

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

SUSAN GAFFNEY, in her official capacity  
as Inspector General, U.S. Department of  
Housing and Urban Development,

Petitioner,

v.

THE HAMILTON SECURITIES  
GROUP, INC. and HAMILTON  
SECURITIES ADVISORY  
SERVICES, INC.,

Respondents.

Misc. No. \_\_\_\_\_

FILED UNDER SEAL

MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION TO SEAL PROCEEDINGS

The Inspector General of the United States Department of Housing and Urban Development ("HUD"), by her undersigned attorneys and pursuant to Local Rule 108(a), hereby respectfully submits the following memorandum of points and authorities in support of her motion to seal the proceedings in the above-captioned case:

1. This is a Miscellaneous Action for summary enforcement of administrative subpoenas that have been issued by HUD's Office of Inspector General ("OIG") to The Hamilton Securities Group, Inc. and Hamilton Securities Advisory Services, Inc. (collectively "Hamilton"). Those administrative subpoenas are related to a qui tam complaint, which was filed under seal in this Court in June, 1996. See Civil Action No. 96-1258 (SS). Respondents are among the named defendants in the qui tam complaint. By Court Order entered on or about November 25, 1997, the seal on the

qui tam complaint was lifted for the limited purpose of advising Respondents that they were named as defendants. On or about December 1, 1997, former Assistant United States Attorney Barbara Van Gelder advised Respondents' then-attorneys, Jenner & Block, of the existence of the qui tam complaint.

2. The administrative subpoenas at issue in the instant action are also related to Ervin & Associates, Inc. v. Helen Dunlap, et al., Civil Action No. 96-1253-WBB ( the "Bivens action"), also pending in this Court, in which it is alleged, among other things, that there was corruption and favoritism in the procurement of services associated with HUD's sales of defaulted mortgage notes. Respondents served as HUD's primary contractor in connection with those note sales.

3. In July 1996, the OIG, at the request of the United States Attorney's Office, began an investigation of the allegations in the qui tam complaint, as well as certain of the allegations in the Bivens action. During the nineteen months since the investigation began, the OIG, in coordination with the United States Attorney's Office and other law enforcement entities, has conducted a methodical investigation in an effort to explore the many, complex allegations in both the qui tam complaint and Bivens action, as well as many related allegations that have arisen during the course of the investigation.

4. To further its investigation, the OIG has issued a total of six administrative subpoenas duces tecum to Respondents. Those subpoenas were issued on August 6, 1996, August 22, 1996, and October 24, 1997, respectively. The OIG subsequently agreed to certain modifications of the subpoenas; however, respondents have not fully complied with any of the subpoenas as modified.

5. As a result of Respondents' failure to comply, the OIG has filed herewith a petition pursuant to 5 U.S.C. App. 3 § 6(a)(4), which seeks to compel compliance with the subpoenas.


6. When a subpoena relates to the investigation of allegations included in a sealed qui tam complaint, the disclosure of the nature of the investigation runs the risk of violating the seal. To avoid the risk of an inadvertent violation of the seal on the qui tam complaint in Civil Action No. 96-1258 (SS), prudence dictates that the Inspector General's petition for summary enforcement and related papers herein be filed under seal.

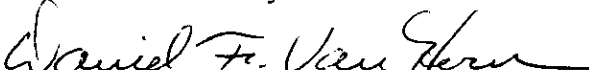
7. In addition, sealing the petition and related papers in this case will help protect Respondents from potentially unfavorable publicity. Recently, Respondents filed a Motion for a Temporary Restraining Order and a Preliminary Injunction in The Hamilton Securities Group, Inc., et al. v. United States Department of Housing and Urban Development, et al., Civil Action No. 98-36 (SS). In part, Respondents' motions sought to enjoin the OIG from improperly leaking information about Respondents and the OIG's investigation. Respondents argued that alleged leaks had damaged Respondents' reputation, and had impaired Respondents' ability to secure new business. The Inspector General vigorously denied those allegations, and maintains that neither she nor her Office has improperly disclosed any confidential information concerning Respondents or the OIG investigation. In view of Respondents' allegations, however, sealing the Inspector General's petition for summary enforcement and related papers herein will further protect Respondents from any adverse inferences that might be drawn based upon any disclosure in Court papers about the nature of the investigation and the history of OIG's attempts to obtain compliance with the subpoenas.

WHEREFORE, for all the foregoing reasons, it is respectfully requested that the Inspector General's motion to seal the proceedings in this case be granted, and that the Court order that all

pleadings, motions and other papers filed in this case be sealed and the contents thereof not be disclosed, except to the parties herein and their agents, pending further order by the Court.

Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Motion to Seal Proceedings, together with the accompanying memorandum of points and authorities and the attached proposed Order, was served on March 3, 1998, by hand delivering copies thereof to the Respondents and to the following counsel:

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