

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.
	.	May 20, 1997
vs.	.	10:40 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:

BARBARA VAN GELDER, ESQ.
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Tucker Flyer
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For the Defendant:

Court Reporter:

BEVERLY J. BYRNE
Official Court Reporter
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Washington, D.C. 20001
(202) 273-0899

Proceedings reported by stenomask, transcript produced from dictation.

P R O C E E D I N G S

1
2 THE DEPUTY CLERK: U.S. ex rel Ervin versus Hamilton
3 Securities, Civil Action 96-1258. Barbara Van Gelder
4 representing the plaintiff. Daniel Hawke representing the
5 defendant.

6 THE COURT: What do you want to tell me about?

7 MS. VAN GELDER: Well, if you want to have any
8 questions, I'll take them at the bench.

9 THE COURT: No, these are only my people.

10 MS. VAN GELDER: No, these guys are also -- let me
11 go back. Barbara Van Gelder on behalf of the United States.

12 THE COURT: Oh, I see. But they're the original --

13 MS. VAN GELDER: They are the relators and they are
14 also a plaintiff in a case before Judge Bryant in which the
15 United States is the defendant So the --

16 THE COURT: Well, should this be transferred to
17 Judge Bryant?

18 MS. VAN GELDER: Actually they just made a motion to
19 transfer this case to you, which Judge Bryant denied. We
20 would prefer --

21 THE COURT: Well, I don't mind it going to Judge
22 Bryant.

23 MS. VAN GELDER: I do.

24 THE COURT: What?

25 MS. VAN GELDER: Well, for two reasons, Your Honor.

1 For, of course, personal reasons, but actually I have some
2 legal reasons why the case should not be consolidated.

3 THE COURT: What were the first ones?

4 MS. VAN GELDER: The personal ones? Oh, it's always
5 a pleasure to appear before you.

6 THE COURT: You know how to butte me up, don't you?
7 You and I go back many years here. But --

8 MS. VAN GELDER: Your Honor, the reason why we can't
9 -- I believe that we can't have one case consolidated is
10 because what would happen is that one judge would have total
11 knowledge of the case, and the problem is in the other case,
12 we are the defendant, and so with the United States being the
13 plaintiff and the United States being the defendant --

14 THE COURT: Is there linkage?

15 MS. VAN GELDER: Oh, there is incredible linkage,
16 yes. So that is the problem.

17 THE COURT: Well, okay. Let's keep it this way
18 then, unless there is an objection.

19 Counsel, you have an objection?

20 MR. HAWKE: Daniel Hawke --

21 THE COURT: Wait. Let me see who everybody is. I
22 got people on both sides of the aisle here.

23 MS. VAN GELDER: Your Honor, this is Daniel Hawke,
24 the relators counsel

25 THE COURT: I can't tell the players without a

1 scorecard here.

2 MR. HAWKE: Your Honor, I'm Dan Hawke. I'm from the
3 law firm of Tucker, Flyer & Lewis.

4 THE COURT: Are you one of the plaintiffs' counsel?

5 MR. HAWKE: Yes, we are plaintiffs' counsel.

6 THE COURT: I see. Now, how about the other two
7 gentlemen?

8 MR. HAWKE: This is Mr. Ervin. He is the principal
9 of Ervin & Associates, and this is Bernard Oleniacz, who is
10 the in-house general counsel for Ervin & Associates.

11 THE COURT: Now, are those the prospective
12 defendants?

13 MS. VAN GELDER: They are the relators. They are
14 the prospective, and no disparagement here, they are the
15 bounty hunters.

16 THE COURT: They're the bounty hunters.

17 MR. HAWKE: And we are the plaintiffs in the civil
18 action against the Department of Housing and Urban
19 Development.

20 THE COURT: I see. So you don't have anything to do
21 with the qui tem case then?

22 MS. VAN GELDER: Yes.

23 MR. HAWKE: We do. We are the relators in the qui
24 tem case as well.

25 MS. VAN GELDER: Maybe I can explain. When a qui

1 tem case is filed, the United States is the party of interest.
2 However, the relator, the person who brings the information to
3 the government, still has a right to be involved in the case,
4 because they will get, depending on their involvement --

5 THE COURT: Twenty-five percent or something?

6 MS. VAN GELDER: -- a percentage. So he is in this
7 case before you, he is in essence my co-counsel. But on the
8 matter before Judge Bryant, what has happened is the qui tem
9 statute will not allow you to file against the government or
10 anybody who is an SES level or above. In the matter before
11 Judge Bryant, the same parties are now the plaintiffs against
12 HUD and Ms. Helen Dunlap whom they say have conspired with the
13 defendants in the qui tem to prevent them from, among other
14 things, getting various and sundry contracts from retaliating
15 against them for being whistleblowers in this matter and in
16 other matters, and also for just having a general conspiracy
17 to run their mortgage program.

18 THE COURT: I think you're going to need a
19 continuance.

20 MS. VAN GELDER: Well, and we're asking until
21 September 9, Your Honor, because it is a criminal -- now, the
22 third person, the last person is Judith Heatherton who is the
23 IG counsel from the Department of Housing and Urban
24 Development. And we are actively investigating this case.

25 We are also asked for a stay before Judge Bryant so

1 that the criminal people can flesh out some of these matters,
2 and Judge Bryant has granted that stay. We're asking, quite
3 frankly, being realistic, also including people's, not only
4 our summer vacations, but our agents summer vacations. We're
5 asking to come back on September 10, and we have the consent
6 of the relator and his counsel.

7 THE COURT: All right.

8 MS. VAN GELDER: Thank you, Your Honor.

9 THE COURT: No opposition. Linda, can we get a
10 date?

11 THE DEPUTY CLERK: Yes, Your Honor. September 10 at
12 10:00 o'clock would be fine.

13 THE COURT: September 10 at 10:00 o'clock. You
14 know, these are interesting cases. I've had one of these
15 where the relator I think he recaptured about 30 million, and
16 I think is 25 percent the tops?

17 MS. VAN GELDER: Twenty-five is the top, right.

18 THE COURT: And you figure what 25 percent of 30
19 million is, 7.5 million bucks he picked up in that.

20 (Whereupon, the proceedings were concluded at 10:45
21 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