

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.
	.	September 10, 1997
vs.	.	10:28 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. 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.

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THE DEPUTY CLERK: U.S. ex rel Ervin and Associates versus Hamilton Securities Group, Civil Action 96-1258.

THE COURT: All right. Are we ready to go ahead with this case?

MS. VAN GELDER: No, Your Honor.

THE COURT: You're not?

MS. VAN GELDER: I'm here asking with the consent of the relators for another six months.

THE COURT: Another six months? How are you doing? Can you give me some report? Is that possible?

MS. VAN GELDER: I can give you -- the general sketch is the aspect that we're doing a quote, "saturation" investigative effort is actually the aspect that you were interested in before. At our last status you inquired as to whether or not this would be an SEC type of investigation. The note sales that we're looking at are not regulated by the SEC.

But we're going --

THE COURT: Well, what would they be that would not be regulated?

MS. VAN GELDER: They're actual sales as opposed to any sort of securities. They're just selling the actual notes, like giving you a second mortgage or something.

THE COURT: If it's to say -- it's defined as a

1 security, is it not?

2 MS. VAN GELDER: No, I don't believe it is.

3 THE COURT: No?

4 MS. VAN GELDER: Wayne can help me here. Mr.
5 Travell.

6 MR. TRAVELL: Well, perhaps I can help.

7 THE COURT: Have you talked to the SEC people?

8 MS. VAN GELDER: Yes, we did.

9 THE COURT: And what did they say?

10 MS. VAN GELDER: They said, no. They didn't. We
11 did. They said, no, but they'd help us with --

12 THE COURT: So it's not a security?

13 MR. TRAVELL: No, Your Honor. There is no retained
14 interest in the agency. It's just as asset sale. There are
15 some of the notes which look more like securities than the
16 others, but by and large, at least from what we understand
17 from counsel, the SEC feels that this is not regulated by
18 securities law.

19 THE COURT: No, no, no. That's a different story.
20 You got a -- first, you got to ask a question. Do you have a
21 security? There are some exempted securities. Like municipal
22 securities are exempted securities. Other exempted
23 securities, which only means that they don't have to register
24 under the Securities Act of 1933 or the Exchange Act of 1934
25 if they are traded.

1 But there are no exemptions -- if you have a
2 security, there are no exemptions from Section 10 of the '34
3 Act or Rule 10(b)(5) which you've I'm sure have heard of,
4 which is fraud. There are no exemptions from fraud. As long
5 as it's a security. If it's not a security, fine.

6 Now, you got to determine whether it's a security,
7 and the question is is it a Bivens? What kind of an
8 instrument is it?

9 MR. TRAVELL: It's the sale of a mortgage note or a
10 pulled mortgage note

11 THE COURT: Now, there's a case up in, oh, New York,
12 where it was a housing project, and they were selling those
13 notes that the Supreme Court held was not a security. But
14 these are the sale of mortgage notes?

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

16 THE COURT: Well, did the SEC say it wasn't a
17 security?

18 MS. VAN GELDER: They did. They said there was one
19 series that may -- and we're going to use them in an advisory
20 capacity.

21 THE COURT: No, I'm not trying -- I'm just trying to
22 figure out why they would say it. They said that it is not a
23 security?

24 MS. VAN GELDER: They said it's an asset sale.

25 THE COURT: An asset sale.

1 MS. VAN GELDER: It was based on the -- let me ask
2 you the question, Your Honor. Do you believe that the RTC
3 notes were securities under the SEC law? Because that's what
4 they were modeled on, the RTC note sales.

5 THE COURT: Well, yes, I don't see why they wouldn't
6 be. I don't see why they wouldn't be.

7 MS. VAN GELDER: Well, I think the easy question for
8 today is that the qui tem basically triggered three sales,
9 four sales, and --

10 THE COURT: What do you mean the qui tem triggered?

11 MS. VAN GELDER: The qui tem said there was fraud,
12 alleged fraud and going through this, we have made the
13 determination that we have to look at all 12 sales.

14 THE COURT: I got you.

15 MS. VAN GELDER: So in that expedientially -- I
16 mean, it's going to take us --

17 THE COURT: This is an area that I'm so interested
18 in in sense --

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

20 THE COURT: I don't want any specifics, but what is
21 it that -- I mean, what was the alleged scheme here? What is
22 the alleged scheme?

23 MS. VAN GELDER: You can do that. It's your
24 alleged.

25 MR. TRAVELL: Your Honor, Wayne Travell for the

1 relator. Your Honor, we've alleged in the qui tem action that
2 HUD put together a group, a pool of these mortgage notes and
3 then provided inside information to certain Wall Street
4 concerns, and provided false information publicly with regard
5 to the quality of the notes in the pool

6 THE COURT: Give me that again. HUD is going to be
7 putting out some of these packages to be sold, right?

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

9 THE COURT: And that the brokers on Wall Street are
10 going to buy them, and they told the brokers on Wall Street
11 certain facts?

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

13 MS. VAN GELDER: That's the allegation.

14 MR. TRAVELL: That's the allegation.

15 THE COURT: All right. Isn't an issuer required to
16 tell the person that's buying these securities, giving them
17 the facts? I mean, don't take my questions as being negative
18 or positive. I'm just trying to find out.

19 In other words, if I'm an issuer of DuPont stock,
20 and I call in Merrill Lynch as my underwriter, I've got to
21 tell them everything.

22 MR. TRAVELL: That's correct, Your Honor. This is
23 not the underwriter. These are public auctions of pools of
24 notes, and to the extent that a market is made for the notes
25 -- if information goes out to the public, it has to be

1 consistent, and everybody has to get the same information.

2 THE COURT: I got you. Now, I understand. What
3 you're saying is HUD is not the originator of these notes.

4 MS. VAN GELDER: HUD is using Hamilton Securities
5 which is the defendant as the note salesperson, the financial
6 advisor.

7 THE COURT: I see. I see.

8 MS. VAN GELDER: And, in fact, Your Honor, the tact,
9 quite frankly, is rather than look at the nature of the
10 securities and the disclosures, it's really more of a question
11 of bid rigging. You know, is whether or not the bids were
12 rigged, because these were sealed bids --

13 THE COURT: I got you.

14 MS. VAN GELDER: -- by under -- by, you know,
15 insider information.

16 THE COURT: Now it makes sense. In other words,
17 what it is is that people were invited to come in and bid for
18 these notes?

19 MS. VAN GELDER: Some people got longer invitations
20 than others.

21 THE COURT: And then in the invitation to bid some
22 people were told information they shouldn't have; is that
23 correct?

24 MR. TRAVELL: That's correct, Your Honor. It's an
25 insider -- in the securities context, it would be an insider

1 trading case.

2 THE COURT: Well, that would be a very dynamite
3 insider trading case, because -- so then they get in and they
4 buy, and then what? They resell?

5 MS. VAN GELDER: Well, they're actually in the
6 process of reselling now.

7 MR. TRAVELL: That's right. That's correct, Your
8 Honor.

9 THE COURT: They then resell. Was there any profit
10 made?

11 MR. TRAVELL: There is phenomenal profits being
12 made, Your Honor. And to date we believe that -- the note
13 sales are all but complete at this point, and it is our
14 information that although these are generally available, made
15 available to the public for anyone to bid on, there have only
16 been three successful bidders.

17 THE COURT: No, no, give me that one again.

18 MR. TRAVELL: There have only been three successful
19 bidders in these note sale -- in the actual sales.

20 MS. VAN GELDER: It's an interesting thing that what
21 I think he's trying to say is you throw out a net in the sea,
22 and why do the only three people are the only people who
23 respond?

24 THE COURT: Why is that?

25 MS. VAN GELDER: Well, --

1 THE COURT: It's almost like the bankruptcy with
2 they buy-in of a mortgage deal. The only person that ever
3 buys in is the person who holds the mortgage.

4 MS. VAN GELDER: Well, the question is is that
5 collusion? Is that bid rigging?

6 THE COURT: Isn't that what --

7 MS. VAN GELDER: That's the investigation we're
8 proceeding with.

9 MR. TRAVELL: Yes. These are not the people who --
10 these are not the commercial banks that hold the mortgage.
11 These are different, a whole different set of players that are
12 coming in and buying these pools of notes.

13 THE COURT: And you say only three people ever bid
14 on these things?

15 MR. TRAVELL: No, there have only been three
16 successful bidders effectively. There are entity groups --

17 THE COURT: Well, I would assume they have to take
18 the lowest --

19 MS. VAN GELDER: No.

20 MR. TRAVELL: No.

21 MS. VAN GELDER: In that respect, Your Honor, this
22 is part of the issues.

23 THE COURT: Is there an allegation of any collusion
24 with government employees?

25 MR. TRAVELL: Yes.

1 MS. VAN GELDER: Yes, and that's part of the Bivens
2 case that's before Judge Bryant.

3 THE COURT: He has a Bivens case?

4 MS. VAN GELDER: He has a Bivens case that at the
5 same time this case was sold, I was sold good on the notes.
6 At the same time this case was filed, the day before, the same
7 plaintiffs filed a case against HUD for --

8 THE COURT: So should we send this to Bryant?

9 MS. VAN GELDER: No. And the reason why is --

10 THE COURT: It's not a related case?

11 MS. VAN GELDER: We -- just to refresh Your Honor's
12 recollection, this issue came up the last time we were here,
13 and the reason we are asking it not to be is because the
14 Department of Justice is representing HUD in that matter, and
15 we have to have a wall between our investigative efforts.

16 THE COURT: I see. All right. Now, okay. You need
17 six months?

18 MS. VAN GELDER: We need six months.

19 THE COURT: All right. You keep bringing these
20 kinds of cases, and you obviously need the time. All right.
21 Let's put it down for six months.

22 THE DEPUTY CLERK: Status in March, Judge, of next
23 year?

24 THE COURT: Yes.

25 MS. VAN GELDER: Your Honor, you are exactly right.

1 HUD is trying to -- part of it was trying to find out what
2 kind of animal we're dealing with, and it's kind of a hybrid,
3 and the next question is, you know, the scope.

4 THE COURT: I still think that the SEC could be
5 helpful.

6 MS. VAN GELDER: They are helpful, and we are
7 talking to them. It's just a matter of if we wanted --

8 THE COURT: And I don't understand fully why they
9 would not -- there is one case. It's a very leading case, and
10 I can't remember it, where the definition of security was cut
11 back in connection with a housing instrument. And I think
12 that's what they are worried about.

13 MS. VAN GELDER: Well, Your Honor, to be perfectly
14 candid to the Court, I would prefer at this time to use the
15 SEC, if at all, in an advisory capacity.

16 THE COURT: That's fine. That's fine.

17 MS. VAN GELDER: Because we might be dealing with
18 conflicts of interest, public corruption matters and it would
19 be better to --

20 THE COURT: No, you use it any way you want. I
21 can't tell you -- I just know that they know this area pretty
22 well, very well. They know the area of -- any time you have a
23 security -- probably -- and I don't want to know who those
24 people are, but they probably know a lot of your brokers
25 involved.

1 This is almost like -- there was a case at the SEC.
2 There was a case involving bids for government instruments,
3 and normally the SEC wouldn't get into it. What it was was
4 the government would put out certain notes, and because they
5 don't want there to be a concentration in one entity, they
6 will limit the amount of notes that any one of these entities
7 can have.

8 In other words, they can't have more than five
9 percent of the whole offering, because they want it to be
10 spread. So what happens? Well, some wiseguy in one of these
11 major brokerage firms, what he does is he not only puts in a
12 order for his five percent, but he then goes in, and he has a
13 number of customers for whom he puts in orders for the
14 customers. Okay?

15 Now, customers aren't told he's putting in the
16 order. So what happens is now they get the five percent, and
17 they can build it up to another 10 percent by the customers.
18 And that what he does is he puts it into the customers'
19 accounts unbeknownst to them, then takes it out of the
20 customers' account and sells it to himself once he gets it.

21 So that means instead of getting the five, they're
22 getting 15 percent. Now, the SEC came into that case and the
23 basis obviously was that, first of all, the customers were
24 being misused because they were using the customers -- they
25 had no right to use the customers' accounts. It wasn't

1 benefitting the customers. They showed no profit in the
2 transaction. They didn't order this done.

3 So it was the SEC's action that comes here rather
4 than the Feds or the Controller's action. It was the SEC
5 because they were violating the securities laws.

6 Gail, what is the famous -- are you aware of the
7 case in the SEC area where there was a sale of mortgage notes
8 concerning I think it was a metropolitan building operation.
9 Franklin. Was it Franklin? Well, in any event --

10 MS. VAN GELDER: I'll look it up, Your Honor.

11 THE COURT: -- there is a case. All right. Got
12 them the date?

13 MS. VAN GELDER: Your Honor, how's the -- I think we
14 asked for the seal to be continued until March 10. If we can
15 meet on March 9, that will protect the seal. That's a Monday.
16 I don't know if you're --

17 THE COURT: Is that all right with everybody?

18 MR. TRAVELL: Fine with us, Your Honor.

19 MS. VAN GELDER: 10:00 a.m.? And as always, Your
20 Honor, --

21 THE DEPUTY CLERK: 10:00 o'clock?

22 MS. VAN GELDER: Fine. If anything happens before
23 then that we need you, we'll file a motion.

24 THE COURT: All right. These you'll find are
25 interesting cases.

1 MR. TRAVELL: This has been. We've been -- August,
2 Your Honor, since -- more than a year, and we filed last June,
3 a year ago June, so this has been a long trip for us.

4 THE COURT: Well, Ms. Van Gelder are you working on
5 this or just representing the court?

6 MS. VAN GELDER: I'm working on this, Your Honor.

7 THE COURT: Are you working on it?

8 MS. VAN GELDER: Yes.

9 THE COURT: Now you know why someone like myself
10 could stay in the government for 20 years, because these cases
11 -- not ones like this, but ones like it would come down almost
12 every single day.

13 MS. VAN GELDER: I figure this is going to keep me
14 in the government for 20 years.

15 THE COURT: What's that?

16 MS. VAN GELDER: This one case is going to keep me
17 in the government for 20 years I think.

18 THE COURT: All right. Thank you.

19 (Whereupon, the proceedings were concluded at 10:42
20 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