

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

MARK Y. LIU & GINGER Y. BIAN,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 16841-14
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	
)	

ORDER

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit herewith to petitioners and to respondent a copy of the pages of the transcript of the trial in the above case before Special Trial Judge Lewis R. Carluzzo at Houston, Texas, containing his oral findings of fact and opinion rendered at the trial session at which the case was heard.

In accordance with the oral findings of fact and opinion, an appropriate Order denying petitioners' motion will be issued.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
 June 2, 2016

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1 Bench Opinion by S.T. Judge Lewis R. Carluzzo

2 May 20, 2016

3 Mark Y. Liu & Ginger Y. Bian v. Commissioner

4 Docket No. 16841-14

5 The Court has decided to render oral
6 findings of fact and opinion in this case, and the
7 following represents the Court's oral findings of
8 fact and opinion (bench opinion). Unless otherwise
9 noted, section references made in this bench opinion
10 are to the Internal Revenue Code of 1986, as amended,
11 in effect for the relevant period, and Rule
12 references are to the Tax Court Rules of Practice and
13 Procedure. This bench opinion is made pursuant to
14 the authority granted by section 7459(b) and Rule
15 152. Except as provided in Rule 152(c), this bench
16 opinion shall not be cited as authority.

17 By agreement between the parties, the
18 decision in this case for the redetermination of a
19 deficiency was entered on October 2, 2014. Neither
20 party appealed the decision, and it became final in
21 due course 90 days later. See secs. 7481(a)(1) and
22 7483. Petitioners now seek to vacate that decision
23 in their motion for leave, filed April 13, 2016
24 (motion). Respondent's objection to petitioners'
25 motion was filed April 26, 2016.

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1 By Order dated April 29, 2016, and pursuant
2 to section 7443A(b) (3) and Rule 182, petitioners'
3 motion was assigned to me for disposition. By Order
4 dated May 2, 2016, I set petitioners' motion for
5 hearing on May 20, 2016, in Houston, Texas. The
6 motion was heard as scheduled. Mark Y. Liu appeared
7 on his own behalf and argued in support of the
8 motion. Ginger Y. Bian passed away after the
9 decision in this case was entered. Ashley Vaughan
10 Targac and Paul Feinberg appeared on behalf of
11 respondent and opposed it. Derek Matta appeared on
12 his own behalf at the invitation of the Court and
13 made a presentation. On May 17, 2016, just days
14 before the scheduled date for the hearing, the Court
15 received and filed petitioners' motion to postpone
16 the hearing; the appearance of Mark Y. Liu renders
17 that motion moot.

18 In general, the finality of a decision
19 entered by this Court is absolute, and the Tax
20 Court's authority to vacate a final decision is
21 limited. See Cinema '84 v. Commissioner, 122 T.C.
22 264, 270 (2004), aff'd 412 F.3d 366 (2d Cir. 2005).
23 One^{the} exception to this general rule involves a decision
24 procured by fraud on the Court; we have jurisdiction
25 to set aside an otherwise final decision for that

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1 reason. Id.: see Davenport Recycling Assoc. v.
2 Commissioner, 200 F.3d 1255, 1259 (11th Cir. 2000),
3 aff'g T.C. memo, 1998-347; Taub v. Commissioner, 64
4 T.C. 741, 751 (1975), aff'd without published
5 opinion, 538 F.2d 314 (2d Cir. 1976). According to
6 petitioners, the decision they now seek to vacate was
7 procured by fraud on the Court.

8 In the context of a motion to vacate a
9 final Tax Court decision, fraud on the court is
10 narrowly construed to require "'an unconscionable
11 plan or scheme which is designed to improperly
12 influence the Court in its decision,' preventing the
13 opposing party 'from fully and fairly presenting his
14 case.'" Davenport Recycling Assoc. v. Commissioner,
15 220 F.3d at 1262 (quoting Abatti v. Commissioner, 859
16 F.2d 115, 118 (9th Cir. 1971), aff'g 86 T.C. 1319
17 (1969); cf. Toscano v. Commissioner, 441 F.2d 930,
18 936-937 (9th Cir. 1971), vacating 52 T.C. 295 (1969).
19 To prove fraud on a court, a party bears the heavy
20 burden of presenting specific facts establishing that
21 "an intentional plan of deception designed to
22 improperly influence the Court in its decision has
23 had such an effect on the Court." Abatti v.
24 Commissioner, 86 T.C. at 1319, 1325; see Drobney v.
25 Commissioner, 113 F.3d 670, 677-678 (7th Cir. 1997),

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1 aff'g T.C. Memo 1995-209; Kenner v. Commissioner, 387
2 F.2d 689, 691 (7th Cir. 1968).

3 According to petitioners, the relationship
4 between Derek Matta, an attorney admitted to practice
5 before the Court who was previously employed as an
6 attorney with the Office of Chief Counsel, and Ashley
7 Targac, who represented respondent in this case,
8 forms the basis for petitioners' claim. Mr. Matta's
9 appearance on petitioners' behalf is not noted in
10 this case, but he was involved, at least early on,
11 due to the unusual manner in which this case was
12 commenced. Petitioners suggest that Mr. Matta
13 somehow or another colluded with Ms. Targac, and the
14 two settled the case, "without petitioners' knowledge
15 or consent." Mr. Matta and Ms. Targac apparently
16 discussed settlement of the case, and Mr. Matta
17 apparently transmitted the results of these
18 discussions to petitioners with recommendations on
19 how to proceed, but Mr. Matta was not involved in the
20 formal settlement of the case. The stipulated
21 Decision that petitioners now seek to vacate,
22 however, is not signed by Mr. Matta on petitioners'
23 behalf, but by petitioners themselves.

24 Petitioner's own statements included in the
25 record show that the settlement that they now

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1 complain about was negotiated between them and
2 respondent's counsel. In a document styled
3 "Ratification of Petition," dated September 10, 2014,
4 received from petitioners on September 15, 2014, and
5 filed by the Court on that date as petitioners'
6 motion for entry of decision, petitioners represent:
7 "We will not contest the Notice of Deficiency in
8 principle for the taxable year 2011. In our phone
9 conversations on September 9, 2014, respondent's
10 counsel Ashley Targac and we reached a settlement of
11 50% of the penalties." The decision entered on
12 October 2, 2014, precisely reflects this
13 "settlement." Furthermore, according to a
14 representation in petitioners' August 30, 2014 letter
15 to the Court, received by the Court and filed as
16 petitioners' second amended petition on September 8,
17 2014, the \$24,714 deficiency has been paid.
18 Respondent's counsel confirmed at the hearing that
19 the deficiency has not been twice assessed and only
20 half of the penalty has been assessed.

21 It now appears that petitioners are unhappy
22 with the terms of the settlement, and they blame Mr.
23 Matta for any recommendations he might have made to
24 them regarding its merits. But we fail to see how
25 petitioners can complain about the portion of the

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1 decision showing their liability for the section
2 6662(a) penalty in an amount they expressly stated to
3 have agreed to with respondent's counsel, and their
4 dissatisfaction with the settlement is hardly grounds
5 to reopen a closed case. From what has been
6 presented, it cannot be said that the stipulated
7 decision in this case was procured by fraud on the
8 Court. It follows that the Court has no authority to
9 disturb its finality.

10 To reflect the foregoing, an appropriate
11 order denying petitioner's motion will be issued. As
12 a result, all other pending motions not addressed in
13 this bench opinion are moot.

14 This concludes the Court's bench opinion in
15 this matter.

16 (Whereupon, at 11:46 a.m., the above-
17 entitled matter was concluded.)

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