

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

<hr/>)	
UNITED STATES OF AMERICA ex rel.,)	
ERVIN AND ASSOCIATES, INC.)	
)	
Plaintiff,)	
)	
v.)	
)	CIV No. 1:96-CV-1258 (LFO)
THE HAMILTON SECURITIES GROUP,)	
INC., et al.)	
)	
Defendants.)	
<hr/>)	

DEFENDANT WILLIAMS, ADLEY & COMPANY'S
MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

Pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6), Defendant Williams, Adley & Company, LLP ("Williams Adley"), through counsel, hereby moves this Court to dismiss the First Amended Complaint with prejudice for failure to state a claim upon which relief may be granted. In support of its Motion, Williams Adley relies on the accompanying Memorandum of Law.

DEPARTMENT OF JUSTICE
OCT 5 2 500A
RECEIVED

Respectfully submitted,

REED SMITH LLP

By: *Kathleen H. McGuan / AH*

Kathleen H. McGuan
(DC Bar # 358359)
Andrew L. Hurst
(D.C. Bar # 455471)
1301 K Street NW
Suite 1100 -- East Tower
Washington, D.C. 20005
(202) 414-9200

Attorneys for Defendants
Williams, Adley & Company

DATED: October 20, 2000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendant Williams, Adley & Company's Motion to Dismiss the Amended Complaint, Memorandum of Law in support thereof and proposed Order were served, via Federal Express, on the 20TH day of October, 2000, on the following:

Wayne Gormly Travell
Venable, Baetjer & Howard, LLP
2010 Corporate Ridge
Suite 400
McLean, VA 22102-7847

Counsel for the Relator

Michael J. McManus
Drinker, Biddle & Reath LLP
1500 K Street NW
Suite 1100
Washington, DC 20005-1209

Counsel for Defendants Hamilton
Securities Group, Inc. and Hamilton
Securities Advisory Services, Inc.

Rudolph Contreras
U.S. Attorney's Office
555 Fourth Street NW
Tenth Floor - Civil Division
Washington, DC 20001

Counsel for the United States of
America



Andrew L. Hurst

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

UNITED STATES OF AMERICA ex rel.,)
ERVIN AND ASSOCIATES, INC.)
Plaintiff,)
v.) CIV No. 1:96-CV-1258 (LFO)
THE HAMILTON SECURITIES GROUP,)
INC., et al.)
Defendants.)

ORDER

Upon consideration of Defendant Williams, Adley & Company's Motion to Dismiss the First Amended Complaint, and the memoranda and in support and opposition thereof, this order shall issue this _____ day of _____, 200__, by the United States District Court for the District of Columbia,

ORDERED that Defendant's motion is, hereby **GRANTED**, and it is further

ORDERED that the Complaint is **DISMISSED** with prejudice.

IT IS SO ORDERED:

Dated: _____

Hon. Louis F. Oberdorfer
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

UNITED STATES OF AMERICA ex rel.,)	
ERVIN AND ASSOCIATES, INC.)	
)	
Plaintiff,)	
)	
v.)	
)	CIV No. 1:96-CV-1258 (LFO)
THE HAMILTON SECURITIES GROUP,)	
INC., et al.)	
)	
Defendants.)	

**DEPENDANT WILLIAMS, ADLEY & COMPANY, LLP'S MEMORANDUM
OF LAW IN SUPPORT OF MOTION TO DISMISS
THE FIRST AMENDED COMPLAINT**

While the First Amended Complaint in this matter is unusually lengthy, it is notable only for what it is missing. The allegations by Ervin and Associates, Inc. (the "Relator") are so vague and unsubstantiated as to mandate dismissal of the First Amended Complaint pursuant to Federal Rule of Civil Procedure ("Rule") 9(b). The Relator fails to identify a single false statement or claim made by Williams, Adley & Company, LLP ("Williams, Adley"), much less the "who, what, when, where and how" of such claims or statements as required by Rule 9(b). Indeed, the Relator's allegations do not even explain its legal theories as to what makes any claims or statements made by Williams, Adley false. Because the Relator has had more than

four (4) years to make its allegations comply with Rule 9(b), the Court should dismiss the case with prejudice for the utter lack of specificity.

I. FACTUAL BACKGROUND

A. Relevant Procedural History

On June 6, 1996, Relator filed a complaint under the civil False Claims Act, 31 U.S.C. § 3729, et seq., ("FCA" or the "Act") against four defendants. Williams, Adley was not named in this complaint. On March 3, 1999, while the government was still contemplating intervention in the matter, Relator filed a "First Amended Complaint For Damages and Other Relief Under the False Claims Act" (the "Complaint"), naming Williams, Adley as a defendant.

On April 17, 2000, the United States declined to intervene in the action pursuant to Section 3730(c). The Complaint was unsealed by the Court on April 18, 2000.

B. The Complaint in General

The sixty-seven (67) page Complaint concerns the conduct of competitive loan auctions which were held on behalf of the Department of Housing and Urban Development ("HUD") between 1995 and 1997. Complaint at ¶¶7-17. The majority of the Complaint alleges that Hamilton Securities Group, Inc. and Hamilton Securities Advisory Services, Inc. (collectively referred to as "Hamilton") entered into a scheme with three other

entities¹ to "defraud" the government through manipulation of the competitive loan auctions, which Hamilton was retained by HUD to handle. See generally Complaint. It appears from prior pleadings in this matter that Relator was an unsuccessful bidder in this process, and that the Relator has a long history of litigation regarding its unsuccessful bids against the government and Hamilton. The Complaint prays for three times the amount of unspecified damages suffered by the United States, statutory penalties, and attorney's fees and expenses.

C. The Complaint As It Relates to Williams, Adley

As it relates to Williams, Adley, the Complaint attempts to set forth a two-count prayer for relief under the *qui tam* provisions of the FCA. See generally Complaint. Counts XIII and XIV both appear² to allege that Williams, Adley entered into an illegal "kickback" relationship with Defendant Hamilton Securities in that: (1) Hamilton recommended that Williams, Adley be awarded a contract from HUD to perform due diligence services in return for Williams, Adley subcontracting work under that contract to Hamilton; and (2) Hamilton assisted in obtaining an expansion of Williams, Adley's contract in return for further subcontracting work. Complaint at ¶¶268-284. Counts XIII and XIV allege that based on this "kickback" relationship, as well as

¹ These three entities were dismissed from the Complaint without explanation on Relator's motion.

² Counts XIII and XIV are word-for-word identical with the exception of the statutory section reference.

unauthorized services performed under the contract and a failure to conduct "competitive note sale auctions," Williams, Adley submitted "false or fraudulent claims" and "provided false records or statements" to HUD in violation of 31 U.S.C. §§3729(a)(1) and (a)(2). Complaint at ¶¶268-284.

The only other allegations concerning Williams Adley are contained at Complaint ¶¶6, 17, 32-33, 136, and 198-203.

II. THE QUI TAM PROVISIONS OF THE FALSE CLAIMS ACT

The FCA imposes civil penalties on parties who knowingly submit false claims for payment to the United States government. In order to demonstrate liability under Sections 3729(a)(1) or (a)(2), a plaintiff bears the burden of showing: (a) that the defendant submitted or caused the submission of a claim to the federal government; (b) that the claim was false or fraudulent and/or the defendant made or used false or fraudulent records or statements to obtain the claim's payment; and (c) that the party submitting the claim either had actual knowledge of the claim's falsity or acted in reckless disregard of the claim's validity. United States v. Abbott Washroom Systems, Inc., 49 F.3d 619, 624 (10th Cir. 1995).

The qui tam provisions of the FCA allow private persons, called "relators", to bring civil false claims actions on behalf of the government. 31 U.S.C. § 3730(b)(1). Upon a relator's filing of its complaint (under seal), the government is given the opportunity to investigate the facts and law of the case and decide whether it wants to take over the prosecution of

the suit. 31 U.S.C. § 3730(b)(2). If the government chooses to intervene, it exercises primary responsibility for the case, and the relator has no control over the action (although it may continue participation). 31 U.S.C. § 3730(c)(1). If the government declines, the relator (under certain conditions) is given authority by the FCA to pursue the action. 31 U.S.C. § 3730(c)(1)(3). A relator is awarded a portion of the government's recovery upon successful prosecution either with or without government participation. 31 U.S.C. § 3730(d).

III. ARGUMENT

The Complaint Must Be Dismissed As To Williams, Adley Because It Fails To Plead Fraud With Particularity As Required By Rule 9(b)

In order to state a claim under the FCA, a complaint must make its allegations with particularity. To say that the Complaint lacks particularity would be an understatement. The Relator's sweeping and speculative allegations specify not a *single false claim* filed by Williams, Adley, much less the identity of the person making any false claim, the specific (or even approximate) date of any false claim, how such claims were false, or the location from which the false claim was made. This utter lack of specificity mandates the Complaint's dismissal.