

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

In the Matter of the Petition for Redetermination and the Administrative Protests Under the Sales and Use Tax Law of:)	
)	
)	
MELODY ARYA HUSAINI and BAHRAM ARYA HUSAINI, dba Char Fasl Restaurant)	Account Number: SR AC 97-782372 Case ID 415086
)	
CHAR FASL CUISINE RESTAURANT INC.)	Account Number: SR AC 53-003167 Case ID 418856
)	
CHAR FASL RESTAURANT INC.)	Account Number: SR AC 53-003168 Case ID 418861
)	
BAHRAM ARYA HUSAINI)	Account Number: SR AC 53-003169 Case ID 418864
)	
MELODY ARYA HUSAINI, dba Char Fasl Restaurant)	Account Number: SR AC 53-003170 Case ID 418867
)	
Petitioner and taxpayers)	Agoura Hills, Los Angeles County

Type of Business: Restaurant

Audit period: 04/01/03 – 06/30/06 Case ID's 415086, 418864, and 418867
09/09/05 – 06/30/06 Case ID 418856
04/01/03 – 11/30/05 Case ID 418861

<u>Item</u>	<u>Disputed Amount</u>	
Penalties for fraud	\$28,905	Case ID's 415086, 418864, and 418867
Penalty for fraud	\$14,575	Case ID 418856
Penalty for fraud	\$17,236	Case ID 415806

	<u>Tax</u>	<u>Penalty</u>
	<u>Case ID's 415086, 418864, 418867</u>	
As determined and proposed to be redetermined:	\$115,618.78 ¹	\$34,393.21
Less concurred	<u>115,618.78</u>	<u>- 5,488.50</u>
Balance, protested	<u>\$0.00</u>	<u>\$28,904.71</u>
	<u>Case ID 418856</u>	
As determined:	\$ 58,300.04	\$20,063.52
Finality penalty		5,830.00
Less concurred	<u>58,300.04</u>	<u>- 11,318.50</u>
Balance, protested	<u>\$0.00</u>	<u>\$14,575.02</u>

¹ Petitioners and taxpayers signed waivers of the statute of limitations, and the determinations were issued before the period of the waivers expired. Thus, the determinations were timely without regard to whether there was fraud.

1		<u>Case ID 418861</u>		
2	As determined:		\$ 68,942.86	\$18,229.78
3	Finality penalty			6,894.29
4	Less concurred		<u>68,942.86</u>	<u>- 7,888.35</u>
5	Balance, protested		<u>\$0.00</u>	<u>\$17,235.72</u>
6		<u>Case ID's 415086,</u>	<u>Case ID 418856</u>	<u>Case ID 418861</u>
7		<u>418864, 418867</u>		
8	Proposed tax redetermination	\$115,618.78		
9	Tax, as redetermined		\$ 58,300.04	\$ 68,942.86
10	Interest through 6/30/10	49,930.32	21,555.67	32,643.73
11	25% penalty for fraud	28,904.71	14,575.02	17,235.72
12	10% Failure-to-file penalty ²	5,488.50	5,488.50	994.06
13	10% Finality penalty		<u>5,830.00</u>	<u>6,894.29</u>
14	Total tax, interest, and penalty	<u>\$199,942.31</u>	<u>\$105,749.23</u>	<u>\$126,710.66</u>
15	Payments	<u>-9,900.00</u>	<u>-5,500.00</u>	<u>-1,100.00</u>
16	Balance Due	<u>\$190,042.31</u>	<u>\$100,249.23</u>	<u>\$125,610.66</u>
17	Monthly interest beginning 7/1/10	<u>\$616.69</u>	<u>\$308.00</u>	<u>\$395.75</u>

13 Notices of Appeals Conference were mailed to petitioner's and taxpayers' addresses of record,
14 with copies to their representative of record, and none of the notices were returned as undeliverable.
15 None of the parties responded to the notices or appeared at the appeals conference, which was held as
16 scheduled. We thereafter sent letters to petitioner, taxpayers, and their representative offering them the
17 opportunity to provide additional arguments and evidence in writing, and explaining that relief from
18 the failure-to-file and finality penalties could be considered if the parties filed requests for relief,
19 signed under penalty of perjury. There was no response.

20 These matters were scheduled for Board hearing on February 24, 2010, but none of the parties
21 responded to the Notice of Hearing. Accordingly, the Board Proceedings Division informed the parties
22 that these matters would be presented to the Board for decision without oral hearing. Subsequently,
23 the parties responded and requested an oral hearing.

24 BACKGROUND

25 Ms. Melody Arya Husaini and Mr. Bahram Arya Husaini formed a partnership (petitioner)

26 _____
27 ² The failure-to-file penalties are less than 10 percent of the determined tax because they apply only to the periods for which
28 no sales and use tax returns were filed.

1 which owned and operated a Persian restaurant. The Sales and Use Tax Department (Department)
2 conducted an audit of the period April 1, 2003, through June 30, 2006, the effective date that
3 petitioner's seller's permit was closed out. Petitioner did not maintain any formal books and records,
4 and the only records provided to the Department were bank statements. The Department computed the
5 percentage of credit card sales to total sales of 72.13 percent based on a test of the restaurant operated
6 by the successor on January 19 and 24, 2007, and divided recorded credit card deposits by that
7 percentage to establish audited taxable sales.

8 The person or persons who actually owned the business during the audit period is not entirely
9 clear. The possible owners identified by the Department are the partnership, either of the partners as
10 individuals, and two corporations, Char Fasl Cuisine Restaurant, Inc. and Char Fasl Restaurant, Inc.,
11 each of which was issued a Notice of Determination.³ In their petition and administrative protests,
12 petitioner and taxpayers dispute only the fraud penalties, which is consistent with the comments in the
13 revised audit report indicating that petitioner agrees with the additional taxable measure established in
14 the revised audit, but disputes that there was fraud. Thus, the only disputed issue for each
15 determination is whether the fraud penalties were properly imposed.

16 UNRESOLVED ISSUE

17 **Issue:** Whether the understatement was the result of fraud or intent to evade the tax. We find
18 that the Department has established fraud by clear and convincing evidence.

19 The Department assessed the fraud penalty pursuant to Revenue and Taxation Code section
20 6485 for the period April 1, 2003, through September 30, 2005, when petitioner filed SUTR's, and
21 pursuant to Revenue and Taxation Code section 6514 for the period October 1, 2005, through June 30,
22 2006, when petitioner did not file SUTR's. The Department must establish fraud by clear and
23 convincing evidence. (Cal. Code Regs., tit. 18, § 1703, subd. (c)(3)(C).)

24
25
26 ³ The determination issued to the partnership was for the entire audit liability, and a dual determination for the same
27 liability was issued to each partner. The determination issued to each corporation was based on the liability incurred by the
28 business during the period that each corporation might have owned the restaurant according to the records of the California
Secretary of State.

1 The Department asserts that fraud penalties are justified because: (1) Ms. Melody Husaini was
2 uncooperative with respect to furnishing books and records for the audit, and in the original audit she
3 furnished bank statements for only a portion of the audit period; (2) due to incomplete records, the
4 Department had to resort to alternative audit procedures; (3) petitioner reported taxable sales of
5 \$236,878 for the audit period while audited taxable sales paid by credit card *alone* were \$1,181,719,
6 and total taxable sales (including cash sales) were \$1,638,317; (4) it is undisputed that the business
7 underreported its taxable sales by \$1,401,439, which is 592 percent of reported taxable sales;
8 (5) petitioner failed to file SUTR's for the fourth quarter of 2005 and the first and second quarters of
9 2006, and ignored the Department's requests that it do so, while making \$665,275 of taxable sales in
10 those quarters; (6) the Department has been unable to locate records of any federal or state income tax
11 returns filed by petitioner or its partners for periods from January 1, 2003, through December 31, 2005;
12 (7) during the period from March 2005 through September 2005, the restaurant made monthly taxable
13 sales of about \$48,000 and paid monthly rent of \$7,340.22 while reporting monthly taxable sales on its
14 SUTR's of about \$7,000; (8) petitioner underreported taxable sales by about 178 percent during the
15 first 12 months of the audit period, and as its business grew, it reported smaller portions of its sales;
16 and (9) the confusion surrounding the true ownership of the restaurant business made it necessary for
17 the Department to issue dual determinations.

18 Petitioner and taxpayers assert that they did not deliberately intend to evade payment of tax and
19 contend that the Department has not met its burden of proving fraud by clear and convincing evidence.
20 Petitioner states that the understatement is attributable to Ms. Melody Husaini's lack of business
21 knowledge and failure to exercise due care in keeping records and preparing returns. Further,
22 petitioner asserts that Ms. Husaini was raised in Iran, she started this business when she was only 20
23 years old, and she did not have any previous business experience. With respect tot the period
24 October 1, 2005, through June 30, 2006, petitioner contends that only the failure-to-file penalties
25 should apply. Petitioner states that Ms. Husaini did not file returns for those quarters because she was
26 ill, and during those nine months, she "just stopped caring about the business."

27 Petitioner was obviously aware of its obligation to report and pay sales tax because petitioner
28 applied for and was issued a seller's permit, petitioner calculated and collected sales tax

1 reimbursement on its sales, and petitioner reported a portion of its sales and use tax liabilities on
2 SUTR's for 10 of the 13 quarters audited. However, for those ten quarters, petitioner understated its
3 reported taxable sales by \$736,164, or 311 percent, the understatements steadily increasing over time,
4 from \$31,429 (127 percent) for the second quarter of 2003, to \$173,134 (821 percent) in the third
5 quarter 2005. Moreover, petitioner collected sales tax reimbursement on such unreported sales, so for
6 those 10 quarters, the amount of sales tax reimbursement petitioner collected from customers exceeded
7 the amount of sales tax paid to the Board by \$60,733.53. Petitioner has failed to provide any credible,
8 non-fraudulent explanation for those understatements of reported taxable sales or for its consistent
9 pattern of collecting and retaining substantial amounts of sales tax reimbursement. Accordingly, we
10 find that the fraud penalties were property applied under section 6485 for the period April 1, 2003,
11 through September 30, 2005.

12 With respect to the fraud penalty assessed for the last quarter of 2005 and the first two quarters
13 of 2006, during those three quarters the business made sales of \$665,275 and incurred sales tax liability
14 of \$54,885.20, but no SUTR's were filed or sales tax paid. Petitioner's explanation is that Ms. Husaini
15 was ill and had experienced traumatic events, and she had "just stopped caring about the business."
16 While we are not unsympathetic to these alleged circumstances, we find that petitioner has not
17 adequately explained how the partnership, during the same period, was able to continue operating the
18 restaurant, making greater sales in all three of the quarters at issue than it had made in any of the other
19 quarters of the audit period, but was unable to even arguably comply with its obligation to file SUTR's
20 and pay the applicable tax due. In other words, the partnership alleges that Ms. Husaini was too ill to
21 ensure that the business satisfied its reporting obligations at a time when *someone* was able to
22 successfully operate the restaurant so that its sales increased. Whether that person was Ms. Husaini, or
23 Mr. Bahram Husaini, or one or more employees, petitioner has failed to explain why the person or
24 persons who did operate the restaurant during that period did not ensure that SUTR's were filed and
25 the sales tax due was paid (sales tax reimbursement of \$54,885.20 was collected from customers
26 during the period for which no SUTR's were filed). We find that these facts are clear and convincing
27 evidence of fraud.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

OTHER DEVELOPMENTS

None.

Summary prepared by Rey Obligacion, Retired Annuitant

EVIDENCE OF FRAUD RELIED ON BY DEPARTMENT

1.	Substantial deficiency, which cannot be explained as due to negligence or honest mistake.	Yes
2.	More than one set of records.	No
3.	Falsified records.	No
4.	Substantial discrepancies between recorded and reported amounts for which there is no valid explanation.	Yes
5.	Permit or license held by taxpayer for prior period indicating that taxpayer was knowledgeable about the requirements of law.	No
6.	Tax properly charged to customers, evidencing a knowledge of the requirements of the law, but not reported.	Yes
7.	Transfers of amounts of unpaid tax from the tax accrual account to another income account.	No
8.	Consistent substantial underreporting.	Yes