

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROCCO TERMINI, OFFICER	:	
JULIE'S EMPORIUM OF BUFFALO, INC.	:	DECISION
for Revision of a Determination or for	:	
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law for	:	
the Periods June 1, 1974 to November 30,	:	
1974.	:	

Petitioner, Rocco Termini, residing at 833 Prospect Avenue, Buffalo, New York 14213, an officer of Julie's Emporium of Buffalo, Inc., located at 124 Elmwood Avenue, Buffalo, New York, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods June 1, 1974 through November 30, 1974 (File No. 11008).

A formal hearing was held before Alan R. Golkin, Esq., Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on March 11, 1974 at 10:30 A.M. Petitioner appeared by Timothy Kane, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Arnold M. Glass, Esq., of Counsel).

Whether petitioner, Rocco Termini, was a responsible officer of the corporate taxpayer, Julie's Emporium of Buffalo, Inc., and thereby individually liable for sales and use taxes assessed to said corporation and unpaid by said corporation for the period June 1, 1974 through November 30, 1974.

FINDINGS OF FACT

1. The Sales Tax Bureau issued notices of determination dated October 27, 1975, March 13, 1975 and two others under an earlier date, based on estimates covering only the periods of June 1, 1974 to November 30, 1974.

2. The petitioner, Rocco Termini, filed an Application for Hearing to Review a Determination on or about March 19, 1975, disputing petitioner's liability as a responsible corporate officer.

3. Petitioner voluntarily submitted any and all available books and records for audit and review by the Sales Tax Bureau.

4. Julie's Emporium of Buffalo, Inc., was a domestic corporation organized by petitioner's attorney, Nicholas Sargent, then acting for petitioner. Said attorney was to be an equal shareholder for fair consideration.

5. Nicholas Sargent and petitioner, acting like partners, expended time, effort and money in organizing said corporation, acquiring realty, and creating a restaurant until about May 27, 1974, at which time petitioner lost all control to Nicholas Sargent.

6. At all times, Nicholas Sargent and not petitioner, Rocco Termini, had possession and control of all corporate books and records, and all outside records such as bank loan applications, bank account resolutions, liquor license application, etc.

7. From and after May 27, 1974 until November 13, 1974, petitioner had no control whatsoever of said corporation, and in fact, had no privilege of operation much less responsibility. Further, petitioner was only on said premises four (4) or five (5) times throughout that period, and then only as a customer.

8. Nicholas Sargent informed petitioner, Rocco Termini, that the latter had no stock and that the books and bank accounts were changed deleting petitioner, and that the operating staff of Julie's Emporium of Buffalo, Inc. was told by Nicholas Sargent to ignore the petitioner, since he had no interest in said enterprise. The door, office and safe locks were all replaced.

9. The petitioner commenced various suits against Nicholas Sargent to rectify unlawful acts of the latter. Numerous conferences were conducted with counsel to negotiate buy-out agreements, none of which were ever consummated.

10. The petitioner did not actively participate in the operation of said business from and after May 27, 1974 in that he made no payrolls, purchase or sales, wrote no checks, paid no bills, neither hired nor fired any employees, and had no say in the management of said restaurant.

11. The petitioner was told on November 13, 1974 that he could have the business back. He went to the premises and found it almost empty and closed. Because of a blizzard the next day, petitioner failed to open, and upon examination of the books and records during that next day, never reopened said restaurant.

12. Wage and Hour Division cases against the corporation were resolved personally by Nicholas Sargent and not by the petitioner nor the corporation.

13. Unrelated third parties witnessed fights in public between petitioner and Nicholas Sargent during which petitioner suffered humiliation, and shame as well as bodily injury, and in the course of which petitioner was told by Nicholas Sargent to leave, to stay away, and to avoid interference, since the former had no authority in the business.

14. That the Internal Revenue Service determined petitioner bore no liability for Federal taxes since petitioner was not a responsible corporate officer.

CONCLUSIONS OF LAW

A. That section 1133 of the Tax Law requires persons to collect tax, and section 1131 describes those falling in the category of "persons required to collect tax" as including but not limited to "any officer or employee of a corporation...who as such officer or employee is under a duty to act for such corporation..."

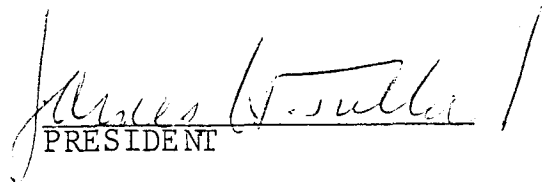
B. That during the periods of June 1, 1974 through November 30, 1974, petitioner, Rocco Termini, was not a responsible officer of Julie's Emporium of Buffalo, Inc. as defined in section 1131 of the Tax Law as referenced immediately above.

C. That despite petitioner's wish to participate in and control said corporation, he was violently, categorically (perhaps unlawfully) and effectively discharged, terminated and/or severed from any viable connection to Julie's Emporium of Buffalo, Inc., by Nicholas Sargent.

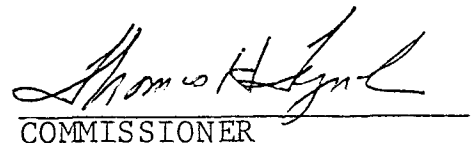
D. That the petition of Rocco R. Termini is granted and the notices of determination issued against said petitioner as an officer of Julie's Emporium of Buffalo, Inc., are hereby cancelled.

DATED: ALBANY, NEW YORK
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER