

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES, EX REL. ERVIN  
AND ASSOCIATES, INC.,

Plaintiff,

v.

THE HAMILTON SECURITIES GROUP,  
INC., et al.,

Defendants.

~~UNDER SEAL~~

Civil Action No. 96-01258  
(CRR)

**FILED**

NOV 22 1996

NANCY MAYER-WHITTINGTON, CLERK  
U.S. DISTRICT COURT

ORDER

Relator in the above-entitled cause, Ervin and Associates, Inc. ("Ervin"), by counsel, has moved this Court for a lifting of the seal in this matter for the limited purpose of permitting Ervin to make an ex parte in camera notification of the pendency of this matter to Senior Judge William B. Bryant of this Court who is the judge assigned to the matter entitled Ervin and Associates, Inc. v. Helen M. Dunlap, et al., Civil Action No. 96-1253 (WBB) ("Ervin I").

Ervin argues that it is necessary that Judge Bryant understands the full import of the allegations in this action as they relate to the allegations in Ervin I before he rules on the Ervin I defendants' Motion to Dismiss on November 26, 1996. Ervin claims that the federal defendants in Ervin I, represented by the

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Department of Justice, are presently asserting that Ervin's claims in that case are incredible and unsupportable, while at the same time their colleagues in the Department of Justice, whose work is being screened from government counsel in Ervin I, are investigating criminal allegations arising from Ervin I and this matter. Ervin claims that the federal defendants' Motion to Dismiss should not be strengthened by the lack of disclosure to Judge Bryant, when such nondisclosure is the result of a seal in this case substantially extended by the Court to facilitate the Department of Justice's pursuit of a related criminal investigation. The Court agrees.

In this case, the Court has gone to great lengths to allow the government as much time as possible to determine whether it should intervene. The Complaint in this case was filed on June 6, 1996. Ordinarily, the government must elect whether to intervene in a qui tam action within sixty (60) days of the filing of the Complaint. See 31 U.S.C. § 3730(b)(2). On August 23, 1996, the Court gave the government approximately ninety (90) additional days within which to make its election. See 18 U.S.C. § 3730(b)(3). On November 18, 1996, the Court granted the government's motion seeking a stay of this case until thirty (30) days after the completion of its criminal investigation and any resulting criminal proceedings.

Now, Ervin's case before Judge Bryant may be dismissed because, in part, Ervin is unable to bring the government's civil and criminal investigations arising from this matter to the attention of Judge Bryant due to the seal here. To avoid penalizing Ervin in its case before Judge Bryant as a result of the Court's generosity to the government in this case, and because the government has failed to demonstrate in its Response to the Relator's Motion how the ex parte in camera disclosure to Judge Bryant resulting from a limited lifting of the seal in this case will hamper, injure, or otherwise compromise the government's criminal investigation relating to this case and Ervin I, the Court shall grant the Relator's Motion for a limited lifting of the seal. See 31 U.S.C. § 3730(c)(4) (providing for restrictions on discovery if such discovery will compromise ongoing criminal and civil investigations); see, e.g., United States ex rel. McCoy v. California Medical Review, 715 F. Supp. 967, 970 (N.D. Cal. 1989) ("The United States may seek narrowly tailored relief under 31 U.S.C. § 3730(c)(4) upon a showing to the court that certain discovery actions by the relators would interfere with its actions in related civil or criminal proceedings.").

The Court has allowed the considerable delay in this matter resulting from the government's indecision because the government

has adequately justified such delay and the extensions of time have not been opposed by the Relator Ervin. The Court, however, will not allow the government's delay in this case to penalize the Relator in a suit before another member of this Court given that there is no evidence that the limited lifting of the seal sought will compromise the government's ongoing civil or criminal investigations.

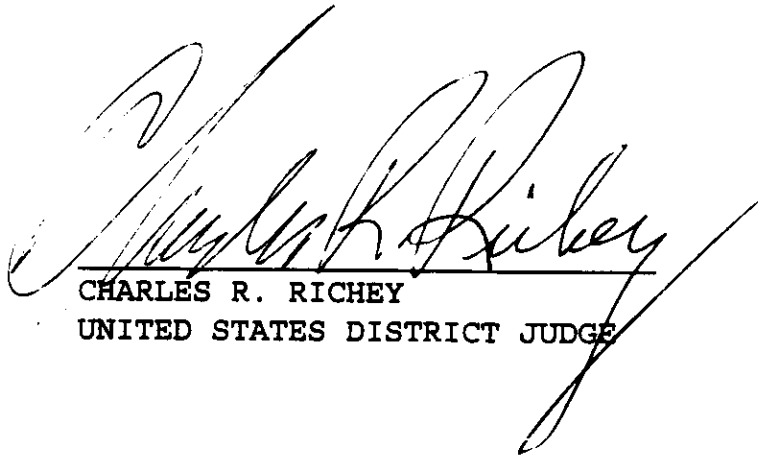
Accordingly, it is, by the Court, this 27 day of November, 1996,

ORDERED that the Relator's Motion shall be, and hereby is, GRANTED; and, it is

FURTHER ORDERED that the seal in this case shall be lifted for the sole and limited purpose of enabling Relator to make an ex parte in camera notification to Senior Judge William B. Bryant in the matter entitled Ervin and Associates, Inc. v. Helen M. Dunlap, et al., Civil Action No. 96-1253 (WBB) ("Ervin I") of the pendency of this action and the criminal investigation arising, at least in part, from allegations in this action and Ervin I; and, it is

FURTHER ORDERED that, except as otherwise ordered herein, the Complaint and all other filings shall remain under seal until further Order of the Court; and, it is

FURTHER ORDERED that the Clerk of this Court shall contact the government and relator in this matter FORTHWITH and inform them as to the contents of this Order.



CHARLES R. RICHEY  
UNITED STATES DISTRICT JUDGE