

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
W. CHUA and L. CHUANG,) OTA NO. 220610633
)
 APPELLANTS.)
)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, March 12, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken
at 12900 Park Plaza Drive, Cerritos, California,
90703, commencing at 1:02 p.m. and concluding
at 1:48 p.m. on Wednesday, March 12, 2025,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ AMANDA VASSIGH

Panel Members: ALJ ASAF KLETTER
ALJ STEVEN KIM

For the Appellants: W. CHUA
L. CHUANG
CRUZ SAAVEDRA

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

DAVID HUNTER
NATHAN HALL

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I N D E X

E X H I B I T S

(Appellants' Exhibits 1-13 were received into evidence at page 6.)

(Department's Exhibits A-KK were received into evidence at page 6.)

OPENING STATEMENT

PAGE

By Mr. Hunter

22

APPELLANT'S
WITNESSES:

DIRECT

CROSS

REDIRECT

RECROSS

Dr. Chua

9

CLOSING STATEMENT

PAGE

By Mr. Saavedra

27

1 Cerritos, California; Wednesday, March 12, 2025

2 1:02 p.m.

3
4 JUDGE VASSIGH: So we will now go on the record.

5 This is the Appeal of Chua and Chuang, OTA Case
6 No. 220610633. The date is March 12th, 2025, and the time
7 is 1:02 p.m. This hearing is being held in Cerritos,
8 California.

9 I am Judge Vassigh. I will be the lead judge for
10 the purpose of conducting this hearing. My co-panelists
11 Judge Kim and Judge Kletter and I are equal participants
12 in deliberating and determining the outcome of this
13 appeal.

14 I'm going to ask the parties to identify
15 themselves on the record and who they represent, starting
16 with Franchise Tax Board.

17 MR. HUNTER: Good afternoon. David Hunter,
18 H-u-n-t-e-r, on behalf of Respondent Franchise Tax Board.

19 JUDGE VASSIGH: Thank you.

20 MR. HALL: And Nathan Hall on behalf of
21 Respondent Franchise Tax Board.

22 MR. SAAVEDRA: Good afternoon, panel. Cruz
23 Saavedra for the Appellants. And if I may introduce them
24 to the Court -- they're with me here -- Dr. Chua and his
25 wife Lilian and their son Winston, who is just observing.

1 JUDGE VASSIGH: Thank you very much.

2 Okay. We're going to talk about the evidence in
3 this case. Appellants have submitted Exhibits 1
4 through 13. Franchise Tax Board did not object to the
5 admissibility of these exhibits. Therefore, Exhibits 1
6 through 14 [sic] are admitted into the record.

7 (Appellants' Exhibits 1-13 were received
8 into evidence by the Administrative Law Judge.)

9 JUDGE VASSIGH: And Franchise Tax Board submitted
10 Exhibits A through KK. Appellants did not object to the
11 admissibility of these exhibits and therefore, Exhibits A
12 through KK are now admitted into the record.

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

15 JUDGE VASSIGH: And, Mr. Saavedra, during our
16 prehearing conferences, you indicated that Appellants
17 would be presenting testimony today. Is that still
18 correct?

19 MR. SAAVEDRA: Yes. Dr. Chua will be testifying.

20 JUDGE VASSIGH: Okay. Just a moment, I'm looking
21 for something in my notes.

22 MR. SAAVEDRA: And, at some point, I do have a
23 procedural question.

24 JUDGE VASSIGH: Okay. Would you like to ask it
25 now?

1 MR. SAAVEDRA: Yes. I was -- I was very pleased
2 to receive from the OTA staff a binder by email of
3 approximately 600 pages. Is that considered the record in
4 this case?

5 JUDGE VASSIGH: That is the hearing binder. So
6 that would contain the exhibits that have now been
7 admitted into the record, correct.

8 MR. SAAVEDRA: And procedurally, I'll be
9 referring, as I speak and with the witness and during
10 argument, to exhibits. But I'll also be referring to the
11 PDF page in the binder so that later on we can look at
12 this electronically more easily. So my references are to
13 PDF page 14, for example. That's of that binder.

14 JUDGE VASSIGH: That's fine. I ask that when you
15 do reference the PDF pages that you also reference the
16 exhibit.

17 MR. SAAVEDRA: Yes, Your Honor.

18 JUDGE VASSIGH: Okay. Wonderful.

19 I'm going to just take a minute to pull something
20 up here. Okay. The following issue is being decided on
21 this appeal: Whether Appellants properly claimed theft
22 loss deductions on their personal income tax returns for
23 tax years 2015, 2016, and 2017.

24 So, Mr. Saavedra, before we begin your
25 presentation, I will place Mr. Chua under oath and -- so

1 we can consider his statements as testimony.

2 And, Mr. Chua, you will remain under oath until
3 the close of this hearing.

4 Mr. Saavedra, I just want to clarify. Is
5 Dr. Chuang not testifying today?

6 MR. SAAVEDRA: I was going to question Dr. Chua.
7 And then if the wife testifies, she would simply adopt his
8 testimony because they would -- their answers would be the
9 same.

10 JUDGE VASSIGH: Okay. So I'm going to place both
11 Appellants under oath. So if you could please, Dr. Chua
12 and Dr. Chuang, raise your right hands.

13

14 W. CHUA,

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

18

19 L. CHUANG,

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

23

24 JUDGE VASSIGH: Okay. Both Appellants have
25 answered yes.

1 So you will be under oath until the close of this
2 hearing.

3 And, Mr. Saavedra, you have 20 minutes for your
4 opening statement and to present witness testimony. You
5 can have the witnesses testify in the narrative form, or
6 you may ask them specific questions as we discussed in our
7 prehearing conference. Please proceed with your
8 presentation when you're ready.

9 MR. SAAVEDRA: Yes, I would like leave from the
10 panel to use some of my 20 minutes in my reply argument.

11 JUDGE VASSIGH: That's fine.

12 MR. SAAVEDRA: Okay. I would like to call
13 Dr. Chua to testify. Let me help him up -- come up to the
14 table.

15

16 DIRECT EXAMINATION

17 BY MR. SAAVEDRA:

18 Q Good afternoon, Doctor. Thank you for coming
19 today. Would you please tell the panel your name?

20 A My name is William Chua, C-h-u-a.

21 Q And what city do you live in?

22 THE STENOGRAPHER: Dr. Chua, can you please turn
23 on your microphone and bring it closer to you?

24 MR. SAAVEDRA: The light is on?

25 DR. CHUA: Is that better?

1 THE STENOGRAPHER: Yes.

2 DR. CHUA: Okay. Thank you.

3 BY MR. SAAVEDRA:

4 Q And, Dr. Chua, again, what is your name?

5 A My name is William Chua, C-h-u-a.

6 Q And what city do you live in?

7 A San Marino, California.

8 Q Thank you. And, sir, what's your profession?

9 A I'm a medical doctor.

10 Q And how long have you been a doctor?

11 A For 40-some years.

12 Q And did you have a medical license?

13 A Yes.

14 Q And what state was that issued in?

15 A State of California.

16 Q And what is the name on your medical license?

17 A State of California.

18 Q And what is it -- what name is in that license

19 in?

20 A My name, William Chua.

21 Q William Chua?

22 A Right.

23 Q Where is your practice?

24 A I practice in Monterey Park in Montebello.

25 Q And how long have you practiced there?

1 A About 40 years.

2 Q And are there other doctors in your practice?

3 A Yes.

4 Q How many are there?

5 A Only with my wife.

6 Q Your wife?

7 A Yeah, Dr. Chuang.

8 Q Do you know where your wife has her license from?

9 A State of California.

10 Q And do you know the name on her license?

11 A Lilian Chuang, C-h-u-a-n-g.

12 Q Doctor, do you recall and know the name Rosie

13 Divinagracia.

14 A Yes.

15 Q How do you know her?

16 A Oh, she's our office manager.

17 Q In your medical practice?

18 A Correct.

19 Q And how long did she work for your medical

20 practice?

21 A For a long time, approximately 40 years.

22 Q 40 years. At some point, were you contacted by

23 the Bank of America about Ms. Divinagracia?

24 A Yes.

25 Q And what was that about?

1 A Well, I was waking up one morning. I don't know
2 the exact date, but she told us that somebody is
3 depositing your check into her personal account.

4 Q When you said "she" told you, who is "she?"

5 A Somebody who represented of Bank of America.

6 Q And what happened after that call?

7 A After that call, I said I need the copy of the
8 checks.

9 Q And did you get copies of the checks?

10 A I do, but they -- they told us very succinctly
11 that they could only give one month of checks.

12 Q One month?

13 A Right.

14 Q Did you end up suing the Bank of America?

15 A Yes.

16 Q And as a result of that lawsuit, were you able to
17 get more checks?

18 A Not more checks, no. But they told us that if we
19 want more checks, they have to sue Bank of America.

20 Q Did you later sue Ms. Divinagracia?

21 A I don't know if they -- if Ms. Divinagracia was
22 sued by the state. I don't know.

23 THE STENOGRAPHER: Can I please have Dr. Chua
24 speak louder into the microphone. I'm having a hard time
25 hearing him.

1 MR. SAAVEDRA: Yes. Yes. For me?

2 BY MR. SAAVEDRA:

3 Q Okay. Let's call Divinagracia Rosie. That was
4 her first name?

5 A Right.

6 Q Dr. Chua, did -- did you ever sue Rosie?

7 A No. I did report to the police.

8 Q Yes, but did you sue her in court?

9 A I don't quite remember if my lawyer sue or not.

10 Q Do you recall if you obtained a judgment against
11 her?

12 A Yes, we had a judgment against her.

13 Q Are you aware of whether Rosie appeared at the
14 court?

15 A No, she never appeared.

16 Q In that judgment, do you recall determining
17 damages that were owed to you?

18 A It was quite huge. If I remember correctly, it's
19 about \$17 million in damage -- punitive damage. Yeah.

20 Q After you obtained the judgment from Rosie, did
21 she ever pay you any money?

22 A No.

23 Q Do you recall, did she do something else? File
24 her own?

25 A Oh, yeah. And I think her attorney advised her

1 to take the fifth amendment.

2 Q Okay. But did she go to court herself and file
3 any papers herself --

4 A No.

5 Q -- to protect herself?

6 A Not that I know. Not that I'm aware of.

7 Q Do you recall if she ever filed bankruptcy?

8 A Eventually, yes.

9 Q She did file bankruptcy?

10 A She did file bankruptcy, correct.

11 Q And did you sue her in the bankruptcy court?

12 A I don't know the whole process. She's already
13 bankrupt. I don't know what can I get more out of her,
14 you know.

15 Q If I tell you that you sued her to deny her
16 discharge, would that help you remember?

17 A Would you repeat again?

18 Q Yes. Do you remember if you sued her to deny her
19 a discharge in the bankruptcy court?

20 A I think I must have done that, yeah.

21 Q Okay. After the bankruptcy court, did you
22 receive any money from Rosie?

23 A No.

24 Q Did you make any other efforts to find out about
25 her finances?

1 A I hired a private investigator to go find her
2 asset.

3 Q Okay. And did you pay this investigator?

4 A Yes.

5 Q Did you ever find any assets.

6 A No luck at all.

7 Q Okay. And, at some point, did you decide to take
8 a deduction on your tax for this loss?

9 A Yes.

10 Q And when -- do you remember how that happened?

11 A I have been sitting down with my accountant and
12 that I -- he feel that I should claim the loss as a -- as
13 a way to seek some justice from her.

14 Q Sir, I'm sorry. Let me remove this from --

15 MR. SAAVEDRA: The -- let the record reflect that
16 Dr. Chua was looking at my exhibit log. There's no
17 information in here suggesting the answers to his
18 questions. I'm sorry that I didn't see him looking at
19 that.

20 JUDGE VASSIGH: Thank you, Mr. Saavedra.

21 MR. SAAVEDRA: Counsel, would you like to look at
22 this for a moment? You're okay with it?

23 MR. HUNTER: No. I trust you.

24 BY MR. SAAVEDRA:

25 Q When you took the deduction on your tax return,

1 did you have any feeling about how much you could collect
2 from Rosie?

3 A No, not at all. I mean --

4 Q Talk into the mic, please.

5 A I' am sorry. I said I am a physician. I take
6 care of patient. I don't take care of this accounting
7 problem, you know, issues in the office. I never did. I
8 never will.

9 Q I'll ask you again, doctor. When you took the
10 deduction on the return, did you have some understanding
11 of what you thought you could ultimately collect from
12 Rosie on your judgment?

13 A Oh, my judgment is very tricky. Because a
14 judgement is one thing. The actual reward is another
15 thing, you know.

16 Q Okay. Now, after you took the deduction on the
17 return -- just to refresh your memory, that was in 2015 --
18 you started taking more collection action against Rosie?

19 A Correct.

20 Q And why did you do that?

21 A The reason we do that, after we fired her, our
22 income suddenly went up so much, about \$60,000 per month.
23 Yeah.

24 Q But any other reasons, Doctor?

25 JUDGE VASSIGH: Excuse me. I'm going to just

1 interrupt.

2 Dr. Chua, can you please try to speak into your
3 microphone and, if possible, a bit louder.

4 DOCTOR CHUA: Okay. I'm sorry.

5 JUDGE VASSIGH: I want to make sure we record all
6 of your testimony. Okay.

7 DOCTOR CHUA: Oh, okay. Okay. You know, I'm
8 usually soft spoken. You know, all my life since --

9 JUDGE VASSIGH: You're doing fine. Just try to
10 speak into your microphone as loud as --

11 DOCTOR CHUA: Yeah. Okay. Is that better?

12 JUDGE VASSIGH: That is better.

13 DOCTOR CHUA: Okay. That -- okay.

14 BY MR. SAAVEDRA:

15 Q Doctor, let me ask you. Did you ever expect to
16 collect the huge judgment from Rosie when you took the
17 deduction?

18 A No.

19 Q Then why, after you took the deduction, you still
20 tried to sue her to collect money?

21 A Well, I see -- I don't see justice being done to
22 me, you know, after all this huge losses, you know. I
23 feel like she owe something, you know.

24 Q And, sir, did you pay the attorneys in connection
25 with your litigation with the Bank of America? Did you

1 pay them fees?

2 A Yes.

3 Q And did you pay the attorneys' fees in connection
4 with your lawsuit against her in the bankruptcy court?

5 A Yes.

6 Q And, sir, did you pay your private investigator
7 fees in connection with his work for you?

8 A Yes.

9 Q And how much money did you get from Rosie after
10 paying three sets of professionals' fees?

11 A Very little.

12 Q And later on when you sued, did you have to pay
13 the attorney?

14 A Yes.

15 Q Did you have an arrangement with the attorneys?

16 A Yes.

17 Q What was the arrangement?

18 A Oh, the arrangement, one of the lawyer ask for,
19 like, contingency. He would get 40 percent of whatever he
20 recovered, you know.

21 Q So that if you received payment from Rosie, the
22 lawyer would get paid only if you collected money?

23 A Correct.

24 Q Is you didn't have to spend any more money on
25 fees -- on lawyers fees?

1 A Correct.

2 MR. SAAVEDRA: Those are all my questions.

3 JUDGE VASSIGH: Thank you, Mr. Saavedra.

4 And thank you, Dr. Chua, for your testimony. I'm
5 going to ask you to remain at the table in case anyone has
6 any questions for you.

7 So I'd like to ask Judge Kim, do you have any
8 questions for the Appellants or Mr. Saavedra?

9 JUDGE KIM: No questions at this time. Thank
10 you.

11 JUDGE VASSIGH: Thank you.

12 And, Judge Kletter, do you have any questions for
13 Appellants or Mr. Saavedra?

14 JUDGE KLETTER: I do not have any questions at
15 this time. Thank you.

16 JUDGE VASSIGH: Okay. I do have a few questions
17 for Mr. Saavedra. CCMC, the medical practice, did it
18 continue to operate and file tax returns in subsequent
19 years?

20 MR. SAAVEDRA: Yes.

21 JUDGE VASSIGH: And is it still continuing to
22 operate?

23 MR. SAAVEDRA: Yes.

24 JUDGE VASSIGH: Okay. Thank you.

25 And you touched on this in your testimony,

1 Dr. Chua, CCMC continued to enforce collection efforts as
2 late as 2021; correct?

3 MR. SAAVEDRA: Yes.

4 JUDGE VASSIGH: Okay. And then I have a question
5 about the significance of your Exhibits 3, 4, and 5. I
6 know that some of these checks were made out to Dr. Chua
7 and Dr. Chuang as individuals. Some of the checks were
8 made out to the corporation. I'm wondering how you came
9 to the amount of approximately \$69,000, that in your
10 briefing, the prior representative stated was made as
11 payments directly to Appellants.

12 MR. SAAVEDRA: If, Your Honor, wants me to, I can
13 go into a little bit more detail on the facts that are
14 related to that kind of question. In other words, there's
15 1099s. There's money deposited in the bank. There are
16 checks issued to the Chuas in their individual names.
17 There's checks issued to the corporation, and they all
18 have different amounts on them. And I can summarize those
19 in a minute or two, if you want me to.

20 JUDGE VASSIGH: A minute would be great.

21 MR. SAAVEDRA: Okay. In the record is a schedule
22 of 1099s issued to Dr. Chua himself and his wife and the
23 medical practice during the year 2009, '10, and '11. And
24 I'll refer to that later during argument. But just for
25 the sake of explanation, I would say about 60 percent of

1 the payments to Dr. Chua and his wife were made payable to
2 the corporation and were issued in 1099s where the payee
3 was the corporation. So the 40 percent were issued in the
4 names of Dr. Chua or his wife Lilian, and the 1099s have
5 the payee as them individually. So we have checks payable
6 to the corporation and checks payable to them.

7 We have bank accounts for one year from Rosie,
8 2009, that show deposits -- well, I don't think that's
9 going to be in dispute -- of these checks. We have
10 roughly, I would say, about \$700,000 of deposits that are
11 identified with canceled checks that went into her bank
12 account, either through ATM deposits or just directly
13 deposited into her bank account. And the rest of the
14 alleged damages, which I'll be able to show are
15 reasonable, are through extrapolation, Cohan, which I will
16 address at length later.

17 JUDGE VASSIGH: Okay. And another question about
18 the checks made directly to Dr. Chua and Dr. Chuang were
19 those payments for services of CCMC?

20 MR. SAAVEDRA: Yes. All the funds in this case
21 were for services rendered by Dr. Chua or his wife Lilian.

22 JUDGE VASSIGH: In their medical practice?

23 MR. SAAVEDRA: In the capacity of owners and
24 officers of the practice, yes.

25 JUDGE VASSIGH: Thank you for that clarification.

1 I'd like to turn to Mr. Hunter and Mr. Hall, if
2 you have any questions for Dr. Chua?

3 MR. HUNTER: Given that clarification, Judge, I
4 don't have any questions for you, sir.

5 JUDGE VASSIGH: Mr. Hall?

6 MR. HALL: No questions. Thank you.

7 JUDGE VASSIGH: Thank you very much.

8 Okay. Mr. Hunter, you have 20 minutes for your
9 presentation, and please begin when you are ready.

10 MR. HUNTER: Thank you.

11

12 PRESENTATION

13 MR. HUNTER: Again, my name is David hunter, and
14 to my left is Nathan Hall, and together we represent the
15 Franchise Tax Board in this case.

16 And what this case is really about is a theft
17 loss that was incurred by a corporation -- we'll refer to
18 it as CCMC -- owned by these individual Appellants, yet,
19 improperly reported on their personal income tax returns.
20 And here's what happened. Appellants own a medical
21 practice located in Montebello, California, and they
22 formed this company as a C corporation and operated this
23 company as C corporation during the year at issue; 2015
24 when the theft loss was reported and all years prior to
25 that.

1 The corporation hired an employee, Rosie, that
2 embezzled funds by intercepting payments headed for the
3 medical practice and depositing funds into her personal
4 account. There's no question that the corporation was the
5 victim of theft. This is evident as the corporation was
6 named as the victim on the report prepared by the
7 Montebello Police Department after being provided
8 information by Dr. Chua. The corporation was the
9 aggrieved party that sued the employee in superior court,
10 and Dr. Chua provided a sworn declaration under penalty of
11 perjury, which indicates the employee stole from the
12 corporation by intercepting checks made payable to the
13 corporation and depositing these checks into her personal
14 bank account. That's Exhibit L to Respondent's opening
15 brief, and that is also Appellants' Exhibit 7.

16 And since we're on the topic and in term of that
17 clarification, Judge, Appellants' Exhibit 7 is a
18 declaration that was filed in the superior court lawsuit
19 back in 2011, more contemporaneous with the transaction,
20 not as we sit here today. It is completed by
21 Dr. William Chua in his capacity as an officer of
22 Plaintiff Chua and Chuang, Inc., a medical corporation,
23 CCMC, not in his personal capacity. And at paragraph 4
24 thereof, he states, "According to the customary and usual
25 practices of Plaintiff CCMC," not these Appellants in

1 their personal capacity, "regarding bank deposits, all
2 checks were to be endorsed with plaintiff's CCMC's stamp,
3 limiting the deposit to the account owned by plaintiff,"
4 again the corporation. "Rosie was responsible for
5 preparing checks for deposit by stamping the checks and
6 then delivering the checks for depositing to an officer of
7 plaintiff. Rosie was not and never ever was an authorized
8 signer on any bank accounts belonging to plaintiffs, the
9 corporation."

10 Again, that's Appellants' Exhibit M.
11 Respondent's exhibit as well. When Rosie committed --
12 the former employee that committed the embezzlement
13 subsequently filed for bankruptcy protection, again, the
14 corporation was the party that filed a motion for relief
15 from discharge and also filed a creditor's claim to try to
16 get its corporate funds back; again, not Appellants in
17 their personal capacity. So despite it being very clear
18 that the corporation was entitled to the theft loss
19 deduction at issue here, as corporate funds were stolen,
20 Appellants reported this theft loss on their personal
21 income tax return. And when Respondent picked this up on
22 audit, this theft loss deduction was correctly disallowed.

23 And here's why. As explained in our briefing,
24 the business of the corporation is separate and distinct
25 from the business of its shareholders. The case we cited

1 to was Moline Properties, M-o-l-i-n-e, which draws a clear
2 distinction between the corporate entity and the
3 shareholders of the corporate entity. And this is a tax
4 case. The United States Supreme Court held that a
5 corporation must be recognized for tax purposes. The
6 theft loss may be only claimed by the taxpayer who was the
7 owner of the stolen party. And here, with the record, the
8 loss belongs to the corporation.

9 Also, not only did Appellants incorrectly claim
10 the theft loss on their personal income tax returns --
11 that's where it should end here -- they incorrectly
12 reported the year of loss as 2015. The law, Internal
13 Revenue Code section 165, provides that there's a claim
14 for reimbursement that has a reasonable prospect of
15 recovery. No deduction shall be claimed until it is
16 determined with reasonable certainty whether such
17 reimbursement will be received. A reasonable prospect of
18 recovery exists when the taxpayer has filed a lawsuit to
19 recoup the loss, and the taxpayer must postpone the theft
20 loss deduction until the litigation is terminated.

21 Here, the corporation is still pursuing
22 litigation and collection activity against the ex-employee
23 Rosie, down at the Los Angeles County Superior Court as
24 late as 2022, given the documents that we submitted in
25 with our exhibits. Not only are these individual

1 Appellants not the proper parties to claim this theft loss
2 deduction on their individual income tax return, tax year
3 2015, the year before you, is not the correct year to
4 report this theft loss as a matter of law. And that's all
5 there is to it.

6 Now, given the testimony that you heard today,
7 again, I would like to draw a distinction here because the
8 questions were asked to Appellant, the witness, did you
9 file a lawsuit against Rosie? And the response was yes.
10 However, the record clearly shows that the party was CCMC
11 or the corporation. Also, the question was asked, did you
12 seek relief from a discharge of this fraud claim against
13 Rosie in the bankruptcy court? But the true answer to
14 that question is the corporation was the proper property
15 that filed that creditor's claim and filed that complaint
16 for nondischargeability in the bankruptcy court.

17 So what I'm offering you is, this record with the
18 objective evidence shows that the corporation was the
19 proper party to claim this theft loss, if the audit issues
20 are met, not these individual taxpayers. On top of that
21 the year is wrong.

22 I'm here to answer any questions you may have.
23 Thank you.

24 JUDGE VASSIGH: Thank you, Mr. Hunter.

25 Mr. Kim, do you have any questions for FTB?

1 JUDGE KIM: Not at this time.

2 JUDGE VASSIGH: Thank you. And I said Mr. Kim.
3 I meant Judge.

4 Judge Kletter, do you have any questions for FTB?

5 JUDGE KLETTER: I do not have any questions at
6 this time. Thank you.

7 JUDGE VASSIGH: Okay. Thank you.

8 I also do not have any questions for FTB.

9 So, Mr. Saavedra, we're going to give you some
10 time for a final statement, and you can provide a rebuttal
11 to FTB's presentation. I know you asked to spend some of
12 your 20 minutes, but you spent your 20 minutes. If you
13 need an extra few minutes, that's fine. And you may begin
14 when you're ready.

15 MR. SAAVEDRA: May I have 10 minutes?

16 JUDGE VASSIGH: Ten minutes is fine.

17

18 CLOSING STATEMENT

19 MR. SAAVEDRA: Well, in -- in all the litigation,
20 there's -- there's law theory. And the more you litigate
21 cases, you realize that 90 percent of the time the results
22 of the case turns on the facts. The Franchise Tax Board
23 has a theory, you can't disregard a corporation. But they
24 also have a theory, you can pierce the corporate veil.
25 They have a theory that substance over form. They have a

1 theory, a corporation or somebody may be a nominee for
2 somebody else. There's a theory you can never assign
3 earned income. So all of these theories apply depending
4 on the facts.

5 Now, in this case, I believe that I can show you
6 that when you look at the facts of the theft; when you
7 look at the facts of the proof of loss; when you look at
8 the fact as to why more checks in 2009 were not obtained;
9 when you look at other evidence of the amount of the loss;
10 and when you look at who I can claim the loss, that these
11 facts will connect to theories that allow Dr. Chua and his
12 wife to take this as a theft loss in 2005 because there
13 was no reasonable prospects of collecting \$7,500,000. And
14 the efforts to make -- to -- to get something from her
15 afterward, were efforts to somehow get justice for what
16 they felt they didn't get when she wasn't prosecuted. In
17 over a period of many years, they collected about \$40,000
18 against this judgement after they took the deduction.

19 So I'll go through the facts right now. First of
20 all, the theft -- in order for something to be a theft,
21 obviously, it must be a theft under state law. So I'll
22 cite Penal Code 484 and Penal Code 478. And we have proof
23 that hundreds -- or like \$600,000 was deposited -- \$60,000
24 a month was deposited in Rosie's account. And I think
25 that goes a long way towards showing theft because it was

1 either the corporation's money or his money. All right.
2 Their money personally.

3 We have a superior court judgment for \$7,500,000.
4 Now, the panel knows that superior court has an obligation
5 to render a judgment only when there's adequate proof.
6 Rosie did not appear, but they still had to put on proof.
7 Attorneys signed pleadings with the superior court of
8 their estimate of proof based on Cohan. I'll get to that
9 in a minute. And a superior court judge found \$7,500,000
10 of damages. Then she filed bankruptcy, and Dr. Chua filed
11 a lawsuit -- the corporation filed the lawsuit. It's
12 irrelevant. But there was a finding that this money was
13 maliciously taken under Bankruptcy Code 523, and it was
14 not dischargeable.

15 So now in a separate forum, a federal forum where
16 the officers of the court signed papers very seriously,
17 and another attorney was on the case, and another judge
18 found that this -- I will call it a theft occurred. We
19 have evidence. California Evidence Code 4 -- I believe
20 it's 411 that states if a person does not deny an
21 allegation, a body -- a judicial body has the right to
22 draw some inference from that. If Rosie didn't show up
23 and deny that she stole \$7,500,000, there's something to
24 be said about whether it's becoming a little bit more
25 reasonable.

1 Now, let's talk about Cohan. I'll cite this
2 Board's precedent decision. That's going to be en re
3 Seddioui, S-e-d-d-i-q-u-i. It's OTA Case No. 220911419.
4 Now, I'm talking to the choir. I don't need to tell the
5 Board or the panel about Cohan, but I'll say it this way.
6 To have Cohan, you have to start with something. And we
7 have uncontroverted facts that in 2009, \$50 or \$60,000 a
8 month went into Rosie's account. That cannot be denied.
9 All right. And how do you extrapolate that into
10 \$7 million -- well, \$7.5 million? She worked there for 40
11 years. The -- there was no suggestion that she started
12 this yesterday. Embezzlement is something usually that
13 goes on for many years before it's collected. So they
14 looked at all the fact that they could, and they found --
15 they got two judges in superior court and a bankruptcy
16 court to agree with them. So I think that's adequate
17 extrapolation of a basis that is not in dispute.

18 The evidence for the basis would be Exhibit 1,
19 PDF 4, Exhibit 3, PDF 150, Exhibit 4, PDF 190, Exhibit 5,
20 PDF 232, the various pleadings filed in the superior and
21 bankruptcy court, which would be Exhibit 6, PDF 267,
22 Exhibit 8, PDF 284, Exhibit I or 1 -- I think that's I --
23 PDF 481, the default judgement, Exhibit K, PDF 495. All
24 of these different findings cannot be wrong.

25 Now, the next thing we have to prove is the --

1 why more checks. When you have Cohan, you have to have
2 some reason to not -- to not offer more evidence. Well,
3 Bank of America was not going to give them more checks to
4 increase their liability, and they have attorneys. They
5 had money to fight, and they basically said go pound sand.
6 They gave them the one-year's checks before the lawyers
7 got involved, and then they clammed up. And Dr. Chua was
8 not about to take on the Bank of America to get other
9 checks. He accepted what he could get and worked with it.

10 Now, I mentioned that -- who lost this money?
11 Well, let's talk about the checks that were written to
12 Dr. Chua and his wife Lilian. First of all, they're
13 medical doctors. Their license is in their name, not in a
14 corporation name. They performed services. And under
15 general principle of taxation, you cannot assign money for
16 earned money. But with a corporation it's a tax
17 convention for reasons that have nothing to do with who
18 earned the money or that type of thing, but for
19 administration.

20 Well, under the Supreme Court teaching in
21 Aquilino -- and that's A-q-u-i-l-i-n-o, 363 US 509 1960 --
22 whether property right s are defined by state law. So
23 Dr. and Mrs. Chuang, they worked providing medical
24 services. They billed medical companies for it. The
25 checks were issued in -- let's just take the checks that

1 were issued only in their names. Until those checks got
2 into the bank account of the corporation, that money was
3 their money under state law. That would be my argument.
4 Because the putting it into the account and all the cases
5 that you're -- that you're -- that Respondent is arguing
6 about you can't disregard a corporation, that's for money
7 that was stolen from the bank account of the corporation,
8 not before it got to the corporation. So while that money
9 was in route, that property under law in my judgment,
10 that's my contention, was their money. So that's one
11 thing I would like you to consider very carefully.

12 Now, look at the rest of the money that --
13 there's a legal theory well settled in tax law, and it's
14 called constructive receipt of income. It's -- and it's
15 based on the facts. In the seminal case, this is a Ninth
16 Circuit, which this appeal would go to, would be Baxter
17 versus Commissioner. That's 816 Fed2nd 493 Ninth Circuit
18 1987. I will argue that under the facts the corporation
19 never constructively received this money. And so until it
20 did receive it, it's still the property of the
21 Dr. and Mrs. Chua because they earned it.

22 JUDGE VASSIGH: Mr. Saavedra, that's time.

23 MR. SAAVEDRA: Okay.

24 JUDGE VASSIGH: Would you like to conclude real
25 quickly?

1 MR. SAAVEDRA: Okay. 30 seconds.

2 JUDGE VASSIGH: Okay.

3 MR. SAAVEDRA: They got the bankruptcy denial of
4 discharge in February of 2014. They took the loss in '15
5 when they said, you know, we're tired of paying people.
6 He sued later when he could get taken on a contingency,
7 and the record will show that \$40,000 is the total amount
8 collected coming in at \$600 at a time. He did it for
9 justice, not with any realistic hopes of ever collecting
10 \$7,500,000.

11 Thank you for your patience.

12 JUDGE VASSIGH: Thank you, Mr. Saavedra.

13 I'd like to see if my co-panelists have any
14 questions.

15 Judge Kim?

16 JUDGE KIM: Yeah, I did have a question. So just
17 to be clear, the payments that Appellants received, either
18 for checks written out to the corporation or to the
19 individual Appellants, those were payment for medical
20 services provided?

21 MR. SAAVEDRA: Yes.

22 JUDGE KIM: Okay.

23 MR. SAAVEDRA: And the verification of that would
24 be the 1099s. They're in the record.

25 JUDGE KIM: Okay. And my other question was, you

1 said that corporation is currently still operating or --

2 MR. SAAVEDRA: Yes.

3 JUDGE KIM: -- and was operating in 2015, '16,
4 and '17?

5 MR. SAAVEDRA: Yes. It's not relevant, but in
6 '17 the corporation changed from S corporation --

7 JUDGE KIM: Okay.

8 MR. SAAVEDRA: -- and they're an S corporation
9 now.

10 JUDGE KIM: So why didn't the corporation claim
11 these losses on its own tax returns?

12 MR. SAAVEDRA: Well, I don't think the answer to
13 that, Judge, is legal. I think the answer is that it was
14 very personal. And that's what they felt that they lost
15 the money. And I tried to make the legal and factual
16 arguments. But without guidance, that's what they did.
17 They changed accountants. His name was Corey. And it may
18 be right or wrong, depending on how everybody rules, but
19 that was intuitively how they felt. And I tried to make
20 that point here. In my -- in my humble opinion, the
21 intuition follows the law. It was their money. It didn't
22 get that far.

23 JUDGE KIM: Thank you.

24 JUDGE VASSIGH: Judge Kletter, do you have any
25 questions?

1 JUDGE KLETTER: This is Judge Kletter. No
2 questions. Thank you.

3 JUDGE VASSIGH: Thank you.

4 And I'd like to allow FTB, if you find it useful,
5 a few minutes to respond to anything that Mr. Saavedra
6 said.

7 MR. HUNTER: I believe that our position is very
8 clear in the pleadings. Thank you.

9 JUDGE VASSIGH: Thank you. Mr. Hunter, I do have
10 a question for FTB, if that's okay.

11 Mr. Saavedra discussed piercing the corporate
12 veil. What is FTB's position on piercing the corporate
13 veil in this case?

14 MR. HUNTER: FTB -- strike that.

15 Respondent never once took the position that the
16 Appellants had an alter ego theory going on or someone
17 could pierce the corporate veil. What Counsel just
18 referred to are general concepts or legal theories. This
19 issue was not raised at audit or at protest. It was only
20 issued -- I'm sorry. It was only referenced in the reply
21 brief. It's been Respondent's position all along that
22 these individual Appellants provided medical services
23 while operating their corporation, and these were
24 corporate funds that were intercepted. Respondent has no
25 thoughts on this general concept of piercing the corporate

1 veil. It's our position that it's not applicable to this
2 case.

3 Thank you.

4 JUDGE VASSIGH: Thank you, Mr. Hunter.

5 I'm just going to check with my co-panelists if
6 they have any final questions.

7 Judge Kletter?

8 JUDGE KLETTER: This is Judge Kletter. No
9 questions.

10 JUDGE VASSIGH: Judge Kim?

11 JUDGE KIM: No questions.

12 JUDGE VASSIGH: Okay. And I have no further as
13 well.

14 This case is submitted today on March 12th, 2025.
15 The record is now closed.

16 Thank you everyone for participating today.

17 And thank you, Dr. Chua, for your testimony.

18 The Judges will meet to deliberate and decide
19 this case. We will issue a written opinion within 100
20 days.

21 Today's hearing in the Appeal of Chua and Chuang
22 is now concluded.

23 (Proceedings adjourned at 1:48 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
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I further certify that I am in no way interested
in the outcome of said action.

I have hereunto subscribed my name this 25th day
of March, 2025.

ERNALYN M. ALONZO
HEARING REPORTER