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Federal Judge Dismisses RICO Claims Against Manhattan Real Estate Family

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A DEVELOPER who made $20,000 a month in the last two years from his stake in subsidized upper Manhattan housing projects but claimed his partners were "cooking the books" has had his case dismissed by a federal judge.

The developer, John L. Edmonds, "has been unable to unearth any evidence to support" his allegations of fraud and missing money, Southern District Judge Harold Baer ruled in *Edmonds v. Seavey*, 08 Civ. 5646, in dismissing Mr. Edmonds' $500 million lawsuit.

In 1973, Mr. Edmonds entered into four partnerships with Robert W. Seavey and other members of the Seavey family to own and operate 840 units of low-to-middle-income government-subsidized housing. The partnerships were known as Fifth and 106th Street Associates, Logan Plaza Associates, Charles H. Housing Associates and Church Home Associates.

Through the years, different companies managed the daily operations of the units, but in 2000, with Mr. Edmonds' "knowledge and consent," the partnerships signed an agreement with Dalton Management, a company owned by the Seavey family, according to the decision.

Dalton Management is responsible for the books and records of the partnerships and hired accounting firm Marks, Paneth & Shron to conduct year-end audits.

Mr. Edmonds had "often complained that he has not received income...to which he believes he is entitled," Judge Baer wrote. Despite a monthly income of $20,000 in 2007 and 2008, Mr. Edmonds, who owns varying stakes in each partnership, had threatened several times to sue his partners under the federal Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1961.

In turn, the Seavey family "repeatedly reminded Edmonds that the properties are low-to-middle-income government-subsidized housing projects and as such do not generate significant profit," the judge wrote.

But, he noted, since Dalton Management took over daily operations, the income streams increased across the board.

Once "the myriad of cobwebs are cast aside," Judge Baer wrote, Mr. Edmonds claimed that Dalton was using partnership money to pay its own employees and make below-market deals with vendors.

Mr. Edmonds sued in June 2008, claiming mail and wire fraud under RICO, citing allegedly fraudulent financial statements sent to him by Dalton.

To build his case during the previous year, Mr. Edmonds had brought in accounting firm Cameron, Griffiths & Pryce to examine the partnership records.

In December 2007, Cameron, Griffiths & Pryce submitted its final report, which noted problems with the methods used by Dalton. But its report "nowhere states that any of the financial statements contained any false or misleading financial information," Judge Baer wrote. "Further, they failed to find any additional distributions were due to Edmonds or the other partners."

The report concluded that Dalton had misappropriated funds from the Logan Plaza project to pay salaries and other expenses. But according to the decision, Dalton was permitted under the management contracts to use partnership funds to pay employees' salaries.

Judge Baer

In granting summary judgment to the Seavey family, Judge Baer first turned to Mr. Edmonds' federal RICO claims, which included mail fraud and conspiracy to violate RICO.

Rather than evidence of fraud, the record is "replete with devastating admissions by Edmonds's own auditors...and Edmonds himself that there is, in fact, no evidence of such fraud," Judge Baer wrote.

The basic RICO standard involves two predicate acts—here wire and mail fraud—committed within 10 years of each other, the judge wrote, noting that Mr. Edmonds failed to meet this threshold.

While Mr. Edmonds claimed he was sent fraudulent monthly statements, he testified at a deposition that he "has received no inaccurate monthly financial reports, he never received any false statement... and most devastating to his case, that he has no evidence that demonstrates any illegal or improper payments that the Seavey Defendants received should have gone instead to the Partnerships," Judge Baer wrote.

And, the judge continued, "to make the cheese more binding," Mr. Edmonds' own auditors "admitted that, even after months of investigation and review" of the records, it could not find any missing money.

Any "issues" with the accounting methods and ledger adjustments used by Dalton were not sufficient to satisfy RICO fraud standards, Judge Baer ruled, dismissing the claims with prejudice.

The judge declined to rule on Mr. Edmonds' state-law claims of fraud and breach of contract and the Seavey family's counterclaim for breach of fiduciary duty, choosing instead to dismiss without prejudice, noting that a state court could resolve any further litigation.

"The Seavey organization is extremely grateful that the court looked at the facts and vindicated the organization," the group's attorney, Scott E. Mollen of Herrick, Feinstein, said in an interview.

"Unfortunately, there are times when an investor will threaten a general partner in an effort to extract a monetary benefit," said Mr. Mollen.

He added that Mr. Seavey and Mr. Edmonds are still partners, despite the litigation. "They still have to play in the same sandbox," Mr. Mollen said.

M. Douglas Haywoode of Brooklyn represented Mr. Edmonds.

In an interview, Mr. Haywoode praised Judge Baer as an "excellent judge," but said his client's allegations were based on either "negligence beyond belief or premeditated design." There is a "very deceptive game being employed here," he said, adding that while the case may be refiled in state court, no determination has been made on whether to appeal the civil RICO portion of the decision.

Thomas R. Manisero of Wilson, Elser, Moskowitz, Edelman & Dicker represented Dalton's accounting firm, Marks, Paneth & Shron. Mr. Manisero said he was pleased with the decision and his client remains the auditor for Dalton Management.