

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

**THE HAMILTON SECURITIES GROUP, INC.)
802 Rhode Island Avenue, N.E.)
Washington, D.C. 20002)**

and)

**HAMILTON SECURITIES ADVISORY)
SERVICES, INC.)
802 Rhode Island Avenue, N.E.)
Washington, D.C. 20002)**

Plaintiffs,)

v.)

Civil Action No. _____

**ERVIN AND ASSOCIATES, INCORPORATED)
7315 Wisconsin Avenue)
Suite 1150 West)
Bethesda, Maryland 20814,)**

**SERVE: Prentice Hall Corporation)
System Maryland)
11 East Chase Street)
Baltimore, MD 21202)
[Registered Agent])**

and)

**JOHN H. ERVIN)
7315 Wisconsin Avenue)
Suite 1150 West)
Bethesda, Maryland 20814,)**

Defendants.)

COMPLAINT

I. INTRODUCTION

1. This action is brought by former United States Department of Housing and Urban Development (“HUD”) business and financial advisors The Hamilton Securities Group, Inc. and Hamilton Securities Advisory Services, Inc. (collectively,

“Hamilton”) against HUD contractor Ervin and Associates, Incorporated, and its principal, John H. Ervin (collectively, “Ervin”). This dispute arises out of the strategic lawsuits brought by Hamilton’s competitor, Ervin, for the wrongful and tortious purposes of causing the cancellation of Hamilton’s financial advisor contract with HUD and the elimination of Hamilton as a future competitor, and to cause HUD to cease its loan sales program.

II. JURISDICTION AND VENUE

2. The subject matter jurisdiction of this Court is invoked pursuant to the provisions of D.C. Code Annotated, 1981 edition, *as amended*, Sec. 11-921(a).

3. Personal jurisdiction is invoked pursuant to the provisions of D.C. Code Annotated, 1981 edition, *as amended*, Sec. 13-334 and 13-423(a).

III. THE PARTIES

4. Plaintiff The Hamilton Securities Group, Inc. (“HSG”) is a Delaware corporation with its principal place of business in Washington D.C. HSG provides investment banking and other financial advisory services to its clients. HSG served as HUD’s financial advisor and helped, with its subsidiary Hamilton Securities Advisory Services, Inc., to design and implement an \$11 billion loan sale program and advised on portfolio strategy and national housing reform policies.

5. Plaintiff Hamilton Securities Advisory Services, Inc. (“HSAC”) is a Delaware corporation and subsidiary of HSG with its principal place of business in Washington D.C. HSAC provides investment banking and other financial advisory services to its clients, and helped design the loan sale program referenced herein.

6. Defendant Ervin and Associates, Incorporated, is a Delaware corporation with its principal place of business in Bethesda, Maryland. At all times relevant to

this Complaint, Ervin and Associates, Incorporated was a competitor of Hamilton in efforts to solicit contracts from HUD.

7. Defendant John H. Ervin is the president of Ervin & Associates, Inc. On information and belief, John Ervin is responsible for the decision to initiate the civil suits mentioned herein which were filed against Hamilton.

IV. FACTUAL ALLEGATIONS

8. HUD's Federal Housing Administration ("FHA") provides mortgage insurance for low- and moderate-income purchasers of single-family and multi-family residential homes. By the early 1990s, the size of HUD's insured loan portfolio was in the range of \$400 billion.

9. In the late 1980s and early 1990s, a substantial portion of Defendant Ervin's income came through contracts with HUD in the areas of financial advisory services and the servicing of HUD loans and properties.

10. During the late 1980s and early 1990s, the number of defaulted FHA loans grew substantially. By 1993, an aggregate unpaid principal balance of \$11 billion had accrued, involving over 2,400 multi-family mortgages and 95,000 single-family mortgages. The large volume of defaulted loans required significant HUD staff time, and detracted from HUD's ability to oversee and manage the non-troubled loans. In 1993 and 1994, HUD, with legislative support from Congress, sought authority to sell the defaulted mortgage loans.

11. Ervin opposed the loan sales program, because the divestiture of defaulted loans reduced the volume of HUD's portfolio, and thereby reduced the number of properties and loans which were available for Ervin's own loan servicing contracts. It was in Ervin's financial interest for HUD to retain as many mortgage loans and properties as possible, so that Ervin could continue to service them.

12. In 1993, in response to a HUD Request for Proposals (RFP), Hamilton submitted a bid for a contract as HUD's financial advisor to assist in the loan sales, and to provide general financial advice. Hamilton's bid was successful.

13. As a result of HUD's loan sales auctions, designed and implemented by Hamilton, over 115,000 mortgages were sold for a total price of \$6.5 billion, creating a \$2.1 billion savings to the U.S. Government. The success of this program was much lauded, and its several awards included Vice President Gore's coveted "Hammer Award" as a model of successful and efficient government re-engineering. However, this success also highlighted Ervin's comparative inefficiency, as Ervin's recovery rate proved far lower than that which was obtained through the loan sales auctions.

14. Between 1993 and 1996, Ervin placed unsuccessful bids for several asset management and financial advisor contracts, often filing protests when it lost out on bids. Though Hamilton did not and could not have played any role in these procurements, Ervin blamed Hamilton in the many protests filed by Ervin during those years.

15. In January 1996, HUD hired four financial advisors, including Hamilton, to assist in implementing the loan sales program. Ervin was an unsuccessful bidder for that work.

16. Hamilton was also awarded a "crosscutting" advisory contract from HUD, which involved the management and investment of HUD's \$400 billion loan portfolio at a fee of \$10.4 million per year, for two years. Hamilton's responsibilities in this role involved coordinating the work of 17 different contractors, including Ervin.

17. In early 1996, Ervin, with the apparent concurrence of the HUD Inspector General's office, prepared two lawsuits specifically designed to cause the cancellation of Hamilton's contracts, to effectuate the removal of Hamilton as a competitor,

and to kill the loan sales program that was adversely affecting Ervin's financial interests.

18. On June 5, 1996, Ervin & Associates filed a *Bivens* action against the United States, HUD, Henry Cisneros, Helen Dunlap, and other federal defendants, alleging corruption in the HUD Office of Multi-Family Housing's contract procurement process. In the complaint, Hamilton is derisively referred to as Ms. Dunlap's "contractor of choice," and the recipient of improper and illegal favors. Hamilton expressly denies the receipt of any such favors or preferential treatment.

19. Also in the complaint, Ervin accuses Hamilton, *inter alia*, of:

- "look[ing] the other way if [Ms. Dunlap] crosses the line of impropriety";
- exercising control over subcontractors that is "not appropriate";
- advising Ervin to manipulate Ms. Dunlap into improperly circumventing the procurement process;
- engaging in a conflict of interest and creating an "illegal pass-through" by accepting a \$5 million contract from a minority-owned HUD subcontractor;
- engaging in insider trading in its conduct of the loan sales program by providing confidential information to two prominent wall street firms.

Each of these allegations by Ervin is false.

20. On June 6, 1996, Ervin filed a *qui tam* complaint under seal. Although the complaint presently remains sealed, the complaint was at one point unsealed by court order for the limited purpose of informing Hamilton that it is a named defendant in the complaint. The Department of Justice has yet to indicate whether the government will pursue the complaint on Ervin's behalf.

21. After the lawsuits were filed, Ervin - with the apparent assistance of the HUD Inspector General - provided documentary and oral information to the media

which, Ervin asserted, demonstrated that Hamilton was complicit in the alleged corruption surrounding HUD procurement procedures and the loan sales program. As a direct result of these leaks of unsubstantiated allegations, articles critical of Hamilton appeared in *U.S. News and World Report* and in *The Washington Times*, among other publications.

22. In August 1996, the HUD Office of the Inspector General opened civil and criminal investigations, ostensibly in response to various of Ervin's allegations. Broadly-worded subpoenae were issued to Hamilton by Inspector General Gaffney on August 6, 1996, and August 22, 1996. Many of the same documents were requested to be produced a second time in a third subpoena issued on October 24, 1997. The U.S. Attorneys' Office has declined criminal prosecution, but the onerous OIG civil investigation continues.

23. On October 17, 1997, HUD cancelled Hamilton's financial advisor contract as a result of the untrue allegations made by Ervin in its pleadings, and further purveyed by Ervin to the media, government investigators, and HUD officials.

24. Hamilton's \$11 billion loan sale initiative was suspended.

25. Burdened by the loss of the HUD contract (which, at that time, was Hamilton's primary source of income) and by over \$1 million in expenses incurred in responding to Inspector General Gaffney's subpoenae, Hamilton's business was ruined, and its access to the marketplace cut off. Hamilton has been unable to market its services to the private sector as it was once able to do, as Hamilton's once-stellar reputation has now been irrevocably destroyed as a result of Ervin's actions.

26. Ervin, with the demise of the loan sales program, is presently thriving. On information and belief, Ervin has been awarded contracts that would not have been received but for its scurrilous allegations against Hamilton.

V. STATEMENT OF CLAIMS

COUNT ONE

(Tortious Interference With Contractual Relations)

27. The allegations of Paragraphs 1 through 26 of this Complaint are by reference incorporated herein as allegations of this Count.

28. At the time that Ervin instituted the *Bivens* and *qui tam* actions in June 1996, Hamilton was a party to contract with HUD providing financial advisory services.

29. Ervin was aware of the existence of Hamilton's financial advisory services contract.

30. Ervin intentionally and maliciously interfered with the financial advisory services contract by procuring and instigating HUD's repudiation and cancellation of that contract.

31. As a consequence of Ervin's intentional interference, Hamilton has incurred substantial loss, including the benefit of its bargain with HUD, and irreparable harm to its reputation.

COUNT TWO

(Tortious Interference with Prospective Business Advantage)

32. The relevant allegations of Paragraphs 1 through 31 of this Complaint are by reference incorporated herein as allegations of this Count.

33. At all times relevant to this Complaint, a valid business relationship and expectancy as to future business existed between and among HUD and Hamilton, and among private and other governmental entities and Hamilton, such that Hamilton had reason to believe that it would be awarded additional contracts from HUD and/or that existing contracts would be extended or expanded, and that its good name would be

maintained such that its services could also be marketed to other private and governmental entities.

34. At all times relevant to this Complaint, Ervin was aware of these business relationships and expectancies.

35. Ervin, by their initiation and maintenance of the *Bivens* and *qui tam* actions, intentionally and maliciously caused the termination of Hamilton's business relationships with and expectancies.

36. As a consequence of Ervin's intentional interference, Hamilton has incurred substantial loss, including the loss of any and all additional and future business with HUD, as well as any other business with private or governmental entities due to the irreparable harm to Hamilton's reputation.

COUNT THREE
(Abuse of Process)

37. The relevant allegations of Paragraph 1 through 26 of this Complaint are by reference incorporated herein as allegations of this Count.

38. Defendants, by initiating and maintaining the allegations against Hamilton in the *Bivens* and *qui tam* complaints, sought and intended to eliminate Hamilton as a viable competitor, sought to end the loan sales, sought to destroy Hamilton's business, and thereby engaged in a perversion of the judicial process.

39. As a result of this perversion of justice, Defendants achieved an end not regularly or legally obtainable, *to wit*, the cancellation of Hamilton's financial services contract, the sullyng of Hamilton's good name and reputation, the elimination of the loan sale program previously orchestrated by Hamilton.

40. Defendants' conduct was intentional and malicious and caused substantial damage to Hamilton, no less than its financial destruction and the elimination of any of its future business prospects.

VI. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Court enter judgment against the Defendants Ervin and Associates, Incorporated, and John H. Ervin, and in favor of the Plaintiffs The Hamilton Securities Group, Inc. and Hamilton Securities Advisory Services, Inc., and award:

(1) Compensatory damages in excess of \$100 million for all past, present and future economic and non-economic loss to Hamilton, including Hamilton's loss of the benefit of its bargain with HUD, the legal fees and expense expended by Hamilton as a result of the investigation instigated by Ervin, and its loss of future business opportunities, in such an amount as this court may determine;

(2) Punitive damages, based on Ervin's ill-will, recklessness, wantonness, willful disregard of the Plaintiffs' rights, and other aggravating factors tending to demonstrate the outrageousness of Defendants' conduct, in such an amount as this court may determine; and

(3) Such other and further relief as this Court deems just and proper including damages, injunctive relief, costs, interest and attorneys' fees.

VII. JURY DEMAND

The Plaintiffs demand a trial by jury on all counts.

Dated: June 4, 1999

Respectfully submitted,

Michael J. McManus (#262832)
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Inc. and Hamilton Securities Advisory Services,
Inc.