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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
M. MUTHANNA,) OTA NO. 221011592
)
)
 APPELLANT.)
)
)
 _____)

Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:30 a.m. and concluding at 9:58 a.m. on
Wednesday, October 16, 2024, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ KEITH LONG

Panel Members: ALJ ANDREW WONG
ALJ NATASHA RALSTON

For the Appellant: M. MUTHANNA

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

SUNNY PALEY
STEPHEN SMITH
SHELLY ANSELM
JEANINE CANDELARIA

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I N D E X

E X H I B I T S

(Department's Exhibits A-F were received into evidence at page 8.)

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California; Wednesday, October 16, 2024

9:30 a.m.

JUDGE LONG: We are opening the record in the Appeal of Muthanna, OTA Case No. 221011592. This matter is being held before the Office of Tax Appeals. Today's date is October 16, 2024, and the time is 9:30 a.m. This hearing is being convened electronically.

Today's hearing is being heard by a panel of three Administrative Law Judges. My name is Keith Long, and I will be the lead Administrative Law Judge. Judge Natasha Ralston and Judge Andrew Wong are the other members of this tax appeals panel. All three judges will meet after the hearing and produce a written decision as equal participants. Although the lead judge will conduct the hearing, any judge on this panel may ask questions or otherwise participate to ensure that we have all the information needed to decide this appeal.

As a reminder, the Office of Tax Appeals is not a Tax Court. It is an independent appeals body. The Panel does not engage in ex parte communications with either party. OTA will issue an opinion based on the parties' arguments, the admitted evidence, and the relevant law.

For the record, will the parties please state their name and who they represent, starting with the

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representatives for CDTFA.

MS. PALEY: Sunny Paley, attorney with CDTFA.

MR. SMITH: Stephen Smith, an attorney with CDTFA.

MS. ANSELM: Shelly Anselmi, a hearing representative with CDTFA.

MS. CANDELARIA: Jeanine Candelaria, hearing representative with CDTFA.

JUDGE LONG: Thank you.

And for Appellant.

Mr. Muthanna?

MR. MUTHANNA: Yes.

JUDGE LONG: Can you please state your name for the record.

MR. MUTHANNA: Mohammed Ahmed Ali Muthanna.

JUDGE LONG: Thank you.

MR. MUTHANNA: You're welcome.

JUDGE LONG: There are two issues in this appeal. They are: One, whether Appellant violated Business & Professions Code section 22974; and two, whether the 10-day license suspension was properly imposed.

After the prehearing conference, Appellant provided a witness list, including Mohammed Mohammed and Hapeep Almoraisi.

Does CDTFA have any objections to the witnesses?

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MR. ALMORAISI: Yes, Hapeep.

MS. PALEY: No objections. Thank you.

JUDGE LONG: Thank you.

Mr. Mohammed, I will go ahead and take your oath now. Okay. So if could please just raise your right hand.

MOHAMMED MOHAMMED,

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

JUDGE LONG: And Mr. Almoraisi, could you please raise your right hand.

HAPEEP ALMORAISI,

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

JUDGE LONG: Okay. The exhibits for this appeal consist of CDTFA Exhibits A through F. At the prehearing conference, Appellant stated that there were no objections to these exhibits.

Can Appellant please confirm that there are no

1 objections, Mr. Muthanna?

2 MR. MUTHANNA: Yes.

3 JUDGE LONG: No objections?

4 MR. MUTHANNA: I didn't understand what's this
5 word mean but --

6 JUDGE LONG: It means do you have any problems
7 with including CDTFA Exhibits A through F in the hearing.

8 MR. MUTHANNA: No.

9 JUDGE LONG: Thank you.

10 All right. Then CDTFA Exhibits A through F are
11 admitted without objection.

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

14 JUDGE LONG: There are no other exhibits in this
15 appeal.

16 Mr. Muthanna, you requested 20 minutes to make
17 your presentation and also your witness testimony, and you
18 may begin when you are ready.

19 MR. MUTHANNA: Yes. Can I start right now?

20 JUDGE LONG: Yes, you can.

21

22 PRESENTATION

23 MR. MUTHANNA: Yes. So the product that they
24 find in the shop in April 2021, we -- I -- we received
25 that to the shop as a sample box. We usually get samples

1 from most of the distributors that's -- they work in
2 America. And every year they have a trade show in Las
3 Vegas. It's called "CHAMPS", and I go to there every
4 year, and I leave all my business card for the smoke shop
5 to all the booths that's in the -- in the show, most of
6 it. And, usually, after we leave our business card
7 information, we receive samples product from the
8 distributors and manufacturers that they are in the show.

9 And I believe this box I received it as a samples
10 after the show meeting from Vegas. We usually get all
11 kinds of products as a samples, like kratom, CBDs, and all
12 the other stuff. And when they come to the shop, the box
13 it wasn't in the shelf. It wasn't for sale or anything.
14 And when they walk in, they find everything is good, all
15 the invoices and all the products. It's -- we buy it with
16 the invoices from the manufacturers, from the
17 distributors. Most of it in Sacramento, the tobacco. And
18 when they come, they find that box was in the floor and
19 the product still inside the box.

20 And that's all what I have to say.

21 JUDGE LONG: Thank you. And did you want to have
22 your witnesses make their presentations right now?

23 MR. MUTHANNA: Yes, please. And thank you.

24 JUDGE LONG: All right. Well, let's begin with
25 Mr. Almoraisi then.

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WITNESS TESTIMONY

MR. ALMORAISI: Yes. I'll be honest with you, those days we get them as a samples. I work -- I work for him, and we always get a samples like, CBD samples. Sometimes new companies, Grinders, or sometimes create, like, samples. And we get them, and I put them out -- we put it on aside for him until we see him. Because even it was way far from the register, and it was just like over there. And it came from -- from a company, I think it was New York, from like, you know, warehouse. I don't know. I think it was from New York. I forget, to be honest, which company it was exactly. But I'm pretty sure 100 percent that was -- it was in a box, and it was like for samples.

That's -- that's all about it.

JUDGE LONG: Thank you.

And Mr. Mohammed, would you like to make your presentation now?

MR. MOHAMMED: Yes, sir.

WITNESS TESTIMONY

MR. MOHAMMED: And I'm work with Mohammed Muthanna for a long time ago. We always receive a lot of products from all the companies from -- like, CBD or like Grinder, or sometimes glass, sometimes or kratom. Like

1 just receive like these sample. But the reason if -- the
2 issue we probably because this day, I'm -- I go to
3 Sacramento to bring product. I come to shop. He told me
4 government come see. I told him don't about it. We are
5 clear. We have all invoice for everything. Do it. He
6 told me about the sample, this one. I tell him why he
7 take it. He tell me he don't know. This all what happen.
8 But always we receive a lot a lot, a lot, like samples
9 from everywhere.

10 That's what I my have.

11 JUDGE LONG: Okay. Thank you.

12 Before we move on, does CDTFA have any questions
13 for the witnesses?

14 MS. PALEY: No, thank you.

15 JUDGE LONG: Okay. Thank you.

16 Mr. Muthanna, does that conclude your
17 presentation?

18 MR. MUTHANNA: Yes.

19 JUDGE LONG: Thank you.

20 Before we move on with CDTFA's presentation, I
21 want to turn to my Co-Panelists to see if they have any
22 questions.

23 Judge Ralston do you have any questions?

24 JUDGE RALSTON: I have no questions. Thank you.

25 JUDGE LONG: Thank you.

1 And, Judge Wong, do you have any questions?

2 JUDGE WONG: Just one question. Just to clarify,
3 we're talking about Hyde products, is that right, H-y-d-e?
4 Is that what we're talking about, Mr. Muthanna?

5 MR. MUTHANNA: Yes.

6 JUDGE LONG: Okay. That's all. Thank you.

7 MR. MUTHANNA: It's -- I think -- sorry. I think
8 both -- both I think they come. It was a box -- a small
9 box of Puff Plus, I think, and some Hyde.

10 JUDGE LONG: Okay. Thank you very much.

11 Judge Wong, did you have any other questions?

12 JUDGE WONG: So about the Puff products, I think
13 the CDTFA's report indicated that they were like on a
14 shelf for sale. Are you --

15 MR. MUTHANNA: No.

16 JUDGE WONG: The Puff product?

17 MR. MUTHANNA: It wasn't in the shelf. It was --
18 it was -- there was in a box. That inside the box that we
19 received it is we didn't even pull the product from the
20 box. It was inside the box and the box was in the floor,
21 not in the shelf, not for sale.

22 JUDGE WONG: So both the Puff products and the
23 Hyde products were in boxes on the floor?

24 MR. MUTHANNA: I believe so, yeah. Yes. Puff
25 Plus 100 percent I know. I remember that it was inside

1 the box in the floor, and the Hyde was next to it, not
2 inside.

3 JUDGE WONG: Where in the store on the floor?

4 MR. MUTHANNA: The store -- in the store in
5 the -- how to explain. The -- the register is in the
6 middle of the store. And I think it was in the right by
7 the -- in the end of the corner. By the end of the corner
8 inside the box. Where -- where we usually we receive the
9 product, the shipment -- when we receive the shipment we
10 put it on that side.

11 JUDGE WONG: Mr. Muthanna, were you at the store
12 when CDTFA came to inspect?

13 MR. MUTHANNA: No. I wasn't there.

14 JUDGE WONG: Okay. So --

15 MR. MUTHANNA: I believe they call me, and I was
16 in the home.

17 JUDGE LONG: Mr. Muthanna and Judge Wong, I'm
18 sorry for interrupting. Because we're sort of getting
19 towards -- we're getting away from argument towards
20 testimony. Before you answer anymore questions from
21 Judge Wong, I just want to verify, would you like to be
22 sworn in as witness so that this can be considered as
23 evidence?

24 MR. MUTHANNA: Who? Me?

25 JUDGE LONG: Yes.

1 MR. MUTHANNA: As -- as a witness?

2 JUDGE LONG: Yeah. Would you like to provide
3 sworn testimony with respect to your answers because we're
4 kind of moving away from arguments about whether this is
5 untaxed tobacco and more into the realm of where you're
6 storing and factual testimony.

7 MR. MUTHANNA: No. I think I want to -- I don't
8 want to. No.

9 JUDGE LONG: Okay. All right. Thank you.

10 MR. MUTHANNA: You're welcome. Thank you.

11 JUDGE LONG: Judge Wong, I'll turn it right back
12 to you. Sorry for interrupting.

13 JUDGE WONG: No problem.

14 So which witness was actually at the store at the
15 time CDTFA came to inspect it?

16 MR. ALMORAISI: It was it Hapeep.

17 JUDGE WONG: Okay. So I guess the question to
18 you is where were the -- so were the Puff products in
19 boxes, yes or no?

20 MR. ALMORAISI: Yes, they was in the boxes.

21 JUDGE WONG: And then the Hyde products were also
22 in boxes?

23 MR. ALMORAISI: Yes, sir.

24 JUDGE WONG: Were the boxes open?

25 MR. ALMORAISI: No.

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JUDGE WONG: They were sealed and closed?

MR. ALMORAISI: Yes, sir. They were sealed and closed.

JUDGE WONG: Where in the store were these boxes?

MR. ALMORAISI: It was out of the shop. It's like -- like 15 feet from the register. It was, like, under, like, it was in the floor. Like it wasn't even around the register. It was all the way far. Like, we take most of the -- even, like, sometimes envelopes or, like, all the mails or, like, most of the stuff we put them in aside for our boss until we see him. So that's why they was all the way on the, like, from the register. And they was not for sale. And they was all the way, like, far. Like, you know what I'm saying. Way back, the box.

JUDGE WONG: Okay. But they were at the store?

MR. ALMORAISI: Yes, sir.

JUDGE WONG: Okay. Thank you. No further questions at this time.

MR. ALMORAISI: You're welcome.

JUDGE LONG: Thank you.

With that, I would like to move on to CDTFA's presentation. CDTFA requested 20 minutes.

And you may begin when you're ready.

MS. PALEY: Thank you.

1 Revenue & Taxation Code Section 30008 subdivision(b). A
2 Notice of Violation was issued to Appellant, Exhibit C,
3 imposing a 20-day license suspension as a penalty for the
4 violations. As we will discuss, CDTFA's Appeals Bureau
5 reduced the 20-day suspension to a 10-day suspension.

6 Regulation 4603 subdivision (e), provides that in
7 cases involving multiple violations, the violation
8 punishable by the most severe penalty will be used for
9 purposes of determining the penalty assessed. Regulation
10 4603 subdivision (d) (3), provides that a violation for
11 possession of untaxed tobacco involving a first offense
12 for a seizure of tobacco products that is equal to or
13 greater than the wholesale cost of 20 packages of
14 cigarettes will result in a 20-day license suspension.

15 According to Department records, the wholesale
16 cost of 20 packages of cigarettes at the time of the
17 inspection was \$118.40. The total wholesale cost of the
18 seized Hyde Plus products was approximately \$176, which is
19 above the \$118 threshold. Therefore, 20-day suspension is
20 the penalty set fourth in Regulation 4603 for Appellant's
21 violation.

22 A reduction in the length of a suspension period
23 may be warranted if mitigating circumstances are present,
24 including but not limited to: One, how recently the
25 licensee purchased the business or began operations and

1 acquired its inventory of cigarettes and/or tobacco
2 product; two, the amount of cigarettes without tax stamps
3 and with counterfeit tax stamps in relation to the size of
4 the licensee's overall; three, the size of a licensee's
5 cigarette and/or tobacco products business; four, the
6 retail value of any cigarettes or tobacco products seized;
7 and five, the absence of prior seizures, Regulation 4603
8 subdivision (f) and 4606.

9 If a suspension period is reduced, the
10 redetermined period of suspension must be zero days, 5,
11 10, or 20 days according to Regulation 4603 subdivision
12 (f). A licensee has the burden of proving the grounds for
13 the reduction of penalties, Regulation 35057 subdivision
14 (d). While Appellant did not participate in the prior
15 proceedings concerning his violations, nonetheless, the
16 Department did examine the mitigating factors. First,
17 Appellant was not a new licensee in April 2021, having
18 licensed for nearly four years at the time of this
19 inspection. Second, Appellant's prior inspection did not
20 result in any noted violations or seizures. Third, the
21 Department tried to calculate the value of seized tobacco
22 products in relation to the size of licensee's business.

23 In the second quarter of 2021, the quarter in
24 which the subject violations occurred, Appellant reported
25 taxable sales of approximately \$242,000 per month on its

1 sales and use tax return. The seized Hyde Plus vape
2 product had an estimated retail value of \$440. It's not
3 clear precisely how much of Appellant's reported monthly
4 sales of \$242,000 are for tobacco products. But because
5 Appellant operated a smoke shop, the Department believes
6 that the seized vape product represented a very small
7 percentage of Appellant's total inventory; likely less
8 than 1 percent.

9 Based on Appellant's prior good history and
10 relatively small amount of tobacco products seized, the
11 Appeals Bureau found that mitigating factors existed to
12 warrant a reduction of the 20-day license suspension to a
13 10-day license suspension. Based on the law, facts, and
14 evidence, we submit that Appellant violated sections 2294
15 and 22974.3 subdivision (b), and that the 10-day license
16 suspension is the appropriate mitigated penalty for these
17 violations.

18 Thank you.

19 JUDGE LONG: Thank you.

20 MR. SMITH: If I could just add one point, since
21 there's been questions raised about the Puff. The Puff
22 product was a tax-paid product. It was seized because it
23 was counterfeit, which was an innocent mistake, we
24 believe, on the licensee's part. But it doesn't factor in
25 to the penalty here because it wasn't seized pursuant to

1 the Licensing Act. It was seized pursuant to provision in
2 the Revenue & Taxation Code, and it's not used to
3 determining the appropriate penalty here.

4 I hope that's helpful.

5 JUDGE LONG: Thank you. I think that is helpful.

6 Judge Ralston, do you have any questions for
7 CDTFA?

8 JUDGE RALSTON: No questions. Thank you.

9 JUDGE LONG: Thank you.

10 And, Judge Wong, do you have any questions for
11 CDTFA?

12 JUDGE WONG: Yeah. I did have one or two
13 questions. So where were the Hyde products found by the
14 inspectors?

15 MS. PALEY: I would point the Panel to our
16 Exhibit B, which is the citation package, specifically,
17 the 504, at page 4 of the PDF. It indicates that the
18 product was -- it doesn't -- excuse me.

19 The Puff Plus was found to be placed out for
20 sale. However, it doesn't indicate specifically where the
21 Hyde Plus product -- excuse me -- there's lots of P's
22 there that are challenging -- the Hyde Plus products were
23 found. But it does indicate, however, that the Puff Plus
24 was located on the display sale.

25 JUDGE WONG: Okay. And then the -- and the Hyde

1 products? Does it mention where the Hyde products were?

2 MS. PALEY: No.

3 JUDGE WONG: Okay.

4 MS. PALEY: Other than -- other than that they
5 were found in the store because that's what they were
6 inspecting.

7 JUDGE WONG: Right.

8 MS. PALEY: And --

9 JUDGE WONG: And so -- I'm sorry. Go ahead.

10 MS. PALEY: And I would only note that the law
11 just requires possession. It does not even require it to
12 be placed out for sale, but possession of the product
13 would be a violation.

14 JUDGE WONG: Okay. And so you referenced -- you
15 had mentioned distribution. So definition of distribution
16 under Revenue & Taxation Code 30008 --

17 MS. PALEY: Yes.

18 JUDGE WONG: -- were you mentioning that in
19 respect to the Hyde products or the Puff products?

20 MS. PALEY: The Hyde products.

21 JUDGE WONG: The Hyde products, okay.

22 MS. PALEY: Yes.

23 JUDGE WONG: And so that would be under(b), the
24 use of consumption of untaxed cigarettes or tobacco
25 products in the state?

1 MS. PALEY: Yes.

2 JUDGE WONG: And then it would go to 30009 where
3 it talks about use or consumption includes the exercise of
4 any right or power over --

5 MS. PALEY: Yes.

6 JUDGE WONG: -- tobacco product. Okay. Incident
7 to ownership?

8 MS. PALEY: Yes. Exactly.

9 JUDGE LONG: Okay. And that includes just
10 storing it on the premises of the store is CDTFA's theory;
11 is that right?

12 MS. PALEY: Well, it's just not our theory. It's
13 the law.

14 JUDGE WONG: Right. Well, your argument. That's
15 your argument?

16 MS. PALEY: Yes. Yes.

17 JUDGE WONG: Okay. Got it. Okay. So for -- so
18 just -- so what would a cigarette or tobacco store do if
19 they do receive such samples? Would they -- like, what
20 would they do -- what should they have done in this case?

21 MS. PALEY: The retailer has a duty to only
22 accept products that is properly invoiced and
23 demonstrating that tax has been paid. So they could
24 decline the shipment. They could dispose of the shipment.
25 But taking possession, it is that duty upon them to only

1 have things in their possession in their store that have
2 been taxed and are properly invoiced.

3 JUDGE WONG: Okay.

4 MR. SMITH: They -- they could -- in
5 Section 30108 subdivision (b), I think it is, requires an
6 out-of-state distributor in this situation to give the
7 recipient an invoice. I guess if the retailer receives it
8 without an invoice, one option would be to report the tax
9 themselves, if they haven't been given tax-paid products,
10 or the tax hasn't been collected by them by the seller --
11 by the donor.

12 JUDGE WONG: Okay. Got it. All right. Thank
13 you. No further questions at this time.

14 JUDGE LONG: Thank you.

15 Judge Ralston, do you have any questions?

16 JUDGE RALSTON: No. Thank you.

17 JUDGE LONG: Thank you.

18 Then let's move on to Appellant's final
19 statement.

20 Mr. Muthanna, you requested five minutes to make
21 your closing statements, and you may begin when you're
22 ready.

23

24 CLOSING STATEMENT

25 MR. MUTHANNA: Yes. The amount when she

1 mentioned, like, we shouldn't receive the samples. We
2 didn't -- we don't ask for samples. Like, most of the
3 distributors they boost their product. They -- they send
4 the samples without, like, the store's permission. They
5 just go to Google and look for the smoke shops in the area
6 and start sending their product samples trying to push
7 their products to sell it.

8 And most -- it's we barely get any tobacco as a
9 samples. It's like once every while we receive a samples.
10 And most of the samples when we receive it, we didn't even
11 know who those companies. Like I mention before, we go to
12 the shows and there's a lot of distributors from all --
13 all the country. Sometimes there's a manufacturers they
14 come from even from China to the show to trying to push
15 their product. What we do, we just go to the show and
16 start passing the business card and start receiving the --
17 the samples and it's we --

18 I understand I shouldn't receive any tobacco as a
19 samples and -- but it's -- it's not in my hand. I just
20 received it. I wasn't in the shop at the time, and maybe,
21 I think, two or three days after we receive the samples,
22 the CDTFA people they came, and they find the boxes. I've
23 been in this business from 2008 until now. I didn't have
24 any violation in the shop. I didn't have any even one
25 ticket that I sold it to under minors or underage.

1 I try to do my best to maintain business with all
2 the invoices and keep everything, like, under the law. I
3 just have some people from the CDTFA, like, maybe three or
4 four weeks ago come to the shop, and they ask for
5 invoices. They inspect all the tobacco products and
6 everything was 100 percent, like, comply. I didn't have
7 any problems.

8 So, please, I want you to look at it. I didn't
9 mean to do this or to break the law or anything. It's --
10 it's my business, and I've been in this business from
11 2009. When I started, it was under my brother name, but I
12 switch in 2017 into my name. I didn't have any violation.
13 And, I don't know. If there is a taxes that's for the,
14 like, the amount she mention she difference. I'm -- I'm
15 willing to pay the taxes for these product.

16 And that's all. Thank you.

17 JUDGE LONG: Thank you.

18 I believe we're ready to conclude this hearing.

19 I just want to verify with my Co-Panelists.

20 Are my Co-Panelists ready to close this appeal?

21 Judge Ralston?

22 JUDGE RALSTON: Yes.

23 JUDGE LONG: And, Judge Wong?

24 JUDGE WONG: Yes. No further questions. Thank
25 you.

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JUDGE LONG: Thank you.

Well, then this case is submitted on Wednesday, October 16th, 2024. The record is now closed.

Thank you everyone for coming in today.

The Judges will meet and decide your case later on, and we'll send you a written opinion of our decision within 100 days after the record is closed.

Today's hearing in the Appeal of Muthanna is now adjourned.

(Proceedings adjourned at 9:58 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 31st day of October, 2024.

ERNALYN M. ALONZO
HEARING REPORTER