH:  Okay.  And who else do you have  
5       with you?

6               MS. WEISS:  This is Appellant Florence Fall and  
7       Steven Margolis who is a witness.

8               JUDGE ALDRICH:  Okay.  Is there another witness?

9               MS. WEISS:  It's just them.

10              JUDGE ALDRICH:  Just them.  Okay.  Thank you.  
11              And for the Department?

12              MS. DANIELS:  Courtney Daniels.

13              MR. BACCHUS:  Chad Bacchus with the Department's  
14       Legal Division.

15              MR. PARKER:  Jason Parker, Chief of Headquarters  
16       Operations Bureau with CDTFA.

17              JUDGE ALDRICH:  Thank you.

18              The issue to be decided is as follows.  Well, the  
19       minutes and orders as distributed to the parties stated  
20       that the issue is whether Appellant is personally liable  
21       for the unpaid liabilities of Le Faubourg, LLC, doing  
22       business as Saint Amour, pursuant to Revenue & Taxation  
23       Code Section 6829.

24              Does that issue statement correctly summarize the  
25       issue before us, Appellant's Counsel?

1 MS. WEISS: Yeah. And to clarify it's for sales  
2 tax liabilities.

3 JUDGE ALDRICH: Right.

4 MS. DANIELS: Yes. That is also the Department's  
5 understanding.

6 JUDGE ALDRICH: Great. Thank you.

7 Did both parties receive a copy of the exhibit  
8 binder OTA prepared?

9 MS. WEISS: Yes.

10 MS. DANIELS: Yes.

11 JUDGE ALDRICH: Okay. So for the Department,  
12 exhibits are identified alphabetically, Exhibits A through  
13 K.

14 Appellant's representative or counsel, do you  
15 have any objections to admitting those exhibits into the  
16 record?

17 MS. WEISS: Not into the -- yeah. Into the  
18 record, that's fine.

19 JUDGE ALDRICH: Okay. And similar question to  
20 the Department. Appellant's Exhibits 1 through 14, does  
21 the Department have any objections to admitting those into  
22 evidence?

23 MS. DANIELS: No objections.

24 JUDGE ALDRICH: Okay.

25 MS. WEISS: And to clarify, it's admitted but not

1 necessarily for the truth of the matter.

2 JUDGE ALDRICH: Correct.

3 MS. WEISS: Yeah. Okay.

4 JUDGE ALDRICH: All right. Hearing no  
5 objections, we're going to admit A through K as well as 1  
6 through 14 into the record.

7 (Appellant's Exhibits 1-14 were received  
8 in evidence by the Administrative Law Judge.)

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

11 To give everyone an overview of how the hearing  
12 is going to proceed, we plan for the hearing to proceed as  
13 follows: Appellant's opening presentation, including  
14 testimony, which we estimated at 90 minutes. Next, the  
15 Department will present an opening presentation for 20  
16 minutes. Then the Panel will ask questions for  
17 approximately 5 to 10 minutes, maybe longer, and Appellant  
18 will have 5 minutes for closing remarks. And finally,  
19 CDTFA will have 5 minutes for closing remarks.

20 MS. DANIELS: Originally, the Department  
21 estimated that our presentation would be 20 minutes.  
22 There were a few additional matters that we were asked to  
23 address at the PHC. So that might add 3 to 5 minutes onto  
24 our presentation, but we're trying to keep it at the  
25 original agreed upon 20 minutes.



1 JUDGE ALDRICH: I think we can allow that time.  
2 MS. DANIELS: Thank you.  
3 JUDGE ALDRICH: And --  
4 MS. WEISS: I do have -- I do have one question.  
5 JUDGE ALDRICH: Yeah.  
6 MS. WEISS: So there was an issue of a negligence  
7 penalty, which was initially asserted by the then BTFD --  
8 JUDGE ALDRICH: BTFD.  
9 MS. WEISS: -- which was then waived and -- to  
10 which Appellant agreed about waiving it. And then --  
11 JUDGE ALDRICH: Respondent agreed or Appellant  
12 agreed about waiving it?  
13 MS. WEISS: I -- I agreed to Respondent's --  
14 JUDGE ALDRICH: Recommendation to waive it.  
15 MS. WEISS: Yes.  
16 JUDGE ALDRICH: Yes.  
17 MS. WEISS: So is that -- 'cause then during the  
18 prehearing conference there was mention that you we're  
19 going to look at it again, and I was -- my understanding  
20 is that issue was not before us right now.  
21 JUDGE ALDRICH: The negligence penalty is not  
22 before us.  
23 MS. WEISS: Okay. Just clarifying then.  
24 JUDGE ALDRICH: Yeah.  
25 MS. WEISS: Okay.

1 JUDGE ALDRICH: Okay. And as I said during the  
2 prehearing conference, the estimates were for calendaring  
3 purposes. If you need additional time, just like  
4 Ms. Daniels did, just request it and we'll see if we can  
5 accommodate you. Okay.

6 So since we're going to be having witness  
7 testimony, I would like to go ahead and swear in the  
8 witnesses at this time. Let's see. Would you mind  
9 passing the microphone to Ms. Fall?

10 Could you please raise your right hand.

11

12 F. FALL,

13 produced as a witness, and having been first duly sworn by  
14 the Administrative Law Judge, was examined and testified  
15 as follows:

16

17 JUDGE ALDRICH: Thank you.

18 And sir, Mr. Margolis, is that your --

19 MR. MARGOLIS: Yes.

20 JUDGE ALDRICH: Okay. So could you raise your  
21 right hand as well.

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S. MARGOLIS,

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

JUDGE ALDRICH: Great. Thank you.

Let me see. And -- all right. Does either party have questions or further questions before we move to opening presentations?

MS. DANIELS: No.

JUDGE ALDRIDGE: Ms. Weiss?

MS. WEISS: No.

JUDGE ALDRICH: No. Okay. So we're ready to proceed with your opening presentation. If you want to incorporate witness testimony, however you see fit, go for it.

MS. WEISS: Okay. All right. Thank you. And, actually, I do have a question. So you indicated that we would give presentation and then CDTFA would give their presentation. So my question is both of the witnesses have to stay because you said you were going to ask them questions. Do they both need to stay until that point in time, or will you ask them their questions as we move along?

JUDGE ALDRICH: So just as procedural matter, the

1 Department will have the opportunity to ask questions of  
2 the witnesses after they give testimony. And then during  
3 the question period from the Panel members, that's when we  
4 would potentially ask questions of the witnesses. So if  
5 they could stay, that would be appreciated.

6 MS. WEISS: Okay. All right. Thank you. Thank  
7 you for that clarification.

8  
9 PRESENTATION

10 MS. WEISS: Okay. As you know we're here to talk  
11 about or determine whether or not Florence Fall is  
12 personally liable for unpaid sales taxes of Saint Amour.  
13 So the one thing I want to indicate is that the BOE was  
14 notified of Saint Amour's closure in February of 2012.

15 THE STENOGRAPHER: I'm sorry to interrupt, but  
16 can you pull the mic closer to you?

17 MS. WEISS: Yes, I can.

18 THE STENOGRAPHER: Thank you.

19 MS. WEISS: Okay. So the issue here is whether  
20 or not Ms. Fall was willfully failing -- to somehow be  
21 involved with failing for Saint Amour, to pay its taxes  
22 willfully. And according to the statute, a willful act  
23 has to be volitional. That is, it's a failure that is a  
24 result of intentional, conscious, or voluntary course of  
25 action. We're also looking at who had control over the

1 business operations at Saint Amour.

2 And the issue is whether -- one of the issues  
3 that we're going to look at is whether Ms. Fall was  
4 operating under duress. Because if she was operating  
5 under duress then her signatures arguably weren't  
6 voluntary. And duress can be either something inflicted  
7 or something threatening and impending. So it's something  
8 that's sufficient to overcome the mind and the will of an  
9 ordinary person. So that's what we're looking at for her.

10 And as the testimony will show, Ms. Fall did not  
11 have control over Saint Amour's operation. She did sign  
12 some documents, but regardless she was not the person who  
13 made decisions about who got paid or for what or how the  
14 restaurant actually operated. Additionally, the person  
15 who was really involved here was Bruno Commereuc who was  
16 her ex -- is now her ex-husband and, unfortunately, who  
17 has passed away.

18 He was reckless. He was threatening in many  
19 ways, and Ms. Fall lived in fear of Bruno and acted out of  
20 fear under duress from Bruno's explosive nature. She was  
21 married at the time that Saint Amour operated. However,  
22 she did attempt to ask him for a divorce while the  
23 restaurant was operated, after which he had a heart  
24 attack, and then their divorce was finalized in 2013.

25 But what we'll discuss is that Bruno was the

1 brains behind Saint Amour's operations. He was the head  
2 chef. He made all of the financial decision. He had a  
3 lot of experience operating and running restaurants prior  
4 to opening Saint Amour. And, unfortunately, he also had a  
5 DUI conviction on his record. For that reason, he was  
6 counseled not to sign any documents on behalf of Saint  
7 Amour because that would disable Saint Amour from being  
8 able to obtain a liquor license. And as a French  
9 restaurant, they needed to be able to serve wine.

10 Consequently, he had Florence sign a lot of  
11 paperwork. She signed out of fear of retaliation from  
12 Bruno. She had no knowledge or experience with running a  
13 restaurant, and she was generally someone who worked in  
14 the front of the house as a greeter and a hostess.

15 And we're also going to speak today with  
16 Mr. Stephen Margolis who is a retired police officer and  
17 currently a professor of forensic psychology who  
18 frequented the restaurant and was a very close personal  
19 friend of both Bruno and Florence and knew much about the  
20 restaurant's operations.

21 And with that, I think we need to pass this  
22 microphone.

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Q So we're going to start with Ms. Fall who -- if you could please tell us what your current job is?

JUDGE ALDRICH: Sorry to interrupt, but can you move the microphone a little bit closer to you?

JUDGE ALDRIDGE: Thank you.

JUDGE ALDRIDGE: Yes.

BY MS. WEISS:

A I was born in Paris.

A I came to the United States in 1989.

A I married Bruno in 2001.

A     So Bruno had a restaurant that was called  
Angelique Café that he had opened a few years previously,  
and I was actually working for a medical office.

1           Q    Okay. All right. And then what happened to the  
2   cafe? Is it still around, or what happened to it?

3           A    No. Angelique Café was put to sell in 2005. I  
4   mean, right after an issue that happened between Bruno and  
5   one of our employees.

6           Q    So what was the issue?

7           A    They got into a heated discussion, and my  
8   ex-husband actually moved him outside. Physically moved  
9   him outside, and he got a lawsuit.

10          Q    Okay. There was a lawsuit?

11          A    Right, there was a lawsuit.

12          Q    Okay. And so then the restaurant closed?

13          A    The restaurant did not close. We put it for sale  
14   at that time.

15          Q    Okay. All right. And then what was the next --  
16   so after Cafe Angelique, what was the next restaurant  
17   venture that Bruno entered into?

18          A    The Saint Amour.

19          Q    Okay. And what -- so this former employee did --  
20   were there any financial issues that came up before Saint  
21   Amour? Or can you describe financial issues that came up  
22   before Saint Amour even opened?

23          A    So at the original Saint Amour, my ex-husband had  
24   an agreement -- a verbal agreement with his best friend  
25   whose name was Marc Bineau. And right before we opened



1 Saint Amour in the middle of construction, there was  
2 another issue that led to more legal concerns that lasted  
3 for a year and delayed the opening of the restaurant. I  
4 think we signed the lease in January 2008 and opened in  
5 June 2009.

6 Q That's Saint Amour?

7 A Saint Amour.

8 Q Right. Okay. And what was your role at Saint  
9 Amour?

10 A I was -- I was -- I mean, I was the front hostess  
11 and the floor manager.

12 JUDGE ALDRICH: Excuse me, Counsel. Could you  
13 give me the name of the restaurant or cafe that preceded  
14 Saint Amour.

15 MS. WEISS: Angelique Café.

16 JUDGE ALDRICH: Did you get that?

17 THE STENOGRAPHER: Yes.

18 JUDGE ALDRICH: Thank you.

19 BY MS. WEISS:

20 Q Okay. All right. So when Saint Amour opened,  
21 who was the one who had the plans for Saint Amour? Who  
22 was the one that had the vision and the -- who did the  
23 operations?

24 A My ex-husband. He was the chef, so he's the one  
25 who -- I mean, create and conceive the restaurant.

1           Q    Okay.  And what about the business decisions for  
2   the restaurant?

3           A    He -- I mean, they were his business decisions.  
4   I mean, yes.

5           Q    Okay.  And what happened when -- before the  
6   restaurant opened, he had asked you to sign documents and  
7   all this.  Can you explain the circumstances under which  
8   you had to do that?

9           A    So I think it was in 2005, if I'm correct, again  
10   of Angelique Café.  My ex-husband left for a trip into the  
11   wine country with a friend of his, and he got a DUI.  So  
12   it was right before, actually, we had decided to, you  
13   know, open another restaurant.  And he was supposed to  
14   sign paperwork, and we were advised by the attorney at  
15   that point not to have him sign anything, because he would  
16   have endangered the liquor license.

17           THE STENOGRAPHER:  Pardon me.  Endanger the what?

18           MS. FALL:  Endanger the liquor license.  From  
19   what I understand, you cannot get a liquor license if you  
20   have a DUI.  At least that is what we were told.

21           THE STENOGRAPHER:  Thank you.

22   BY MS. WEISS:

23           Q    Okay.  And why did the restaurant need a liquor  
24   license?

25           A    Because it was a French restaurant, we needed

1 wine.

2 Q Yeah. Okay. That makes sense.

3 JUDGE ALDRICH: So sorry for another interruption  
4 regarding the microphone. If you could just -- so it  
5 seems that they're are having trouble picking it up when  
6 you turn your head.

7 MS. FALL: Okay. So I'm going to look at you.

8 MS. WEISS: Yeah. I'm talking to you but --

9 MS. FALL: I'll look that way.

10 MS. WEISS: -- I'm asking questions, but you're  
11 talking to those people at the other side of the room.

12 MS. FALL: Okay.

13 BY MS. WEISS:

14 Q Okay. So during this time, would you say that --  
15 can you give me examples or relate some examples of  
16 Bruno's behavior and how he managed the restaurant?

17 A So we had -- we had three chefs in two-and-a-half  
18 years because -- I mean, that was another thing. My  
19 ex-husband would hire friends of people he knew, and that  
20 he -- was very trustworthy, if I can say. And then things  
21 would go down, and he would hire someone else, and it  
22 would go down. So did not help the success of the  
23 restaurant.

24 Q Okay. And were you involved in any of these?

25 A No.

1           Q   And did you -- were you able to be involved in  
2   any of the decision --

3           A   No.

4           Q   -- about who was hired, and how things were done?

5           A   No. Absolutely not. The second chef was hired  
6   while I was on trip with my parents in New York City. I  
7   didn't even know about it. I saw him when I came back.

8           Q   Okay. And -- all right. Let me see. So during  
9   the time that the restaurant was open, can you explain the  
10   circumstances under which you tried to ask Bruno for a  
11   divorce, and why you tried to ask him for a divorce?

12          A   I think it was in 2000. I'm not -- I don't  
13   remember clearly. I think it was in 2009 or beginning of  
14   2010. We had two major legal issues. The first one being  
15   because of that employee. The second one being because of  
16   his supposedly best friend, and a lot of issues that took  
17   place at Saint Amour. I mean, again, he made reckless  
18   decisions, and I wanted to -- I wanted to leave.

19               And literally that day I -- I said I wanted to  
20   leave he stormed out. He was -- he was furious, and the  
21   next thing I knew he was in the hospital. He had a heart  
22   attack. So I felt -- he had one surgery in November and  
23   one surgery in February. So I mean, I felt I couldn't  
24   leave at that point, so I pushed back everything.

25          Q   Okay. All right. And then can you just clarify

1       what your married name is?

2           A    My married named at that point, Florence Herve  
3       Commereuc.

4           Q    Okay.  And when did you start using the name  
5       Florence Fall?

6           A    After my divorce.

7           Q    When did that happened?

8           A    2013.

9           Q    Okay.  And so you weren't ever referred to as  
10       Florence Fall before then?

11          A    So Florence Fall was -- it was my previous name.

12          Q    It was your previous name?

13          A    Yeah.

14          Q    Okay.  So did -- and did you use it while you  
15       were married?

16          A    No.

17          Q    No.  Okay.  So in 2011, you had some  
18       conversations with the BOE.  Can you explain the  
19       circumstances under which that happened?

20          A    Yes.  Well, so first -- I mean, I was -- my name  
21       was on some paper.  And the other thing is, I think the  
22       name of gentleman that was over there at that point was  
23       Joe Moten.  I know he also got into a very difficult  
24       conversation with my ex-husband, and he refused to talk to  
25       him at some point.  And that's when I, you know, tried to

1 take over and peace the Board.

2 Q Okay. All right. So was the BOE officer willing  
3 to speak to your husband? Or what was going on there that  
4 you actually had --

5 A No, he was not. He was not.

6 Q Okay. All right. And then there was just one  
7 other thing I want to ask you about. So there's issues  
8 about you signing checks. There's also -- there's a  
9 document in the file. This is Exhibit A, page 24 of 88.  
10 Can you just read the name of the person who it looks like  
11 they signed that form?

12 A Elena Duncan.

13 Q Okay. Do you know who she is?

14 A No.

15 Q Okay. And if looking at some of these checks as  
16 you go through, do you see your name on any of these  
17 pages?

18 A I don't, and that's not my signature.

19 Q Okay?

20 A Some of my ex-husband and some I cannot  
21 recognize, but it's not -- not even one has any signature.

22 Q Okay. All right. So I'm just identifying --  
23 I'll just read it. And it's Exhibit 10, page 4 of 7, 5 of  
24 7, 6 of 7, 7 of 7, Exhibit 11, page 1 of 7, 2 of 7, 3 of  
25 7, 4 of 7, 5 of 7, 6 of 7, and 7 of 7. And I believe

1       these checks are also in the -- this is from the CDTFA's  
2       files. So I just want to clarify that point.

3               Okay. Let's see is there any other questions?  
4       Is there anything else that you just want to explain about  
5       how Bruno operated, how decisions were made, your  
6       relationship with him, just final, like, more points of  
7       clarification, examples of his behavior, and how you  
8       responded to it.

9               A     Just that he -- my ex-husband was a very reckless  
10       person, and I felt like -- I mean, I spend my time trying  
11       to fix, you know, potential issues. And I mean, I would  
12       have definitely left in 2009 if it were not for that heart  
13       attack.

14              Q     Okay. All right. Is there --

15              A     No.

16              Q     That's all you want to talk about today?

17              A     Yes.

18              MS. WEISS: Okay. All right. So that was -- so  
19       that's just to -- so in the record there's already her  
20       declaration, which is the main portion of her testimony,  
21       but I just wanted to clarify some points in there with her  
22       testimony today.

23              JUDGE ALDRICH: Okay.

24              MS. WEISS: Okay. All right. And then I'm going  
25       to ask -- one second. Just got to shift microphones

1       around.

2

3                               DIRECT EXAMINATION

4       BY MS. WEISS:

5               Q     All right.  Okay.  Mr. Margolis.  What do you  
6       currently do?  Can you -- am speaking into the -- am I  
7       speaking clearly?  What do you currently do?

8               A     Yeah.  Good afternoon.  Is this clear?

9               JUDGE ALDRICH:  Yes.

10              MR. MARGOLIS:  All right.  Currently I retired  
11     from Los Angeles Police Department Major Crimes Division.  
12     I currently teach at Cal State University Fullerton.  I'm  
13     part of the part-time faculty.  I teach forensics  
14     psychology.  I also am the president of Margolis Solutions  
15     Incorporation, which is a consulting firm for major  
16     businesses.

17     BY MS. WEISS:

18              Q     Okay.  All right.  And how do you know Florence  
19     and Bruno?

20              A     I knew both Bruno and Florence during --  
21     initially during my tour as a watch commander over at  
22     Central Division.  The operation they had was called  
23     Angelique, and it was a French restaurant.  And it had  
24     tremendous standing within the general Los Angeles area.

25                    To give you context, the Chief of Police ate



1       there from Los Angeles. So it was pretty well renowned.  
2       I was fortunate enough to befriend both Bruno and Florence  
3       during that time. They took me into their -- literally  
4       their family. I had the opportunity of spending both my  
5       lunches and oftentimes dinners at the restaurant, even  
6       during the period it was closed down.

7           Q     Okay. And how would -- and did you also meet  
8       with them at Saint Amour, or can you describe that,  
9       please?

10          A     Yes. Because of the relationship, I continued  
11       with both Bruno and Florence once they opened up the new  
12       restaurant Saint Amour. And so I continued the  
13       conversations and the closeness during that period.

14          Q     Okay. And how would you describe their  
15       relationship while Saint Amour was open?

16          A     Contextually, I would -- I would offer that the  
17       insight started while I spent time at Angelique's. It was  
18       very contentious in terms of, you know, the relationship.  
19       It got -- you know, I would say it worsened with the  
20       second restaurant.

21          Q     Okay. And how did you know this?

22          A     Direct observation. I spent hours and hours and  
23       hours with both of them during the time both in -- during  
24       the time at Angelique and then later in Saint Amour. It's  
25       that Bruno has a very strong personality. And I got along

1       very well with him, but he was the dominant decision maker  
2       during that period. And it was his word -- his way or the  
3       highway type of way of running the operation.

4               And he was an expert in the field and -- but  
5       he -- I think -- I think that he saw himself as definitely  
6       the primary decision maker in -- not only in the  
7       restaurant but in the relationship. And that was more my  
8       experience of just seeing them directly and indirect with  
9       each with me.

10            Q    All right. And how -- did they discuss the  
11       restaurant's operations with you, or how did those issues  
12       come about?

13            A    As I said, Bruno understood all facets of the  
14       restaurant business from supply operations, to everything  
15       from the supply chain to preparation of food, to service  
16       of food, to how, you know, the customer flow. Everything.  
17       So overwhelming when you sat with Bruno, it was you were  
18       listening to how restaurants are run, and how his  
19       restaurant is going to be run.

20               And so if the question is what -- you know, how I  
21       know that, I just sit in with a lot of conversations with  
22       him. And I was fascinated with it. To be in all  
23       fairness, I found he had such a command of the industry,  
24       and he had such extraordinary standing within the French  
25       restaurant industry in Los Angeles.

1           And I saw that because they used to have these  
2           annual events where the French restaurants would all get  
3           together, and Bruno would have -- he was the man that  
4           people went to, whether it was in terms of distributing,  
5           prepare food, or running the restaurants. He had that  
6           type of standing. And, you know, he's very charismatic.  
7           And he had a downside, a dark side, but that's what made  
8           it attractive spending time with him.

9           Q     So can you describe the dark side?

10          A     Bruno fought alcoholism. He struggled with it,  
11          and manifested itself in states of anger. He had blowups,  
12          poor decision maker. As I said in my declaration, you  
13          know, one time during a busy time in the restaurant he  
14          blew up and just walked out in the middle. He was the  
15          head chef, so the restaurant just closed down during that  
16          moment in time.

17                 But that was not uncharacteristic of him. He was  
18          very -- he would make these immediate decisions that  
19          without any secondary thought about the consequences  
20          because that -- and I think a lot of it was driven by his  
21          fight with alcoholism and perhaps some mental instability.

22          Q     Okay. And how open was he to other people's  
23          suggestions or input regarding the restaurant?

24          A     Well, I could only say that he commanded the  
25          stage. It was not -- he wasn't looking for input. He was

1 a, you know, he -- he saw himself as -- and what he was a,  
2 you know, a remarkable, you know, chef slash business  
3 operator of French restaurants. And when you'd see him in  
4 context with the other experts in the field, in  
5 Los Angeles they all owned prestigious restaurants, they  
6 would come to Bruno.

7 And his restaurant by standing is smaller, but  
8 you would see them come to him, you know, for insights as  
9 to how he ran the business. So that was my experience,  
10 and I got to see it firsthand. So that's what I can state  
11 why I know what I know.

12 Q Okay. Like, did you ever see anything in the  
13 kitchen, or how deeply did you --

14 A I -- I was fortunate enough, because of my  
15 interest in the field, he would bring me into the kitchen.  
16 I would see the prep work being done. I'd spend time -- a  
17 lot of time afterwards in the evenings after shift, going  
18 in there to have dinner and helping him prepare dinner.  
19 So, yeah. There was a lot of -- you got insight to see  
20 how he worked and the, you know, his thought process in  
21 terms of running it.

22 Q Okay. And how did Florence fit in?

23 A She was a supportive wife in the sense that  
24 you'd -- I didn't see -- with all respect to her, I didn't  
25 see her as the decision maker in this. And she -- she was

1       supportive. She went through some real difficult periods.  
2       One was the heart attack and the other was the DUI. The  
3       other was the -- ended up getting -- assaulting employees  
4       physically. And I would get calls on this because of, not  
5       only was I their friend and a police manager, but I was  
6       also the manager of the district that they worked in.

7               So a lot of the things which overlapped with, you  
8       know, asking for advice. So she was supportive of him  
9       during his crisis and a very nice charming person. But  
10       yeah, that didn't -- wasn't the decision maker for either  
11       Angelique's or Saint Amour --

12              Q     Okay. And --

13              A     -- that I saw.

14              MS. WEISS: Okay. All right. I think that's it.  
15       I think the rest of his testimony is actually in the  
16       declaration that's in the record. I just wanted to  
17       clarify some of the points that were questioned about it.  
18       So --

19              JUDGE ALDRICH: Okay.

20              MS. WEISS: -- that's it.

21              I just want to ask, Florence, do you have  
22       anything else before we move on. Okay.

23              JUDGE ALDRICH: Since I'm not sure that the mic  
24       picked that up, I'm going to state that the Appellant  
25       indicated no, she did not.

1 MS. WEISS: She's -- yeah. She doesn't have  
2 anything else.

3 JUDGE ALDRICH: Okay. Ms. Daniels, would you  
4 like to ask questions of either of the witnesses?

5 MS. DANIELS: No. The Department does not have  
6 questions for either of the witnesses.

7 JUDGE ALDRICH: Ms. Fall -- does Ms. Fall need a  
8 break or --

9 MS. FALL: I'm fine.

10 MS. WEISS: Are you sure? Do you want to get  
11 some water or something? Okay.

12 JUDGE ALDRICH: Okay. At this time, we'll  
13 transition over to CDTFA's presentation.

14 Please go ahead.

15

16 PRESENTATION

17 MS. DANIELS: Good afternoon.

18 The issue in this case is whether Appellant is  
19 personally liable for the unpaid liabilities of Le  
20 Faubourg, LLC, Saint Amour hereinafter referred to as the  
21 business pursuant to Revenue & Tax Code Section 6829.

22 The unpaid liabilities of the business originate  
23 from self-assessed partial and/or non-remittance sales and  
24 use tax returns for the third quarter of 2009 through the  
25 third quarter of 2011, late prepayment returns for

1 January and April of 2011, and an audit for the period of  
2 January 1st, 2009, through January 8th, 2012.

3 Under Section 6829, any person who has control or  
4 supervision of an LLC, or who has duty to act for that LLC  
5 in complying with any requirement of the sales and use tax  
6 law is personally liable for business's unpaid tax,  
7 interest, and penalties if the person willfully failed to  
8 cause -- or fail to cause to be paid any taxes due.

9 Four elements must be met for personal liability  
10 to attach. First, the business must be terminated.  
11 Second, the business must have collected the sales tax  
12 reimbursement. Third, the person must have been  
13 responsible for the payment of sales and use tax. And  
14 fourth, the person's failure to pay must have been  
15 willful.

16 In a situation where a person is an officer or a  
17 manager of the business and also has an ownership  
18 interest, that person is presumed to be a responsible  
19 person under Regulation 1702.5(d), and requires that the  
20 Department proves each eliminate by a preponderance of the  
21 evidence, or that the circumstances the Department asserts  
22 are more likely than not to be correct. There's no  
23 dispute that the business closed or that the business  
24 collected tax reimbursement from its customers.

25 So pursuant to Regulation 1702.5(b)(1),

1 responsible person means any person having control or  
2 supervision of or who is charged with the responsibility  
3 for the filing of returns or the payment of tax, or who  
4 had a duty to act for the business in complying with any  
5 provision of the sales and use tax law.

6 According to Commercial Security Company v  
7 Modesto Drug Company, a general manager is presumed to  
8 have broad implied and actual authority to do all acts  
9 customarily connected with the business, including  
10 ensuring its compliance with sales and use tax matters,  
11 even if that responsibility is delegated to others.

12 Here, Appellant is listed as the only manager for  
13 the business on the business's Articles of Organization  
14 and is Exhibit G. And as the business's manager on its  
15 statement of information filed with the California  
16 Secretary of State on April 24th, 2009, and that's  
17 Exhibit A-4.

18 Appellant consistently represented herself as the  
19 owner and the manager of the business and acted on its  
20 behalf, including signing a letter in which she states she  
21 is the manager and a shareholder; and that is Exhibit A-1.  
22 She also signed the sales tax permit application as  
23 manager, Exhibit A-2, the business's Public Health license  
24 permit application, Exhibit A-5, the business's Employment  
25 Development Department registration form as president,



1       that's Exhibit A-6. And signing the lease as principal  
2       owner of the organization, and that's Exhibit A-7.

3               Because Appellant is a manager of the business  
4       with an ownership interest, the applicable burden of proof  
5       is the preponderance of evidence. In addition to being  
6       the business's manager and president, Appellant  
7       electronically submitted sales use tax returns for the  
8       second quarter of the 2011 and the third quarter of the  
9       2011. And those are available at Exhibit A-13. And she  
10      also regularly communicated with the Department regarding  
11      the business's tax liabilities from December 9th --  
12      through -- sorry -- through November 2011; and that's  
13      Exhibit A-14.

14              So based on this evidence it's clear that  
15      Appellant was a responsible person for purposes of Section  
16      6829 throughout the liability period. Per Regulation  
17      1702.5 subdivision (b) (2), willfulness means a voluntary,  
18      conscious, and an intentional course of action. But it  
19      does not require bad purpose or motive. A responsible  
20      person willfully fails to pay taxes, if the Department can  
21      establish that the responsible person had actual knowledge  
22      that the taxes were due but not being paid, the authority  
23      to pay the taxes or cause them to be paid when the taxes  
24      became due, and when the responsible person had actual  
25      knowledge that the taxes were due and the ability to pay

1       the taxes but chose not to do so.

2               The evidence shows that Appellant had the  
3       authority to pay the business's tax liabilities during the  
4       entirety of the liability period. In fact, Appellant  
5       signed checks to the Department on behalf of the business,  
6       and that's Exhibit A-12. Elena Duncan, a former employee,  
7       submitted a business operations question and response, and  
8       she identified Appellant as the owner and the individual  
9       who was responsible for signing paychecks. That's  
10      Exhibit A-3.

11             Appellant also admitted to being the business's  
12      sole manager in a letter dated September 30th, 2010,  
13      written on the business's letterhead and signed by  
14      Appellant; and that's Exhibit A-1. Appellant signed the  
15      business seller's permit as a manager on July 1st, 2011.  
16      That's Exhibit A-2. So the foregoing is consistent with  
17      the fact that Appellant was the sole manager of the  
18      business at its inception, as provided on the business's  
19      Articles of Organization, Exhibit G, and was still  
20      identified as the manager on its most recent statement of  
21      information filed with the Secretary of State,  
22      Exhibit A-5.

23             As mentioned before, Appellant also actively  
24      signed numerous other documents for the business as its  
25      president, including a Los Angeles County Department of

1 Public Health license permit application dated May 27th,  
2 2009, Exhibit A-5, the Employment Department Registration  
3 form, Exhibit A-6, the business's lease agreement,  
4 Exhibit A-7, and a credit application for Rocker Bros,  
5 which was dated November 2nd, 2010, and that's  
6 Exhibit A-8.

7 So the foregoing shows that's there's no doubt  
8 that Appellant had maintained the authority to pay the  
9 business's tax liabilities during the liability period.

10 So we'll move onto knowledge. Knowledge means  
11 that the person knew that the taxes were not being paid  
12 on/or after the date the taxes came due. Due to the  
13 numerous filings, we're going to address Appellant's  
14 knowledge for each tax return and audit period separately.

15 So the business filed its third quarter 2009  
16 return, dated November 2nd, 2009, showing tax due of  
17 around \$48,000. And that became due on October 31st,  
18 2009. Appellant signed a check to the Department for  
19 \$15,000 on December 11th, 2009, which the Department  
20 applied to this third quarter liability. That's  
21 Exhibit E, page 3, which is also page 844 in the exhibit  
22 binder.

23 According to the Department's Automated  
24 Compliance Maintenance System, which we call ACMS, the  
25 Department discussed the business's unpaid tax liability,

1 including the third quarter 2009 liability with Appellant  
2 on January 28, 2010; and that's Exhibit A-14, page 12.  
3 Appellant's management of the business and issuance of  
4 this \$15,000 check towards that liability, evidences that  
5 Appellant had knowledge of the unpaid third quarter 2009  
6 liability as of November 2nd, 2009, when the return was  
7 filed without remittance.

8 The business filed its fourth quarter 2009 return  
9 dated February 1st, 2010, showing tax due of approximately  
10 \$28,000, and that became due on January 31st, 2010. Our  
11 ACMS notes indicate that Appellant was notified on  
12 January 28th, 2010, of the fourth quarter 2009 returns  
13 needed to be filed in order for the business to qualify  
14 for the installment payment agreement that she was  
15 requesting. That's Exhibit A-14 on page 12. Therefore,  
16 Appellant had been provided notice of the due date for the  
17 filing and the required payment.

18 Moreover, as previously mentioned, she had  
19 previously signed checks for the business's tax  
20 liabilities. Accordingly, Appellant's involvement in the  
21 business operations, her conversations with the Department  
22 regarding the need to file the fourth quarter return, and  
23 her request for the payment plan are all clear evidence  
24 that she knew about the fourth quarter 2009 tax liability,  
25 and that it was not paid when it was filed without

1 remittance on February 1st, 2010.

2           The business filed its first quarter 2010 return,  
3 dated May 4th, 2010, showing tax due of approximately  
4 \$23,000. And that became due on April 30th, 2010. Our  
5 ACMS notes indicate that the Appellant met with the  
6 Department concerning the business's current and past due  
7 tax liabilities on July 26th, 2010. That's Exhibit A-14,  
8 pages 1 through 2. During this discussion, the Department  
9 informed Appellant that the income from the business's  
10 sales provided it with more than enough income to pay off  
11 its tax liabilities. And that's, again, Exhibit A-14,  
12 page 1 through 2.

13           However, Appellant did not make any payments  
14 towards the liability at that meeting. And based on these  
15 discussions and Appellant's history of failing to pay the  
16 business's tax liabilities with the submission of her --  
17 the returns, it is clear that Appellant had knowledge that  
18 the first quarter 2010 tax liability was not paid when the  
19 return was due on April 30th, 2010.

20           The business filed its second quarter 2010 tax  
21 return dated September 27, 2010, showing tax due of  
22 approximately \$23,000. And that became due on July 31st,  
23 2010. And, again, our ACMS notes indicate that Appellant  
24 was notified on August 9th, 2010, but the business's  
25 second quarter 2010 return was due, and that the

1 Department had requested that she bring the return to a  
2 meeting that was scheduled for August 11th, 2010. And  
3 that's Exhibit A-14, page 14.

4 Given Appellant's interaction with the Department  
5 and the explicit notification that Appellant received  
6 regarding the fact that the business's tax returns had not  
7 been filed, it is clear that Appellant had knowledge that  
8 the liability was not paid on/or before August 9th, 2010.

9 The third quarter of 2010 return, dated  
10 October 28th, 2010, showed taxes due of approximately  
11 \$17,000. And that became due on October 31st, 2010. ACMS  
12 notes indicate that Appellant was notified by the  
13 Department by a phone call on November 17th, 2010, that  
14 the third quarter 2010 tax liability was due immediately,  
15 and that's Exhibit A-14, page 16.

16 During this conversation, Appellant admitted to  
17 collecting sales tax from customers and stated that  
18 despite doing so, the collected tax had been used to pay  
19 suppliers, rent, and employee wages. That's Exhibit A-14  
20 at page 16. Therefore, the evidence supports a finding  
21 that Appellant knew that the business's third quarter 2010  
22 tax liability was not paid no later than that phone call  
23 on November 17th, 2010, but likely knew when the return  
24 filed without remittance on October 28th, 2010.

25 The business filed its fourth quarter 2010 tax

1 return dated February 3rd, 2011, showing tax due of  
2 approximately \$18,000, which became due on January 31st,  
3 2011. ACMS notes indicate that per a phone call on  
4 May 25th, 2011, the Department discussed the business's  
5 past due liabilities with Appellant, including the fourth  
6 quarter liability. That's Exhibit A-14, page 4.  
7 Therefore, Appellant had knowledge of the fourth quarter  
8 2010 liability and that it was not paid no later than that  
9 May 25th, 2011, phone call.

10 However, as previously discussed, given  
11 Appellant's consistent contact with the Department,  
12 beginning in January 2010 in which she requested the  
13 payment plan and her continual involvement in the  
14 business's operations, Appellant knew that the fourth  
15 quarter 2010 return was filed without remittance when it  
16 was due and not paid on January 31st, 2011. And that's  
17 available at exhibit A-14, pages 14 through 17.

18 The business filed its first quarter 2011 return,  
19 dated May 26th, 2011, showing tax due of approximately  
20 \$25,000, which became due on April 30th, 2011. As  
21 previously discussed, Appellant was notified of the need  
22 to file the first quarter 2011 returns per phone call with  
23 the Department on May 25th, 2011. And again, that's  
24 Exhibit A-14, page 4.

25 Thus, aside from the general knowledge that

1 Appellant had regarding the need for quarterly filings,  
2 she was also provided notice that the return was not filed  
3 nor the taxes paid. This evidence shows that Appellant  
4 had knowledge on/or before the May 25th, 2011, date.  
5 Moreover, as previously stated, the evidence of  
6 Appellant's involvement in the business operations as well  
7 as her regular communication with the Department supports  
8 a finding that Appellant knew that the business failed to  
9 file its first quarter 2011 return or pay the tax  
10 liability when it was due on April 30th, 2011.

11 The business filed its second quarter 2011  
12 return, dated November 30th, 2011, and it showed taxes due  
13 approximately \$19,000. And that became due on July 31st,  
14 2011. That's Exhibit A-11. The non-remittance sales and  
15 use tax return was signed by Appellant. No payment  
16 accompanying the return. Again, Appellant was the manager  
17 and handled the daily business operations, which included  
18 issuing checks. Therefore, evidence supports a finding  
19 that Appellant knew of the business's failure to file its  
20 second quarter 2011 return or pay its tax liability when  
21 it was due on July 31st, 2011.

22 The business filed its third quarter 2011 sales  
23 and use tax return dated November 30th, 2011. And that  
24 showed taxed due of approximately \$16,500, which became  
25 due on October 31st, 2011. The non-remittance sales and



1 use tax return was again signed by Appellant. No payment  
2 accompanied the return. ACMS notes show that Appellant  
3 spoke with the Department on November 16th, 2011, and  
4 again on November 28th, 2011, concerning the requirement  
5 that Appellant made timely filings and paid the business's  
6 tax liability in full. That's Exhibit A-14, pages 7  
7 through 9. Therefore, Appellant knew the business's third  
8 quarter 2011 tax liability was not paid when the return  
9 was filed on the October 31st, 2011, due date.

10 The business also failed to make its required  
11 prepayments for January 2011 in the amount of \$3,500,  
12 which was due on February 24th, 2011, and for April 2011  
13 in the amount of \$8,499, and that was due on May 24th,  
14 2011. As previously discussed, Appellant signed checks  
15 for the business's check liabilities and had consistently  
16 filed its prepayments in 2009 and 2010. Thus, the  
17 evidence shows that Appellant knew of the business's  
18 obligations to file and pay its prepayments, especially  
19 since she would have been the one to sign the checks for  
20 these obligations.

21 Moreover, our ACMS notes indicate that Appellant  
22 was told on May 25th, 2011, that the April prepayment  
23 needed to be filed; Exhibit A-14, page 4. As such the  
24 evidence supports that Appellant had knowledge that the  
25 January and the April 2011 prepayments were not made when

1       they were due on February 24th, 2011, and May 24, 2011.

2               After the sales and use tax liabilities became  
3       due starting on October 31st, 2009, through October 31st,  
4       2011, the business paid rent each month during the period  
5       totaling more than \$170,000. And you can see those  
6       payments at Exhibit E-HH, pages 11 through 13. The  
7       business also paid a monthly salary to Appellant and her  
8       ex-husband totaling more than \$96,000, and that's  
9       Exhibit E-E. These payments alone exceed the business's  
10      tax liabilities for the third quarter of 2009 through  
11      third quarter 2011.

12              And this is without taking into consideration  
13      that the business also collected tax reimbursement from  
14      its customers or for any payments that the business made  
15      to other vendors and utility companies during this time.  
16      In fact, Appellant admitted in the November 17th, 2010,  
17      phone conversation with the Department that they collected  
18      the tax and that it had been used to pay suppliers, rent,  
19      and employee wages. And, again, that's Exhibit A-14,  
20      page 16.

21              Moreover, the business's bank account records for  
22      the months of September 2010 and October 2010 show  
23      deposits totaling over \$280,000. And those are Exhibits  
24      E -- or it's Exhibit E-11 -- or Exhibit E-LL. Thus, there  
25      was sufficient funds available to pay the business's tax

1 liabilities throughout the liability period without taking  
2 into consideration any of the checks that the business may  
3 have issued that were returned for insufficient funds.

4 So based on the foregoing, at the time, Appellant  
5 had knowledge that the business's tax liabilities from its  
6 returns and prepayments for the periods of third quarter  
7 2009 through third quarter 2011 were not being paid.

8 Appellant had the authority to pay or to cause the taxes  
9 to be paid and had the ability to pay them but chose not  
10 to.

11 The Department performed an audit of the business  
12 for the period of January 1st, 2009, through January 8th,  
13 2012. The Department initiated the audit in August 2011.  
14 And upon completion of the audit, the Department issued a  
15 Notice of Determination, which is dated April 27, 2012,  
16 which was after the business ceased business operations in  
17 January 2012.

18 The audit report consists of two audit items:  
19 Unreported taxable sales measuring \$1,597,056 and  
20 disallowed claimed exempt sales of food products measuring  
21 \$102,913. Upon audit, Appellant was unable to provide the  
22 Department with necessary business records. Therefore,  
23 the audit liability is based on daily receipts and  
24 summaries provided by Appellant for a seven-day period,  
25 which consisted of August 15th, 2011, through August 21st,

1       2011.

2               The Department determined that the business  
3       consistently underreported taxable sales through the audit  
4       period. Accordingly, the Department must show that  
5       Appellant knew that the business underreporting its  
6       taxable sales. As we have shown, Appellant was  
7       instrumental in all aspects of the business throughout the  
8       liability, including the business's finances. This is  
9       evidenced by her signature on numerous credit applications  
10      and her involvement with payment of vendors and employees  
11      and the Department.

12             Appellant also signed the tax returns for the  
13      business, consistently met with the Department regarding  
14      the business's tax liabilities, and was involved in the  
15      Department's audit. The fact that the business made  
16      taxable sales for the fourth quarter of 2011 and in  
17      January 2012 before ceasing business operations and did  
18      not report any taxable sales for either period, is  
19      indicative of an underreporting that was perpetrated  
20      throughout the liability period.

21             This level of involvement shows that Appellant  
22      had knowledge that the business was consistently  
23      underreporting its sales throughout the audit period. And  
24      as we've shown, the business had enough income to pay its  
25      tax liabilities but instead paid rent, salaries to

1 Appellant and her ex-husband, and made payments to other  
2 vendors. Once again, this was acknowledged by Appellant  
3 on November 17th, 2010. And that's Exhibit A-14, page 16.

4 Additionally, gross credit card income paid to  
5 the business by American Express and Wells Fargo totals  
6 more than \$200,000 for November 2011 through January 2011.  
7 And that's available at Exhibit H. The evidence supports a  
8 finding that Appellant had knowledge of the business's  
9 consistent underreporting throughout the audit period, and  
10 that at all times during the period, Appellant had the  
11 authority to pay the difference and the ability to make  
12 those payments but chose not to.

13 Appellant contends that the Department has not  
14 shown an ability to pay because many of the checks that  
15 were written to the business's vendors could not be cashed  
16 due to insufficient funds. However, we've provided ample  
17 evidence here today that the business had the ability to  
18 pay without considering any of those checks.

19 Finally, we will turn to the areas of question  
20 that were noted in the PHC minutes and orders. The first  
21 being the discrepancy in the tax liabilities provided  
22 within the Notice of Determination, which is available at  
23 Exhibit 8 -- or F. And the audit proration and billing  
24 worksheet included in the dual package, which is  
25 Exhibit E.

1           So the Notice of Determination lists Appellant's  
2     tax liability as \$409,297.03. Whereas, the audit  
3     worksheet shows a total liability amount of \$430,474.20.  
4     So some of the difference is attributable to the fact that  
5     Audit Items 2 and 3, which were included in the audit  
6     worksheet were not included in the final assessment to  
7     Appellant and thus, were not included in the Notice of  
8     Determination. So these items account for \$21,270.78.

9           So after subtracting that amount from the  
10    \$430,474.20, there is still a small difference between the  
11    totals provided in the worksheet and the NOD, and that  
12    equals \$93.61. And that difference is attributable to  
13    rounding in the program. Upon the determination that the  
14    Audit Items Numbers 2 and 3 would not be assessed to  
15    Appellant, a new audit was created. And in doing so, the  
16    system used the sum numbers listed on the schedule for  
17    1482 of the audit, that's Exhibit I, to calculate the  
18    assessed billing.

19           In calculating the amounts owed, the Department's  
20    Internal Revenue information system rounds each  
21    calculation for each period to the nearest penny. Thus,  
22    the differences in the totals provided in the audit  
23    proration and billing worksheet and the Notice of  
24    Determination are due to the deletion of Audit Numbers 2  
25    and 3 and the recalculation of the tax liability.

1           Lastly, the Department would like to address the  
2     Panel's concerns regarding whether the negligence penalty  
3     in this manner was properly relieved, pursuant to  
4     Regulation Section 1703(c) (a) which states as follows: A  
5     penalty of 10 percent of the amount of tax specified in  
6     the determination shall be added to deficiency  
7     determinations if any part of the deficiency for which the  
8     determination is imposed is due to negligence or  
9     intentional disregard of the sales use tax law or  
10    authorized regulation.

11           Generally, a penalty for negligence or  
12    intentional disregard should not be added to deficiency  
13    determinations associated with the first audit of a  
14    taxpayer in the absence of evidence establishing that any  
15    bookkeeping and reporting errors cannot be attributed to  
16    the taxpayer's good faith and reasonable belief that its  
17    bookkeeping and reporting practices were in substantial  
18    compliance with the requirements of the sales and use tax  
19    law or authorized regulations.

20           So here the Department's decision to delete the  
21    negligence penalty is indicative only of a policy change  
22    regarding first-time audits, not a lack of knowledge on  
23    Appellant's part. In fact, the aforementioned language  
24    allows for the penalty to be deleted even with the  
25    taxpayer's intentional disregard of the sales and use tax

1 law. Thus, the deletion of the negligence penalty is not  
2 indicative of a lack of knowledge on Appellant's part and  
3 is, in fact, consistent with the Department's assertion  
4 that Appellant knowingly underreported taxable sales  
5 during the audit period.

6 Moreover, we have provided this Panel with ample  
7 evidence of knowledge and direct communication with the  
8 Department regarding the business's liabilities throughout  
9 the liability period. So the Department's decision to  
10 delete the penalty cannot outweigh the evidence that we  
11 have presented of actual knowledge here in this matter.

12 In conclusion, the evidence shows that Appellant  
13 is liable pursuant to Section 6829 of the Revenue & Tax  
14 Code Section because the business terminated its business  
15 in 2012; the business collected sales tax reimbursement;  
16 Appellant was responsible for the business's payment of  
17 sales and use tax; and Appellant's failure to pay was  
18 willful.

19 Therefore, we ask this Panel to affirm the  
20 decision in this matter. Thank you.

21 JUDGE ALDRICH: Thank you.

22 This is Judge Aldrich. At this time, I'm going  
23 to refer to my Panel members for potential questions.  
24 Judge Geary would you like to ask questions first?

25 JUDGE GEARY: Sure. Questions for the Appellant



1 first. Did you prepare any of the sales and use tax  
2 returns yourself?

3 MS. FALL: I did not.

4 JUDGE GEARY: Do you concede that you signed  
5 sales and use tax returns?

6 MS. FALL: I did not sign any returns.

7 JUDGE GEARY: Who did prepare the returns for the  
8 restaurant?

9 MS. FALL: I'm assuming Bruno, but I did not  
10 prepare them.

11 JUDGE GEARY: Did the restaurant -- and by that,  
12 I mean, did the company employ a bookkeeper?

13 MS. FALL: Yes, we did.

14 JUDGE GEARY: And did you employ -- did the  
15 company employ a bookkeeper during the audit periods that  
16 are in question here?

17 MS. FALL: Yes.

18 JUDGE GEARY: Do you know whether that bookkeeper  
19 prepared the returns?

20 MS. FALL: I don't. I don't know.

21 JUDGE GEARY: There are lots of checks included  
22 in the evidence. Did the restaurant have just a single  
23 checking account?

24 MS. FALL: Yes, it did.

25 JUDGE GEARY: And your husband was authorized to

1 sign checks on that -- your late husband was authorized to  
2 sign checks?

3 MS. FALL: Yes.

4 JUDGE GEARY: And were you also authorized to  
5 sign checks?

6 MS. FALL: I was authorized.

7 JUDGE GEARY: And did you on occasions sign  
8 checks?

9 MS. FALL: I did sign checks on occasions, yes.

10 JUDGE GEARY: The letter that that was referred  
11 to by Respondent in its presentation -- it might have  
12 referred also by your representative earlier -- but it  
13 says September 30th, 2010, letter that purports to be  
14 signed by you. Did you sign that letter?

15 MS. FALL: Which letter?

16 JUDGE GEARY: Look page -- it's on page -- pdf  
17 page -- oh, you don't have a pdf with you. Try page 122  
18 of the pdf.

19 MS. WEISS: Give me a moment.

20 JUDGE GEARY: Yes, that's fine. As a matter of  
21 fact, you might want to keep that open because I have  
22 other pages, I want to refer to also. Nope, it's not 122.  
23 Hold on a minute. Let's see.

24 JUDGE ALDRICH: Ms. Weiss, would you mind  
25 grabbing that other microphone to your right and bringing

1       it close. Thank you.

2               JUDGE GEARY: Judge Aldrich, do you happen to  
3 know where that September 30th, 2010, letter is.

4               MS. WEISS: I'm in the middle of connecting to my  
5 phone. So I'll have access. Just give me -- I'm almost  
6 there.

7               JUDGE GEARY: All right. I'll still need to have  
8 the right page number, though.

9               MR. BACCHUS: Mr. Geary, it's page 91 of the --

10              JUDGE GEARY: I just found it. Thank you,  
11 Mr. Bacchus.

12              MS. WEISS: So that's page 91?

13              JUDGE GEARY: Yes, the PDF page 91 of 902 pages.  
14 Do you have the September 30th, 2010, letter in front of  
15 you on the letterhead of Saint Amour?

16              MS. FALL: Yes, I do.

17              JUDGE GEARY: And is that your signature at the  
18 bottom.

19              MS. FALL: Yes, it is.

20              JUDGE GEARY: And in that letter you describe  
21 yourself as the manager of the LLC, Le Faubourg; correct?

22              MS. FALL: Yes.

23              JUDGE GEARY: All right.

24              MS. FALL: As I expressed earlier, I mean, I  
25 had -- I was on the paperwork because he had a DUI. So

1       yes, my name was on those paperwork. Absolutely.

2               JUDGE GEARY: Okay. Is it your signature that  
3       appears on the application for seller's permit that you  
4       will find scrolling down just a couple of pages to page  
5       93?

6               MS. FALL: No.

7               JUDGE GEARY: Do you have the signature in front  
8       of you dated -- it looks to be dated July 1st, 2011?

9               MS. FALL: Yes, I do.

10              JUDGE GEARY: Is that your signature?

11              MS. FALL: Yes and no. But I would say yes.

12              JUDGE GEARY: It is your signature. Okay. If  
13       you go down to page 96, that's the Public Health License  
14       permit application that I believe Respondent made  
15       reference to in its argument. Page 96 at the bottom,  
16       signature dated May 14th, 2009, signature of applicant.  
17       Can you tell me if that's your signature?

18              MS. FALL: Yes, it is. It is mine.

19              JUDGE GEARY: And on the following page, and  
20       that's the EDD, Employment Development Department's  
21       registration form for commercial employers. At the  
22       bottom, is that your signature?

23              MS. FALL: It looks like mine. Yes.

24              JUDGE GEARY: Typically, when you signed a check,  
25       would you typically also fill out the check, or would

1       someone else fill it out for you?

2               MS. FALL: I sign some blank checks.

3               JUDGE GEARY: At who's request?

4               MS. FALL: My ex-husband. I was incapacitated  
5       for a period of four months because I tore my back. So  
6       yes, I signed some checks.

7               JUDGE GEARY: During that period of time, you're  
8       saying you were physically incapable of going to the  
9       restaurant and working?

10              MS. FALL: Exactly.

11              JUDGE GEARY: And he would have you sign blank  
12      checks --

13              MS. FALL: Yes.

14              JUDGE GEARY: -- during that period?

15              MS. FALL: Yes.

16              JUDGE GEARY: Are you able to identify your  
17      husband's signature?

18              MS. FALL: Yes.

19              MS. WEISS: Okay. Wait.

20              JUDGE GEARY: I'm not sure what you're putting in  
21      front of her, but I was going to direct her to another  
22      document.

23              MS. FALL: Exhibit E, page 59 of 315.

24              JUDGE GEARY: Okay. I'd actually prefer you go  
25      to my document that I have in front of me, which is

1 page 117 of the PDF hearing binder. Tell me when you're  
2 there. It's a check dated February 7th, 2011, Check 2589.  
3 Are you there?

4 Ms. Weiss, do you have that check in front of  
5 you, page 117?

6 MS. WEISS: Sorry. My computer is doing  
7 something here.

8 MS. FALL: This is not my signature.

9 JUDGE GEARY: The question was whether that's  
10 your husband's signature, whether you recognize it as your  
11 husband's signature?

12 MS. FALL: No, it's not.

13 JUDGE GEARY: Who else was authorized to sign  
14 checks on the Wells Fargo account in the name of La  
15 Faubourg, LLC?

16 MS. FALL: I don't know.

17 JUDGE GEARY: Those are all the questions that I  
18 have for you right now. I would like to ask questions of  
19 Mr. Margolis, if you would shift that microphone over.

20 Mr. Margolis, can you tell me about when it was  
21 that you first started frequenting the cafe -- Angelique  
22 Café?

23 MR. MARGOLIS: Yes, sir. That would be the year  
24 2000, and that's when I became the watch commander over  
25 Central Division. And since it was a French restaurant

1 and that's where both my parents met and lived for a long  
2 period of time, which is in France, I was very much drawn  
3 to it. So it was in 2000. As soon as -- literally, as  
4 soon as I found out about it, I was there.

5 JUDGE GEARY: Did you ever visit with Appellant  
6 or her late husband in their home?

7 MR. MARGOLIS: That -- that location was where  
8 exclusively where I met with them. And that's where they  
9 served. That's where we had dinner. That's where we  
10 spent time. And it was in the back portion of the  
11 restaurant, which was literally more of a living quarter  
12 or resting quarter during that. And that's where we ate.  
13 Or sometimes it was upstairs.

14 JUDGE GEARY: Upstairs being --

15 MR. MARGOLIS: It was two stories.

16 JUDGE GEARY: All right.

17 MR. MARGOLIS: I apologize.

18 JUDGE GEARY: So you're describing a private area  
19 of the restaurant that was occupied temporarily by the  
20 Appellant and her late husband. Is that what you're  
21 saying?

22 MR. MARGOLIS: When we ate, yes.

23 JUDGE GEARY: Okay. So not part of the public  
24 dining area and not part of the kitchen, but a separate  
25 dining area?

1           MR. MARGOLIS: Right. We -- we -- I spent time  
2           in the front portion when I ate at the restaurant. I  
3           spent time in the back room, which is the kitchen itself,  
4           when I spent time with Bruno watching him during the  
5           preparations and running the operations. And then when we  
6           spent time in conversation, it was in the third place.

7           JUDGE GEARY: At one point in your testimony, you  
8           said something about -- about mental instability. Are you  
9           expressing your opinion today? Is that --

10          MR. MARGOLIS: Strictly, sir.

11          JUDGE GEARY: Let me finish my question.

12          MR. MARGOLIS: Oh, sorry. Sorry.

13          JUDGE GEARY: You used the term, and I need to  
14          explore. Are you expressing your opinion today that the  
15          Appellant's late husband was mentally unstable?

16          MR. MARGOLIS: Yes, I am. And it is my opinion.

17          JUDGE GEARY: In your opinion, was Appellant's  
18          late husband drunk most of the time that you spent with  
19          him?

20          MR. MARGOLIS: No, sir. Not most of the time.

21          JUDGE GEARY: But he was an alcoholic in your  
22          opinion?

23          MR. MARGOLIS: Yes.

24          JUDGE GEARY: Those are all the questions I have  
25          for you. Thank you, sir.



1 MR. MARGOLIS: Thank you.

2 JUDGE ALDRICH: Thank you.

3 Judge Kwee, did you have any questions?

4 JUDGE KWEE: Hi. This is Judge Kwee. I did have  
5 a couple of questions. I'd like to start. There was some  
6 talk about, you know, issues that were impacting the  
7 business, like, the DUI, the medical issues, like, the  
8 heart attack, some litigation involving an employee of the  
9 restaurant who was involved in an altercation with the  
10 former husband. And I'm just wondering, in the record was  
11 there specific documentation, like, police reports or  
12 medical records that would have corroborated the specific  
13 dates of those events?

14 MS. WEISS: There is documentation of the DUI.

15 JUDGE KWEE: Okay. And do you have -- did you  
16 have the exhibit number for that one?

17 MS. WEISS: I can find it. Give me a second.

18 JUDGE KWEE: Okay.

19 MS. WEISS: It should be listed as one of  
20 Appellant's exhibits. It's Exhibit 8.

21 JUDGE KWEE: Okay. One second. Oh, okay. I see  
22 it the People v -- okay. But there isn't documentation on  
23 the medical records or the litigation, but there was  
24 documentation on the DUI?

25 MS. WEISS: Correct.

1 JUDGE KWEE: Okay. And as far as the testimony  
2 that was provided by Ms. Fall earlier today, my  
3 understanding is that she intended to divorce her  
4 ex-husband in 2009. But because of the heart attack at  
5 that time, the divorce was postponed until 2013. Is that  
6 a correct understanding?

7 MS. FALL: Yes.

8 JUDGE KWEE: Okay. So was the recovery period  
9 from the heart attack, did that take four years then?

10 MS. FALL: No. It took a year, maybe a year. He  
11 had the first surgery in November and I think the other  
12 one in February. I -- I left my ex-husband in 2011.

13 JUDGE KWEE: Okay. And during the recovery  
14 period, who was running the business then?

15 MS. FALL: During the recovery, there was a  
16 manager over there. There was a floor manager. I can't  
17 remember. I can't find his name, but there was somebody  
18 managing the restaurant.

19 JUDGE KWEE: Okay. And if I -- so during that  
20 time period then, you, Ms. Fall, weren't signing bills or  
21 signing returns, or you did sign some returns during that  
22 period?

23 MS. FALL: I did. I don't remember filing  
24 returns, but I did sign, definitely sign some checks. And  
25 yes, absolutely.

1 JUDGE KWEE: Okay. And just if I could shift one  
2 question over to CDTFA briefly. CDTFA, do you have a  
3 position on whether or not a DUI conviction would have  
4 prevented Appellant's husband from being able to obtain a  
5 liquor license for the business, or is that you don't have  
6 a position on?

7 MS. DANIELS: That's outside of our purview.

8 JUDGE KWEE: Okay. If you just -- if you bear  
9 with me one moment. So if I understand, you were  
10 separated in 2011, but then the both of you were still  
11 involved in the business?

12 MS. FALL: Well, I was not separated. So yes,  
13 I'm assuming I was still involved in the business. Until  
14 the dissolution, my name was still on all of the  
15 paperwork.

16 JUDGE KWEE: Okay. Thank you. I believe that's  
17 all the questions I have at this time. I will turn it  
18 back over to Judge Aldrich.

19 JUDGE ALDRICH: Hello. Just a quick question.  
20 Did the floor manager, during the period in which your  
21 ex-husband was out recovering from the heart attack, have  
22 authority to sign checks?

23 MR. MARGOLIS: No, I do not know.

24 JUDGE ALDRICH: You do not know?

25 MR. MARGOLIS: No, I don't know.

1 JUDGE ALDRICH: Okay. So at this time, I think  
2 we'll transition to closing statements. I had Appellant's  
3 closing statement first followed by Respondent's closing  
4 of about five minutes each.

5 Are you ready to proceed, Ms. Weiss?

6 MS. WEISS: Sure.

7 JUDGE KWEE: Oh, just before we do that -- I'm  
8 sorry. Do you mind if I ask one more question?

9 JUDGE ALDRICH: Go for it.

10 JUDGE KWEE: Okay. So there was one other  
11 question I had, and that was, I believe there was  
12 testimony that Ms. Fall was incapacitated for four months  
13 and signed some blank checks at that time. Do you know  
14 approximately what time period that was? What year?

15 MS. FALL: I think it was at the beginning of  
16 2011, but I don't remember for sure. So I don't want  
17 to -- I can't.

18 JUDGE KWEE: Okay. Thank you. I apologize for  
19 the interruption. I will turn it back to you for your  
20 closing presentation.

21 MS. WEISS: Thank you.

22

23 CLOSING STATEMENT

24 MS. WEISS: So I think most of the testimony has  
25 been stated on what was going on at the restaurant and how

1 volatile Bruno was and how Ms. Fall really was just stuck  
2 picking up pieces much of the time. She struggled with  
3 Bruno's struggles because he would storm out. He would  
4 make reckless decisions. And yet, he was really the  
5 brains behind the operation. And he was calling all the  
6 shots, even if it was in a reckless way, and she was  
7 stuck.

8 She was very stuck because she was in this  
9 relationship. She couldn't get out of the relationship so  
10 easily, financially, personally. She also has a son whose  
11 declaration is in the file as well. And, you know, she  
12 tried to leave and that created a physical problem, you  
13 know, and then the heart attack happened. So she was not  
14 able to leave. She couldn't get out of it.

15 Her name was all over everything because she was  
16 told and counseled that she had to sign stuff so he could  
17 open this restaurant that he made her open, you know, made  
18 her sign all these things because he couldn't sign it  
19 because of this DUI. Whether or not that's the law,  
20 that's what they were counseled, and that's what they were  
21 responding to.

22 So, you know, I really do want to discuss this  
23 issue of signing things because she signed stuff. But the  
24 question is, you know, technically she signed things. And  
25 we're not going to argue about that. We know her name is

1 on a lot of things. But does that really mean she had  
2 control over it? Did she choose not to pay? That's a --  
3 that's a really deep term to talk about choosing. She was  
4 not the one choosing anything. She just was stuck. I  
5 mean, there's just no other way to define it.

6 And I just want to discuss, you know, certain  
7 things that, you know, if someone signed something under  
8 duress, their signature is not considered valid. So we  
9 haven't really discussed that. We're not going to go back  
10 in time and wonder if these licenses are valid because the  
11 person who signed it, perhaps their signature wasn't  
12 really valid if they weren't signing it volitionally or  
13 with intention to have it, you know, be there. Or they  
14 were signing it under duress, which would invalidate it.

15 But for the purposes of finding her personally  
16 responsible for a very, very large liability over a  
17 situation where she was really -- and if you read through  
18 her declaration, perhaps, you know, she was a little upset  
19 today to really bring everything out. But to be in this  
20 situation where she was really stuck and forced to sign  
21 things, well, her signature is on things.

22 But the question is so what? Did she have  
23 control over it? No. Was she choosing? No. No, she  
24 wasn't. Not at all. And now, you know, I mean, you saw  
25 her crying. I mean, it's very upsetting. You know, Bruno

1       stormed out. Their relationship dissolved. We know that  
2       he was killed in a hit and run motorcycle accident. I  
3       mean, the whole situation is personally upsetting from  
4       beginning to end.

5               And then on top of all this charge her for  
6       personal liability for, you know, a restaurant over which  
7       she had no control. It just doesn't seem to be the right  
8       thing to do. And speaking about that, and while I know we  
9       didn't talk about whether or not the sample that was taken  
10      for that week, a sample for a week, and that was the basis  
11      for the sales tax.

12             I'll turn your attention -- and I'm sorry. I  
13      don't have it versus pdf. I just printed out individual  
14      pages that I want to look at. But if you look at  
15      Exhibit D, page 69 of 173, there is an email from  
16      Ms. Fall, and she talks about how -- it says -- this is  
17      from her. This is to -- I'm not sure. Oh, this is to  
18      somebody at the accounting firm that was the restaurant's  
19      accounting firm, not her personal accounting firm.

20             And she said, "Great. The non-taxables are very  
21      low this week and sales higher because we did a special 30  
22      percent discount for the month of August with a company,  
23      and a 15 percent discount with the Kirk Douglas Theater.  
24      We had no time to take wholesale orders because we were  
25      busy. Both discounts combined brought a lot of people in,

1       and it does not reflect our usual business."

2               So, you know, there's even a question that we  
3       haven't even gotten into of whether or not the sales tax  
4       was even computed properly because there was a wholesale  
5       business that was being ran out of Saint Amour, which was  
6       Bruno's Charcuterie wholesale business. So then on top of  
7       everything else, now to take a week that might not have  
8       been the proper week to find a good sample because of --  
9       and I don't know how that was all determined.

10              And now charge her with this personal liability  
11       based on the situation where she was going through  
12       personal, you know, horribly, you know, catastrophic  
13       events is just -- you know, at the end of the day, I don't  
14       think it meets the standard for choosing. It was  
15       unwilful. She did not have a choice.

16              And so, you know, just under 6829 it just does  
17       not seem appropriate for her to be charged with  
18       responsibility for the -- all possible, maybe not -- you  
19       know, possibly not even be proper computation of sales tax  
20       for the failed sales business, which was constantly -- if  
21       you go through the financial records, I mean, there's  
22       constant insufficient funds, and it's just one big  
23       financial catastrophe of a business operation.

24              So that's it.

25              JUDGE ALDRICH: Thank you.



1 CDTFA, would you like to give a five-minute  
2 closing or rebuttal?

3  
4 CLOSING STATEMENT

5 MS. DANIELS: I think the only point that we  
6 would like to make is we have to build our case and look  
7 at liability based on the information that's provided to  
8 us. And all of the documents that we have, have her  
9 signing as manager and president. And her communications  
10 with us, specifically, page 148 of the binder has her  
11 being very involved where she says that they're collecting  
12 sales tax, remitting those funds. They're taking action.

13 It's hard for us not to find liability under 6829  
14 when we see so much involvement, and it looks like she is  
15 the decision maker.

16 JUDGE ALDRICH: Thank you.

17 Well, I just wanted to thank everyone for your  
18 time this afternoon. We're ready to conclude the hearing.  
19 The record is now closed.

20 The panel will meet and decide the case based off  
21 the evidence and the arguments. We will send both parties  
22 our written decision no later than 100 days from today.

23 And the hearing calendar for today has concluded.  
24 Hearings will resume tomorrow morning. Thank you, again.

25 (Proceedings adjourned at 3:06 p.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyn 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 30th day  
of May, 2023.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER