

unsealed

ORIGINAL

pursuant to order of 9/13/00

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, ex rel.
ERVIN and ASSOCIATES, INC.,

Civil Action No. 96-1258

PLAINTIFFS,

vs.

Washington, D. C.
July 1, 1996,
11:45 a.m.

THE HAMILTON SECURITIES GROUP,
INC.,

DEFENDANT.

FILED

JUL 10 2000

NANCY MYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

TRANSCRIPT OF SEALED HEARING
BEFORE THE HONORABLE CHARLES R. RICHEY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:

MARK NAGLE, ESQ.
BARBARA VAN GELDER, ESQ.
DANIEL M. HAWKE, ESQ.
WAYNE G. TRAVELL, ESQ.

FOR THE DEFENDANT:

(none)

OFFICIAL COURT REPORTER:

Laura M. Beasley
4800-H U.S. Courthouse
Washington, D. C. 20001
(202) 371-1843

Computer-Aided Transcription of Stenographic Notes

SEALED PROCEEDINGS

1
2 THE CLERK: Civil Action No. 96-1258, United States
3 ex rel Ervin and Associates versus Hamilton Securities Group,
4 Inc.

5 Present for the plaintiffs, Barbara Van Gelder,
6 Wayne Travell and Daniel Hawke.

7 MS. VAN GELDER: Good morning, Your Honor.

8 THE COURT: Good morning, Ms. Van Gelder.

9 MS. VAN GELDER: Your Honor, pursuant to this Court's
10 instruction -- and I do apologize. Mr. Nagle and I have been
11 tag-teaming on this case. He is in court on another matter.
12 Pursuant to Your Honor's instructions, counsel for Mr. Ervin,
13 the relator in this matter, did come to our office on June 27th
14 and make a presentation of all material evidence.

15 The United States pursuant to 31 U.S.C. -- you got
16 that -- 3129 I believe is the False Claims Act -- deems that
17 they have satisfied their service requirements. They have to
18 serve not only the Complaint, but all material evidence. They
19 certainly have satisfied that abundantly with their information
20 on the 27th of June.

21 Your Honor, the matters that are before this Court are
22 very strong, perhaps criminal, allegations that there has been
23 collusion, bidrigging and kickbacks.

24 THE COURT: Fraud.

25 MS. VAN GELDER: Absolute fraud.

1 This is the first time we have had knowledge of it, so
2 I liken this time period as if we are going right to the
3 grand jury. We are going to give a copy of this Complaint to
4 the Criminal Division. We are giving a copy to the HUD IG's
5 office. We will have HUD IG investigators doing some rapid
6 interviews of unrelated parties who may or may not have
7 information. So we can determine in this next 60 days, if
8 Your Honor grants us 60 days, whether or not --

9 THE COURT: You don't need 60 days. I agree with you;
10 I read the Complaint. And I don't know what else they have, but
11 I ordered them to present whatever they had to you, and I am
12 glad that has been done. But why is it going to take 60 days?

13 MS. VAN GELDER: The first reason is --

14 THE COURT: I don't want to cut you off. You have that
15 right under the statute, I guess.

16 MS. VAN GELDER: Well, it is always with the discretion
17 of the Judge, Your Honor

18 But one reason is that HUD IG has no knowledge of this
19 at the moment, and we have no idea what -- we do know from other
20 cases that they have been cut back. They are very spread out in
21 other criminal investigations.

22 THE COURT: So are you.

23 MS. VAN GELDER: We are. And we are going to try to
24 get a rapid attack on this.

25 THE COURT: Would it help you if I put a deadline of

1 30 days, and then if you have to do it, make an application to
2 extend the time?

3 MS. VAN GELDER: Your Honor, I will take that with the
4 proviso that --

5 THE COURT: Let's make it 45 days.

6 MS. VAN GELDER: That will be fine.

7 THE COURT: This is the 1st of July.

8 MS. VAN GELDER: Right.

9 THE COURT: Let's give the United States until
10 4:00 p.m. on August 9th within which to either let them
11 prosecute the case or you take it over.

12 MS. VAN GELDER: Okay.

13 THE COURT: Is that all right?

14 MS. VAN GELDER: I will do that with the proviso that
15 if we are in the middle of investigations and we have -- I mean,
16 part of this problem is it's a multistate investigation. They
17 have given us a list of a number of people, not even within HUD,
18 who have to be interviewed. These would be the people who
19 could -- what they have provided are very strong allegations
20 with no smoking gun. There is absolutely -- there are people
21 they say are in the room who should know. We are going to have
22 to find them, we are going to have to interview them, we are
23 going to have to interview the people they spoke to.

24 THE COURT: How many would you say are involved?

25 MS. VAN GELDER: I stopped at 12, I believe. I mean.

1 I said that's enough right there.

2 MR. TRAVELL: Your Honor, there are a dozen or more
3 people that will have to be interviewed.

4 THE COURT: How many?

5 MR. TRAVELL: A dozen or more people that will have to
6 be interviewed.

7 We have no objection, given the indications from the
8 U. S. Attorney's Office that they will investigate this matter.
9 We want to give them sufficient time to be able to conduct their
10 investigation in the manner that is going to bear the most
11 fruit

12 THE COURT: Well, I don't like to have a case lying
13 around on my docket unnecessarily.

14 MS. VAN GELDER: Your Honor, this one will not be.
15 This one is either going to be criminal or we're out of here
16 I mean, it's going to be one or the other.

17 THE COURT: Well, wait a minute. No, no. I don't want
18 you out of here. Maybe he does because he gets a fee.

19 MS. VAN GELDER: Actually, that's an interesting point,
20 Your Honor. The United States would say if he deserves the fee,
21 he gets the fee, but we will have -- in this particular case,
22 we're either going to have to come in and stay the case pending
23 a criminal investigation or --

24 THE COURT: If you have to do that, I don't stay cases.
25 I dismiss them without prejudice with leave to reopen upon the

2 1 conclusion of whatever event, and this case would be a criminal
2 prosecution.

3 MS. VAN GELDER: Exactly. As long as his rights are
4 protected under the statute, whether it's stayed or dismissed,
5 I think --

6 THE COURT: You don't have any objection to that?

7 MR. TRAVELL: No, Your Honor. The chief interest of
8 the relator in this case is having the investigation undertaken.
9 We do believe there have been serious wrongdoings in this case.

10 THE COURT: From what you said in your Complaint,
11 I guess that is right, and it ought to be prosecuted. If there
12 is damages that the government is due or you are due on behalf
13 of the United States, ought to be paid. There is certainly
14 a lot of money going on back and forth here.

15 MR. TRAVELL: That's correct, Your Honor.

16 MS. VAN GELDER: Your Honor, may I make a suggestion?

17 THE COURT: Of course.

18 MS. VAN GELDER: I have no -- I think a 45-day time
19 frame may set HUD's IG on fire to try to get them up to speed.

20 THE COURT: Surely

21 MS. VAN GELDER: And if it comes before that time that
22 we can make a status report to the Court to say exactly what we
23 are doing, so you know we are not just sitting back and letting
24 the time run, if we have until August 9th to make that status
25 report and in that status report ask for additional time,

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1 then --

2 THE COURT: I don't have any objection to that. You
3 are always so reasonable and professional.

4 I will see you at 10:00 o'clock on the 9th.

5 MR. TRAVELL: Your Honor, can I ask the Court if we
6 could push that over to the following Monday? I am out of town
7 that day.

8 THE COURT: Are you going to be on vacation or
9 something?

10 MR. TRAVELL: Yes, sir.

11 THE COURT: I will tell you, you're in luck,
12 Ms. Van Gelder. I will give you until 11:00 a.m. -- no,
13 2:00 p.m. on August 19th --

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

15 THE COURT: -- within which to decide whether you are
16 going to prosecute or whatever you are going to do

17 MR. TRAVELL: Thank you, Your Honor.

18 THE COURT: That will give you more than 60 days.

19 MS. VAN GELDER: I appreciate that, Your Honor.

20 THE COURT: Are you going to be ready for the hearing
21 on the merits of that other case?

22 MS. VAN GELDER: Your Honor, we have been discussing.
23 I have spent an awful lot of time with Mr. Taylor. I think
24 Mr. Taylor is going to ask to not file his PI -- he is outside
25 waiting -- and that we are going to try to settle this matter.

2

1 I think that hopefully --

2 THE COURT: Is that today?

3 MS. VAN GELDER: We told you we would be here today to
4 give you a briefing schedule on that matter.

5 THE COURT: All right.

6 Does this finish our business with this case?

7 MR. TRAVELL: Yes, Your Honor. If we may be excused.

8 (The above matter was concluded.)

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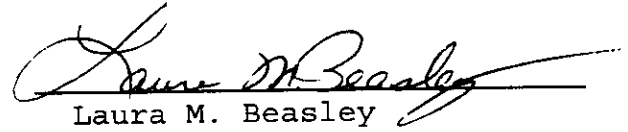
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CERTIFICATE OF REPORTER

This record is certified by the undersigned reporter to be the official transcript of the above-entitled matter.



Laura M. Beasley
Official Court Reporter