

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

AUG 1 1996

Clerk, U.S. District Court
District of Columbia

UNITED STATES ex rel.)
ERVIN AND ASSOCIATES,)
)
Plaintiff,)
)
v.)
)
THE HAMILTON SECURITIES GROUP,)
INC., et al.,)
)
Defendants.)

Civil Action No. 96-1258 CRR
FILED UNDER SEAL

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
EX PARTE MOTION FOR EXTENSION OF TIME WITHIN WHICH TO MAKE
INTERVENTION DECISION AND MAINTAIN SEAL ON THIS CASE

This is an action filed by a private individual (called a "relator") in the name of the United States pursuant to the qui tam provisions of the False Claims Act (FCA), 31 U.S.C. § 3730. Under the FCA, a private person may file a qui tam complaint under seal seeking recovery of treble damages and civil penalties resulting from the submission to the United States of false claims and/or false statements in support of false claims for payment. 31 U.S.C. §§ 3729 et seq. Once it has been served with the qui tam complaint, the United States has 60 days within which to investigate the relator's charges and to determine whether it will intervene in and proceed with the case or whether it will decline intervention, thus leaving the relator to proceed with the case on his own. 31 U.S.C. §§ 3730(b)(2), (4). However, the United States may, "for good cause shown," petition the Court to extend the time within which the intervention decision must be made and during which the case remains under seal.

By the accompanying motion, the United States requests a 90-day extension of the time within which to make its decision whether to intervene in this case and of the time during which this case shall remain under seal. The additional time is needed in order to continue investigating the relator's charge that defendants conspired with high ranking officials at the Department of Housing and Urban Development (HUD) to circumvent existing contract restrictions and regulations by directing contracts for financial advisory services or disclosing insider information concerning HUD mortgage note sales.

In compliance with an Order of this Court, the relator served the United States Attorneys Office with the Complaint and supplied this office with copies of all material evidence as required by 31 U.S.C. §3730(b)(2). As a result of relator's claims and disclosure, the Inspector General for the Department of Housing and Urban Development commenced an investigation.

During most of the initial 60-day investigation period provided for under the FCA, the investigation has been hampered by the unavailability of key witnesses. In addition, the Inspector General issued a subpoena to one of the defendants on August 6, 1996 with a return date of August 16, 1996. At this time, the defendant has only partially complied with the Inspector General's subpoena and has indicated that full compliance can not be completed before the end of September.

Even assuming full and timely compliance with the subpoena, additional time is needed analyze the information in order to

determine the course of this investigation and, ultimately, to decide whether the United States should intervene in and proceed with this action. Once the requested information is gathered and the issues are better defined, it may be necessary to obtain further documents and other information from the defendants, perhaps through the use of Inspector General subpoenas or Civil Investigative Demands. Time will also be needed to pursue the appropriate means for obtaining authority to decide whether to intervene in this case or not.

The United States also requests that the Court permit this case to remain under seal during the extended investigatory period. The sound policy reasons for keeping a qui tam complaint under seal while the Government pursues the requisite investigation are found in the legislative history of the False Claims Act Amendments:

Keeping the qui tam complaint under seal for the initial 60-day period is intended to allow the Government an adequate opportunity to fully evaluate the private enforcement suit and determine if that suit involves matters the Government is already investigating and whether it is in the Government's interest to intervene and take over the civil action

* * *


... The initial 60-day sealing of the allegations has the same effect as if the qui tam relator had brought his information to the Government and notified the Government of his intent to sue. The Government would need an opportunity to study and evaluate the information in either situation


S. Rep. No. 99-345, 99th Cong., 2d Sess. 25, reprinted in 1986 U.S. Code Cong. & Ad. News 5266, 5289. The same reasoning supports the continuing need to keep the Complaint and other filings in this

action under seal pending the completion of the Government's investigation of this complex case.

For the above reasons, the United States respectfully requests a 90-day extension of time, to and including November 18, 1996, during which the Complaint and other documents filed in this matter remain under seal, and during which the United States may evaluate its decision whether to intervene in the action.

Respectfully submitted,



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Assistant United States Attorney

CERTIFICATE OF SERVICE

I certify that on this /bth day of August, 1996, I caused the foregoing Motion for Extension of Time Within Which To Make Intervention Decision and Maintain Seal On This Case, Memorandum in Support Thereof, and proposed Order to be served on relator's counsel by fax and first class mail, postage prepaid, and addressed:

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