

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA EX	.	Docket No. CA 96-1258
RELATOR ERVIN AND	.	
ASSOCIATES, INC.,	.	
	.	
Plaintiff,	.	Washington, D.C.
	.	November 19, 1998
vs.	.	10:55 a.m.
	.	
HAMILTON SECURITIES GROUP,	.	
INC., et al.,	.	
	.	
Defendants.	.	
	.	
.....	.	

TRANSCRIPT OF SEALED MATTER
BEFORE THE HONORABLE STANLEY SPORKIN
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

For the Plaintiff:	ANTHONY ALEXIS, ESQ. U.S. Attorney's Office 555 Fourth Street, N.W. Washington, D.C. 22001
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Tucker Flyer
By: WAYNE G. TRAVELL, ESQ.
DANIEL M. HAWKE, ESQ.
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Suite 400
Washington, D.C. 20036

For the Defendant:

Court Reporter:	BEVERLY J. BYRNE Official Court Reporter Room 6810 U.S. Courthouse Washington, D.C. 20001 (202) 273-0899
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Proceedings reported by stenomask, transcript produced from dictation.

I N D E X

<u>EXHIBITS:</u>	<u>MARKED</u>	<u>RECEIVED</u>
Relator's Exhibit Nos. 1, 2, & 3	5	--
Relator's Exhibit No. 4	14	--

P R O C E E D I N G S

1
2 THE DEPUTY CLERK: U.S. ex rel Ervin and Associates
3 versus Hamilton Securities Group, Civil Action 96-1258. Mr.
4 Hawke, Mr. Alexis, and Mr. Travell for the plaintiff.

5 THE COURT: Is this something open in this? What do
6 we have open here, folks?

7 MR. HAWKE: It's a sealed matter.

8 THE COURT: Oh, this is a sealed matter?

9 MR. HAWKE: Daniel Hawke for the relator, Ervin &
10 Associates.

11 THE COURT: Now, I'm confused. We still have a
12 sealed matter? I thought this was all --

13 MR. ALEXIS: There are several matters, but the one
14 today is still the sealed qui tem. Your Honor is also working
15 with some related matters with Dan Van Horn of our office
16 regarding the documents that Hamilton has that are subject to
17 the IG subpoenas.

18 THE COURT: That's not here today?

19 MR. ALEXIS: That's not before you today, Your
20 Honor.

21 THE COURT: So before me is where the government
22 stands on its qui tem. All right. Is that it?

23 MR. ALEXIS: Yes, Your Honor.

24 THE COURT: It's just a status?

25 MR. ALEXIS: It's a status, but we also want to

1 request that the seal remain in place until we can still
2 finish our investigation which is linked inextricably
3 unfortunately to the documents that Hamilton has in the
4 subpoena matters which are also before the Court.

5 MR. HAWKE: The relator, Your Honor, would like to
6 be heard for two minutes.

7 THE COURT: Surely. Go right ahead.

8 MR. HAWKE: Okay. If I could hand the Court --
9 Judge, the question in this case is whether when someone wins
10 the lottery nine straight times, you have to ask whether they
11 know something that nobody else knows. The log jam in the
12 other Hamilton case is preventing this case from moving
13 forward expeditiously. This case has been before this Court
14 for 29 months, and under the qui tem statute, it's supposed to
15 move --

16 THE COURT: What are elephants? What is the
17 gestation period for an elephant? Maybe you'll give birth to
18 an elephant.

19 MR. HAWKE: If you'll look at the graphs that I've
20 just handed you, the graph on top is -- as you know, Hamilton
21 was a financial advisor to --

22 THE COURT: Well, do you want to mark these as --

23 MR. HAWKE: We filed these with a precipe last
24 night.

25 THE COURT: I know. But why don't we mark these. I

1 didn't get them last night because I wasn't here. Why don't
2 you show how you want to mark them. Mark them as Relator's 1,
3 2 and 3 so I know what you're referring to.

4 (Whereupon, Relator's Exhibit Nos. 1, 2, and 3 were
5 marked for identification.)

6 MR. HAWKE: Judge, Relator's Exhibit No. 1, which
7 your Clerk will be handing you, is a chart that shows the
8 success of Goldman Sachs, Blackrock, and Ocwen, which were
9 bidders in these auctions prior to the time that Blackrock
10 became a subcontractor to Hamilton under the financial advisor
11 contract.

12 Hamilton was HUD's chief financial advisor.
13 Blackrock was a subcontractor under that contract, but they
14 were also a bidder in the auctions.

15 The first chart shows you that Blackrock and Goldman
16 and Ocwen won none of the notes that were being sold prior to
17 the time that Blackrock became a subcontractor to Hamilton.

18 Chart Number 2 relates --

19 THE COURT: Wait, wait. Chart Number 1 shows what?

20 MR. HAWKE: It shows that there are no -- that
21 Blackrock won none of the notes. All of the winners did not
22 include Blackrock, Goldman Sachs or Ocwen.

23 If you look at Chart Number 2 --

24 THE COURT: So Number 1 includes GE, Banker's Trust,
25 First Boston, --

1 MR. HAWKE: Correct.

2 THE COURT: -- Lehman. Now, this is before
3 Blackrock has a contract with Hamilton?

4 MR. HAWKE: With Hamilton, right. So in other
5 words, --

6 THE COURT: What are we selling? What are these,
7 sales of what?

8 MR. HAWKE: These are sales of HUD mortgages. If
9 you look down on the left hand column --

10 THE COURT: Secure -- mortgages; is that it?

11 MR. HAWKE: Well, they are mortgages that in which
12 if you look down on the left hand side there, HUD held G-4,
13 FNMA reassignment mortgages, performing mortgages.

14 THE COURT: It says purchased by Blackrock and
15 Goldman. What does that mean? Oh, zero. Okay.

16 MR. HAWKE: Yes, so in other words, they've zero --

17 THE COURT: Okay. Okay. Now I got 2. What's 2?

18 MR. HAWKE: Chart Number 2 shows Blackrock, Goldman
19 and Ocwen's success after they became a subcontractor to
20 Hamilton. So what you're looking at Judge, what we're
21 concerned about --

22 THE COURT: In other words, Blackrock becomes a
23 contractor --

24 MR. HAWKE: A subcontractor with Hamilton.

25 THE COURT: Are they still buying?

1 MR. HAWKE: Yes, they're still buying.

2 THE COURT: They're allowed to buy even though
3 they're advising --

4 MR. HAWKE: Precisely, Your Honor. In other words,
5 the --

6 THE COURT: Why does HUD allow that to happen?

7 MR. HAWKE: Well, it is our understanding --

8 THE COURT: They didn't know it was happening?

9 MR. HAWKE: -- they didn't know it was happening.

10 THE COURT: Well, how was Blackrock buying without
11 HUD knowing it? Were they doing it under another name?

12 MR. HAWKE: They didn't -- well, it's not that they
13 were buying without HUD knowing it. HUD knew that they were
14 buying. What HUD didn't know was is that Blackrock was acting
15 as a subcontractor to Hamilton. And they were working out of
16 Hamilton's offices while the auctions were being planned that
17 Blackrock --

18 THE COURT: Who is paying Blackrock? Hamilton?

19 MR. HAWKE: Hamilton. So the issue -- this is a
20 classic insider trading case, Your Honor, because essentially
21 what's happened, if you look at these charts, Chart Relator's
22 No. 3 --

23 THE COURT: Wait, wait. I didn't get to 2 yet.

24 MR. HAWKE: Oh, I'm sorry. Relator No. 2 --

25 THE COURT: Solomon gets 7.7 percent?

1 MR. HAWKE: Yeah, but the Blackrock/Goldman/Ocwen
2 team wins 62 percent in nine straight sales after Blackrock is
3 working out of Hamilton's offices. So --

4 THE COURT: Why is that significant?

5 MR. HAWKE: The reason why it's significant, Your
6 Honor, is because in the other case, in the Hamilton case,
7 you're being asked to enforce subpoenas against Hamilton for
8 very important documents that show communications between
9 Hamilton and the bidders in the auctions.

10 And the concern is is that what I'm showing you here
11 is that Blackrock was as a subcontractor to Hamilton, and
12 before they became a subcontractor, they enjoyed no success in
13 the auctions. After they became a subcontractor, they had
14 teaming arrangements with Goldman Sachs, and with Ocwen. They
15 bid together on a number of different auctions.

16 THE COURT: All right.

17 MR. HAWKE: Relator's No. 3 shows the breakdown of
18 their success. And if you look at the top right hand chart,
19 it shows that for the non-performing notes that Blackrock
20 purchased, the Blackrock/Goldman/Ocwen team, they won almost
21 96 percent of all of the mortgages sold for \$1.9 billion.

22 THE COURT: Where do you see that?

23 MR. HAWKE: On the upper right hand chart.

24 THE COURT: I see.

25 MR. HAWKE: All of the red indicates their success.

1 So the issue, Your Honor, is in the other case, this case is
2 being -- this is a classic insider trading case, and in order
3 for the government to be able to prove the relator's
4 allegations, they've got to get access to the documents that
5 Hamilton is withholding.

6 THE COURT: Well, they have them.

7 MR. HAWKE: Well, --

8 THE COURT: I don't understand why you say they
9 don't have them.

10 MR. HAWKE: My understanding, Your Honor, is that
11 there are a number of motions in that case that have not been
12 ruled on that relate to --

13 THE COURT: Not been ruled on?

14 MR. HAWKE: - the -- that relate to the need to get
15 access to --

16 THE COURT: I thought I ruled on everything. But
17 there is one about just showing some documents or something.
18 But I don't know of anything I'm sitting on. I don't sit on
19 things. I just don't sit on things. If something becomes
20 germane, you bring it to me, and I'll rule on it.

21 MR. ALEXIS: Again, I'm speaking out of turn from
22 the standpoint that I'm not --

23 THE COURT: Well, then, -- all right. Look,
24 whatever has to happen in that other case, when it's brought
25 to me, I'll rule on it. Okay? And you set up something?

1 It only just recently became ripe. So you set it up already?
2 It's already been set up. We'll have it in.

3 But, you know, whenever it's done, I'm going to rule
4 on it. I'm not going to sit on anything.

5 MR. HAWKE: Your Honor, would it be possible for --

6 THE COURT: If anybody knows my reputation, I don't
7 sit.

8 MR. HAWKE: No, and we're not suggesting that. What
9 we're suggesting is that what Hamilton has succeeded in
10 litigating numerous privilege and proprietary claims.

11 THE COURT: Did I send it to a magistrate?

12 MR. HAWKE: A special master.

13 THE COURT: And they are not ruling on it?

14 MR. HAWKE: Well, that's the problem is is that
15 there are voluminous documents that are not -- there are
16 numerous disputes over the documents, and the concern is that
17 this case can't proceed until --

18 THE COURT: Oh, I understand that. But they have a
19 right -- those people are good people. They know what they're
20 doing, Storch and --

21 MR. HAWKE: Sure.

22 THE COURT: I mean, they're not --

23 MR. HAWKE: It's not the special master, Your Honor.
24 It's Hamilton.

25 THE COURT: Well, whoever it is, it's going to be

1 ruled on fairly and rightly so. Okay. I understand it. But
2 what is your -- are you opposed to the government's seeking
3 for further extension?

4 MR. HAWKE: Well, we're not opposed. In fact, we've
5 consented to every one. What I would propose, Your Honor, is
6 just to keep the case moving forward, is that we have a status
7 in 30 days so that we can --

8 THE COURT: What is it you're claiming? Your claim
9 is that Blackrock leaked information to Goldman?

10 MR. HAWKE: That Blackrock obtained inside
11 information through its connection as a subcontractor to
12 Hamilton that it used to inform Goldman Sachs and Ocwen so
13 that they could all structure their bids in such a way as to
14 win.

15 And the bidding margins, they were remarkably
16 successful, Your Honor.

17 THE COURT: Well, how about Solomon, are they
18 involved?

19 MR. HAWKE: No, no. None of the other players --

20 THE COURT: Well, Solomon got 24 percent.

21 MR. HAWKE: Correct, Your Honor. But in terms of a
22 percentage of the UPB, the overall auctions, their success was
23 limited relatively speaking.

24 THE COURT: So you think it's only Blackrock,
25 Goldman, and Ocwen?

1 MR. HAWKE: At this time, Your Honor.

2 THE COURT: Who is Ocwen?

3 MR. HAWKE: Ocwen is a -- they are an affiliate of
4 Berkley Federal Bank down in Florida I believe, and they have
5 enjoyed tremendous success in the auctions.

6 THE COURT: Now, what is it that you think Blackrock
7 told these people?

8 MR. HAWKE: Well, what we believe is that -- what we
9 believe, Your Honor, is that they were in Hamilton's offices
10 where they were receiving information about how the auctions
11 were being structured, and that that information was then
12 communicated, you know, inside to Blackrock's people, and to
13 Berkley Federal, Ocwen and Goldman Sachs, and they were able
14 to structure their bids in a way that allowed them to be
15 successful. These were sealed bid auctions.

16 MR. ALEXIS: Let me state it this way, Your Honor.
17 The way I understand it, it's both been alleged and the way
18 may develop, is that Blackrock gets a subcontract with
19 Hamilton without the government knowing it to actually help
20 create the matrix for evaluating the bids and how to develop
21 the bids, and then they go out and then make the bids with the
22 information that they used or help advise Hamilton to use to
23 evaluate the bids. I think that's the general allegation in a
24 nutshell.

25 MR. HAWKE: The other issue is, Your Honor, if

1 you'll recall the Hamilton case last January when Mr. Lowell
2 was here, and they were fighting over money that they claim
3 the government owed, that that case has been dismissed.
4 Hamilton told you, Your Honor, that they did not know of
5 problems in the west of the Mississippi sale until October of
6 '96.

7 We have a document here which shows crystal clear
8 that they knew in October of -- in September of '95, before
9 the auction even closed, that they had selected the wrong
10 winner.

11 In that auction, the winner was Goldman Sachs walked
12 away with \$164 million in mortgages that they should not have
13 won. Hamilton knew it, and C. Austin Fitz, the president,
14 submitted an affidavit to you in which she said she didn't
15 know or that Hamilton Securities did not know of the error
16 until a year after, in fact, they really did.

17 THE COURT: What was the error?

18 MR. HAWKE: The error was in the running of the
19 optimization model used to process the bids. The bids that
20 come in are run through this computer program, and Hamilton
21 told you that they did not learn of these errors until October
22 of '96. And we have a fax document here that shows that
23 Coopers & Lybrand had audited the results of the auction
24 before the closing on the transaction and informed Hamilton
25 that, in fact, there had been errors, and that Goldman Sachs

1 won \$164 million that they should not have won.

2 THE COURT: Has someone gone back to them, Goldman,
3 to get the money back?

4 MR. HAWKE: Well, that's what the qui tem action is
5 for is to basically -- is to -- we believe that there were
6 false claims presented in the bid documents, and we believe
7 that this was -- the reason why no one has gone back is
8 because that was part of the scheme, that the people who were
9 involved with Hamilton and on behalf of HUD were involved with
10 covering that up.

11 But it's been --

12 THE COURT: So they hired Blackrock, and --

13 MR. HAWKE: Right.

14 THE COURT: -- Blackrock -- well, don't -- didn't
15 Hamilton know that Blackrock was bidding on these?

16 MR. HAWKE: Yes, they absolutely knew. In fact, --

17 THE COURT: So in other words, are you suggesting
18 there is a conspiracy here?

19 MR. HAWKE: Yes, Your Honor. If I may show Your
20 Honor an e-mail -- this is the reason why Hamilton's
21 electronic documents are so important. I have an e-mail here,
22 and I've bracketed -- this is Relator's No. 4, which shows a
23 communication from Hamilton to Blackrock.

24 THE COURT: Let me see this now.

25 (Whereupon, Relator's Exhibit No. 4 was marked for

1 identification.)

2 MR. HAWKE: In this communication --

3 THE COURT: Mark this as the next number. Oh, you
4 marked it as 4? Mark it as Relator's 4.

5 Read what it says.

6 MR. HAWKE: It says, lastly, I hope -- this is from
7 Grace Hubsher dated 11/19/95. She's a Hamilton employee, to
8 Wes Edens who is I believe one of the senior executives at
9 Blackrock, and Hamilton tells Blackrock, lastly, I hope the
10 next several months allow Blackrock to get better leverage
11 from the association with the HUD business through this
12 contract, and I will do whatever I can to make that happen.

13 THE COURT: Oh, boy.

14 MR. HAWKE: Blackrock didn't have a contract with
15 HUD. It's only relationship with HUD was as a bidder in the
16 auctions. So the reason why the electronic files that the
17 special master is reviewing and all the documents that the
18 special master is looking at, we believe there is a treasure
19 trove of these kinds of communications.

20 THE COURT: Well, hasn't the government gone into
21 Blackrock and gotten their documents on this? Well, I guess
22 this is all 6(e) stuff. Is this all Grand Jury stuff?

23 MR. ALEXIS: No. To the extent -- they've
24 interviewed Blackrock. The problem with approaching Blackrock
25 is without shall we say closing the back door with the

1 Hamilton information is simply they can lie to us. I'm not
2 calling them liars, but no one --

3 THE COURT: I got you.

4 MR. ALEXIS: No one seems to be able to recall what
5 happened, and --

6 THE COURT: All right. So what do you need now?
7 How much time are you asking for?

8 MR. ALEXIS: I mean, I would agree to the 60 -- you
9 know, come back in 60 days to give a status report at that
10 time, and if the Court has ruled on the other matter, by then
11 we would have had some documents and we would have been able
12 to --

13 THE COURT: All right. Let's do 60 days. Bring
14 them back.

15 MR. HAWKE: Thank you very much, Your Honor.

16 THE COURT: What time would that be? Let's give you
17 a date.

18 THE DEPUTY CLERK: The 29th at 4:30.

19 THE COURT: All right.

20 MR. ALEXIS: Of?

21 THE DEPUTY CLERK: January 29.

22 THE COURT: 4:30?

23 THE DEPUTY CLERK: 4:30.

24 THE COURT: I'm going to be here on the 29th?

25 THE DEPUTY CLERK: That's on a Friday, Judge. You

1 might -- yes, you're going to be here.

2 THE COURT: When is my program out in San Diego?

3 THE DEPUTY CLERK: That's the week before.

4 THE COURT: All right. The 29th, that's fine. All
5 right. Okay, folks. Nothing further? Let's go. Let's get
6 this other case moving.

7 MR. HAWKE: We would like the color copies to be in
8 the Court file so --

9 THE COURT: What can I do with these? Because this
10 is under seal. All right. Can you put them under seal?

11 THE DEPUTY CLERK: Yes.

12 THE COURT: All right. Put them under seal. All
13 right. Thank you, folks.

14 (Whereupon, the proceedings were concluded at 11:10
15 o'clock a.m.)

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CERTIFICATE

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I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

BEVERLY J. BYRNE
Official Court Reporter