

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
D. ABRAHAMI,) OTA NO. 221212079
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, February 22, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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IN THE MATTER OF THE APPEAL OF,)
D. ABRAHAMI,) OTA NO. 221212079
APPELLANT.)
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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 10:50 a.m. and concluding at 11:19 a.m. on
Thursday, February 22, 2024, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Administrative Law Judge: JUDGE RICHARD TAY

For the Appellant: D. ABRAHAMI

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

PAIGE CHANG
MARIA BROSTERHOUS

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-3 were received at page 6.)
(Department's Exhibits A-G were received at page 7.)

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

	<u>P A G E</u>
By Mr. Abrahami	8
By Ms. Chang	12

C L O S I N G S T A T E M E N T

	<u>P A G E</u>
By Mr. Abrahami	16

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California; Thursday, February 22, 2024
10:50 a.m.

JUDGE TAY: We are on the record.

This is the Appeal of Dalia Abrahami, OTA
Case No. 221212079. Today is February 22nd, 2024. It's
approximately 10:50 a.m.

This appeal is being conducted electronically
lead by myself, Judge Richard Tay. This appeal is being
heard and decided by single Administrative Law Judge under
the Office of Tax Appeals Small Case Program.

I just want to remind everyone and all of our
viewers that the Office of Tax Appeals is not a court but
is an independent appeals body. The office is staffed by
tax experts and is independent of the State's tax agency.

OTA does not engage in any ex parte
communications with either party, and my decision will be
based on the arguments and evidence provided by the
parties on appeal in conjunction with an appropriate
application of the law.

Now, for the record, I'm going to ask the parties
to introduce themselves, starting with Appellant.

Will you please introduce yourself for the
record.

MR. ABRAHAMI: Appellant would be me?

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JUDGE TAY: Yes.

MR. ABRAHAMI: Doron Abrahami speaking for Dalia Abrahami.

JUDGE TAY: Thank you.

Franchise Tax Board.

MS. CHANG: Page Chang for the Franchise Tax Board.

MS. BROSTERHOUS: Maria Brosterhous also for the Franchise Tax Board.

JUDGE TAY: Thank you everyone.

Now, the issue on appeal today is whether Appellant has shown that Franchise Tax Board erred in its proposed assessment of tax in the late-filing penalty for the 2019 tax year.

During the appeal process, Respondent provided Exhibits A through G, and Appellant provided Exhibits 1 through 3. No objections were made to the exhibits.

Is that correct, Franchise Tax Board?

MS. CHANG: Yes. That's correct. Thank you.

JUDGE TAY: And Mr. Abrahami?

MR. ABRAHAMI: Correct.

JUDGE TAY: The exhibits are now admitted as evidence into the record.

(Appellant's Exhibits 1-3 were received in evidence by the Administrative Law Judge.)

1 (Department's Exhibits A-G were received in
2 evidence by the Administrative Law Judge.)

3 Mr. Abrahami, I believe that you decided to make
4 your presentation and that you wanted to maybe testify to
5 certain facts. Is that still the case? Because, if so,
6 I'd like to swear you in as a witness as well.

7 MR. ABRAHAMI: Yes.

8 JUDGE TAY: Okay. If you would please just raise
9 your right hand.

10

11 D. ABRAHAMI,
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

16 JUDGE TAY: Okay. Thank you very much.

17 We're going to start with presentations, and
18 we'll start with Appellant's presentation. You will have
19 10 minutes to make you're presentation, after which I will
20 give Franchise Tax Board an opportunity to make its
21 presentation, and then you will have 5 minutes on
22 rebuttal.

23 Okay. So, Mr. Abrahami, you have 10 minutes.
24 Feel free to begin whenever you're ready.

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JUDGE TAY: Okay. Thank you, Mr. Abrahami.

1 I have just a few clarifying questions regarding
2 some of the documents that you submitted. And so I know
3 that you submitted some statements, it looks like credit
4 card statements to Franchise Tax Board. Now, some of them
5 are credit card statements of Dalia Abrahami and January,
6 June, July, and December of 2019. Could you just
7 elaborate a little bit about why those statements are
8 relevant to this appeal?

9 MR. ABRAHAMI: Well, they -- they asked for
10 statements, so I sent her statements, you know. I didn't
11 even read them. Because, you know, they -- it was
12 basically to prove that she did not make any payments to
13 Rez [sic] Mortgage Company. It's not really showing
14 anything except that she's never made payments to Rez.
15 This is what their -- the entire number is based on.
16 They --

17 JUDGE TAY: Okay.

18 MR. ABRAHAMI: They think she made enough money
19 to pay -- to make a large living expenses, and I don't
20 know where they came up with that \$3,000.

21 JUDGE TAY: Okay. And there's also a statement
22 of Cherry Red LLC. It looks like a checking account
23 statement. There are a few transactions that are
24 highlighted -- it seems like they're highlighted. Would
25 you be able to also kind of elaborate on the relevance of

1 this statement?

2 MR. ABRAHAMI: Well, they -- they wanted me to
3 show that -- where the payments to Rez Mortgage came from.
4 And it always, for the last three or four years, as long
5 as we had that loan, came from Cherry Red LLC. They
6 requested those statements. I sent them.

7 JUDGE TAY: Would you be able to point to which
8 transaction they're referring to regarding the mortgage
9 payment?

10 MR. ABRAHAMI: I don't have it in front of me,
11 but I think it's for \$1,097 and I remember that's the
12 amount that is being deducted automatically from the
13 Cherry Chase account for Rez Mortgage. But that's the
14 only relevant number that is on that statement. It's
15 basically they wanted proof that -- that the mortgage
16 payment is being made not by Dalia. So I sent those
17 statements.

18 JUDGE TAY: Would this be related to the Flamingo
19 Heights HOA?

20 MR. ABRAHAMI: No. The Flamingo Heights is my
21 property. It's only for, think, \$375 or \$286 previously.
22 I don't know which statement but probably \$216. That's an
23 HOA for one of my condominiums that I own.

24 JUDGE TAY: Okay. That's --

25 MR. ABRAHAMI: And, again, it's that -- those are

1 my expenses, not Dalia's. She's not on that account.

2 JUDGE TAY: Okay. And the amount you said is
3 \$900 or --

4 MR. ABRAHAMI: For the Rez Mortgage, it's -- I
5 think it's \$1,097 for the mortgage company.

6 JUDGE TAY: Okay. Well, I'm not seeing it
7 exactly, but perhaps I'm looking at the wrong thing. So
8 I'll maybe let Franchise Tax Board weigh in a little bit
9 on that. And the mortgage statement that you submitted in
10 December from Newrez, it does show Natalie Abrahami on it.
11 I note that it's a mortgage statement dated November 2023.
12 But is it your understanding or was it the fact that
13 Natalie Abrahami was on the mortgage statement in all of
14 2019 as well?

15 MR. ABRAHAMI: Yes. She is the one that is the
16 only one on the mortgage paper. She's the one that sign
17 those loan documents. The mortgage is in her name solely,
18 completely.

19 JUDGE TAY: Okay. All right. That's all the
20 clarifying questions I have right now.

21 I will turn it over to Franchise Tax Board for
22 its presentation.

23 Franchise Tax Board, you have 10 minutes. Please
24 begin whenever you're ready.

25 MS. CHANG: Thank you.

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1 presumption of correctness, the burden shifts to the
2 taxpayer to show error in the assessment. In addition,
3 the taxpayer must produce evidence to establish the proper
4 amount of tax.

5 Here, Appellant's claim that she did not work for
6 the 2019 tax year, having closed her business, and that
7 her ex-husband, Mr. Abrahami, paid for her living expenses
8 and the mortgage payments in 2019. Appellant has provided
9 some documents. However, Appellant has not met her burden
10 to establish error in the proposed assessment.

11 Appellant provided these following documents:
12 Appellant provided four months of personal bank
13 statements, which show some online transfer deposits.
14 However, the statements do not indicate the source of
15 these deposits or that it was Appellant's ex-husband who
16 made these deposits. Appellant provided one bank
17 statement from the entity Cherry Red LLC in order to show
18 a mortgage payment to JP Morgan Chase bank. However, from
19 the transaction detail listed to JP Morgan Chase bank,
20 it's not clear that the transaction was for a mortgage
21 payment.

22 Appellant provided a mortgage statement under the
23 name Natalie Abrahami for the period of November 2023.
24 It's not clear from the mortgage statement that because
25 the year on appeal is 2019 that Dalia Abrahami was not the

1 one making the mortgage payments in 2019. However,
2 Mr. Abrahami has explained here today that it was the case
3 that Dalia Abrahami was also not on the mortgage in 2019.
4 Lastly, Appellant provided a copy of her 2018 federal tax
5 return. However, the tax year on appeal is 2019 and,
6 based on federal information that FTB received from the
7 IRS, Appellant has not yet filed her 2019 federal tax
8 return.

9 Beyond the provided documents with regards to
10 additional information or documents, in order to explain
11 how Appellant paid for cost of living expenses and
12 mortgage interest payments the following items would be
13 helpful: First, bank statements from Appellant's
14 ex-husband, Mr. Abrahami, that showed the corresponding
15 online transfer payments that were indicated in
16 Appellant's personal bank statements to show that
17 Mr. Abrahami was paying for Appellant's cost of living
18 expenses; second, mortgage statements from the year of
19 2019; third, Appellant may file her 2019 California tax
20 return; lastly, any additional information or evidence as
21 to Appellant's business, the date that her business closed
22 or the reason that her business closed would be helpful as
23 well.

24 A taxpayer's failure to provide evidence that is
25 within his or her control gives rise to the presumption

1 that such evidence would be unfavorable, and supported
2 assertions are insufficient to meet a taxpayer's burden of
3 proof. Thus, Appellant has not met her burden of proof to
4 establish error in FTB's proposed assessment.

5 Now, turning to the second issue, FTB properly
6 imposed a delinquent filing penalty when Appellant failed
7 to timely file a 2019 tax return. To date Appellant has
8 not yet filed her 2019 California return. Although, the
9 delinquent filing penalty may be abated upon a showing of
10 reasonable cause, Appellant has not made a reasonable
11 cause argument for abatement of the penalty. Thus, the
12 delinquent filing penalty may not be abated.

13 Turning to the third and final issue regarding
14 accrued interest, there is no reasonable cause exception
15 to the imposition of interest, and Appellant has not
16 alleged or established any of the statutory grounds for
17 interest abatement. Thus, interest may not be abated.

18 In conclusion, Appellant has failed to satisfy
19 her burden of proof because Appellant has not demonstrated
20 error in Respondent's proposed assessment or established
21 any grounds to abate the delinquent filing penalty or any
22 grounds to abate interest, Respondent's actions should be
23 sustained.

24 Thank you. I'm happy to answer any questions.

25 JUDGE TAY: Thank you, Franchise Tax Board.

1 Maybe just a couple of clarifying questions. First, on
2 the late-filing penalty, if Appellant were to show that
3 they did not have sufficient income or to show that there
4 was a tax due, then what would be the consequence to the
5 late-filing penalty?

6 MS. CHANG: Generally, the late-filing penalty is
7 calculated based on the amount of tax due. And so if
8 Appellant filed a tax return and the tax return were
9 accepted at a lower amount of tax than the proposed
10 amount, then the late-filing penalty would also be reduced
11 based on the calculation, if that's helpful.

12 JUDGE TAY: Yes. Thank you. I appreciate that.
13 I have no further questions for Franchise Tax Board.

14 So I will turn to Mr. Abrahami to close us out
15 with a 5-minute rebuttal to what Franchise Tax Board had
16 to say, so if you have anything to add. And if you would
17 like to make any kind of closing remarks, please feel free
18 to do so. You have 5 minutes. Please begin whenever
19 you're ready.

20 MR. ABRAHAMI: Yes, Your Honor.

21

22 CLOSING STATEMENT

23 MR. ABRAHAMI: I just want to re-emphasize that
24 Dalia Abrahami has not worked in 2019. All the payments
25 were made by me to the mortgage company in the name of

1 Natalie Abrahami, which is also on the bank accounts for
2 Cherry Chase LLC. Dalia is disabled. She's not working.
3 She was receiving compensation from the uninsured -- from
4 the whatever it's called -- the EDD. She's still not
5 working. She's unable to work.

6 I don't really know what they want from her.
7 They should just -- they should just go and leave this
8 lady alone. There is no income. She has no income now.
9 She didn't have income in 2019, and they're just making
10 things very difficult for Dalia Abrahami, a lot of stress.
11 And I -- I'm asking the Court to dismiss her case. It's
12 based on the assumption that she paid mortgage, and she
13 paid this, and she paid this. She didn't pay anything.
14 She didn't have any money to pay.

15 I think -- I think I made that clear with the
16 Cherry Chase statements that if it wasn't for me and my
17 goodwill, she -- she would be a burden on the State even
18 more.

19 JUDGE TAY: Mr. Abrahami, did that conclude your
20 final statement?

21 MR. ABRAHAMI: Yes, sir.

22 JUDGE TAY: Okay. I'm going to ask just a couple
23 of clarifying questions just to close us out here. Now,
24 it occurs to me that this appeal has to do with documents
25 that may or may not be able to be provided. Franchise Tax

1 Board just articulated a list of a few documents that they
2 believe would be helpful to them in terms of being able to
3 understand your position.

4 Do you have any interest in providing any of
5 those documents, because I can leave the record open for a
6 short amount of time? So for example, if Appellant would
7 like to file their 2019 California income tax return or
8 provide any mortgage statements from 2019 or any other
9 payment evidence.

10 MR. ABRAHAMI: I -- I will be willing to submit
11 all of 2019 mortgage payments that were made by Cherry
12 Chase LLC. For some reason, the tax accountant that gave
13 Dalia the last -- the last five years of tax returns --
14 just no reason for her to file. She didn't make any
15 income. She stopped filing and filed for welfare -- not
16 welfare. She filed for Social Security, and she's
17 receiving \$460 a month.

18 Okay. So I will be willing to go through my
19 records for 2019, even though it's -- it's -- I told them
20 pick a money month, any months that you want, and I will
21 give you that month. If you want January or if you want
22 April, I'll show that in the April of 2019 Cherry Chase
23 made that payment. They didn't respond. I don't -- I
24 don't see a reason for them to make things so difficult
25 and request all 12 months.

1 JUDGE TAY: Fair enough. I'm going to turn to
2 Franchise Tax Board and ask one clarifying question, which
3 is, if Appellant Dalia Abrahami made no money in 2019, my
4 understanding from what you're saying is that you'd still
5 like to see a tax return filed that shows no income; is
6 that correct?

7 MS. CHANG: Yes, that's correct. Appellant may
8 file a return even showing zero income. FTB would welcome
9 that, yes.

10 JUDGE TAY: Okay.

11 MS. BROSTERHOUS: Can I just make a clarifying
12 statement, sir -- Judge Tay.

13 JUDGE TAY: Sure.

14 MS. BROSTERHOUS: We're not saying that she has
15 to require one -- or excuse me -- file one if she has no
16 income, but that's one way she can demonstrate it. We --
17 we just need to understand the source of income that she
18 was receiving and how the mortgage was being paid.

19 MR. ABRAHAMI: Well, I think I have
20 established -- excuse me for interrupting I think I've
21 established about the mortgage. You know, I think they
22 should just accept the fact that they made the wrong
23 calculation and stop asking for those mortgage payments.
24 They were made by Cherry Chase LLC. Just say -- just
25 say -- name three months. Name four months -- any four

1 months that you want in 2019, and we'll show you that it
2 was paid in automatic payment from Cherry Chase LLC to Rez
3 Mortgage.

4 I -- I think they're just being very difficult on
5 a poor woman. How about having her make a statement? I
6 think they -- they requested that -- that she did not work
7 in 2019. Why file taxes and -- if you don't make any
8 money?

9 JUDGE TAY: Mr. Abrahami, so I think one -- part
10 of the issue is --

11 MR. ABRAHAM: If it's -- excuse me for
12 interrupting you, Judge. But if -- you know, I can ask
13 her old accountant if it's worthwhile. You know, it's
14 \$150 to do the filing. And what, show zero amount of
15 whatever little she made. I don't know if she made any.
16 She -- but okay. Go ahead. I'm sorry.

17 JUDGE TAY: That's okay, Mr. Abrahami.

18 MR. ABRAHAM: It's been very frustrating.

19 JUDGE TAY: I understand, and I know it's a
20 difficult process. So hopefully I can provide a little
21 bit of clarification here. I think one issue -- well, one
22 aspect of this is that Franchise Tax Board is estimating
23 an income based on mortgage payments that were allegedly
24 made. And so what you're -- I understand that you're
25 arguing that those payments were not made by her. Now,

1 that's, kind of, part of the larger question, which is,
2 did Appellant Dalia Abrahami have any income at all that
3 year?

4 And so what they're also saying is that if you
5 can just demonstrate that the actual amount of income that
6 Dalia Abrahami had in 2019, which from what I understand
7 from what you're saying she made no income, then that
8 would also would be helpful to Franchise Tax Board. And
9 one way to demonstrate, kind of, the correct amount of
10 income is just to file a 2019 California income tax
11 return, even if it shows that she made zero income. Okay.

12 So I think that's what Franchise Tax Board is
13 trying to say here is that there's an amount of income
14 that she may or may not have made that's uncertain right
15 now. And so if you could provide any information that
16 shows what her income was in 2019, even if it were a
17 minimal amount of income, then that would be helpful.

18 Now, what I'm hearing from you, for the purpose
19 of this appeal, is that you would like an opportunity to
20 provide additional documents. And so what I'm going to do
21 is I'm going to hold the record open for 30 days at the
22 conclusion of this hearing. And I'll issue an order
23 asking you to provide any other documents that you would
24 like to submit. If you do provide any documents, I will
25 allow Franchise Tax Board time to review and respond to

1 those documents before I close the record. Okay.

2 MR. ABRAHAMI: I appreciate that, Judge.

3 JUDGE TAY: Okay. All right.

4 MR. ABRAHAMI: I'll have a talk with Dalia and
5 see what she's willing to do. I don't really know what
6 the level of income she had, if it was below the minimum
7 of reporting. I'm not sure because I was not involved.
8 Like I said, you know, I was in Brazil at the time, and I
9 did not live with her. I'm only here right now to take
10 care of her while she's sick. But I'll be willing to find
11 out. And if it makes sense to file 2019, I'll
12 see where -- if she can come up with \$150 to -- to file
13 for it.

14 JUDGE TAY: Okay. And I understand that it can
15 be a little bit of a burden in terms of the cost to file a
16 return. I do believe that there are some fairly low cost
17 or free opportunities to file as well. So --

18 MR. ABRAHAMI: I'll look into it.

19 JUDGE TAY: You can look into those as well.

20 MR. ABRAHAMI: Yes.

21 JUDGE TAY: Okay. Any final questions before we
22 conclude today's hearing?

23 Franchise Tax Board?

24 MS. CHANG: No questions. Thank you.

25 JUDGE TAY: Okay. Mr. Abrahami, do you have any

1 final questions for me before we conclude today's hearing?

2 MR. ABRAHAMI: I don't have any questions. This
3 is just a request to -- actually, an appeal to these
4 ladies. Just let it go. You can see from the taxes she
5 never paid that much in her life. You know you made a
6 mistake. Just admit the mistake and -- and let her go.
7 You know, she never paid \$3,000.

8 JUDGE TAY: Okay, Mr. Abrahami.

9 MR. ABRAHAMI: Just an appeal.

10 JUDGE TAY: Okay. Thank you.

11 And, again, I just want to thank both parties
12 again for participating in this appeal. This concludes
13 the hearing for this appeal. We will hold the record open
14 to allow Appellant an opportunity to provide additional
15 documents, and so please look out for that post-hearing
16 order from me.

17 With that, we are now off the record.

18 Thank you again, everyone.

19 (Proceedings adjourned at 11:19 a.m.)
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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 13th day
of March, 2024.

ERNALYN M. ALONZO
HEARING REPORTER