

IN THE MATTER OF THE APPEAL OF:)
)
W. STEFFIER,) OTA NO. 20076326
)
)
) APPELLANT.
)
)

Job No. :
42729 OTA(A)

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF:)
W. STEFFIER,) OTA NO. 20076326
APPELLANT.)
_____)

TRANSCRIPT OF PROCEEDINGS, taken at
12900 Park Plaza Drive, Suite 300, Cerritos,
California, commencing at 9:30 a.m. and
concluding at 10:51 a.m. on Tuesday,
July 11, 2023, reported by HANNA JENKIN,
Hearing Reporter.

1 APPEARANCES:

2
3 Panel Lead: ALJ CHERYL AKIN

4
5 Panel Members: ALJ KENNY GAST
6 ALJ SARA HOSEY

7
8 For the Appellant: W. STEFFIER

9
10 For the Respondent: STATE OF CALIFORNIA
11 FRANCHISE TAX BOARD
12 ERIC YADAO
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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-19 were received at page 6)

(Department's Exhibits A-J were received at page 7)

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By Mr. Steffier 47

1 Cerritos, California; Tuesday, July 11, 2023

2 9:30 a.m.

3
4
5 JUDGE AKIN: We are opening the record of Appeal of
6 Steffier, OTA Case Number 20076326. This matter is being
7 held before the Office of Tax Appeals. Today's date is
8 July 11th, 2023 and the time is approximately 9:33 a.m.

9 Again, my name is Cheryl Akin. I am the lead
10 Administrative Law Judge for this appeal. With me today
11 are Administrative Law Judges Kenneth Gast and Sara Hosey.

12 As a reminder, the Office of Tax Appeals is not a
13 court, it is an independent appeals body. The office is
14 staffed by tax experts and is independent of the State's
15 taxing agencies.

16 With that, let me please have the parties
17 introduce themselves for the record, including the witness
18 as well, please.

19 MR. STEFFIER: My name is Wayne Steffier, I'm the
20 appellant.

21 MS. SHOHAT: Sandra Shohat, witness.

22 MR. YADAO: Eric Yadao for Franchise Tax Board.

23 JUDGE AKIN: Okay. As confirmed at the prior
24 prehearing conferences and in my minutes and orders
25 following the conferences, the issue to be decided in

1 today's appeal is whether the accuracy-related penalty
2 imposed for the 2013 tax year should be abated.

3 Is this consistent with the parties'
4 understanding of the issue to be decided in this appeal?
5 Let me start with Appellant, Mr. Steffier.

6 MR. STEFFIER: Yes.

7 JUDGE AKIN: Okay. And Franchise Tax Board?

8 MR. YADAO: FTB agrees.

9 JUDGE AKIN: With that, let's move on to the evidence
10 in this appeal. I'd like to start with Appellant's
11 exhibits. As noted my in prior prehearing conference
12 minutes and orders, Appellant has submitted 19 exhibits
13 which have been labeled Appellant's Exhibits 1 through 19.

14 Franchise Tax Board indicated that it does not
15 have any objections to Appellant's Exhibits 1 through 19.

16 Mr. Yadao, is that still correct? No objections?

17 MR. YADAO: No objections.

18 JUDGE AKIN: Okay. Thank you. Appellant's Exhibits
19 1-19 are now admitted into the evidentiary record.

20 (Appellant's Exhibits 1-19 were received in
21 evidence by the Administrative Law Judge.)

22 JUDGE AKIN: That brings me to Franchise Tax Board's
23 exhibits. Franchise Tax Board has submitted 10 exhibits
24 which have been labeled as Franchise Tax Board's Exhibits
25 A through J. These exhibits were submitted by Franchise

1 Tax Board prior to the prehearing conferences.

2 Mr. Steffier, I asked that the exhibits please be
3 reviewed and asked you to indicate in writing whether
4 there were any objections to the admission of those
5 exhibits.

6 MR. STEFFIER: And there were not.

7 JUDGE AKIN: Okay. I was just going to verify that
8 that was the case.

9 Okay. No objection to Franchise Tax Board's
10 Exhibits A through J as such, Franchise Tax Board's
11 Exhibits A through J are now admitted into the evidentiary
12 record.

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

15 JUDGE AKIN: Okay. Next I would quickly like to go
16 over the witnesses. I understand, Mr. Steffier, that you
17 have a witness with you today.

18 MR. STEFFIER: Yes.

19 JUDGE AKIN: Did Franchise Tax Board have any
20 objections to Ms. Shohat providing witness testimony
21 today?

22 MR. YADAO: We didn't have notice that Ms. Shohat was
23 appearing, so we would offer an objection for any
24 testimony she offers outside of her declaration or any of
25 those that she was not a precipitate witness.

1 JUDGE AKIN: Okay. Noted. Would it be helpful if we
2 offered you an opportunity to provide a post-hearing brief
3 if necessary to address anything?

4 MR. YADAO: That would be fantastic. Thank you.

5 JUDGE AKIN: Okay. I will check with you at the end
6 of the hearing to see if we believe that is necessary.

7 MR. YADAO: Very good. Thank you.

8 JUDGE AKIN: Okay. Thank you.

9 All right. And I also wanted to quickly check,
10 Mr. Steffier, were you planning to provide witness
11 testimony or argument only today?

12 MR. STEFFIER: I don't understand the question.

13 JUDGE AKIN: Okay. Just to explain, if you are
14 providing argument only you are not sworn in and that
15 means that any of the statements you make are considered
16 argument only. For example, if the issue were whether a
17 light was red when you went through the intersection --

18 MR. STEFFIER: I would like to be sworn in.

19 JUDGE AKIN: Okay. Perfect. I what I can do is swear
20 you in at the beginning of your presentation, and any
21 factual statements you make can be considered by the panel
22 as evidence.

23 MR. STEFFIER: I do have a question.

24 JUDGE AKIN: Sure.

25 MR. STEFFIER: You know, I did file the proper

1 documents uploaded on OTA website regarding my witness,
2 Sandra, so I don't understand why she's not able to be a
3 witness.

4 JUDGE AKIN: Okay. Could you move your microphone a
5 little closer when you speak?

6 MR. STEFFIER: I'm sorry. Yes.

7 JUDGE AKIN: Interesting. The file as well and the
8 only thing I saw was your confirmation of the attendance
9 at the hearing, so maybe there is a technical issue with
10 how it was uploaded. I can have our staff look into it.

11 MR. STEFFIER: Yes. You know, I did it about four
12 different times throughout this past year and I believe
13 she and Robert Hammond were on the latest witness
14 disclosure.

15 JUDGE AKIN: Understood. We are allowing her to
16 testify as a witness, so anything she says will be
17 considered by the panel. It is just because Franchise Tax
18 Board was not necessarily aware that she would be
19 testifying, they would like the opportunity to brief it,
20 if needed, but I'll check with Mr Yadao at the conclusion
21 of the hearing for that.

22 MR. STEFFIER: Thank you.

23 JUDGE AKIN: Yeah. And I'm sorry for the
24 misunderstanding on that, but we will allow her testimony
25 and consider it in today's hearing.

1 MR. STEFFIER: Thank you.

2 JUDGE AKIN: Okay. All right. Finally, before we get
3 to the parties' presentations, I would like to quickly go
4 over the time estimates and the order of the proceedings
5 today.

6 Noted in my minutes and orders, Appellant will
7 present first and we will have approximately 60 minutes
8 for his presentation, including the witness testimony.
9 Following Appellant's presentation, the panel of
10 Administrative Law Judges and Franchise Tax Board will
11 also be permitted to ask any questions they have of the
12 witnesses.

13 After that, Franchise Tax Board will make their
14 presentation and I believe they have asked for 20 minutes.
15 After which I will turn it over to my panel to ask any
16 questions they may have a Franchise Tax Board, and then
17 following any questions, Appellant will have an additional
18 10 minutes for a rebuttal or closing statement.

19 Any final questions before we proceed with the
20 hearing?

21 MR. STEFFIER: No.

22 JUDGE AKIN: Good. Mr Steffier, were you planning on
23 presenting first? Or were you going to have your witness
24 testify first? Just so I know who to turn it over to.

25 MR. STEFFIER: Is probably best to start with the

1 witness because that basically kicks off the whole issue
2 that I have.

3 JUDGE AKIN: Okay. That works for me.

4 MR. STEFFIER: You might as well just read what you
5 did.

6 JUDGE AKIN: With that I think we're ready to begin,
7 before we do I just need to swear you in.

8 MS. SHOHAT: Okay.

9 JUDGE AKIN: Can you please raise your right hand?

10
11 S. SHOHAT,
12 Produced as a witness, and having been first duly sworn by
13 The Administrative Law Judge, was examined and testified
14 as follows:

15 JUDGE AKIN: Thank you. As a reminder, you have a
16 total of one hour and you may begin.

17
18 PRESENTATION

19 MS. SHOHAT: Okay. I just came to testify because I
20 have first hand knowledge of the CPA that my brother and
21 his partner hired during the sale of their company. And I
22 did, I would say, 85 percent of the due diligence
23 researching the CPA, his background, his clients. I think
24 I did everything except run a credit check on him.

25 So the CPA, Allan Cohen, was referred by a

1 successful real estate entrepreneur in Philadelphia who I
2 knew from 45 years ago, and he was a client.

3 JUDGE AKIN: I'm sorry to interrupt. Can I just have
4 you move the microphone just a little closer to you?

5 MS. SHOHAT: Sure.

6 THE COURT REPORTER: May I please have the witness's
7 first and last name spelling?

8 MS. SHOHAT: Sure. Sandra -- S-A-N-D-R-A, Shohat --
9 S-H-O-H-A-T.

10 THE COURT REPORTER: Thank you.

11 JUDGE AKIN: Thank you. You may continue. Sorry
12 about that.

13 MS. SHOHAT: Okay. The CPA that was referred by a
14 friend that I knew from 40 years ago, successful person,
15 he referred Allan Cohen to my ex-husband, to me, which I
16 referred to my brother. And I did a Google search, found
17 out he was a CPA since the 1960s. I met with a few of his
18 clients in Philadelphia that had many businesses, I looked
19 up those businesses. Allan Cohen was a CFO for several
20 businesses.

21 You know, no indications that this person did not
22 know what he was doing. He was a professional, he was a
23 CPA for years, he had great clients, he still does. He is
24 still in practice.

25 In 2014 I ran through the New York Disciplinary

1 Board if he had any discipline. No disciplinary record
2 for 50 years. He had no lawsuits against him. There was
3 nothing more that would say that this guy was shady or
4 providing tax-avoidant schemes. They were shelters, all
5 legit, his spiel, his partners, his businesses, all seemed
6 legit, and they are still ongoing.

7 So he took my word for it and --

8 MR. STEFFIER: Incidentally, Sandra was a contract
9 administrator for Hyper-Therm, so she was an employee.

10 MS. SHOHAT: I actually was instrumental in starting
11 the business with the cash investment 35 years ago. So
12 from the start and the end, but I had left for some time
13 -- left for some time in between as well.

14 Anyway, as far as I see the scope of due
15 diligence, prudence -- did he do due diligence? I mean,
16 the issue here is the penalty and abatement of the penalty
17 based on two factors, reasonableness, ordinary business
18 standard which would be an ordinary business standard is
19 not really defined by the Franchise Tax Board. It is very
20 broad, it is very vague, there are no examples of ordinary
21 business care.

22 So basically, ordinary business care would
23 suggest that the McDonald's cashier exercise ordinary
24 business care paying her bills on time, it would also mean
25 that a dentist use ordinary business care when paying his

1 bills and taxes on time. So there is no heightened
2 standard of care for an individual.

3 And I know that this is the first go around that
4 Mr. Steffier has ever sold a business. He is not a tax
5 attorney or had no tax knowledge. For the whole 40 years
6 he was in business, he had a CPA do all his tax business,
7 he ever made an individual investment on his own without
8 an attorney. Yes, he is an engineer and that is what he
9 knows, he knows engineering.

10 So ordinary business care, I don't know about.
11 Due diligence I do know about firsthand. I met with these
12 shareholders of various companies and the CPA prior to him
13 hiring him. So that is basically my testimony.

14 MR. STEFFIER: Well, I am going to --

15 JUDGE AKIN: And may I interject?

16 MR. STEFFIER: Yes.

17 JUDGE AKIN: Before I turn it over to, Mr. Steffier,
18 does that include Ms. Shohat's testimony?

19 MR. STEFFIER: I think so.

20 JUDGE AKIN: Let me -- just so we don't lose track of
21 where we're at. Let me allow Franchise Tax Board and my
22 panel to ask any questions they may have of her.

23 MR. STEFFIER: Absolutely.

24 JUDGE AKIN: Mr. Yadao, did you have any questions for
25 Ms. Shohat?

1 MR. YADAO: I have no questions at this time. Thank
2 you.

3 JUDGE AKIN: Okay. Thank you. And let me turn to my
4 panel.

5 Judge Gast, any questions for Ms. Shohat?

6 JUDGE GAST: I do not have any questions at this time.
7 Thank you.

8 JUDGE AKIN: And Judge Hosey, any questions?

9 JUDGE HOSEY: No questions. Thank you for your
10 testimony.

11 JUDGE AKIN: Okay. Let me just swear you in before
12 you begin.

13 MR. STEFFIER: Yes.

14 JUDGE AKIN: So if you could raise your right hand.

15 W. STEFFIER,
16 Produced as a witness, and having been first duly sworn by
17 The Administrative Law Judge, was examined and testified
18 as follows:

19 JUDGE AKIN: Okay. Thank you. You may begin.

20 MR. STEFFIER: Okay. So I'm going to do it by -- it's
21 been a long time -- I have written a number of letters
22 both to Adena Mora back in 2017 or '18. I just want to go
23 over some of the statement of facts from early on as it
24 moves forward. So I am going to be reading a lot of this,
25 I don't know what has been read.

1 JUDGE AKIN: Quick reminder. That's fine, you can
2 read. Move the microphone just a little closer.

3 MR. STEFFIER: Yes. Thank you.

4 JUDGE AKIN: And then when we read there's a tendency
5 to read fast.

6 MR. STEFFIER: I will read slowly.

7 JUDGE AKIN: Yes, try to pace yourself and read slowly
8 for our stenographer. Thank you.

9 MR. STEFFIER: Yes. The history. So in April 2013 I
10 sold my company, Hyper-Therm High-Temperature Composites,
11 to Rolls-Royce North America. Rolls-Royce took the --
12 elected the 338(h)(10) election for taxes, for their tax
13 purposes and following the sale I own 45 percent of the
14 company.

15 My accountant of 20 some-odd years -- 22 years at
16 least that long, Cheryl Collins, felt unqualified to
17 handle both our corporate and personal tax returns for the
18 first time due to the complexities of the 338(h)(10). As
19 such, I was referred to a local corporate accounting law
20 firm in Irvine, Wertz & Company, directly -- who was
21 directed by Rolls-Royce to do our corporate returns upon
22 the sale that year in 2013. They did the corporate tax
23 documents for that year during the transition.

24 So for my personal taxes, I was referred to an
25 accountant. So basically, this company, Wertz, was

1 willing to do my taxes, but they wanted \$9000 upfront for
2 the retainer and then they thought it was going to be
3 about \$12,000 to do the taxes. I thought that was
4 extremely excessive since I probably never paid more than
5 \$500 to do my personal taxes, and other than the
6 338(h)(10) which gave additional complexity to my personal
7 taxes, I thought it was really kind of excessive to want
8 to charge me about \$12,000 and it was open-ended, by the
9 way. They could not commit on the exact price.

10 So what we did is I consulted other people, as
11 well as Sandra, to find me in accountant who is capable of
12 handling mergers and acquisitions, that have done this
13 before for other companies that have been sold and bought,
14 and in particular, one that was very familiar with the
15 338(h)(10) election.

16 So once again, Sandra did her -- she contacted
17 people that she knew back east that had various companies,
18 one of which was David Callen who was a very successful
19 real estate corporate guy that had -- I don't know --
20 nearly a dozen different companies. Allan Cohen was on
21 his both board and as a CFO for a variety of these
22 companies.

23 So anyway, so Sandra did her research on this guy
24 we said, "Okay. Sounds pretty good. He's an older guy
25 it's got a lot of experience." We expressed an interest

1 in possibly hiring him to do my taxes. He was receptive,
2 he was from New York City, he was able to practice in the
3 State of New York, Pennsylvania, Florida, Nevada, and
4 California. He flew out at his expense back in 2013 to
5 basically introduce himself and tell us what he could do
6 for me, with regard to my taxes.

7 He basically alluded to some mechanisms that he
8 has used successfully many times before during an
9 acquisition or a sale, whereby he could save a lot in
10 taxes by forming a company and folding in various
11 businesses that he knew of that were for sale, that were
12 suffering losses.

13 So I'm going to continue to read just what I have
14 to be concise about what I'm trying to do here. So he
15 flew out to California, I met with him personally to
16 discuss my tax situation. Following the day-long meeting,
17 he gave me confidence to proceed handling my taxes, as
18 such I hired him to do my fiscal year 2013 taxes.
19 Although he was often difficult to get ahold of to ask
20 questions, he was usually late with everything, his tax
21 preparation work appeared to be very professional.

22 Sometime in the third quarter of 2016 I received
23 a letter from the Franchise Tax Board, this was Suzy
24 Hernandez, regarding my 2013 taxes. Having no
25 understanding of the accounting that was done, I passed

1 the letter on to the new president of Rolls-Royce to look
2 into. Not long after, Franchise Tax Board sent me another
3 letter requesting support information for my 2013 taxes.

4 I believe at the time I called Suzy Hernandez,
5 who was the contact for Franchise Tax Board at the time,
6 to find out what this was all about. I explained that I
7 didn't do my taxes, nor did I understand how to interpret
8 them to provide any relevant answers to her. I requested
9 that she speak directly to my accountant, Allan Cohen,
10 since he did my taxes. She stated, in order to do so I
11 would need to appoint him as power of attorney which I
12 did. I agreed and Suzy emailed me or directed me to the
13 Franchise Tax Board website to obtain the POA form to
14 appoint Alan Cohen the authority to discuss my taxes with
15 them -- excuse me.

16 Throughout the 2017 year, I contacted Allan Cohen
17 a number of times, at least six to eight times, to get
18 status on handling my Franchise Tax Board matter. He
19 assured me that he was taking care of it and was waiting
20 for additional information from some investments that I
21 made, but gave me absolute confidence at the time that it
22 would be completed soon.

23 I asked on several followup phone calls and text
24 messages and e-mail messages about the FTB requests and if
25 he could send me a copy for my records. He always agreed

1 to do so, but never followed through to send me anything.
2 Because he and his wife were in their late 70s, early 80s
3 they both apparently suffered from a number of medical
4 issues, this is what I understand from Allan Cohen. So he
5 was often either at the doctor's or in the hospital for
6 some medical complication that he claimed to have had.

7 As such, he would often fail to follow through
8 with me on nearly everything that I requested from him.
9 However, I gave him the benefit of the doubt, not
10 responding due to his unfortunate circumstances, I didn't
11 feel -- I felt awkward, you know, being much younger than
12 him, and that he was a professional in his profession. I
13 didn't want to nag him, so I didn't want to seem like I
14 was a nuisance, but it got to that point where I had a be.

15 However, in December of 2017 after learning a
16 notice of proposed assessment from FTB that Allan Cohen
17 never provided any information requested by FTB to
18 straighten out my tax situation, I immediately called Suzy
19 Hernandez just after Christmas and the New Year holiday to
20 find out what was going on. I was informed by her
21 supervisor that FTB sent several mailed letter requests to
22 Allan Cohen throughout the year 2017 regarding my matter,
23 and he never responded to them.

24 Suzy Hernandez informed me that the only response
25 she received from Allan Cohen was a request for an

1 extension at some point in early 2017. Because I granted
2 Allan Cohen POA, I was never informed or copied on any of
3 the correspondences coming from the Franchise Tax Board
4 during 2017 that we're taking place between the Franchise
5 Tax Board and Allan Cohen.

6 I only learned on January 8th, 2018 that these
7 letters were provided to Allan, with the first being sent
8 to him back in October of 2016, so I was completely
9 unaware of what was going on.

10 I immediately contacted Allan Cohen by telephone
11 to express my anger and disbelief over his careless lack
12 of attention and breach of duty regarding his handling of
13 my matter. Never able to get contact on the first try, I
14 left several messages, each with increasing tone of
15 frustration. In lieu of calling back, he would often text
16 me stating that he or his wife was either at the doctor's
17 office, or in the hospital, and that he would get back to
18 me shortly. At this point, I wondered if he was
19 intentionally avoiding me, knowing that perhaps he had
20 ever put any effort to this matter that he promised.

21 Those times where the finally did call back, he
22 would tell me that he was working on it, and had the
23 situation under control. I emailed him a scanned copy of
24 the FTB Notice of Proposed Assessment and demanded he give
25 it immediate attention, as I need to respond to the

1 assessment no later than February 6th of 2018.

2 For over a two-week period I pressured Allan
3 daily by phone, text, and e-mail to send a response letter
4 to FTB, but he kept insisting that he will have all the
5 information that was requested and submitted before that
6 time. At this point, I made it perfectly clear that
7 regardless of his insistence to delay and promise, I
8 demanded that he send the response letter to Franchise Tax
9 Board immediately and I threatened him to take legal
10 action against him for any further delay on the matter.

11 After giving Allan Cohen five days to scribe a
12 response letter and not receiving anything from him, I've
13 decided to write this letter myself, fearing that Allan
14 Cohen may indeed fail me once again. Armed with the
15 threat of legal action is now my hope that Allan would
16 provide answers to questions asked by the Franchise Tax
17 Board and to me to finally put this matter to rest.

18 On Friday, January 12th Allan contacted me and
19 said he will be flying out the week to meet me in person
20 to discuss how his plans -- on how to clear up all the
21 confusion surrounding my 2013 taxes. This at least gave
22 me some sense that he was finally taking the matter a
23 little bit more seriously.

24 On January 17th, 2018 he came from New York to
25 Huntington Beach to meet with me to discuss my taxes and

1 to return much of my old support documentation from prior
2 years taxes that he had prepared for me. For the first
3 time we reviewed my taxes from 2013 through 2016. In
4 doing so, we discovered an error on my 2016 taxes which
5 required an amendment. Allan informed me that he was
6 still in the process of the locating and assembling the
7 necessary support documentation for the Franchise Tax
8 Board on my 2013 taxes.

9 He again told me that this -- that his long delay
10 in providing the requested information is both that he and
11 his wife had been suffering a number of medical problems
12 which set him back, that's his claim. After spending
13 several hours discussing my tax matters with Mr. Cohen, I
14 think he also suffers from some sort of memory loss, as he
15 seems to forget many details that we discussed and agreed
16 to prior.

17 However, he again assured me that he had or was
18 able to obtain all the necessary support documentation for
19 the Franchise Tax Board that was requested and would be
20 providing a package to the Franchise Tax Board before the
21 response deadline of February 6th. However, not knowing
22 if he -- if and when he will be submitting the information
23 to the Franchise Tax Board and not knowing whether I need
24 to seek legal action against him, I submitted a letter in
25 response to the Notice of Assessment sent to me on

1 December 8th of 2017. As such, I requested a 90-day
2 extension for Allan to submit all of the requested
3 information. Attached is a copy of the protest letter.

4 So anyway, that is the first part, just a little
5 bit of background as to what happened early on. And then
6 let's see -- excuse me.

7 So I wrote in -- let's see -- in March of 2020
8 again, describing that I believe I was a victim of fraud
9 and that I did not agree -- let's see -- with the
10 determination of the disposition assessed by the Franchise
11 Tax Board at that time. Various things transpired of
12 which I have exhibits for that made me believe that this
13 guy was a fraud and that I was a victim of a fraudulent
14 scheme that he out on me. And I will go over that a
15 little more detail of what the details of that was.

16 At some point -- I'm trying to remember. I
17 basically agreed with the Franchise Tax Board immediately
18 when they basically gave me -- basically said they didn't
19 accept my response to their demand for paying taxes, I
20 paid it immediately. So the money that was owed, nearly
21 \$1,000,000 that was owed to the Franchise Tax Board, Adena
22 Mora was the person, the hearing officer that I was
23 dealing with at FTB at the time. When she said basically,
24 we can't accept what you got so far, I immediately paid
25 that month in full, without any further discussion, but

1 then said, "Feeling that I am the victim of fraud, I would
2 like to appeal the penalty." I paid the interest the
3 taxes that were due, once again, immediately.

4 So what had happened is I then hired an attorney.
5 In my exhibits, if you look 3B it's basically a text
6 message trail over a number of years since being informed
7 by the Franchise Tax Board that they're in disagreement
8 with my prepared taxes by my CPA. It is a message trail
9 by text message, showing that he clearly states that what
10 he had done on my taxes was completely legitimate and
11 legal, and using generally accepted accounting principles.
12 I asked for reassurance because it was really at that time
13 I was fretting the fact that maybe I was a victim of scam
14 because he wasn't complying with neither the Franchise Tax
15 Board or myself on any of the demands for supporting
16 documentation on what he had done on my 2013 taxes.

17 So basically, what he proposed when we got into
18 this tax thing was he had this so called accounting scheme
19 whereby he would open up a company, and he had several
20 companies, it was three different media learning companies
21 that were losing money that would fold in, and I would be
22 50 percent partnership in this company. I would buy in by
23 buying out these three additional companies for 550,000
24 bucks that would go into this company called Lorax that he
25 had opened up.

1 Come to find out, he didn't buy any of these
2 companies. In fact, in doing some further background
3 research on the guy, these companies were owned by him and
4 he sold them to us or to myself and folded it into this
5 company called Lorax, whereby my capital gains would be
6 offset by the capital losses of these companies that he
7 sold to us.

8 It seemed like a very valid method of accounting
9 and he claimed he does all the time and that large -- he
10 proved them -- basically, he was very encouraging in the
11 fact he described various big companies that did the same
12 thing and so I fell victim to that. I got a -- let me
13 find it, bear with me, please. So I did hire an attorney
14 and Allan Cohen, by the way, was to operate this company
15 called Lorax, LLC. Lorax, LLC expired in, I believe it
16 was 2016, and then magically reappeared when the Franchise
17 Tax Board was -- they let the LLC lapse -- he let the LLC
18 lapse without my knowledge, and then it magically
19 reappeared as a new LLC when the Franchise Tax Board was
20 involved with corresponding with him.

21 So let me see, I filed a -- I called the FBI at
22 some point in 2018 and gave them all the background
23 information, telling them that I felt I was a victim of
24 the financial fraud by this guy, Allan Cohen. I also
25 filed a complaint with the Securities and Exchange

1 Commission, also at about that time. Those are all in the
2 exhibits that I provided in these packages.

3 I had a demand letter from my attorney. I'm
4 sorry for the confusion, I have so much information here.

5 JUDGE AKIN: Take your time. And I will note that we
6 have all of the exhibits on our laptops as well.

7 MR. STEFFIER: So back in December of 2019, I hired --
8 well, in December '18 I was working with a lawyer out of
9 Newport Beach, George Straggas. I hired him to look into
10 Allan Cohen, David Callen, and Scott Williams, who turned
11 out to be the recipients of my \$550,000 that I provided to
12 Allan to form and purchase -- to form Lorax, LLC and to
13 purchase the assets that were to be folded into that
14 investment.

15 The demand letter reiterated Allan's -- Allan's
16 claims that he made back in 2013 after the sale of my
17 business where he claimed to have purchased several
18 companies on behalf of myself with that money, and
19 integrated them into the newly formed company Lorax, LLC.
20 I was supposed to be a 50 percent partner in that company.

21 So these people that were Allan's partners were
22 informed that I was a victim of illegal fraudulent scam
23 where they stole my money and Allan intentionally acted --
24 I basically stated that he acted criminally by using an
25 illegal accounting scheme, known as Son of Boss, which we

1 discovered after doing further research as to what he --
2 what appeared that he -- that he apparently had done. So
3 I have a demand letter from or I have a package here that
4 was from my attorney to both Allan Cohen and the
5 recipients of the money that I provided.

6 I also -- so George Straggas also hired a private
7 investigator to look into the background of Allan Cohen
8 because I was planning on suing Allan Cohen to get my
9 money back for what we believe was a scheme that he had
10 got me into. And the private investigator determined that
11 Allan Cohen was involved in no less than a dozen different
12 shell companies that he had opened including one for his
13 son and one for his wife. And that it was highly unlikely
14 I would ever get anything out of him should I sue him
15 because he's got all his money intertwined in a convoluted
16 way where it would make it judgment-proof. That's how he
17 put it, that he was judgment-proof, so I let that go.

18 And fortunately, George Straggas was very honest
19 with me saying, "I can only go so far. You could continue
20 to pay me to do this," but he didn't feel I could get
21 blood from a stone, so to speak from this issue.

22 So what had happened is in 2018 Allan Cohen came
23 back to California to discuss my situation. He assured me
24 that he was able to straighten out the issue with the
25 Franchise Tax Board, that he was able to provide all the

1 necessary supporting documentation, and the K-1s which I
2 saw for the first time, by the way, in 2018 for this
3 company, Lorax. And we sat for actually it was a day and
4 a half, at which point I recorded some of the
5 conversations that we had at that time that are on the
6 later exhibits in my package here.

7 And his solution to the problem was for me to
8 sign a promissory note. And so that is what flagged the
9 issue with this possible Son of Boss tax scheme, that he
10 took money from me claiming it and I just learned then
11 when we looked at what he had done on the Lorax K-1s and
12 my taxes, claiming that the money I provided him was for
13 services. It wasn't to be for services, it was for
14 purchasing assets in learning media -- three learning
15 media companies that were to be brought into the company
16 Lorax.

17 So he comes with this package -- this document
18 calling it a Subscription Agreement and I read through it
19 and I'm, "Allan, this is nothing more than an IOU." And
20 he goes, "Well, this is how it's done," I said, "Allan
21 this is not what -- this is not what we agreed to. I
22 wasn't getting into something where I'm owing you -- you
23 take money out and I owe it back later. You were to buy
24 assets in various companies and put it into this company
25 that I own fifty percent of, Lorax, LLC."

1 And he insisted that you to sign this order for
2 this thing to go away and I refused to sign because
3 immediately I thought, you know this is not what I agreed
4 to, this is not what I understood -- clearly understood to
5 be what he was getting me into when he did my taxes in
6 order to help save on my capital gains. And as it turns
7 out, this was the scheme he was playing and I think that's
8 the reason why he flew out to California to handle my
9 matter with the Franchise Tax Board, only to get me -- to
10 attempt to get me to sign this IOU document that he felt
11 would clear out the entire situation.

12 Well, I refused to sign it, knowing that perhaps
13 it would clear up the situation, but that's not what I
14 agreed -- that's not what our deal was all about, so I
15 didn't do it. The situation rode out to this point right
16 now where I'm appealing. I agree with the fee, I agree
17 that I've been a victim of fraud by my accountant.

18 With that, I paid my taxes and I just, you know,
19 I'm contesting the penalty because I feel in all honesty
20 that I am a victim of financial fraud by this guy. And he
21 was extremely good at doing it, he was extremely
22 convincing, very charismatic, he seemed very professional.
23 He provided lots of supporting documentation on himself,
24 he had a heck of a resume. He got his CPA license in
25 1966, so he's been doing this for a long time.

1 So I guess I would just like to maybe summarize a
2 couple of things that I just jotted down. Again, I also
3 contacted the FBI -- just to back up -- in 2018, the FBI
4 -- and you have that documentation, it's in my exhibits.
5 I was told by the FBI that they couldn't do anything three
6 years after the fact being a victim of fraud in a matter
7 like what I was experiencing here, so with that the FBI
8 case didn't go any further than a conversation the agent
9 on the telephone.

10 So with that I went and contacted the Security
11 and Exchange Commission. I raised a complaint with them,
12 filled out all the documents online, provided them a
13 letter stating the statement of facts and the history of
14 what happened to file against Allan Cohen, claiming to be
15 a victim of fraud.

16 So just to summarize a couple points that I would
17 like to make. So I've always I've been filing taxes since
18 the late 70s and I've always filed my federal and state
19 taxes on time and never once, never once late in the past
20 46 years. I have never had any discrepancy on a federal
21 or state tax that was in my favor and I've often, if there
22 was any confusion, I would often overpay with the intent
23 of getting a refund when it was due back. So I would
24 never short-pay, I was never owed anything that I didn't
25 pay on time.

1 My tax history and my history as a whole, my tax
2 history, my criminal history, I don't have a single
3 blemish. I never got a moving violation, driving a car in
4 nearly 50 years of driving a vehicle, so I've never even
5 gotten a ticket other than a parking ticket.

6 My failure to pay was due to what I believe was
7 reasonable cause and not willful neglect. I believe I was
8 misguided, I was lied to and I was defrauded by my CPA
9 accountant.

10 With that, I request a penalty relief. We did
11 some research more recently that California is now looking
12 into the possibility of giving up first time abatement to
13 a penalty with reasonable cause, whereby there wouldn't be
14 any willful neglect in doing the taxes. This is the first
15 time I've ever owned a business and it's the first time
16 I've ever sold a business. I was completely unfamiliar
17 and I still am unfamiliar with the 338(h)(10) complexity
18 in doing taxes where the company bought us out, recaptures
19 losses from my company, and somehow passes that on to us
20 as the seller, but they recapture it in a funny way.

21 Franchise Tax Board had made some comments in
22 their arguments against me. I guess from statements that
23 I made on the recordings regarding that I mentioned my
24 daughter, who is now a CPA, where they come out and say,
25 "Well why didn't I consult my daughter?" Well my daughter

1 -- my daughter was a student, she didn't graduate until
2 the summer of 2016 from Cal State Fullerton, so she was a
3 student at the time back in 2013 and up to that point, so
4 I couldn't consult her.

5 And the other comment that they made, it was kind
6 of a very condescending comment, I must say, that I had my
7 head in the sand. I am not an accountant. And I'll be
8 honest with you, I never even balance my checkbook, so I
9 can't balance my checkbook. Yes, I'm an engineer. I can
10 invent things and I know how flying devices and machines
11 work, but I don't do accounting, nor do I claim that I can
12 do such things, so I don't do that.

13 And I've never opened up -- I've got 20 years --
14 well, maybe 15 years worth of tax returns that I received
15 from Cheryl Collins, my long term accountant, when she was
16 finished with the taxes she mailed me the envelope with my
17 taxes in them, they are still unopened at my filing
18 cabinet. So I don't open up my taxes to scrutinize what
19 was done on my taxes, so it's not something I normally
20 did. I trust that my accountant had done a proper job and
21 that I'd mail in whatever is owed and I assume that
22 everything is correct and fair.

23 With that, there's not much more that I can say,
24 but I'm asking for a relief for the penalty. And again, I
25 honestly believe I'm a victim of fraud and I did try to

1 seek to be able to get some relief by hiring an attorney
2 and going after him, but to no avail. We also, my
3 attorney and myself, went after his attorney. And since
4 we brought up the issue of possible fraud, his attorney
5 stopped all correspondences with myself and George
6 Straggas, my attorney.

7 It gave us an indication that this guy, Allan
8 Cohen, has been corrupted and his lawyer probably knows it
9 and that's the reason why he stopped corresponding once we
10 brought to his attention the scheme that we thought Allan
11 got me into which is called Son of Boss.

12 Anyway, that is about all I can really say at
13 this point about my situation. There's a lot of exhibits,
14 there's a lot to go through. I didn't want to have to go
15 through that, you have that, I guess it will be reviewed.

16 JUDGE AKIN: Yes. We have it and have reviewed it and
17 will review it in making our determination.

18 MR. STEFFIER: Well, thank you.

19 JUDGE AKIN: Yes.

20 MR. STEFFIER: Thanks.

21 JUDGE AKIN: Okay. Does that conclude your
22 presentation?

23 MR. STEFFIER: I think it does. And actually, one
24 last comment, so early on, I believe it was Adena Mora
25 asked me to show some documentation early on that I had an

1 agreement with Allan Cohen for him to do by 2013 taxes,
2 and I did have an agreement, a signed agreement, he had
3 scribed up this relationship agreement to do my taxes of
4 which I signed.

5 When my company was bought out by Rolls-Royce all
6 the proprietary trade secret documentation for the company
7 was held in my office. I had a separate office with
8 filing and cabinets where all the sensitive technology
9 information was held in my office, all the financial
10 information was held in other office. And when they took
11 control of the company, the day after they had bought the
12 company, they basically came and they kicked me out of my
13 office and took control of all the documents which
14 rightfully so, they would do such a thing.

15 But in those documents was a wealth of also
16 personal documents that I had. And the documents that I
17 had early on from my accountant were also in that and I
18 never received those back. So I was never able to
19 reproduce a copy for Ms. Mora on the initial agreement
20 that I had with Allan Cohen.

21 JUDGE AKIN: Okay.

22 MR. STEFFIER: That concludes.

23 JUDGE AKIN: Okay. Let me turn to Franchise Tax Board
24 to see if they have any questions for you.

25 MR. YADAO: No questions. Thank you.

1 JUDGE AKIN: Okay. I do have some questions, but I'll
2 check with my panel first.

3 Judge Gast, any questions?

4 JUDGE GAST: I do not have any questions at this time.
5 Thank you.

6 JUDGE AKIN: Judge Hosey?

7 JUDGE HOSEY: No questions at this time. Thank you
8 for your testimony.

9 MR. STEFFIER: Thank you.

10 JUDGE GAST: I have a couple of questions. First,
11 could you explain to me -- let me cover what you just
12 said. So Mr. Cohen, when originally this transaction was
13 set up, he provided you some physical documentation of the
14 transaction?

15 MR. STEFFIER: No, he didn't provide physical -- it
16 was a -- well, yes, in e-mails. And it's probably in the
17 e-mails that I provided in the exhibits, but it wasn't a
18 -- the document that he provided early on was basically
19 the agreement that I would retain him to do my taxes and
20 that I would agree to pay him the fee that he charged
21 which was -- I can't remember if it was 1200 or 2500, but
22 it was some number like that, that I would agree to pay
23 him upon him successfully completing my 2013 taxes.

24 So he came out in 2013, prior to me hiring him to
25 do my taxes, and gave a presentation in the Hilton on PCH

1 and Huntington Beach. He got a room, he had all of these
2 materials and his computer, and went through this
3 presentation and described everything on how it works,
4 companies that he had done this for, companies that do it
5 right now, all his background with regard to where he is
6 accredited in the State of California, Nevada, Florida,
7 New York, Pennsylvania and that is what -- that is all the
8 information that I had.

9 It was basically both verbal and visual documents
10 that were provided to me, nothing in writing.

11 JUDGE AKIN: Okay. Could you briefly explain to me
12 how he explained the transaction to you at that time.
13 Just very briefly, how it was. I know --

14 MR. STEFFIER: Yes.

15 JUDGE AKIN: -- what he eventually did was probably
16 not the same, but how he explained the transaction.

17 MR. STEFFIER: Yes. And it seems perfectly valid to
18 me right now. That he would buy -- okay. I have an asset
19 that I have sold and I have sustained capital gains and I
20 could buy an asset that is sustaining capital losses, fold
21 my assets from my capital gains into a company, and buy
22 these other assets that are suffering capital losses, and
23 I could offset my capital gains with the losses from this
24 company if I bought these companies.

25 It sounds completely valid. I mean, I do some

1 stock trading and I mean, I sell losses to offset my
2 gains. I do those kinds of things and it just sounded
3 very reasonable. I mean, there was nothing that I flagged
4 that didn't make any sense, he made really good sense out
5 of it. He showed the mechanisms on the computer of how it
6 would be done. To me, it all seemed irrational and
7 reasonable.

8 So basically, once again just in summary, I would
9 put my -- I would buy into this company, Lorax, my assets
10 would go in that I received as capital gains, he would
11 then purchase for me companies that have paper losses, and
12 these were supposedly functional companies, they were
13 learning companies, they are in on the Internet, you can
14 find them. He was to purchase those, fold them into the
15 company, and those losses for that tax here would offset
16 my capital gains. It sounded very reasonable, perhaps I
17 was very naive.

18 JUDGE AKIN: Okay. And a follow up question on that.
19 If I understand the documentary exhibits correctly, there
20 was 550,000 that went into Lorax, LLC and that was, your
21 understanding at the time was, for the purchase of the
22 other companies that would fold in the losses.

23 MR. STEFFIER: That's correct.

24 JUDGE AKIN: And then there was also a digital 150,000
25 that was paid to CA Consulting. Can you explain that?

1 MR. STEFFIER: Yes. The CA Consulting turned out to
2 be -- turned out to be Allan Cohen's wife is named Carol
3 Ann, so this was something -- at the time, we had no idea
4 what this was, it turned out to be his wife.

5 So I paid his wife what was supposed to be for
6 managing and operating this company, Lorax, at which point
7 they would get this company, Lorax, and sell it off so
8 that I could recover my \$550,000 out of that deal. So I
9 paid him through his wife that additional money, \$150,000.
10 And again, that was to be spent on managing the company,
11 Lorax, which was located in New York, it was the LLC was
12 opened up in the State of Delaware. But as it turns out,
13 I thought that was another company and as it turns out
14 that CA Consulting was Allen Cohen, so another deception
15 that I was put under at the time.

16 I wasn't paying him, I thought I was paying some
17 other company, turns out to be Allan Cohen's wife.

18 JUDGE AKIN: Okay. And I think I only have one last
19 question at this point. In looking at the documentation,
20 it looks like that 550,000 was invested into Lorax in
21 April of 2014, and the sale of your company had occurred
22 in 2013. Was there any explanation provided by Mr. Cohen
23 about how you could purchase this in 2014 and get losses
24 in 2013?

25 MR. STEFFIER: There was no explanation for that. I

1 thought it was for the 2013 taxes, that it was delayed
2 until he did all this stuff. That was my understanding,
3 it was for the 2013 taxes, that's what it was supposed to
4 be for.

5 JUDGE AKIN: Okay. Understood.

6 MR. STEFFIER: Yes.

7 JUDGE AKIN: That concludes my questions at this
8 point. So I think we are now ready.

9 Unless a break is needed, are we doing okay?

10 Okay. I think we are now ready to turn it over
11 to Franchise Tax Board for their presentation. I believe
12 it was 20 minutes, correct?

13 MR. YADAO: That sounds correct, yeah. I should be
14 quicker than that.

15 JUDGE AKIN: Okay. You may begin when you are ready.
16 Thank you.

17
18 PRESENTATION

19 MR. YADAO: Good morning. I am Eric Yadao, counsel
20 for Franchise Tax Board.

21 Appellant has not established that he's entitled
22 to relief from the accuracy-related penalty. Appellant is
23 an intelligent individual, an engineer, an inventor, and
24 an owner of patents and materials used in jet and rocket
25 engines.

1 Appellant started his own company, Hyper-Therm,
2 in the 1990s and as its president, he sold his stock in
3 the company to Rolls-Royce in 2013. Appellant sought out
4 ways to avoid tax on the gain when he first met Mr. Cohen.

5 Following a single meeting, Appellant agreed to
6 pay Mr. Cohen \$700,000 to prepare his return and to employ
7 a tax-avoidance scheme, showing on his return an
8 artificially inflated five and a half million dollar basis
9 in his company, or one dollar basis increase for every ten
10 cents Appellant paid, which would accomplish what
11 Appellant thought to avoid, paying tax on the gain.

12 Following audit of Hyper-Therm's and Appellant's
13 return, FTB rejected the inflated basis adjustment and
14 assessed additional tax of \$731,500, which appellant has
15 conceded. However, due to a resulting substantial
16 understatement of tax, FTB also imposed a 20 percent
17 accuracy-related penalty in the amount of \$146,300, which
18 is the sole issue on appeal.

19 Appellant's argument is that he reasonably relied
20 on Mr Cohen's verbal assurances regarding the legality of
21 the scheme, which appellant also characterizes as being
22 deceived or a victim of Mr. Cohen's fraud.

23 While the accuracy-related penalty may be abated
24 to the taxpayer can establish his reliance on professional
25 advice was reasonable and in good faith, case law that has

1 evaluated facts similar to appellant's supports the
2 conclusion that the penalty should be sustained here.

3 In Stobie Creek Investors, the federal court
4 stated, "It is not reasonable that the taxpayer knew or
5 should have known that the transaction was too good to be
6 true, based on all the circumstances, including the
7 taxpayers education, sophistication, business experience,
8 and purposes for entering into the transaction."

9 Appellant is an educated, intelligent, and
10 sophisticated business person whose sole purpose for
11 entering into the transaction was to avoid tax on the sale
12 proceeds of his corporation.

13 In Van Scoten, the US Tax Court stated, "Although
14 a taxpayer has a duty to use reasonable care in reporting
15 his tax liability, the promoter who prepares the
16 participant's tax return, can be expected to report large
17 tax deductions and credits to show a relatively low amount
18 of tax due and thereby fulfill prophecies incorporated in
19 his sales pitch." It is not surprising Mr. Cohen prepared
20 Appellant's return, fulfilling the verbal promises he made
21 to Appellant.

22 The Court in Van Scoten further considered the
23 taxpayer's allocation that he was deceived by a promoter
24 and that the deception should instead be considered the
25 taxpayer's mistake of fact. The Court stated, "Whether or

1 not petitioners had a mistake of fact does not alter our
2 conclusion that petitioners' action in relation to their
3 investment and the tax claims were objectively
4 unreasonable. Petitioners' failure to investigate
5 further, beyond what was made available to them, was not
6 an objectively reasonable course of action."

7 Like Van Scoten, Appellant has provided audio
8 recordings of calendar year 2018 -- pardon me. Appellant
9 did not conduct any investigation or seek an objective
10 opinion regarding Mr. Cohen's promises. He simply
11 accepted the amounts reported on his return.

12 Viewing Appellant under Van Scoten supports that
13 as reliance, solely on any verbal promises made by
14 Mr. Cohen was objectively unreasonable.

15 To further support his position Appellant has
16 provided audio recording of calendar year 2018
17 conversations between himself and Mr. Cohen where
18 Appellant, then undergoing the FTB audit, repeatedly asks
19 Mr. Cohen for substantiation of his promises. The Office
20 of Tax Appeals has provided transcripts of those
21 recordings.

22 Appellant makes two statements during those
23 conversations that are further telling of the absence of
24 reasonable cause and good faith. Appellant states, "I
25 just opened up my taxes for the first time two weeks ago

1 from 2013. I never looked at my taxes." That is Exhibit
2 16B, part 1, page 3, lines 9 through 11. And I offer that
3 for the purpose that taxpayers are responsible for the
4 contents of their return and therefore his reliance on the
5 contents simply without even reviewing it is not
6 reasonable.

7 Appellant continues in that same exhibit, page
8 13, lines 20 and 21, "I wished I'd consulted my daughter.
9 My daughter became an accountant." Appellant has attested
10 that his daughter was an accountant at the time, but that
11 shows the reasonableness of -- during the transaction that
12 he should have consulted for a second opinion.

13 In Neonatology Associates v. Commissioner, the
14 Court entertained the taxpayer's argument that they relied
15 on their tax professional to escape the accuracy-related
16 penalty. The Court stated, "The reliance itself must be
17 objectively reasonable in the sense that the taxpayer
18 supplied the professional with all the necessary
19 information to assess the tax matter, and that the
20 professional himself does not suffer from the conflict of
21 interest." The Court concluded that taxpayers could
22 prevail on a reliance on professional defense because the
23 certified public accountants that prepared the taxpayers
24 returns in fact received royalties to endorse the tax
25 avoidance program.

1 Here Appellant paid his fee totaling \$700,000,
2 550 of that was tax year 2014 to incorporate the effects
3 of the scheme into Appellant's 2013 return. Mr. Cohen
4 suffered from an obvious conflict of interest that would
5 have prompted a taxpayer acting in good faith to seek a
6 second opinion.

7 An additional key fact that your panel should
8 consider is the declaration Mrs. Shohat, provided by
9 Appellant, who attested that the accountants at
10 Rolls-Royce offered to prepare repellents return for
11 10,000, but Mr. Steffier declined because he believed that
12 amount was overly excessive. However, he was quickly
13 persuaded by Mr. Cohen to pay a total of \$700,000 with
14 nothing in writing. He has attested earlier that there
15 was a writing, but doesn't have it anymore. That is a new
16 argument, that is not evidence, and it hasn't been made
17 previously. You can see our Exhibit I wherein he states
18 he had nothing in writing and that is the Protest Position
19 Letter.

20 Also not in writing are the risks Appellant would
21 assume in the transaction. The Court in Neonatology
22 further stated, "When a taxpayer is presented with what
23 would appear to be a fabulous opportunity to avoid tax
24 obligations, he should recognize that he proceeds at his
25 own peril. As highly educated professionals the

1 individual taxpayers should have recognized that it was
2 not likely by complex manipulation they can obtain large
3 deductions for their corporations and tax free income for
4 themselves. Moreover, they should have been apprehensive
5 when they examine the scheme, for experience shows that
6 when something seems too good to be true that probably is
7 the case."

8 Taking together Appellant's reliance solely on
9 verbal promises of Mr. Cohen, who stood to profit from the
10 arrangement, and Appellant's failure to seek a qualified
11 and objective second opinion, leads to the conclusion that
12 his reliance was objectively unreasonable, not in good
13 faith, and does not support relief from the
14 accuracy-related penalty. A one day meeting, \$750,000,
15 nothing in writing. Appellant's motivation was tax
16 savings and not the proper application for tax law.
17 Instead of reasonable reliance and good faith, the law
18 supports the conclusion that Appellant proceeded at his
19 own peril in a transaction too good to be true.

20 For these reasons, FTB respectfully requests that
21 you sustain the penalty. And I'm happy to answer any
22 questions you have.

23 JUDGE AKIN: Okay. Thank you, Mr. Yadao. Let me turn
24 to my panel to see if they have any questions.

25 Judge Gast?

1 JUDGE GAST: I have a brief question for Mr. Yadao.

2 Is there any law in the area around fraud for
3 abating the accuracy-related penalty?

4 MR. YADAO: We cited to -- was it -- pardon me. In
5 Van Scoten, they made the argument that they were deceived
6 I'm not sure if they use the word "fraud."

7 JUDGE GAST: Okay.

8 MR. YADAO: I would just add that I have cited to
9 these in our pleadings as well, so if you need the
10 citation for those they are contained therein.

11 And then just one additional comment. Appellant
12 found our comment "head in the sand" offensive and that
13 was actually a citation to case law as well.

14 JUDGE GAST: Okay. Thank you. No further questions.

15 JUDGE AKIN: Okay. Judge Hosey, did you have any
16 questions for Franchise Tax Board?

17 JUDGE HOSEY: No questions. Thank you for your
18 presentation.

19 JUDGE AKIN: Okay. And I don't have any questions, so
20 I think at this point we are ready for Appellant's
21 rebuttal or closing.

22 You have ten minutes and can respond to anything
23 you would like to address or respond.

24 CLOSING STATEMENT

25 MR. STEFFIER: I would like to respond to some of

1 these things. Once again, my daughter was a student at
2 the time this happened, so I didn't -- wasn't about to
3 consult a student in her second year of school or third
4 year.

5 Two, yes, I'm an engineer and I have expertise in
6 an area of jet engines and rocket engines. I'm not an
7 accountant, two totally completely different disciplines.
8 I have no expertise in that.

9 I will comment, the comment where "too good to be
10 true," perhaps you are right, Eric. Maybe it was too good
11 to be true, but I was absolutely convinced by this guy's
12 presentation, which didn't take place just in one day by
13 the way, it was a series of discussions, only once in
14 person which took place over the course of two days.

15 Once again, I probably could have gotten out of
16 this by signing an IOU. I was told by my lawyer, George
17 Straggas, that he saw what was going on here. And should
18 I have -- would I have signed that document for Allan
19 Cohen? May have put some level of this to rest, probably
20 not, but perhaps it could have. I refused to sign it
21 because I felt that that's not -- I wasn't into this to
22 avoid paying taxes, seeing this as a too good to be true
23 scheme. I'm a fraud of this scheme and as an honest
24 individual, I refused to sign this document.

25 And I'm about to pay this penalty if I have to,

1 but at least I have a conscience heart of doing it. I
2 didn't sign the document knowing that this was all part of
3 a scheme that Allan Cohen came up with after as a
4 different story than he presented to me originally.

5 And once again, I'm an engineer, I'm not an
6 accountant, I don't open up my taxes, I've stated that,
7 that I've never opened up. I actually should have brought
8 some as evidence from dating back 15 years ago. I don't
9 open them up, I don't review it, I don't go out for a
10 second opinion for somebody doing my taxes, I don't often
11 do that when I go to a physician to see a doctor, and I
12 certainly don't do that when I hire a lawyer. So I trust
13 a professional, especially a licensed professional to be
14 professional and ethical. I don't go in distrusting
15 somebody right off the bat.

16 So once again, what I was presented early on, the
17 scheme sounded reasonable and legitimate, whereby
18 companies would be folding in and capital gains would be
19 reduced by capital losses from these other assets. It
20 seemed reasonable to believe, I got into it, I didn't know
21 I was paying this guy to line his pockets.

22 So once again, I honestly believe I am a victim.
23 Well, I am a victim of a fraud that cost me nearly a
24 million dollars that I put in his pocket. That is all I
25 have to say, I have nothing else.

1 JUDGE AKIN: Thank you.

2 MR. STEFFIER: Thank you.

3 JUDGE AKIN: Let me just turn to my panel to see if
4 there's any final questions from the panel before we wrap
5 up the hearing today.

6 Judge Gast?

7 JUDGE GAST: No questions from me. Thank you both for
8 your presentations.

9 JUDGE AKIN: And Judge Hosey?

10 JUDGE HOSEY: No questions for me. Thank you,
11 everyone.

12 JUDGE AKIN: I also do not have any additional
13 questions. So I think we are about ready to conclude.

14 Before I do, I wanted to check with Mr Yadao, did
15 you feel a need for a post-hearing brief to address the
16 testimony from Ms. Shohat?

17 MR. YADAO: No, but thank you for the opportunity.

18 JUDGE AKIN: Thank you. So since there is no need for
19 any post-hearing briefing what I will do here is close the
20 record. So before I do that, I want to thank both parties
21 for making it here today. I do know it's been a long
22 process, so I do appreciate both parties being here and
23 providing the argument and testimony.

24 The panel of Administrative Law Judges will meet
25 and decide the case based upon the arguments and evidence

1 in the record. We will issue our written decision 100
2 days from today the case is submitted and the record is
3 now closed.

4 (Proceedings concluded at 10:51 a.m.)
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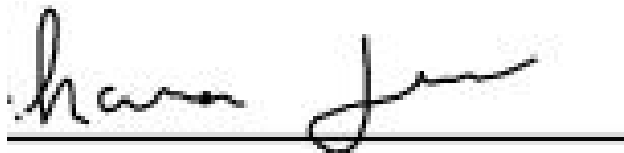
1 CERTIFICATE
2 OF
3 HEARING REPORTER
4

5 The undersigned hearing reporter does hereby certify:
6 That the foregoing was taken before me at the time and
7 place therein that any witnesses in the foregoing
8 proceedings were duly sworn; that a record was made of the
9 proceedings by me using a machine shorthand, recorded
10 stenographically, which was thereafter transcribed under
11 my direction.
12

13 I further certify I am neither financially interested
14 in the action nor a relative or employee of any attorney
15 or party to this action.
16

17 Dated: July 11, 2023

18 Hanna Jenkin

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