

STATE OF NEW YORK : SUPREME COURT
COUNTY OF ERIE : PART 22

HODGSON RUSS LLP,
Petitioner,

Hybrid proceeding/action for judgment
pursuant to Articles 78 and 30
of the CPLR and 42 U.S.C. Section 1983,

- vs -

INDEX # 000097/2014

MINNESOTA DEPARTMENT OF REVENUE,
MYRON FRANS, IN HIS OFFICIAL
CAPACITY AS COMMISSIONER OF THE
MINNESOTA DEPARTMENT OF REVENUE,

SETTLEMENT

Respondents.

25 Delaware Avenue
Buffalo, New York
February 27, 2015

B e f o r e:

HONORABLE TIMOTHY J. WALKER, JCC
Acting Supreme Court Justice
Presiding Justice, Commercial Division
Eighth Judicial District

A p p e a r a n c e s:

HODGSON RUSS LLP
BY: STEPHEN W. KELKENBERG, ESQ.
CHRISTOPHER L. DOYLE, ESQ.
Appearing for the Plaintiff/Petitioner.

WOODS OVIATT GILMAN LLP
BY: WILLIAM F. SAVINO, ESQ.
and
JOHN R. MULE, ESQ. (by telephone)
TAMAR N. GRONVALL, ESQ. (by telephone)
Assistant Minnesota Attorneys General
Appearing for the Defendants/Respondents.

1 THE COURT: We're calling the matter of Hodgson
2 Russ, LLP versus Minnesota Department of Revenue, et al.,
3 Index number 2014-000097. Let's get the appearance of
4 counsel of record, first starting with plaintiff/
5 petitioner.

6 MR. KELKENBERG: Stephen Kelkenberg, I have my
7 colleague Chris Doyle here with me, on behalf of Hodgson
8 Russ.

9 MR. SAVINO: William Savino, Woods Oviatt, local
10 counsel for the State of Minnesota.

11 THE COURT: And I already have by order of this
12 court pro hac vice admission for John Mule, M-U-L-E,
13 Esquire, Assistant Attorney General for the State of
14 Minnesota. He's on a conference call right now along with
15 Tamar, last name, if you could spell it for the record,
16 please.

17 MS. GRONVALL: Yes, Your Honor.
18 G-R-O-N-V-A-L-L. Tamar Gronvall.

19 THE COURT: T-A-M-A-R?

20 MS. GRONVALL: Yes, that's correct, Your Honor.

21 THE COURT: And I have an oral application from
22 Mr. Savino to admit Miss Gronvall for the purpose of this
23 case on a pro hac vice basis for the purpose of putting
24 the matter on the record in terms of a settlement, and I
25 just need Mr. Savino to say yes, Judge, that's what I

1 asked.

2 MR. SAVINO: Yes.

3 THE COURT: And I have no opposition from
4 plaintiff/petitioner's counsel?

5 MR. KELKENBERG: None, Judge.

6 THE COURT: Okay. Duly noted, so ordered. I
7 understand from conversations off the record with counsel
8 that the parties have reached a settlement. I'm going to
9 leave it to whomever wants to speak first, and then
10 subject to anybody filling in any blanks. Steve?

11 MR. KELKENBERG: Yep, I can do that. Bear with
12 me, Judge.

13 THE COURT: Sure, take your time. Tamar, could
14 you hear him okay when he was talking?

15 MS. GRONVALL: Not really, not really. If he
16 could speak up just a little bit, that would be great.
17 Thank you.

18 THE COURT: Sure. I'll have him use the
19 microphone.

20 (Discussion off the record.)

21 MR. KELKENBERG: Thanks, Your Honor. What I'll
22 do is I'll just put on basically the three points that --
23 well, I guess I probably won't put them all on since some
24 of them are not really on the table. I'll just put on the
25 ones that I know and --

1 THE COURT: What is going to settle the case.

2 MR. KELKENBERG: Yes, exactly right. With
3 respect to the principal terms of the settlement, the
4 Department is agreeing to drop its audit or investigation
5 or inquiries with respect to Hodgson Russ for tax years
6 ending December 31, 2004 through and including December
7 31, 2012. The terms of the settlement agreement will not
8 be confidential. Hodgson Russ will agree to withdraw the
9 balance of its claims -- I shouldn't say the balance.
10 Will withdraw its claims with prejudice for those --
11 obviously for those years.

12 MR. SAVINO: The only thing that I would add,
13 Your Honor -- the only thing that I would add, Your Honor,
14 is that upon the entry of a stipulation -- excuse me, of a
15 stipulation of discontinuance based on this settlement
16 that this court still retain jurisdiction to interpret and
17 enforce the settlement. I always like to do that.

18 THE COURT: Any issue with that?

19 MR. KELKENBERG: That's not a problem, Your
20 Honor. I guess the other piece of it, in fairness to Mr.
21 Savino, he had put in correspondence to me of February
22 17th which I'm using largely to track the principal
23 aspects of our settlement, that each party shall bear its
24 own costs and attorney's fees.

25 MR. SAVINO: Agreed.

1 MR. KELKENBERG: I guess the one piece of this,
2 we were hopeful to get a representation from the
3 Department with respect to what we discussed with Your
4 Honor back in chambers.

5 THE COURT: In terms of, Tamar, what you had
6 confirmed, as Mr. Savino expressed it off the record, in
7 terms of the procedures, et cetera, going forward. I
8 didn't -- I left my notes on my desk. It was about how
9 these sorts of determination letters --

10 MS. GRONVALL: Yes, okay. The Department of
11 Revenue has made some changes to its -- its review system,
12 and it will take into consideration 1099s along with other
13 documents and information available to it in making these
14 determinations in the future.

15 THE COURT: Are we good?

16 MR. KELKENBERG: Yes, Judge, I think we're okay.

17 MR. SAVINO: Thank you.

18 THE COURT: And I have to ask this, Tamar and
19 John, you both have authority on behalf of your respective
20 clients to put that proposal -- excuse me, that settlement
21 agreement on the record and the authority to stand by the
22 representations that were made?

23 MS. GRONVALL: That is correct, Your Honor.

24 THE COURT: All right. We have a settlement,
25 I'll retain jurisdiction. If there's any issues, notify

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chambers. Otherwise, have a warm, safe weekend,
everybody.

MR. KELKENBERG: Thanks, Judge, you too.


MS. GRONVALL: Thanks, Your Honor, for all your
help. We really appreciate it.

THE COURT: You're welcome. Take care.

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C E R T I F I C A T I O N

I certify that the foregoing 6 pages are a correct
transcription of the proceedings recorded by me in this matter.


LYNN S. DULAK, RPR, CRR,
Official Court Reporter.

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