

STATE OF NEW YORK EX REL. TOOLEY, LLC V. SANDELL, NO. 101494/2018 (N.Y. SUP. CT. N.Y. CTY.).

CASE OVERVIEW

Status: Settled

Related Practices: False Claims Act, Tax Fraud, Whistleblower

The law firm of Kirby McInerney LLP announced today a \$105 million settlement in a case the firm filed on behalf of its whistleblower client against hedge fund billionaire Thomas Sandell and his business Sandell Asset Management Corporation. The settlement is the largest income tax recovery under the New York False Claims Act.

“This settlement is a great win for the people of the State of New York. It not only achieves a big recovery for the state’s taxpayers, but it also shows that whistleblowers can effectively help catch tax cheats so that the burdens of funding the government don’t just fall on people who follow the rules,” said Kirby McInerney partner Randall Fox, who was the lead lawyer on the case.

Today’s press release from New York’s Attorney General about the settlement is [here](#).

Kirby McInerney’s client presented timely, compelling information about Sandell’s knowing tax violations that formed the basis for the case.

As alleged in the case, Sandell and his businesses submitted false New York tax returns that failed to count more than \$450 million as New York-taxable income, causing them to underpay New York taxes by more than \$50 million. Sandell and the companies had earned the money from services they performed in their New York City office in the late 1990s and early 2000s. Rather than take possession of the income right away, they used a tax strategy available only to wealthy hedge fund managers with off-shore investments to push off any taxation of the more than \$450 million until the end of 2017.

The whistleblower alleged that as 2017 approached, Sandell and his companies were not satisfied with merely delaying the taxes on the more than \$450 million; they did not want to pay any New York taxes on it. To hide the New York connection to the income, they set up an elaborate scheme that included opening a small temporary Florida office and pretending for tax purposes that the Sandell operations had moved out of New York before 2017. They ignored their own admission in an SEC audit that their principal office in 2017 was in New York City. When Sandell’s long-standing accountant refused to sign the false 2017 tax returns without a written opinion justifying the tax maneuver, Sandell had the accountant fired, and he hired another accountant who was willing to participate. As the whistleblower alleged, Sandell and his companies then filed the false returns while knowing that the more than \$450 million in income was earned in New York and was subject to New York taxes. In the settlement, defendants neither admitted nor denied the allegations.

The whistleblower will receive an award of \$22.05 million, which is 21% of the government’s recovery.

The New York False Claims Act rewards whistleblowers, also called *qui tam* relators, who file successful tax-related lawsuits on behalf of the government. To date, New York has recovered over \$577.8 million from tax False Claims Act cases since the law was amended in 2010 to permit tax claims. Whistleblowers have received awards totaling \$110.5 million in those cases.

This settlement demonstrates the value of incentivizing whistleblowers in the fight against tax fraud. To date, tax *qui tam* suits are possible only in New York, Illinois, Washington D.C., Indiana, Rhode Island, Delaware, Hawaii,

Nevada, and New Hampshire. Similar legislation has been introduced in other states. States without these incentives are overlooking an important enforcement tool to catch tax fraud, close their tax gaps, and promote tax fairness.

Kirby McInerney, on behalf of its whistleblower client, filed the suit against Sandell and his companies in October 2018 in New York State Supreme Court. The New York Attorney General's Taxpayer Protection Bureau promptly began its investigation and partnered with Kirby McInerney to analyze and develop the evidence in the case, leading to the \$105 million settlement.

"This case represents exactly the kind of public-private partnership that is envisioned by the False Claims Act," Mr. Fox added. "It shows how persons with useful information can multiply the government's resources to help uncover and prove frauds that otherwise may never have been revealed." Mr. Fox, who before joining Kirby McInerney was the founding Bureau Chief of New York's Taxpayer Protection Bureau, devotes his practice to representing whistleblowers in federal and state False Claims Act cases and in IRS, SEC and CFTC whistleblower matters. Kirby McInerney has been one of the most active firms representing whistleblowers in tax cases under the New York False Claims Act, and has achieved groundbreaking settlements.

Kirby McInerney expresses its gratitude to the New York Attorney General's Office for its partnership and for quickly and thoroughly investigating the case and bringing it to this resolution. In particular, it thanks the Taxpayer Protection Bureau and Senior Trial Counsel David Ellenhorn and Assistant Attorney General Josh Dugan for their dedication and exemplary work. The firm also thanks the New York City Law Department, the New York State Department of Taxation and Finance, and the New York City Department of Finance for their contributions to the case.