

prevented; (3) newly discovered evidence, material to the appeal, which the party could not have reasonably discovered and provided prior to issuance of the Opinion; (4) insufficient evidence to justify the Opinion; (5) the Opinion is contrary to law; or (6) an error in law in the OTA appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6); *Appeal of Shanahan*, 2024-OTA-040P.)

Good cause for a new hearing may be shown where there was insufficient evidence to justify the Opinion. (Cal. Code Regs., tit. 18, § 30604(a)(4).) To find that there is an insufficiency of evidence to justify the opinion, OTA must find that, after weighing the evidence in the record, including reasonable inferences based on that evidence, the panel clearly should have reached a different opinion. (*Appeals of Swat-Fame, Inc., et al.*, 2020-OTA-045P.) OTA considers the evidence in the light most favorable to the prevailing party (here, FTB). (*Ibid.*)

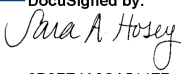
In the Opinion, OTA determined the valuation of Peak Travel's assets, a question of fact, based on all of the evidence presented by the parties and considering FTB's presumption of correctness.² OTA determined, given the limited financial information provided by appellants, that FTB's appraisal, using a sales-based approach, was reasonable. OTA does not require that appraisals be supported by in-person testimony in order to be considered as evidence in the record. Appellants also provided two valuations, each using an income approach, with supporting witness testimony at the hearing. OTA considered the evidence provided by appellants and determined it was not sufficient to overcome FTB's presumption of correctness. OTA found FTB's appraisal persuasively explained why it did not use an income approach: detailed financial data was not available for review; appellants did not provide sufficient information regarding non-operating expenses, non-recurring transactions, and related-party transactions; and the concern that profits had been managed and distributed through payroll to avoid double taxation. OTA found that appellants did not successfully discharge their burden of proof after properly considering all of the evidence provided by the parties. The panel clearly considered all the evidence and plainly explained why it found one appraisal more persuasive than the others. OTA does not find the panel clearly should have reached a different opinion based on the evidence and the presumption of correctness. OTA finds that there was sufficient evidence to justify the Opinion; therefore, OTA cannot grant a rehearing based on this ground.

Good cause for a new hearing may also be shown where there was an error in law in the OTA appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(6).) Courts have found that a new trial may be granted based on an error in law if the trial court's original ruling


² OTA notes that there were no objections to the admission of the appraisals by any party and each appraisal was properly admitted into evidence at the time of the hearing.


as a matter of law was erroneous. (*Collins v. Sutter Memorial Hospital* (2011) 196 Cal.App.4th 1, 17-18, citing *Ramirez v. USAA Casualty Ins. Co.* (1991) 234 Cal.App.3d 391.) For example, courts have found an error in law when there is an erroneous ruling on the admission or rejection of evidence (*Nakamura v. Los Angeles Gas & Elec. Corp.* (1934) 137 Cal.App. 487); an erroneous application of the law by a jury (*Shapiro v. Prudential Property & Casualty Co.* (1997) 52 Cal.App.4th 722); and an erroneous jury instruction (*Maher v. Saad* (2000) 82 Cal.App.4th 1317).

Appellants argue that OTA improperly relied upon FTB’s appraisal because it was an “unsworn statement” as provided in California Code of Regulations, title 18, (Regulation) section 30214(f)(5), which requires that a finding of fact shall not be based solely on unsworn statements made by a party during the proceedings. During the appeals proceeding, appellants did not object to the admission of FTB’s exhibits into evidence, including its appraisal, but rather appellants argued as to the appropriate weight to give the admitted evidence. Pursuant to Regulation section 30214, OTA admits all relevant evidence, including hearsay, unless it is subject to a privilege, or its probative value is substantially outweighed by the probability its admission will necessitate undue consumption of time. (Cal. Code Regs., tit. 18, § 30214(f).) OTA does not follow the federal or state evidence codes, which state an expert valuation report is inadmissible hearsay without the availability of the preparing expert for cross examination. (See Cal. Code Regs., tit. 18, § 30214(f).) FTB’s appraisal was properly admitted into the record as relevant evidence with probative value. OTA weighed the evidence in the record in making its determination and found in FTB’s favor. Accordingly, OTA finds there was no error in law in the appeal proceeding.

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 Sara A. Hosey
 Administrative Law Judge

We concur:

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 Erica Parker
 Hearing Officer

Signed by:

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 Josh Lambert
 Administrative Law Judge

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