

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
D. BALAZS,) OTA NO. 19064861
)
APPELLANT.)
)
_____)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, March 21, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 10:24 a.m. and concluding at 11:37 a.m.
on Thursday, March 21, 2024, reported by
Ernaly M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ MICHAEL GEARY

Panel Members: ALJ KEITH LONG
ALJ RICHARD TAY

For the Appellant: D. BALAZS
ROBERT KLEIN

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE DEPARTMENT

RANDY SUAZO
CHRISTOPHER BROOKS
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibit 1 was received into evidence at page 9.)

(Department's Exhibits A-H were received into evidence at page 9.)

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California; Thursday, March 21, 2024

10:24 a.m.

JUDGE GEARY: Ms. Alonzo, let's go on the record, please.

Will the parties please identify themselves by stating their names and who they represent, beginning with Appellants.

MR. KLEIN: My name is Robert Klein. I represent Dorothy Balazs, the Appellant.

JUDGE GEARY: Thank you.

MR. SUAZO: Randy Suazo, Hearing Representative CDTFA.

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

JUDGE GEARY: And Mr. Brooks?

Mr. Brooks appears to be without the ability to speak on the record.

Mr. Brooks, do you want us to give you some time to work that out?

All right. He is giving me a thumbs up.

Let's everybody stand by for minute. Please mute your mics while we're waiting for Mr. Brooks to chime in, please.

MR. BROOKS: Can you hear me?

1 JUDGE GEARY: I don't see you anymore, but I hear
2 you, Mr. Brooks.

3 MR. BROOKS: Is that any better?

4 JUDGE GEARY: Yes. Please identify yourself for
5 the record.

6 MR. BROOKS: Hi. This is Chris Brooks, attorney
7 for CDTF.

8 JUDGE GEARY: Okay. All right. I think that
9 does it for identification.

10 It is my understanding that there will be no
11 witnesses called to testify today.

12 Is that correct, Mr. Klein?

13 MR. KLEIN: Yes, that is correct.

14 JUDGE GEARY: And Mr. Suazo, correct from
15 Respondent's point of view?

16 MR. SUAZO: That is correct.

17 JUDGE GEARY: The parties have reached an
18 agreement, we learned in the prehearing conference that we
19 held a short time ago, regarding the taxable measure and
20 the amount of tax due; the latter amount being \$27,695.

21 Mr. Klein, do you agree that that agreement has
22 been reached with CDTF?

23 MR. KLEIN: Yes, I agree.

24 JUDGE GEARY: And Mr. Suazo?

25 MR. SUAZO: That is correct.

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JUDGE GEARY: Thank you.

Appellant has asked OTA to address three issues: One, whether Appellant is entitled to relief of penalties; two, whether Appellant is entitled to relief of interest; and three, whether Appellant is entitled to innocent spouse relief.

I may talk a little bit about some of these issues a little bit later, but let's move onto exhibits first. The exhibits have been marked for identification and included in an electronic binder that everybody should have. They have been marked Appellant's Exhibit 1 for identification. That is the sole exhibit being offered by Appellant, and I believe it is a judgement of dissolution. And Respondent's exhibits marked A through H for identification -- I won't describe each of those at this point.

OTA notes, however, that several of Respondent's exhibits, principally Exhibit D, E, F, and G appear to have little to do with the issues that remain in this matter. Those all appear have to do with the measure and the tax that the parties now have already agreed to.

Mr. Suazo, does Respondent still wish to submit all of those documents into evidence? Or would Respondent prefer to withdraw some?

MR. SUAZO: Still be on as evidence.

1 JUDGE GEARY: All right. Have the parties
2 provided copies of the exhibits to each other and to OTA?
3 And as I indicated, OTA incorporated those proposed
4 exhibits into an electronic binder. That should be in the
5 possession of all the parties.

6 Mr. Klein, have you confirmed that Appellant's
7 exhibit incorporated into that binder is complete and as
8 legible as the one you submitted?

9 MR. KLEIN: Yes.

10 JUDGE GEARY: Thank you.

11 Has Respondent also done that with respect to its
12 exhibits?

13 MR. SUAZO: Yes, sir.

14 JUDGE GEARY: The parties were instructed during
15 the prehearing conference to state objections to the
16 proposed evidence in writing, and neither party has done
17 that, nor has any party indicated that there were any
18 problems with the proposed exhibits as they appear in the
19 binder. Let me just ask for final confirmation.

20 Does Respondent have any objection to the
21 admission of Appellant's Exhibit 1?

22 MR. SUAZO: No objection.

23 JUDGE GEARY: And does Appellant have any
24 objection to the admission of Respondent's Exhibits A
25 through H?

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MR. KLEIN: No objection.

JUDGE GEARY: Thank you.

All those documents are admitted to our record.

(Appellant's Exhibit 1 was received in evidence by the Administrative Law Judge.)

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

JUDGE GEARY: I want to talk briefly about time estimates. Appellant, I believe, estimated that she would need -- or Mr. Klein would need approximately 20 minutes for its opening argument, and I informed the parties during prehearing conference that typically we will allow Appellant about 5 minutes for rebuttal after Respondent gives its argument. Respondent has also requested about 20 minutes for its one and only argument.

Do those timeframes still work for you, Mr. Klein?

MR. KLEIN: Yes.

JUDGE GEARY: And Mr. Suazo?

MR. SUAZO: Yes.

JUDGE GEARY: Thank you.

Before I open the floor to Appellant for its opening argument, I have questions for Appellant that will help, I think, the Panel focus during the argument.

Mr. Klein, do you agree that the business that

1 was operated by your client was operated by her as a sole
2 proprietorship?

3 MR. KLEIN: Yes.

4 JUDGE GEARY: And do you intend to argue that
5 your client is entitled to innocent spouse relief because
6 her ex-husband was the person that she entrusted sales and
7 use tax compliance to?

8 MR. KLEIN: That's correct.

9 JUDGE GEARY: All right. Can you direct --
10 before you begin your argument, are you able to direct the
11 Panel's attention to any -- any document that's in
12 evidence that would be relevant to or support Appellant's
13 position that her ex-husband had any ownership interest in
14 the business?

15 MR. KLEIN: There are no documents that would
16 support any ownership interest by the husband because he
17 was not an owner. However, he was responsible for taking
18 care of all filings of any tax documents, including sales
19 tax. Unfortunately, there were many other tax filings
20 that were not filed as well by this ex-husband.

21 Mrs. Balazs became aware of all these things
22 around 2015. And, at that point, began to make many
23 corrections to any of these documents that were not filed.
24 And, since that time, she's been pretty successful in
25 trying to correct or file all these documents that had not

1 been filed.

2 JUDGE GEARY: All right. I'm going to stop you
3 right there because I have a sense you're giving somewhat
4 you will give us in argument. You've responded to my
5 questions. I appreciate that.

6 MR. KLEIN: I'm sorry.

7 JUDGE GEARY: That's all right. All right.
8 Mr. Klein, you may begin your main argument when you're
9 ready.

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PRESENTATION

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MR. KLEIN: Okay. So, again, the only request here is based on the information that I was able to obtain over the many years that I've been representing them. And -- through 2000, this particular issue is from 2007 to 2015, which is that seven-year period where the Appellant believed that all documents and all reportings were done properly and timely, and she was basically involved in only manufacturing gloves. She's a single owner, immigrant from Hungary who came to United States having some experience in making gloves. Her family was involved in this manufacturing in Hungary.

And she was totally unaware and just not knowledgeable in terms of requirements for filings that were needed. Again, in Hungary, there are basically not

1 much reporting that goes on. The taxes are paid by having
2 someone come collect by looking at your set books or
3 whatever it is that you have and, at that point,
4 collecting whatever fees are necessary, whether it's
5 income tax or sales tax. I'm not familiar with their tax
6 requirements.

7 The taxpayer is not a wealthy person. She's been
8 struggling ever since that time with trying to correct
9 things that were not done properly. And she is still in a
10 situation through the COVID -- the COVID problem, as well
11 as the strike that has just been settled with the
12 entertainment industry. Many of her manufacturing or many
13 of her gloves are made for the entertainment industry, and
14 she has been struggling extremely with extreme difficulty
15 in trying to make ends meet because of these difficulties
16 that have arose. And, again, she is trying to find a way
17 that she can afford to be able to -- she wants to pay all
18 the tax she believes that she owes, and she has no problem
19 with that.

20 The problem that is created is that the amount
21 due, at this point, is literally doubled because of the
22 penalty and interest. So she's asking to have the
23 Department consider removing the penalty and interest so
24 that she can afford to be able to pay the amount that's
25 due over a period of time. Some settlement -- some

1 estimated payments or payments overtime and be able to
2 continue to run her business. You know, at this point
3 she's still not even caught up. When I looked at her
4 report for 2023, she was still running at a negative.

5 She basically had refinanced her house in order
6 to be able to pay off many of the debts that were accrued.
7 And she still has some money left in order to be able to
8 fund the operation of the manufacturing of the glove
9 business. So she's, again, asking that consideration be
10 given in her situation and, again, the fact that she was
11 not aware and believed that her husband was taking care of
12 all these reports. She was basically an innocent spouse
13 at this point or at that point. And as soon as she became
14 aware of these problems, she again took immediate control
15 and made all the corrections as necessary.

16 JUDGE GEARY: Does that conclude your opening
17 argument, Mr. Klein?

18 MR. KLEIN: Yes, sir.

19 JUDGE GEARY: Thank you.

20 I am going to ask my fellow Administrative Law
21 Judges if they have any questions regarding your
22 intentions, legal theories, you haven't provided any sworn
23 testimony, so there should not be any factual questions.

24 So let me turn to Judge Long first, and ask him
25 if he has any questions.

1 JUDGE LONG: I do. Just briefly, I can see here
2 that we have the judgment for -- family law judgment for
3 Appellant. Is there anything else in this exhibit binder
4 that would support the theory that she was an innocent
5 spouse?

6 MR. KLEIN: I don't have any other documentation
7 other than the fact that, again, she -- she's an
8 immigrant, and that she was unaware of all the
9 requirements. Her husband who had been here for a much
10 longer period was much more aware, and she was basically
11 told that, "I will take care of everything. You don't
12 know anything anyway. You're not aware of any
13 requirements." That's basically all the information I
14 have. I don't have any documentation to support that
15 information.

16 JUDGE LONG: Okay. Thank you. I don't have any
17 other questions.

18 JUDGE GEARY: Thank you, Judge Long.

19 Judge Tay, do you have any questions?

20 JUDGE TAY: I have no questions. Thank you.

21 JUDGE GEARY: Thank you.

22 JUDGE TAY: Judge Geary, you are on mute.

23 JUDGE GEARY: I thought I turned that on, but I
24 didn't. Thank you.

25 And, Mr. Suazo, you'll be giving the argument for

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Respondent?

MR. SUAZO: That's correct.

JUDGE GEARY: You may proceed when you're ready.

PRESENTATION

MR. SUAZO: Appellant operated a business where she made and sold custom gloves. Appellant obtained a seller's permit as sole proprietorship in June 2005, and had a fiscal year filing requirement. Appellant failed to file sales and use tax returns for 2009 and 2010. On August 12th, 2011, the Department attempted to contact the Appellant via telephone and found out the phone number was no longer in service. Consequently, the Department initially closed the Appellant's seller's permit effective June 30th, 2008; Exhibit A, page 4.

In 2015, the Department obtained 1099-K credit card remittance reports showing that the Appellant received credit card payments from January 1st, 2011, through June 30th, 2015. The Department also discovered the Appellant's website was still active. As a result, the Department determined that the Appellant was still operating the business and contacted her requesting that she file sales and use tax returns for fiscal years 2009 through 2015. Despite the request, Appellant failed to file the returns.

1 When Appellant failed to file the requested
2 returns, the Department reopened the Appellant's seller's
3 permit and issued a Compliance Assessment, referred to a
4 CAS Billings for each of the seven-fiscal year periods,
5 from July 2008 through June 2015. A Notice of
6 Determination was processed in November 2015, Exhibit C.

7 Initially, the CAS Billings were based on 1099-Ks
8 with no exemptions allowed. Subsequently, Appellant
9 mailed a petition of redetermination and attached the
10 seven years of sales and use tax returns to the
11 Department, Exhibit B. Review of the sales and use tax
12 returns showed discrepancies and the returns were not
13 accepted. Appellant was asked to provide support for her
14 contention that exempt sales were included in the CAS
15 Billings; Exhibit G, pages 991 and 992. After records
16 were provided, the Department adjusted the CAS Billings,
17 and Appellant agreed to the audited total sales, exempt
18 sales, taxable sales, and sales tax due; Exhibit D.

19 Penalties for failure to file were added to the
20 billings. Appellant has requested relief in the failure
21 to file penalty, relief of interest, and Appellant
22 contends she's entitled to innocent spouse relief.
23 Failure to file penalties were assessed as Appellant did
24 not file seven fiscal years of sales and use tax returns.
25 Appellant cited financial constraints as a reason for not

1 filing and paying sales and use tax returns in a timely
2 manner.

3 However, Appellant's lack of funds at the time
4 the returns became due, fails to establish reasonable
5 cause or circumstances beyond Appellant's control
6 necessary for the Department to grant relief of the
7 failure to file penalties assessed. Appellant's request
8 for relief of interest does not state any periods in which
9 CDTFA caused an unreasonable delay in the process. Both
10 requests, the BOE 735 dated June 14th, 2017, an innocent
11 spouse relief request dated June 16th, 2021; those are
12 Exhibit H, pages 998 through 1003, only mention that the
13 Appellant is unable to pay the interest amount. The
14 Department contends it did not cause any unreasonable
15 errors or delays to warrant any relief of interest.

16 Appellant also seeks to avoid paying the failure
17 to file penalty by requesting innocent spouse relief.
18 Appellant has the burden of proving that she's met all
19 four requirements stated in subsection 5 of Regulation
20 35055. First, Appellant must prove liability is based on
21 one of the tax laws or fee laws in the regulation. The
22 parties agree that the liability was incurred under the
23 sales and use tax law, but that's the only element
24 Appellant can prove.

25 Second, Appellant must prove the liability is

1 attributable to her ex-husband. She cannot prove this
2 because she provided no substantial service -- she
3 provided -- excuse me. She cannot prove this because she
4 provided substantial services in her glove business.
5 Appellant was a sole proprietor of the business during the
6 duration of the CAS Billings; Exhibit D, page 643.

7 Appellant was an active owner and was involved in
8 conducting sales, acquiring materials, making of the
9 products, and handling banking duties, including
10 depositing funds into various bank accounts, as well as
11 charging and collecting sales tax; Exhibit G, page 992.
12 Appellant never established that her husband was
13 responsible for handling sales and use tax. She signed
14 the amended return -- she signed the amended sales and use
15 tax returns for all seven filing periods; Exhibit B.

16 Appellant completed a BOE 735 request for relief
17 of penalty, collection cost recovery fee and interest on
18 June 14th, 2017; Exhibit H, pages 1000 through 1003. She
19 did not state that her spouse was the reason her returns
20 were not filed. Instead, she claimed the failure to sales
21 and use tax returns and payment of sales tax was because
22 she had financial constraints caused by having to pay
23 medical bills and having to make loan modification program
24 payments for her home. Ms. Balazs did not state her
25 husband was in charge of filing sales and use tax returns.

1 Review of the initial CAS Billing and the report
2 of discussion of audit findings, Exhibit G, pages 991
3 through 993, disclose the following: During a meeting
4 with the Department in Glendale on May 11th, 2016,
5 Appellant was asked why did she fail to report her sales
6 and allow her permit to be closed and yet, continue to
7 collect sales and use tax. Appellant cited poor
8 bookkeeping. She was making the products and then
9 depositing the funds into her account. She was busy with
10 children and the running of a household and the business
11 to notice her taxes were not paid. It was an oversight
12 with no malicious intent on her part; Exhibit G, page 992.

13 Appellant did not mention her spouse was in
14 charge of filing returns. She stated she had no
15 employees; Exhibit G, page 992. During the appeals
16 hearing conference on May 31st, 2017, Appellant and her
17 representative at the time were the only ones to attend
18 the conference. Appellant did not state that her spouse
19 was responsible for filing sales and use tax returns.
20 Appellant, again, cited financial constraints as being the
21 reason for not paying the sale tax amounts collected and
22 the tax due to the State; Exhibit A, pages 6, 7, and 8.
23 Appellant clearly ran the company and handled duties
24 commensurate with managing the business. Appellant did
25 make substantial sales over the seven-year period.

1 Third, Appellant must establish that she did not
2 know about the liability. She cannot prove this because
3 her business charged and collected sales tax from her
4 customers. As a permit holder for the sole
5 proprietorship, Appellant reasonably would know that she
6 had not filed sales and use tax returns because she had
7 not signed any sales and use tax returns for any liability
8 period. Appellant would also reasonably know that she had
9 not paid the accrued liabilities because she had not
10 signed any checks remitting to the state all the sales tax
11 she collected from her customers.

12 Fourth, Appellant must prove it would be
13 inequitable to hold her responsible for the liability.
14 She cannot prove this because this was her business. As a
15 sole proprietorship she was responsible for everything
16 associated with the business. She remained responsible if
17 she delegated the task, such as filing sales and use tax
18 returns because she was a business owner and permit
19 holder. She benefited directly from the liability because
20 she used the unremitted sales tax funds to pay her
21 mortgage and other bills. She also benefited directly
22 because she used the unremitted funds to continue running
23 her glove business through the liability period.

24 The Department contends Appellant was aware there
25 were no sales and use tax returns being filed. Appellant

1 received a significant benefit from the liability not
2 being paid. Appellant has not established that the
3 liability was attributable to her husband. Evidence shows
4 that the Appellant did not comply with California sales
5 and use tax laws during the liability periods. Appellant
6 has not provided substantial documentation to support her
7 contentions. Therefore, the Department request the appeal
8 be denied.

9 This concludes my presentation. I'm available to
10 answer any questions you may have.

11 JUDGE GEARY: Thank you, Mr. Suazo.

12 Let me ask my fellow judges if they have any
13 questions.

14 Judge Long?

15 JUDGE LONG: This is Judge Long. No questions.
16 Thank you.

17 JUDGE GEARY: Judge Tay?

18 JUDGE TAY: Thank you. No questions.

19 JUDGE GEARY: I think I might have a question for
20 you Mr. Suazo. Typically when a taxpayer makes a request
21 for innocent spouse relief, is there a procedure for
22 notification of the non-requesting spouse regarding the
23 request? And then is there an opportunity for the
24 non-requesting spouse to be heard?

25 MR. SUAZO: Well, normally, when you file an

1 innocent spouse request, you're going to file a form,
2 CDTFA Form 682-A, which was not filed in this case. They
3 basically handwrote a -- not handwrote. They typed up a
4 letter stating that they're asking for innocent spouse.
5 Concerning the other portion of the question, I am unsure
6 if there's -- if there's a way that the other spouse would
7 be entangled in a situation.

8 MR. BROOKS: I don't know if I can address that
9 quickly. The form and the process does require that the
10 requesting party give notice to the non-requesting party.

11 JUDGE GEARY: Let me ask you, Mr. Brooks. My
12 understanding is that the -- that procedure was followed
13 in connection with this request, and I believe the request
14 was a letter from Mr. Klein to somebody at CDTFA. And I
15 believe the response to that request was a letter from
16 somebody in the petitions. I don't know if it is called
17 the bureau, but in petitions at CDTFA. How, if at all,
18 does the -- does the failure to follow that specific
19 procedure? That is, the failure of the Appellant to have
20 used the form that is used typically to request innocent
21 spouse relief and the failure of CDTFA to follow the
22 customary procedures that I believe were laid out in the
23 law for how to handle a request when it's made. How do
24 those failures affect the viability of this issue as it
25 now exist in this appeal before OTA?

1 MR. BROOKS: Well, the Department looked at the
2 request as it was presented to us during this hearing
3 process and saw that the Appellant has not provided any
4 documentation or evidence to support the claim. I think
5 the purpose behind having the non-requesting spouse
6 notified was so that party could contest if they wanted to
7 contest. But in this instance where the business owner is
8 the one that's saying she shouldn't be held responsible
9 for the liability that her own company created, it didn't
10 seem like at the point that we reached that there was a
11 way to address it -- address that aspect of it, and that
12 it wasn't a priority in that the general framework for her
13 request wasn't supported by the regulation.

14 JUDGE GEARY: Okay. Thank you, Mr. Brooks.

15 Mr. Suazo, did you have anything else to add?

16 MR. SUAZO: No.

17 JUDGE GEARY: All right.

18 Mr. Klein, are you prepared to give your final
19 closing or rebuttal?

20 MR. KLEIN: Yes.

21

22 CLOSING STATEMENT

23 MR. KLEIN: I would just like to make the
24 comment. I've listened to everything that Mr. Suazo had
25 presented. And, again, when you look at a situation that

1 a person who runs a business is familiar and aware of all
2 the responsibilities, that would be the right way to do
3 things. Unfortunately, in this case many of the
4 documents -- in fact, all the documents that ever came to
5 the house, whatever was sent to this household was hidden
6 by the husband. He's the only one that received this
7 information, and he basically did not present any of this
8 to the Appellant to indicate that these items need to be
9 done.

10 In fact, after they got divorced there were
11 drawers full of notices that she discovered that she was
12 totally unaware of. Again, the proof here is that
13 subsequent to the date of 2015, as soon as she became
14 aware of all these problems, she immediately took charge
15 and started correcting and filing all the required
16 documents. And, again, there were many other tax returns,
17 both individual returns and other documents, that were not
18 filed that had to be corrected for those years. And so
19 her -- her situation was such that she was unaware. And
20 her husband was the responsible party being much more
21 familiar with the requirements. And the husband just
22 decided that he can get away with this or however he
23 decided it, and he hid all this information from her.

24 So that is the reason why she's asking for this
25 relief. And, again, she's willing and ready to try and

1 make this -- this is the last document or the last item
2 that she has to be able to try to continue and run her
3 business in a -- in an efficient and a financially correct
4 manner.

5 That is my comments. Thank you.

6 JUDGE GEARY: Thank you. All right. Mr. Klein,
7 do you submit the matter?

8 MR. KLEIN: I'm sorry?

9 JUDGE GEARY: Do you submit the matter?

10 MR. KLEIN: Yes.

11 JUDGE GEARY: And Mr. Suazo, does CDTFA submit
12 the matter?

13 MR. SUAZO: Yes.

14 JUDGE GEARY: The case is submitted on
15 March 21st, 2024, at roughly 10:59 a.m.

16 The record is now closed.

17 Thank you, everyone, for participating. In the
18 coming weeks the panel will meet to consider the matter,
19 and OTA will send you a written opinion within 100 days of
20 today's date.

21 This hearing is concluded.

22 This is also the final matter on OTA's morning
23 calendar. Thank you, everybody, for appearing this
24 morning for this hearing.

25 (Proceedings adjourned at 10:59 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 22nd day of April, 2024.

ERNALYN M. ALONZO
HEARING REPORTER