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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
S. FRANCO,) OTA NO. 230413039
APPELLANT.)
_____)

Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:07 p.m. and concluding at 2:17 p.m. on
Wednesday, January 15, 2025, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ TERESA STANLEY

Panel Members: ALJ SUZANNE BROWN
ALJ JOSHUA LAMBERT

For the Appellant: S. FRANCO
JAMES BRUNETTE

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

COURTNEY DANIELS
CHAD BACCHUS
JASON PARKER

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I N D E X

E X H I B I T S

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California; Wednesday, January 15, 2025

1:07 p.m.

JUDGE STANLEY: We're going on the record in the Appeal of Franco. It's Office of Tax Appeals Case Number 230413039. The date is January 15th, 2025, and the time is 1:07 p.m. This hearing is being held electronically with the agreement of the parties.

Okay. I have just received some advice, Mr. Beltran, that you can go ahead and log off while you're going to pick up the kids. You don't have to listen in, and we'll just make sure that you get reconnected when you come back. Okay.

I am Judge Teresa Stanley. I'm going to be the lead for purposes of this hearing. My Co-Panelists, Judge Suzanne Brown and Judge Josh Lambert, are with us today too. We are all equal participants in deliberating and determining the outcome of this appeal.

I'm going to ask the parties to identify themselves and who they represent, starting with Appellant.

MR. FRANCO: Hi. My name is Sammy Franco. I'm representing -- I'm here for myself.

MR. BRUNETTE: Good afternoon. My name is James Brunette. I'm representing Mr. Franco.

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JUDGE STANLEY: Thank you.

And for the California Department of Tax and Fee Administration.

MS. DANIELS: Hi. My name is Courtney Daniels. I'm representing the Department of Tax and Fee.

MR. BACCHUS: Chad Bacchus, attorney with the Department.

MR. PARKER: And Jason Parker, Chief of Headquarters Operations Bureau with the Department.

JUDGE STANLEY: Okay. Thank you.

At the prehearing conference we discussed the issue from this case. As stated in the Minutes and Orders, the issue to be decided in this appeal is whether Appellant Mr. Franco is personally responsible for the unpaid sales tax liabilities of Slamwich Company, LLC, doing business as Beach Hut Deli, for the period April 1, 2016, to November 25th, 2017.

Mr. Brunette, do you still agree that's still the issue?

MR. BRUNETTE: Yes, Your Honor. That's correct.

JUDGE STANLEY: And, Ms. Daniels, do you agree as well?

MS. DANIELS: Yes. Thank you.

JUDGE STANLEY: All right. Just briefly with exhibits, Appellant has not submitted any exhibits, and I

1 believe they intend to rely on the exhibits submitted by
2 CDTFA, which were Exhibits A through D. Appellant didn't
3 object to the admissibility of those exhibits and
4 therefore, Exhibits A through D are admitted into
5 evidence.

6 (Department's Exhibits A-D were received into
7 evidence by the Administrative Law Judge.)

8 JUDGE STANLEY: Are there any issues that the
9 parties have with relation to the exhibits?

10 Okay. Seeing none, I will move on.

11 Mr. Brunette, you requested 45 minutes for the
12 Appellant's presentation as well as witness testimony.

13 Did we lose Mr. Brunette yet?

14 MR. BRUNETTE: No. I'm here.

15 JUDGE STANLEY: Okay. So as long as you're still
16 here, can I ask, since there will be three witnesses, that
17 Mr. Franco, Mr. Coronado, and Mr. Beltran, please raise
18 your right hand.

19 S. FRANCO,
20 produced as a witness, and having been first duly sworn by
21 the Administrative Law Judge, was examined, and testified
22 as follows:

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G. CORONADO,

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

R. BELTRAN,

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

JUDGE STANLEY: Okay. Thank you.

And just to point out for the parties and the public who might watch this, we swear in only witnesses who are testifying as to actual facts. We do not swear in representatives, and all the participants from CDTFA are just arguing and not testifying, so they will not be sworn in.

Mr. Brunette, you may have your witnesses testify in the narrative or ask specific questions. You can give a narrative presentation first or whatever order you feel comfortable in making your presentation, and you can proceed when you're ready.

MR. BRUNETTE: Okay. And just to clarify with your guidance, so I will be making a brief statement and then I will, you know, hand this over to Mr. Franco who

1 will discuss some timeline of events, and then we'll have
2 the witnesses speak as well. So it'll be just -- if it's
3 okay with you, somewhat of a joint effort between both
4 myself and Mr. Franco.

5 JUDGE STANLEY: That sounds perfect. Thank you.

6
7 PRESENTATION

8 MR. BRUNETTE: Okay. Okay. I'll start off with
9 a brief statement, and thank you for the opportunity here.

10 So I'm here to represent Mr. Franco, and it's our
11 intention to show that the willfulness provision under the
12 Revenue & Taxation Code was not met on behalf of
13 Mr. Franco to meet the requirements of the Notice of Dual
14 Determination. It's our understanding that the, you know,
15 if any of the provisions are not established by CDTPA
16 during the investigation process, the Notice of
17 Determination cannot be issued.

18 Based on our review, under statutory provision
19 764.080, personnel liability can be imposed on a
20 responsible party only if the person willfully failed to
21 pay to or to cause to be paid taxes due from the entity,
22 but willfully fails to pay or cause to be paid, unquote,
23 means that failure was the result of an intentional,
24 conscience, and voluntary course of action. And the
25 failure may be willful, even though such failure was not

1 done with a bad purpose or evil motive.

2 To reiterate, in order to establish willfulness,
3 CDTFA must prove that the failure to remit taxes was the
4 result of the intentional conscience or voluntary course
5 of action. All three of the actions must be proven, or
6 the willfulness test cannot be met.

7 In the case of Mr. Franco, failure to remit taxes
8 was not intentional as Mr. Franco was operating without a
9 choice under a breach of the business's original operating
10 agreements at the time the taxes became due. In addition,
11 the action of nonpayment should not be considered
12 voluntary as the taxpayer was not the individual who broke
13 the operating agreements. The taxpayer here, Mr. Franco,
14 could not choose to voluntarily but rather, the choice was
15 made for him by another officer of the business. So it's
16 our contention that the willfulness test was not met, and
17 the Notice of Determination against Mr. Franco should be
18 rescinded.

19 Based on the original petition for
20 redetermination submitted by the taxpayer on
21 November 30th, 2020, it's contended that a breach of the
22 operating agreement occurred through conduct by
23 Mr. Terrance Frazier who held a 51 percent ownership stake
24 in the company. In the operating agreement, it provides
25 that member shall not be entitled to withdraw part of any

1 of member's capital contributions or to receive any
2 distributions, whether of money or property from the
3 company, except as provided in the agreement.
4 Furthermore, all funds of the company shall be deposited
5 into one or more recognized financial institutions.
6 Lastly, the agreement requires that a complete book of
7 accounting of the company's business, in which each
8 company transaction is to be fully and accurately entered.

9 So onto Mr. Franco. Mr. Franco is a hard-working
10 member of the Fresno, community, and he's worked his way
11 up from the bottom in the restaurant industry. Mr. Franco
12 has perfected his craft through trial and error and gained
13 experience as an employee running front-of-the-house
14 management at large scale restaurants. Since 2000 he's
15 worked for well-known restaurant groups at physical
16 locations, including Red Lobster, Red Robin, Jamba Juice,
17 and Buffalo Wild Wings. After years of experience in
18 2015, Mr. Franco and his wife were approached by
19 Terrance Frazier who pitched them on helping open and
20 operate a new sandwich concept, Beach Hut Deli.
21 Mr. Frazier was a family friend of the Francos and was a
22 well-known business person in the Fresno community. After
23 discussions were held, it was decided that Terrance wanted
24 Sammy and his wife to operate the front end of the
25 business, and Terrance would handle the finances and show

1 them the ropes of handling a business.

2 Unbeknownst to Mr. Franco, his lack of business
3 experience was exploited by Terrance Frazier, who
4 intentionally operated the business in which he
5 manipulated the Francos to make it appear as if they had
6 full control, but removed that control when it was
7 convenient for him and his investors. This left the
8 Francos high and dry when it came time to managing the
9 finances of the business. Although Mr. Frazier was
10 51 percent owner, he ensured that the Francos signed all
11 documentation, including bank signature cards, tax
12 returns, lease agreements, et cetera, in order to limit
13 his personal exposure. As noted in Exhibit C -- it's
14 Exhibit Number C, No. 9, titled, "1508 Terrance Frazier."
15 Mr. Frazier signed a CDTFA business operations
16 questionnaire from the CDTFA in which he stated that his
17 responsibility at the business was, quote, "I loaned Sammy
18 and Rachel money," end quote. This statement is a
19 misrepresentation of his true duties and hands-on approach
20 at the business location in which the CDTFA's auditors
21 took him for his word.

22 Furthermore, in Exhibit C, No. 7, titled, quote,
23 "Emails," an email chain shows that Mr. Frazier was
24 actively engaged in the business operation, including
25 hiring of bartenders, weekly sales meetings, daily camera

1 recordings in review of the store, and expected
2 51 percent -- 51 percent of all profits. But as an
3 experienced businessperson, he intentionally removed his
4 name from documentation with his attorney's help when it
5 was convenient. He wanted profit without the risk.

6 Mr. Terrance Frazier has denied having any
7 operational control -- or had denied operational control
8 of the restaurant, but the email chains in Exhibit C show
9 otherwise. The email chain between Mr. Franco,
10 Mr. Frazier, and the attorney, Mr. Emerzian, demonstrated
11 that Mr. Frazier's belief is that he had majority of
12 control and was able to remove the Francos from operation
13 of the business. This would be inconsistent with CDTFA's
14 definition of responsible person for determining his
15 personal responsibility.

16 Furthermore, a point of contention occurred with
17 the disappearance of operating capital raised by
18 Mr. Terrance Frazier of \$100,000. In the email chain,
19 it's known as the Aaron Haynes Loan. These funds were
20 never deposited into the Slamwich bank accounts, and they
21 were necessary for operating capital. It's believed that
22 Mr. Frazier used these funds to repay other investors for
23 separate investment projects; a tell-tale sign that he did
24 not have the funds as promised in the original investment.
25 As noted in the email chain from August 21st, 2016,

1 Mr. Franco was in such a dire position that he, quote,
2 "Could qualify for assistance for food stamps right now,"
3 end quote, signaling that he was not profiting at the time
4 and struggling to make the business work.

5 During the dual determination investigation, the
6 CDTFA assigned Mr. Lee to conduct the analysis of the
7 responsible parties. Mr. Lee had advised Mr. Franco that
8 if he could show where the funds of the \$100,000 were
9 deposited, he would be able to determine if Mr. Frazier
10 was violating the operating agreement and had committed
11 fraud. Neither Mr. Franco nor the business ever received
12 the funds in the business bank account, and they were
13 unable to prove where they were deposited. The CDTFA was
14 asked to subpoena the information in an email exchange
15 between Mr. Lee and Mr. Franco, but no subpoena ever
16 occurred.

17 In conclusion, to prove willfulness, CDTFA must
18 show that failure to remit taxes was intentional and
19 conscience and a voluntary course of action. All three of
20 the actions must be proven or the willfulness test cannot
21 be met. Excuse me. Mr. Franco was operating without a
22 choice under the breach of the business operating
23 agreement at the time. And in addition, the action of
24 nonpayment of the taxes should not be considered
25 voluntary, as the taxpayer was not the individual who had

1 broken the operating agreement. The taxpayer could not
2 choose voluntarily but rather, the choice was made for him
3 by another officer. Mr. Frazier was actively engaged in
4 the business operation, expected a 51 percent -- 51
5 percent of the operating profits, but as an experienced
6 businessperson intentionally removed his name from
7 documentation when it was convenient.

8 That is the end of my statement. I'm going to --
9 if it's okay with you pass, I'll pass it back to
10 Mr. Franco.

11

12

WITNESS TESTIMONY

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MR. FRANCO: Hello. Thank you for the
opportunity to present.

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The timeline that Mr. Brunette has given is very
accurate. I wanted to provide a little bit more context
to some of the information about the loan and the capital
that was removed. In the beginning, Mr. Frazier had
mentioned to me that he would put up all the money, take
care of all the finances, and we would be the sweat
equity. About halfway through the build out, he told me
that I was going to have to get a loan. By that point, we
were neck deep in franchise agreements that we couldn't
break or we could have ended up, you know, in suit for
that. So we went ahead and -- and started pursuing the

1 loan.

2 To my surprise, I thought the loan was going to
3 be -- the LLC was going to get the loan, but he told me,
4 no, it had to be me because he had all the money, and
5 didn't want to be left on the hook if the business didn't
6 perform. So we discussed that over a couple of weeks and
7 finally came to terms with I was going to have to
8 collateralize my home. We did that, and the loan broker
9 who worked on the loan for us, along with Suncrest Bank.
10 They had a tough time getting this. And then there was --
11 the loan was under collateralized, and it was expressed to
12 Mr. Frazier in an email.

13 I mean, they did everything they could to have me
14 as the only operating manager. They changed the operating
15 agreement. And Terrance's answer in an email when I asked
16 him if we -- if this is -- if we should do it this way,
17 was, "Yes, we'll just change it back when we get the
18 loan."

19 So we get to opening, and we have finishing
20 invoices that are needed to be paid, approximately \$40,000
21 \$45,000. And I went to Terrance because we had, according
22 to the franchisor, we had to hold a certain amount of
23 money in the bank for the franchise agreement for working
24 capital. If we would have paid that invoice from the bank
25 account, then we would have been in breach of that

1 agreement with the franchisor.

2 At that point in time, Terrance told me he was
3 broke and didn't have the money. So I had to pay that out
4 of the company's bank account, and it took us down to --
5 at opening, we had about \$12,000 in the bank. And so that
6 is, like, nowhere close to what we needed to operate at
7 the beginning because there were marketing requirements.
8 So Terrance said that he was going to get a loan from a
9 friend of his and that would be enough for us to have the
10 operating money that we needed and a little bit of cushion
11 so we could be okay. He came to me at the restaurant with
12 an agreement that was already prepared. We spoke about it
13 over the phone. And it was from a gentleman named
14 Aaron Haynes who was a friend of Terrance's. The
15 agreement was between Slamwich Company and Aaron Haynes.
16 I signed the agreement expecting that we would get a
17 check. And about a week-and-a-half later when I asked for
18 the check, Terrance told me that he used that money to pay
19 off his original investors, and that the money, you know,
20 was not coming to the restaurant.

21 So we were undercapitalized in the business at
22 the most important part is during the opening when
23 we're -- we had the requirements from the franchisor to
24 give away so many sandwiches, to give away product at a
25 loss to us just for marketing, and the large amount of

1 payroll that comes at the beginning of an opening because
2 we have to train a staff and pay for trainers from the
3 franchisor. Leading into that -- that fall of that
4 opening year, we had already started to fall behind with
5 CDTFA, and I was working with a gentleman named Jesse, and
6 I can't remember his last name.

7 And I had to -- we -- we were so behind and
8 couldn't pay the quarterly that we had to -- I took a
9 merchant processor loan, which is a horrible loan, super
10 high interest. But I had to do that so we could -- you
11 know, we could continue to operate. So we took a loan
12 from a company called Knight Capital. And that loan could
13 have been paid off in January with tenant improvement
14 money, but Mr. Frazier also took the tenant improvement
15 money of about \$64,000. And so I was forced to take the
16 remainder of that loan because it came in two sections.
17 And they were taking money directly from our bank account
18 every Wednesday based off of our credit card sales.

19 So at that point in time, we were -- we were
20 playing catchup. And my experience in restaurants has
21 been running restaurants and training managers. And, you
22 know, I was -- I traveled across the United States and
23 trained managers for different companies, but I had never
24 been a part of something like this, and that's where his
25 mentorship was supposed to kick in. And -- and, you know,

1 it seemed like once things got a little rough is when he
2 tried to distance himself and claimed that he was not an
3 owner, just a lender, even though there's -- there's zero
4 loan agreements between myself and him. And he is on the
5 liquor license as an owner. He was on the bank account as
6 an owner. His -- his K-1 tax showed that he claimed the
7 loss as an owner -- as 51 percent owner.

8 And although he separated himself, Terrance
9 was -- Terrance managed through the cameras. We had
10 weekly meetings. He would come in and give me directions.
11 He was like my district management. And so when he kind
12 of disappeared at the end when I needed his guidance and
13 he just claimed this wasn't his business, his inaction
14 hurt because I had no idea. I didn't have the resources
15 that he does. So I had no idea how we were going to, you
16 know, fix the situation. I was told by him, "Keep the
17 doors open at all costs." So that's what I did. And so
18 through his direction, we kind of winded -- winded down
19 the way we did. I had no resources to take care of
20 vendors. We started having to -- you know, to -- to --
21 instead of using approved vendors, we were having to go to
22 the store the night before to buy food to open the next
23 day so that we weren't in breach with the landlord.

24 So that initial start off put us in -- in a, you
25 know, a pinch financially. And, you know, as far as, you

1 know, him not being an owner, that was the appearance on
2 paper, and it's spelled out in the -- in the emails was
3 just so he didn't have to guarantee -- have a personal
4 guarantee on the loan. As soon as Suncrest Bank became
5 aware of that, they wanted to call the loan because I
6 filed taxes as I was supposed to through his -- through
7 Terrance's accountant who was -- everyone we used for
8 financials was Terrance's, Terrance's accountant. We used
9 Terrance's attorney. We used Terrance's loan broker. So
10 he had -- he had an in and an understanding of everything
11 that was going on. He had -- we had conference calls to
12 go over P&L performance, and so he knew exactly where we
13 stood with sales and use taxes due. And he sent me to
14 several of his friends to try to get loans to cover it.
15 But he didn't want to guarantee the loans, and they
16 wouldn't do it because he was 51 percent owner. They
17 would not allow him -- they would not allow me to have the
18 loan without Terrance giving a personal guarantee because
19 of his ownership.

20 So once Suncrest Bank demanded that he change his
21 ownership or they would pull the loan, Terrance had his --
22 Mr. David Emerzian draft up a letter, a side note, saying
23 that we would remove Terrance from all liability, all of
24 the accounts, remove his name from all the debt, but he
25 still wanted to have his 51 percent ownership accounted

1 for on the side. We didn't agree to that, and that's kind
2 of where everything just went south and he abandoned us.
3 You know, right now I am a director of operations in the
4 Fresno airport, and I handle multiple call centers and in
5 charge of multiple departments there. And if I was just
6 to abandon my job and walk away, I'm the one that would be
7 held responsible, not my managers.

8 So, in essence, I feel that Terrance was the one
9 guiding me. He was the majority owner. He was the one
10 experienced, decades of business experience compared to me
11 who was supposed to be mentoring me, and he walked away
12 from me and let me -- you know, left me out there to
13 drown. And so I -- I didn't have the resources to -- to
14 continue to stay open.

15 And so I hope that adds a little bit of context
16 to the timeline that Mr. Brunette gave.

17 JUDGE STANLEY: Thank you.

18 Mr. Brunette, would you like to move to your
19 witnesses at this point?

20 MR. BRUNETTE: Yes, Your Honor. And I'm going to
21 have Mr. Franco introduce them as well so that they can
22 make a statement.

23 MR. FRANCO: Okay. I'm not sure if Rafael made
24 it back on, but I know Gonzalo is on. So Gonzalo Coronado
25 was one of our shift supervisors at the -- at the Beach

1 Hut Deli who was with us from the beginning all the way to
2 the end. And, you know, he was a key part of the
3 business, so always there and had, you know, direct
4 contact with Mr. Frazier, and that's what he's here to --
5 to testify to today. So Gonzalo Coronado would be the
6 first witness.

7 MR. CORONADO: Can you see me, Sammy? Okay.

8 MR. FRANCO: So at this point in time, Your
9 Honor, would Mr. Coronado just make a statement or -- I'm
10 not sure how this part is supposed to proceed.

11 JUDGE STANLEY: This is Judge Stanley speaking.
12 It would be however you all are most comfortable with
13 presenting the case.

14 Mr. Gonzalo, if you would like to just make your
15 statement and say what you have to say, we can always
16 follow up after Appellant's full presentation and see if
17 the other party or if any of the Judges have questions for
18 any of the witnesses.

19

20 WITNESS STATEMENT

21 MR. CORONADO: Okay. Well, my name is
22 Gonzalo Coronado. I was one of the key supervisors there
23 at Beach Hut Deli. I know that I took a lot of direction
24 from Terrance Frazier. He would go in there and acted as
25 a -- as a ownership. You know, as much as I would listen

1 to Sammy, I would listen to Terrance. He had -- he played
2 a big part in Beach Hut Deli. He would run to the bank.
3 He would go pick stuff up for us. He would clean tables.
4 He would jump in the bar, help out in the bar, wipe tables
5 down, and stuff. He did play a big part in Beach Hut
6 Deli.

7 Is there anymore -- anything else? I mean --
8 MR. FRANCO: I mean, if Mr. James -- if
9 Mr. Brunette if you wanted to kind of -- I -- I don't want
10 to -- I'm not sure how this should go, but I guess if I'm
11 allowed to ask -- go ahead, Mr. Brunette.

12 MR. BRUNETTE: As you say, Sammy, absolutely. I
13 think that goes to show the hands-on approach that
14 Mr. Frazier had in the business as a 51 percent owner.
15 And I'll let Sammy now take a few moments to -- to clarify
16 some of those duties as well.

17 MR. FRANCO: Yes, he would stop in. He was --
18 he was very much like a district manager would be as --as
19 far as, you know, what -- you know, with the staff.
20 Towards the end we were very open, and we let the staff
21 know everything that was going on between ourself and
22 Mr. Frazier because, you know, they were wondering where
23 he was. They were wondering, you know, why things were
24 going the way they were.

25 And there was one specific email that we -- we

1 did share with the team and -- that showed that up until
2 the end -- and I believe this was in October of the year
3 that we closed. Mr. Frazier's exact words were, "I am
4 51 percent owner. I will be taking over the restaurant
5 and replacing the team." We shared that with the team
6 because we wanted them to know exactly what they were
7 facing if they wanted to go find new jobs. Most of them
8 stayed with us until the end until we closed. They were
9 very loyal to us because we were fair to work with.

10 So I don't know if -- if Mr. Coronado will speak
11 to that, but that's something that I know that the team
12 members all did see when we had a group meeting, like,
13 towards the end.

14 MR. CORONADO: Yes, I did -- I did see that
15 email. He did time to time would tell us he was -- we
16 knew he was part owner, but he would always assure us that
17 he was part owner, you know, 51 percent. And, you know,
18 he would send people in to pick up food and would just
19 pretty much mention his name. So us following him as a
20 manager -- as an owner, we would do what they would say.
21 He would say I'm here to pick -- they would say we're here
22 to pick up food for Terrance for baseball camps and stuff
23 for kids.

24 I personally would go drop off sandwiches for
25 him. Yeah, he was there. He was there all the time up

1 until the end until -- like Sammy said, we would wonder,
2 like, he -- well, you're here every day. You're here all
3 the time. All of a sudden, you're not here anymore. So,
4 you know, it kind of drew a red flag on what -- what had
5 happened with him. Like, where was he at? Where -- you
6 know. Yeah. That's pretty much it.

7 MR. FRANCO: All right. Thank you, Gonzalo.

8 I don't know if Rafael Beltran has made it on
9 yet.

10 MR. BELTRAN: Yeah. I'm here.

11 MR. FRANCO: Okay. So Rafael was also a key
12 person with our -- our sandwich shop. You know, he -- he
13 also helped manage in -- in the bar, along with others.
14 And I'm going to let him speak to his experience.

15

16 WITNESS TESTIMONY

17 MR. BELTRAN: All right. Yeah. Just like Sammy
18 said, I was there from the beginning. He would come in
19 from time to time. We had weekly meetings with Sammy and
20 Rachel. Excuse me. He would constantly call the
21 restaurant, you know, saying so-and-so is doing this, or
22 this and this happening, checking on the cameras. That
23 needs to get fixed or something -- just that needs to get
24 attended to. And just like Sammy said, towards the end he
25 just stopped showing up and, you know, we all wondered.

1 Then he did mention -- Sammy is right when he said that he
2 showed us the email about -- of him saying he was 51
3 percent owner, and that he was going to hire a clean staff
4 and just hire all new staff.

5 Yeah. That's about it.

6 MR. BRUNETTE: Thank you for that.

7 And just to conclude, you know, I would like you
8 to state that, you know, with his testimony, you know,
9 it's clear, you know. And we understand that, you know,
10 the purpose of this -- of this hearing is not to -- or the
11 end goal of this hearing will not have Mr. Frazier become
12 a responsible party. We understand that's not the purpose
13 of this -- of this hearing. We understand that this
14 hearing is about Mr. Franco. But what -- you know, this
15 time frame, the timeline, the context goes to show is
16 that, you know, it's clear that Mr. Frazier created a
17 situation which he put the Francos in a position where
18 they were deemed to be responsible for everything related
19 to the nonpayment of taxes; whether that's signing tax
20 returns, signing the checks. And it's understood and, you
21 know, the evidence will show that, yes -- yeah, Mr. Franco
22 signed tax returns and had, you know, had signatory
23 authority.

24 But this was done at the direction of
25 Mr. Frazier, and Mr. Frazier setup a situation in which

1 it's clear that, you know, intentionally he put his name
2 on the business for purposes of profit maintained, you
3 know, a consistency that he was going to be receiving
4 51 percent profit. He was managing the business yet, for
5 liability purposes, he limited his exposure when it came
6 time to -- to knowing those types of things. And,
7 unfortunately, with Mr. Franco's, you know, lack of and
8 experience with operating the finances of the business, he
9 was put in that position. And, you know, really without
10 knowledge when Mr. Frazier was clearly running the
11 operations of the business.

12 So that concludes my statement here.

13 JUDGE STANLEY: This is Judge Stanley speaking.
14 Thank you all for testifying, and thank you, Mr. Brunette.

15 I'm going to ask Ms. Daniels if she has any
16 questions for any witness.

17 MS. DANIELS: I do not have any questions at this
18 time. Thank you.

19 JUDGE STANLEY: Okay. And, Judge Brown, do you
20 have any questions for any witness?

21 JUDGE BROWN: I believe I will have questions for
22 Mr. Franco that I will start with asking now. I may have
23 additional follow-up questions later.

24 I wanted to ask Mr. Franco or Mr. Brunette,
25 whoever wants to respond, but I'll start with Mr. Franco

1 about what efforts Mr. Frazier -- whether Mr. Frazier did
2 any actions to interfere with payment of taxes.

3 MR. FRANCO: I would say -- oh, I'm sorry.

4 JUDGE BROWN: No. Go ahead. I didn't mean to --
5 go ahead and you can respond, and I'll follow up.

6 MR. FRANCO: I've said this from -- you know,
7 from the first time that I met with anybody that I feel
8 like his inactions were as powerful as any actions, you
9 know, could have been. He -- he deserted us when we
10 had -- I had questions that I needed to have answered. He
11 was supposed to be the capital in the equation, and we
12 ended up losing our home. And the loan that we had costed
13 us more than what he had actually put -- contributed for
14 his part of the business, which gave him majority
15 ownership.

16 And so I don't know -- I mean, his directions to
17 me were, "Keep the doors open at all cost," which to me
18 meant make sure the rent gets paid, and make sure we can
19 serve people. And so that -- that was his -- now, once we
20 got to a point where he found out that the bank was going
21 to call the loan, he -- he just wanted his name off of
22 everything and tried to compose a side letter to -- the
23 side letter, you know, to have us recognize his ownership
24 but remove him from any responsibility.

25 So he wanted us to take the brunt of all the

1 responsibility and indemnify him. But still, if we were
2 to move on and -- and actually turn the business around
3 and turn a profit, you know, he wanted to take the profit.
4 And I will say that we did have individuals who were
5 interested in purchasing his -- his interest of the
6 business, but he would not do so until they paid off the
7 \$100,000 loan to Aaron Haynes, which never was a business
8 asset. It never touched our bank account. And John Lee
9 is the one who asked -- specifically asked for that check,
10 and they just ignored him, and they didn't answer his
11 request. And they -- he asked for a copy of the -- the
12 voided check, that where it was deposited, and we still to
13 this day have never seen where that actually went to. It
14 didn't go to our business bank for sure.

15 JUDGE BROWN: And John Lee is the CDTFA
16 employee --

17 MR. FRANCO: Yes.

18 JUDGE BROWN: -- you had referred to earlier?

19 MR. FRANCO: Yes.

20 JUDGE BROWN: Did Mr. Frazier instruct you not to
21 pay the taxes?

22 MR. FRANCO: He wanted me to get a loan to pay
23 them. And so that's why we were -- we were sent to
24 Clearinghouse. We were sent to Self-Help Credit Union in
25 Oakland. We were sent several places. He wanted me to

1 get a loan to pay them. We didn't have the capital to pay
2 them and stay open. So his suggestion was to get a loan.
3 And in the emails, you know, I referenced that, you know,
4 his -- he wanted me to get a loan. I couldn't qualify for
5 any loans because we weren't the money equation in -- in
6 the business. He was the capital. He had all of the net
7 worth, and we were just the sweat equity. We're supposed
8 to be the sweat equity. So that was his answer to the --
9 to the tax problem was to get a loan to pay it.

10 JUDGE BROWN: Is there anything in the evidence,
11 any documents that reflect him telling you not to pay the
12 taxes?

13 MR. FRANCO: I wouldn't say directly. Most of
14 our meetings happened in person.

15 JUDGE BROWN: I wanted to ask about the -- there
16 was a document filed with the Secretary of State. Hold
17 on. Let me find it. Oh, it was the amended articles of
18 organization filed with the Secretary of State in 2015.

19 MR. FRANCO: Yes.

20 JUDGE BROWN: Mr. Franco, I see you nodding, so I
21 think you know what document I'm talking about.

22 MR. FRANCO: Yes.

23 JUDGE BROWN: It was filed on May 5th of 2015
24 where previously the prior Statement of Information filed
25 with the Secretary of State in 2013 listed both you and

1 Mr. Frazier as managers. And then the amended articles
2 indicate that the LLC will be managed only by one manager,
3 and it has your name.

4 MR. FRANCO: Yes.

5 JUDGE BROWN: Can you tell me what happened
6 there?

7 MR. FRANCO: The context behind that was him not
8 wanting to guarantee the loan. So inside the exhibits
9 where the emails are, there's back and forth emails
10 between himself, the loan agent -- his name was
11 Mark Layne -- his assistant telling him that, you know,
12 they needed him to drop his ownership under a certain
13 percentage so he wouldn't be liable for the loan. You
14 know, I think -- I can't remember how I phrased the
15 question, like, you know, is this how it's going to stay,
16 or they need -- he said, "Well, this is how once the loan
17 funds, then we'll change it back." That was the -- that's
18 in the emails directly from Terrance.

19 So the switch from me to being the managing
20 member was solely so he wouldn't be on -- on the hook for
21 the loan. And, you know, I was coming from a place of
22 trust, so I never questioned him. I grew up watching
23 Terrance play baseball. I knew him for 30 years before we
24 actually got into business together. So I trusted -- my
25 family trusted him.

1 JUDGE BROWN: And can you point me or can Mr. --
2 I don't know if Mr. Brunette can point me to where in the
3 emails you're referring to. Do I have those documents?

4 MR. FRANCO: James, I believe that that is all in
5 the -- in the emails that we provided.

6 MR. BRUNETTE: Yeah. I have the email PDF.
7 Let's see, about 149 pages, unfortunately.

8 MR. FRANCO: Yeah. There was a lot of emails,
9 and it was between myself, a gentleman named Chris Foxen,
10 was Terrance's assistant. Mark Layne was the loan broker.
11 And there was, you know, back and forth about dropping the
12 percentage and why Terrance -- and even the bank was --
13 the bank is the first one that said in order for us to do
14 this, you know, and not have Terrance as a guarantor,
15 Terrance cannot be a majority owner. And so that's where
16 the conversation started with David Emerzian, started
17 with, you know, Terrance and his team. I was kind of
18 rolling with the punches, you know. I -- I was -- like I
19 said, I was experienced at running restaurants at a
20 restaurant level. This was my first time swimming in
21 these waters, and so I -- I -- this was Terrance's part,
22 and so I was trusting him.

23 JUDGE BROWN: And I see that I do have the
24 emails, the 149 pages of emails that you're referring to.

25 MR. BRUNETTE: If you go --

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JUDGE BROWN: Go ahead.

MR. BRUNETTE: I'm sorry.

JUDGE BROWN: Yeah. Go ahead.

MR. BRUNETTE: -- page 62 of that -- page 62 of the PDF.

JUDGE BROWN: Okay. Got it. I see that email. December 1st, 2017, -- well, it was originally in --

MR. FRANCO: Yeah. There's a lot.

JUDGE BROWN: June -- June 25th, 2015, and forwarded on December 1st, 2017. All right.

MR. FRANCO: Correct.

JUDGE BROWN: I think those are all my questions for right now. I may have more questions later on, but I will turn it back to Judge Stanley. Thank you.

MR. FRANCO: Thank you, Your Honor.

JUDGE STANLEY: Thank you.

Judge Lambert, do you have any questions?

JUDGE LAMBERT: This is Judge Lambert. I don't have any questions at this time. Thanks.

JUDGE STANLEY: This is Judge Stanley again. I do want -- I did want to follow up a little bit, Mr. Franco, on some of what Judge Brown was asking you about. You said that -- you imply that maybe Mr. Frazier was putting some limitations on you in face-to-face meetings. Was he actually directing you to make payments

1 other than for taxes?

2 MR. FRANCO: Yes, make sure the rent got paid;
3 make sure we can still get product in; keep the doors open
4 at all cost is what he told me. When we talked about --
5 we had a specific conversation with a gentleman named Leo
6 Landaverde who was Terrance's -- one of his financial
7 coaches or someone. I'm not sure what he was. He was
8 there to help Terrance with his other businesses. And in
9 that conversation -- it was over the phone -- we spoke
10 directly about the sales and use taxes that were due.
11 And, you know, Terrance said -- told him the same thing he
12 told me, "We're going to get a loan for that."

13 And when he said, "We're going to get a loan for
14 that," he meant me. And I hadn't -- there was no way I
15 was getting a loan. You know, we suffered personally.
16 We -- I mean, we -- we -- Mr. Brunette made a statement
17 where we could have qualified for state benefits because,
18 you know, we were -- like, we weren't making anything.
19 And so we, you know, we -- we went through a lot. And --
20 and I told Terrance, you know, any other partner probably
21 would have just walked away and just let everything fall
22 apart. I was doing my hardest, one, not to let him down
23 and two, he would tell me, you know, if this goes south,
24 like, you lose your home.

25 And so we were working as hard as we could to

1 make sure that that didn't happen, and we only have so
2 many resources. And like I said, he was the one who was
3 supposed to be the resource for finance, and when he
4 stopped showing up and just started avoiding us and
5 then -- and then his friends were coming by saying, you
6 know, Terrance is saying he was just a lender, he's not an
7 owner. And then that's when I kind of knew things were
8 going to -- were going to get a little muddy. But he --
9 you know, it was a -- an incredible learning experience.
10 I'll say that.

11 JUDGE STANLEY: Thank you, Mr. Franco. Given
12 that we've asked questions for now, there may be
13 additional for you all later, but let's for now move onto
14 the Department's presentation.

15 Ms. Daniels, you may proceed when ready.

16 MS. DANIELS: Thank you.

17

18 PRESENTATION

19 MS. DANIELS: Good afternoon.

20 The issue to be decided today is whether
21 Appellant is personally liable for the unpaid sales tax
22 liabilities of Slamwich Company, LLC, doing business as
23 Beach Hut Deli. Hereinafter, we will refer to it as "the
24 business," and that's for the period of April 1st, 2016,
25 through November 25th, 2017, hereinafter, referred to as

1 the "liability period," pursuant to Tax Code section 6829.

2 Upon the termination, dissolution, or abandonment
3 of a business, a manager of an LLC may be held personally
4 liable for any unpaid taxes, interest, or penalties of the
5 business, if such person's failure to pay was willful.

6 And that's Tax Code section 6829 subdivision (a). A
7 willful failure to pay means that the failure was the
8 result of an, intentional, conscience, and voluntary
9 course of action, Tax Code section 6829 subdivision (d).

10 This failure may be willful, even if it was not done with
11 a bad purpose or evil motive. And that's regulation
12 1702.5 subdivision (b)(2). A person is regarded as having
13 willfully failed to pay taxes, or to cause them to be paid
14 where he or she knew that the taxes were not being paid
15 and had the authority and financial ability to pay such
16 taxes, or to cause them to be paid but failed to do so.

17 Since Appellant does not dispute that the
18 business's closure was effective as of November 25th,
19 2017, that the business collected sales tax reimbursement
20 from its customers during the liability period, and that
21 Appellant was the person responsible for the business's
22 sales and use tax compliance, we will focus our
23 presentation on whether Appellant's failure to pay was
24 willful.

25 So first, we look to whether Appellant had

1 authority to pay the taxes or to cause them to be paid
2 first, on the date that the taxes became due, and second,
3 when they had actual knowledge. And that's regulation
4 1702.5(b) (2) (B). Under this regulation, a responsible
5 person who was required to obtain approval from another
6 person prior to paying the taxes at issue and was unable
7 to act on his or her own in making the decision to pay the
8 taxes, does not have the authority to pay the taxes or
9 cause them to be paid. However, a person who had the
10 authority to direct payment but merely differed to the
11 decision of another individual had the requisite
12 authority. And that's regulation 1702.5(b) (2) (B).

13 Appellant's authority to make the business's tax
14 payments is exemplified by the fact that he was a
15 signatory on the business's bank account, and you can see
16 Exhibit A at page 31. And he signed check payments issued
17 to the Board of Equalization during the quarter preceding
18 the liability period, which was the first quarter of 2016.
19 And that's Exhibit A at pages 24 through 25. Additional
20 evidence of his authority includes the following:

21 Appellant identified himself as the business's
22 owner or member when he e-filed the business's sales and
23 use tax returns. That's Exhibit A at pages 18 through 23.

24 Appellant is also listed on numerous
25 applications, forms, and Secretary of State filings as the

1 manager of the business. For example, he is listed on the
2 business's amended articles as the manager for the
3 business, Exhibit C-15; as a member on the Statement of
4 Information for the liability period, that's Exhibit C-17;
5 and as a member on the business's IRS tax returns,
6 Exhibits C-16 and C-20.

7 Appellant also signed as a member partner on the
8 business's lease, which is Exhibit C-21; and on the
9 business's merchant services agreement, that's
10 Exhibit C-23; and on his ABC license, Exhibit C-25.

11 As such, it is clear that Appellant had the
12 authority to pay or to cause payment of the business's tax
13 liabilities, and there's no evidence that his authority
14 was limited in any way.

15 So we will move on to the element of knowledge.
16 For liability under Tax Codes section 6829 to attach, an
17 Appellant must have knowledge, meaning the person had
18 actual knowledge that the taxes at issue were due but not
19 being paid on or after the date that the taxes became due.
20 That's Regulation 1702.5 subdivision (b) (2) (a). Here,
21 Appellant had knowledge that the tax liability was not
22 being paid for each reporting period throughout the
23 liability period. As mentioned earlier, Appellant
24 identified himself as an individual responsible for the
25 business's sales and use tax compliance during the time he

1 worked for the business, and that's at Exhibit A at
2 page 12.

3 And this is further corroborated by the fact that
4 Appellant personally filed the business's sales and use
5 tax returns for each quarter during the liability period
6 and failed to remit payment with those returns, and that's
7 Exhibit D. So despite the fact that he signed the returns
8 declaring that the business owed sales tax for each
9 respective quarter issue, he did not pay or cause these
10 liabilities to be paid. Moreover, since Appellant was a
11 signatory on the bank account and would have issued the
12 check had one been remitted or authorized a bank transfer,
13 it is clear that Appellant had knowledge that the taxes
14 were not paid when he filed the return without payment.

15 For your reference, we have provided the Panel
16 with a table showing the due dates, filing dates, and
17 amounts due for each quarter during the liability period,
18 and that's on pages 2 and 3 of our response brief that was
19 submitted on June 13th, 2023. So the foregoing supports
20 that Appellant had knowledge of each liability amount on
21 the due date for each quarterly return and knew that the
22 liabilities were not paid when he personally filed each
23 return without payment.

24 The third requirement of willfulness is that when
25 the responsible person had actual knowledge and authority,

1 he had the ability to pay the taxes but chose not to do
2 so. Again, that's Regulation 1702.5(b)(2)(C). Throughout
3 the liability period, the business had the ability to pay
4 its sales tax liability but chose instead to make payments
5 to other creditors as Appellant has admitted today.
6 Appellant admitted that the business charged and collected
7 sales tax reimbursement on its sale as a standard business
8 practice throughout the liability period, and that's
9 Exhibit A, page 12. And accordingly, at the very least,
10 the business had those funds available to pay the tax
11 liabilities as they became due.

12 Moreover, while Appellant had knowledge of the
13 taxes were not being paid, the business paid rent, which
14 is shown at Exhibit C-22, and made other numerous payments
15 to different vendors. Such as, instead of paying the
16 second quarter 2016 tax liability in the amount of \$8,880,
17 which was due on July 31st, 2016, the business made
18 payments to Valley Wide Beverage company in August and
19 September of 2016 exceeding \$20,000. And you can see that
20 at Exhibit C-25, pages 15 through 16. This Exhibit C-25
21 details all the payments that the business made to Valley
22 Wide instead of paying its tax liabilities.

23 For example, after the business filed but did not
24 pay the third quarter 2016 liability of roughly \$22,000,
25 which was due October 31st, 2016, it paid Valley Wide over

1 \$23,000 for the months of November and December of 2016;
2 and those are pages 17 through 18. The fourth quarter
3 2016 payment of \$18,937 was due on January 31st, 2017.
4 Again, the business failed to pay its tax liability and
5 instead paid over \$27,000 to Valley Wide for the months of
6 February and March 2017; and again, that's pages 18
7 through 19. The first quarter of 2017 tax liability was
8 approximately \$17,000, and it was due on May 1st, 2017.
9 And it was remitted, again, without payment, and that was
10 on July 31st, 2017. During such time, the business made
11 payments to Valley Wide totaling over \$29,000 for the
12 months of May, June, and July of 2017. And you can see
13 those at pages 20 through 21.

14 The second quarter of 2017 tax liability of
15 roughly \$17,000 was due on July 31st, 2017, and was
16 remitted without payment on its due date. Afterwards the
17 business made payments to Valley Wide for the months of
18 August and September 2017 totaling over \$28,000. And
19 that's pages 21 through 22. The business's third quarter
20 2017 tax liability, which was approximately \$17,000,
21 became due on October 31st, 2017. And instead of the
22 business paying its tax liability, it issued a check in
23 the amount of \$22,310 to Asset Recovery Solutions; and
24 that's Exhibit C-28 at page 38.

25 During the fourth quarter of 2017, the business

1 continued to collect sales tax reimbursement from its
2 customers and thus, had those funds available for
3 remittance to the State. Additionally, the business's
4 banking records indicate that during the fourth quarter of
5 2017, the business made additional payments to creditors
6 and vendors totaling \$3,096; and that's Exhibit C-28,
7 pages 31 through 37. This shows that the business had the
8 funds available to pay its sales tax liability throughout
9 each quarter of the liability period. The business did,
10 in fact, collect sales tax reimbursement from its
11 customers and thus, Appellant could have used those funds
12 to pay the business's tax liability but instead chose to
13 pay other vendors in lieu of making such payments.

14 Finally, Appellant has alleged that his former
15 business partner, Mr. Frazier, is liable for the
16 business's failure to pay its sales tax liabilities to the
17 extent that Appellant argues that Mr. Frazier alone should
18 be held liable. The Department notes that more than one
19 person can be held liable for the business's tax
20 liability. And that's under Civil Code section 1431,
21 which says, quote, "An obligation imposed on several
22 persons or a right created in favor of several persons is
23 presumed to be joint and not several." You can also see
24 Regulation 1702.5 and California Corporation Code
25 section 17703.04. As such, any liability borne by

1 Mr. Frazier does not bar Appellant from also being held
2 personally liability [sic] for the business's tax
3 liabilities. Because the Department has shown that
4 Appellant willfully failed to pay the business's taxes for
5 the liability period, Appellant is personally liable
6 pursuant to Tax Code section 6829, and Appellant's appeal
7 should be denied.

8 Thank you.

9 JUDGE STANLEY: Thank you, Ms. Daniels.

10 Judge Brown, do you have any questions for
11 Ms. Daniels?

12 JUDGE BROWN: I will say I don't have any
13 questions right now. Thank you.

14 JUDGE STANLEY: Okay. Judge Lambert, do you have
15 any questions?

16 JUDGE LAMBERT: This is Judge Lambert. I don't
17 have any questions. Thanks.

18 JUDGE STANLEY: Okay. This is Judge Stanley
19 speaking. I just wanted to clarify after that,
20 Mr. Brunette, after CDTEFA's presentation, that you have
21 acknowledged the part of what Ms. Daniels was arguing that
22 Mr. Frazier and Mr. Franco could potentially both be
23 liable for the same debt. And I believe you acknowledge
24 that, right, Mr. Brunette?

25 MR. BRUNETTE: I understand that the -- I

1 understand her point, yes.

2 JUDGE STANLEY: Okay. And so I'm going to give
3 you an additional 5 minutes to respond to all that's been
4 presented here. But I just do want to clarify, it sounds
5 like what you're saying is that Mr. Franco had paper
6 authority, but that he was in actuality restricted by the
7 majority owner. So you can respond to that in your final
8 comments.

9 MR. BRUNETTE: Okay. You'd like me to do that
10 now?

11 JUDGE STANLEY: Yes, please.

12 MR. BRUNETTE: Okay.

13

14 CLOSING STATEMENT

15 MR. BRUNETTE: Well, although we -- we understand
16 the point from CDTFA that multiple individuals can be
17 found responsible for the nonpayment of taxes, I think the
18 evidence here points to that Mr. Franco was restricted in
19 his ability to, you know, manage the finances of the
20 business. You know, from the beginning, and specifically
21 from, you know, the strings that were pulled to -- to rid
22 himself of the -- of ownership just to put himself back
23 on, he had a higher level of knowledge of the inner
24 workings of these businesses that Mr. Franco just did not
25 have.

1 You know, it's our -- it's our, you know -- well,
2 it's our belief that, you know, to use a phrase, he -- he
3 used Mr. Franco as a pawn in this situation at his, you
4 know -- you know, Mr. Frazier's house was not lost in this
5 business venture. Mr. Franco's was. There were loans
6 that were taken out, merchant loans, in order to keep the
7 business operating, which -- which had, you know,
8 incredibly high daily limits -- excuse me -- you know,
9 daily repayments that, you know, no business really has
10 any business taking. But, you know, I understand that
11 some are forced into that corner.

12 So, again, although, you know, to conclude here,
13 although we understand that, you know, multiple
14 individuals can be considered responsible, we don't
15 believe that the -- that the willfulness test is met for
16 Mr. Franco based on the evidence provided.

17 JUDGE STANLEY: This is Judge Stanley speaking.
18 I'll circle back to my Co-Panelists.

19 Judge Brown, do you have any final questions?

20 JUDGE BROWN: Yes. Let me ask CDTFA, what is
21 CDTFA's position regarding whether -- let's say a
22 situation where there is a hypothetically a -- someone
23 behind the scenes who instructs others to put their names
24 on the tax documents and has authority under this kind of
25 circumstance. Could that be a situation where that would

1 establish that the person was not willful? And then the
2 second part of my question, of course, is do we have the
3 evidence for that situation here?

4 MS. DANIELS: So in a situation where one person
5 could not make a financial decision because maybe they
6 don't own a percentage high enough, they didn't actually
7 have -- they wouldn't have the authority, right. But
8 that's not what we have here. We don't have any evidence
9 showing that Mr. Franco couldn't make decisions. In fact,
10 we have ample evidence to the opposite. We have ample
11 evidence of his making payments to all of these different
12 vendors. So I mean, if we had some sort of operating
13 agreement showing he did not have -- we -- we would need
14 evidence. We just don't have any evidence here.

15 MR. BACCHUS: And this is Chad Bacchus with the
16 Department to just kind of follow up on Ms. Daniel's
17 response. We understand that there are situations,
18 business agreements that happen where there is somebody
19 behind the scenes who is directing payments. And those
20 situations could arise to where if there was sufficient
21 documentary evidence that the Department could see that
22 the individual was being used as a pawn or used as someone
23 who had paper authority -- I think the phrase was used
24 today. Unfortunately, in this situation we -- the
25 Department doesn't feel like that documentary evidence

1 exists.

2 We understand. We have read the emails and
3 looked at all of the evidence that we have, but the
4 Department doesn't see where Mr. Frazier was limiting
5 Mr. Franco's authority to pay the tax liabilities in any
6 way. We understand that Mr. Franco felt -- well, he has
7 testified that he felt that he was directed to pay back
8 the loan or to pay the rent to keep the business open, and
9 that's a common thing that we see in these types of cases.
10 So I guess to -- the bottom line for the Department is
11 that there wasn't any documentary evidence to suggest that
12 Mr. Franco couldn't have ignored those directions and
13 instead paid the tax liabilities when they became due.

14 JUDGE BROWN: That's all I have for questions
15 right now. Thank you.

16 JUDGE STANLEY: Okay. Judge Lambert, do you have
17 any final questions?

18 JUDGE LAMBERT: This is Judge Lambert. I have no
19 questions. Thanks.

20 JUDGE STANLEY: And I would just like to give
21 Mr. Brunette or Mr. Franco an opportunity to respond to
22 what the Department just answered.

23 MR. FRANCO: I would love to, Your Honor.

24 Respectfully, I would like to say that every
25 piece of documentation that if I've signed as an owner,

1 Mr. Frazier also signed as an owner. He had the benefit
2 of claiming the loss the first year, when we filed our
3 taxes, as an owner -- as 51 percent owner. He had, you
4 know, the authority to sign at the bank. He was aware,
5 and it's in the exhibits marked emails where we covered
6 his taxes. He was aware, so Mr. Frazier himself could
7 have gone to the bank and pay the taxes as well. His
8 directions to me were to keep the doors open at all cost.
9 Mr. Frazier is always a -- is also a partner with the
10 landlord of that location, so he wanted to make sure that
11 the rent got paid so he was in good standing with
12 Lance-Kashian Incorporation. So these were the directives
13 that were given to me.

14 And Mr. Frazier, you know, had 25 years on me as
15 far as operating and opening businesses. This was my
16 first one. So when I got -- when we were abandoned and we
17 were left to be the funders [sic] of the business in which
18 he is on record in the exhibit as well of saying he would
19 put up all the money, it was a whirlwind every day. And
20 it was unlike anything. We were under complete duress
21 most of the time we had the business open. And, you know,
22 he had the action. He had the ability to takeover the
23 company and totally clean house and bring in a whole new
24 staff, but he's saying he didn't have the ability to pay
25 the taxes.

1 I was -- I was following 100 percent clear
2 direction from him, and I was reminded several times that
3 my house was on the line. So I understand the vendors
4 that were paid, and a lot of those vendors the dollar
5 amounts were so high because we were -- we were behind.
6 And so we had to, you know, to keep the doors open. And
7 as far as that goes, I was instructed to -- to get a loan,
8 right, from somebody. And we talked to, you know,
9 Self-Help -- as I mentioned, Self-Help Credit Union. We
10 talked to some of the local people here.

11 So I just wanted to make that statement that
12 he -- all of the documents that were said that I signed as
13 an owner, Terrance Frazier also signed as an owner. And
14 the emails will also show the reason why I was switched to
15 the sole operator was so he could avoid being guarantor on
16 the loan.

17 Thank you, Your Honor. I appreciate the time.

18 JUDGE STANLEY: Thank you, Mr. Franco.

19 MR. BRUNETTE: If I may follow up on that, I want
20 to go back and point to Exhibit C, number 9, entitled
21 Form 1508 Terrance Frazier, just to support some of the
22 information that Mr. Franco just claimed here. Terrance
23 Frazier on his responsibility questionnaire -- I believe
24 it's called the CDTFA business operations questionnaire.
25 When asked what his responsibility was at the business, he

1 stated, quote, "I loaned Sammy and Rachel money," end
2 quote. And that was the extent of what he claimed to be
3 his responsibility of the business. And I think that goes
4 to show, you know, the type of -- of misrepresentation
5 and, you know, really internal business knowledge that --
6 you know, we could call it knowledge -- but internal
7 business knowledge that Mr. Frazier had to limit his
8 personal exposure and to be not truthful when it comes to
9 these types of businesses that he operates.

10 You know, Mr. Frazier, you know, clearly has ties
11 to the community, ties to multiple other projects,
12 investors. And, you know, unfortunately he hasn't lost
13 anything related to this -- the downfall of this business
14 where Mr. Franco put everything he had into it and lost
15 everything. So, you know, I think it should be noted in
16 the context of -- of where these individuals stand now.
17 You know, who really lost out on the situation and, you
18 know, the fact that to this day, you know, we don't
19 believe the CDTFA has found Mr. Frazier to be, you know, a
20 responsible party. At least from the documentation
21 provided, it states that he's not a responsible party when
22 the evidence points otherwise.

23 So thank you.

24 JUDGE STANLEY: Okay. This is Judge Stanley
25 speaking. I wanted to thank you all for coming and

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presenting to us today in detail.

And this case is now submitted for an opinion,
and the record is closed.

The judges will meet and deliberate to decide
this appeal, and we'll issue a written opinion within
100 days.

So today's hearing in the Appeal of Franco is now
closed, and this hearing is adjourned.

Have a nice day.

(Proceedings adjourned at 2:17 p.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 4th day of February, 2025.

ERNALYN M. ALONZO
HEARING REPORTER