



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MAJESTIC BROKERAGE CORPORATION)

Appearances:

For Appellant: L. J. Styskal, Attorney (by brief)

For Respondent: Chas. J. McColgan, Franchise Tax Commissioner;
W. M. Walsh, Assistant Commissioner; Irving
Perluss, Assistant Tax Counsel.(by brief)

O P I N I O N

This appeal is made pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Majestic Brokerage Corporation to a proposed assessment of an additional tax in the amount of \$923.52 for the income year ended December 31, 1937.

The sole question involved in this appeal is whether the Appellant was a "financial corporation" as that term is used in Section 4 of the Bank and Corporation Franchise Tax Act and therefore taxable at the rate specified in Section 4(a).

Under its articles of incorporation, Appellant was authorized to and did act as a broker and negotiator of loans and as a guarantor of the loans which it negotiated. It investigated the security offered by the prospective borrower, determined whether or not the prospective borrower was a good credit risk, and made all necessary arrangements prior to the borrower's actually obtaining his loan, such as the details of repayment, the rate of interest, and preparation of the necessary instruments. If the loan resulted in a loss, the entire loss was borne by Appellant, as guarantor.

In The Morris Plan Co. v. Johnson, 37 Cal. App. 2d 621, 624, the court said:

"The word 'financial' when used with reference to corporations refers to corporations dealing in money as distinguished from other commodities (Webster's New International Dictionary). Furthermore, to compete with a national bank implies the performance of some banking functions performed by a national bank. It follows that the words 'financial corporation,' as used in section 5219, Revised Statutes, and

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adopted into our Franchise Tax Act, designate and include moneyed corporations performing some of the functions of a national bank."
(Emphasis added)

In Loyal Finance Service, a California corporation, v. McColgan, Los Angeles Superior Court, No. 443249 (consolidated with a case brought by Ideal Finance Service against the same defendant) the Findings of Fact were, in part, as follows:

"That ... plaintiffs were engaged in business in Los Angeles, California, and competed with the business engaged in by national banks in that city and that such competition was substantial. ... That plaintiffs advertised that they would lend money, and that plaintiffs, while nominally acting as negotiators of loans, actually loaned their credit to borrowers. That plaintiffs' activities were in a field in which national banks sought business. ... That plaintiff, Loyal Finance Company, and the Alan Loan Company formed a business unit and combined together to conduct a single business."

The plaintiffs were held to be financial corporations. While there is some difference in the facts of that case and the present, there are important similarities, one being that as guarantor the present Appellant was loaning its credit. While the form may be different, in substance there is little difference between (1) securing a loan for the borrower by acting as guarantor and (2) lending to the borrower money which has been borrowed from a third party. National banks make loans of the type made to Appellant's customers. A national bank losing a prospective loan customer by reason of the activities of Appellant would be in no different position nor be harmed less by such activities than it would if the loans were made directly by Appellant.

In H. A. S. Loan Service, Inc. v. McColgan, 21 A.C. 551, the plaintiff conducted its business in substantially the same manner as the present Appellant. There was, however, control of that plaintiff and the lending corporation by the same persons, the business of the two corporations was operated as a unit, with their respective offices in the same building and the court was of the opinion that the two corporations were making use of the corporate device to thwart the law limiting the charges which could be made by a lender.

The court did not determine-whether the activities of the plaintiff, if it had conducted its business separately from that of the lender, would have been a financial corporation, saying:

"Without determining whether plaintiff 's conduct as a separate corporate entity would establish its classification as a financial corporation it cannot be doubted that its activities coupled with that of the Marshall Finance Company, a corporation, fall within the operations contemplated by that term."

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The court placed some emphasis on the fact that the broker guaranteed the loans. With reference to that fact is said:

"The manner in which the business was conducted, particularly the guarantee of the payment of the loans by plaintiff and the other circumstances above outlined furnished convincing evidence to support the findings."

In the instant appeal, the Appellant also guaranteed the loans. That fact indicates that the loans would not have been made but for the guarantee and that national banks were subjected to increased competition because of such guarantees.

This circumstance also indicates that Appellant had some financial standing, or in the words of several of Appellant's citations "moneyed capital," which was being employed in a manner to come into competition with national banks. In the absence of such financial standing, there would be little reason to require a guarantee.

Appellant argues that national banks are not permitted to act as guarantors or as loan brokers and that the banks are not in competition with loan brokers. That argument, in our opinion, places too much emphasis on the form and ignores the substance and effect of the transaction.

It is our opinion that Appellant was a "financial corporation" as that term is used in Section 4 of the Bank and Corporation Franchise Tax Act'.

O R D E R

Pursuant to the views expressed in the opinion of the Board **on** file in this proceeding, and good cause appearing **therefor**,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J. **McColgan**, Franchise Tax Commissioner, in overruling the protest of Majestic Brokerage Corporation against a proposed assessment of an additional tax in the amount of **\$923.52** for the taxable year ended December 31, 1938, based upon income for the year ended December 31, 1937, be, and it **is hereby**, sustained.

Done at Sacramento, California, this 23rd day of September, 1943, by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli, Member
J. H. Quinn, Member
Geo. R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary