

LAW OFFICES

JENNER & BLOCK

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

601 THIRTEENTH STREET, N.W.
SUITE 1200
WASHINGTON, D.C. 20005

(202) 639-6000
(202) 639-6066 FAX

DIRECT DIAL NUMBER:

202-639-6085

CHICAGO OFFICE
ONE IBM PLAZA
CHICAGO, IL 60611
(312) 222-9350
(312) 527-0484 FAX

MIAMI OFFICE
ONE BISCAYNE TOWER
MIAMI, FL 33131
(305) 530-3535
(305) 530-0008 FAX

LAKE FOREST OFFICE
ONE WESTMINSTER PLACE
LAKE FOREST, IL 60045
(708) 295-9200
(708) 295-7810 FAX

DAVID A. HANDZO

February 5, 1998

BY HAND DELIVERY

Judith Hetherton
Counsel to the Inspector General
U.S. Department of Housing and Urban Development
Office of the Inspector General
451 7th Street, S.W.
Washington, D.C. 20410-4500

Re: Hamilton Securities Advisory Services, Inc. and The Hamilton Securities Group, Inc.

Dear Judy:

On Monday I received from David Frulla of Brand, Lowell & Ryan a letter authored by you on January 30, 1998. I have not yet received a copy of this letter from your office. I also have several prior missives from you to which this letter will respond.

As you have heard from Mr. Frulla, Jenner & Block withdrew from its representation of Hamilton on January 29, 1998. Your statement that Jenner & Block remains as Hamilton's "business counsel" is incorrect. Jenner & Block no longer represents Hamilton in any matter. We do not contemplate representing Hamilton in any matter in the future. If requested, however, we may choose to represent certain individuals formerly employed by Hamilton (not including Ms. Fitts, who is represented by Brand, Lowell & Ryan).

The decision to withdraw was made by Les Lepow and me, not by Hamilton. Our decision was based solely on the fact that for the past several months Hamilton has been unable to pay our fees -- due in large part to HUD's baseless withholding of Hamilton funds -- and has no reasonable prospect of paying our fees in the future. The suggestion that Hamilton

Judith Hetherington
February 5, 1998
Page 2

choreographed Jenner & Block's withdrawal in order to allow Brand, Lowell & Ryan to disavow agreements made by me is specious.

With respect to the documents subject to the Inspector General subpoenas, as you know, over one hundred boxes of paper documents were produced to you at Jenner & Block's offices in November and December of 1997. Those documents remain at Jenner & Block. We will retain them until instructed otherwise by Hamilton. In the event that Hamilton asks us to transfer the documents elsewhere, we will provide advance notice to your office. Jenner & Block also has possession of a series of full and differential back-up tapes for Hamilton's computer systems ranging in dates from March 7, 1996 to October 25, 1997. We will likewise retain these computer tapes in our offices unless and until instructed otherwise by Hamilton, and we will give you advance notice if the tapes are to be removed from Jenner's offices. The only other potentially responsive documents of which I am aware are Hamilton's financial records. Those records, including the old records which have been retrieved from Hamilton's storage facility, are located at Hamilton's DuPont Circle office.

You have asked about the status of Mr. McMahan. As you observed, Mr. McMahan was a consultant, first to Morrison & Foerster, and then to Jenner & Block, with respect to the production of documents in response to the IG subpoenas. Inasmuch as Jenner & Block no longer represents Hamilton, Mr. McMahan will no longer be providing these consulting services to Jenner & Block. Obviously, Mr. McMahan is free to consult for Brand, Lowell & Ryan or for Hamilton, but I am unaware that he has any plans to do so.

In your recent letters, you have made a number of statements concerning Hamilton's compliance with the IG subpoenas with which I cannot agree. Without attempting to be exhaustive, what follows is my understanding of the status of the document production.

Compliance with the August 1996 subpoenas:

On December 22, 1997, Hamilton supplied a certification by C. Austin Fitts regarding the completion of Hamilton's response to the August subpoenas. As far as I am concerned, Hamilton's response to those subpoenas is complete. I will, however, attempt to address some of the questions you have raised concerning the production.

First, you asked whether Hamilton searched for e-mail communications with all Single Family bidders between October 25, 1995 through November 10, 1996, or only for communications with the successful bidders. Originally, pursuant to an agreement with you made in October of 1996, Hamilton only searched for e-mail with successful bidders. More recently, at your request, Hamilton supplemented that search and looked for e-mail with unsuccessful bidders as well. No e-mail to or from unsuccessful bidders was found. Please note that Hamilton was

unable to locate a bidder called "R&R Homes," which appears to have moved or gone out of business. Hamilton therefore was unable to search for e-mail with this company because it could not determine what e-mail address was used by this company.

Second, I had previously indicated to you that no documents were withheld on privilege grounds in connection with the August subpoenas. In your letter of December 22, 1997, you claim that you "find this difficult to believe." Whether you believe it or not, it is a fact. For the most part, the subpoenas called for communications between Hamilton and non-Hamiltonians such as HUD officials and mortgage sale bidders, or for contract documents. Such documents by definition could not be privileged.

Third, you complain in your letter of December 22, 1997, that "responsive records have been withheld from production to us . . . and other records had been substituted in their place." You are incorrect. In Hamilton's early document production, the initial screening for responsive documents was performed by lower-level employees who were told to err on the side of over-inclusiveness. After a first cut by the lower-level employees, more senior employees in consultation with Hamilton's lawyers reviewed the documents and removed those which were in fact non-responsive. In some cases, the documents had already been bates-labeled prior to the second review. Consequently, when the non-responsive documents were removed, a gap in the bates range was created, and that gap was often filled with other responsive documents (usually with a bates-number written in by hand). Thus, only non-responsive documents were removed.

Fourth, as indicated in the certification letter, Hamilton did not complete the search of its word processing computer files, because those files appeared to be duplicative of the e-mail and paper files that were searched and because the search was unreasonably time-consuming, burdensome and expensive. You indicated in your December 22 letter that Hamilton did not produce any records from its word processing files. That is incorrect. To the extent that those files were reviewed and responsive documents were found, the documents were produced even though they were duplicative. Although I continue to think that any further search of the word processing files is a waste of time, I also note that resolution of the back-up tape issue (discussed below) will also resolve this issue. Hamilton's back-up tapes represent copies of Hamilton's entire computer system -- word processing files as well as e-mail. And since back-up tapes for August of 1996 were preserved by Hamilton, any agreement that might be reached to produce those tapes necessarily will resolve any concerns you may have about Hamilton's search of its word processing files.

Fifth, in your letter of December 22, 1997, you list a handful of documents (representing 26 pages out of more than 27,000 pages produced) which are missing, incomplete, or blank. I have already responded on this issue in my letter of November 26, 1997. I can only repeat that the six blank pages probably represent dividers placed between files of documents

Judith Hetherington
February 5, 1998
Page 4

which, although blank, were nevertheless bates-labeled by the support staff. Documents which are incomplete are likewise incomplete in my files. Additionally, it appears that the four pages of documents you list as "missing" -- bates numbers 0014478 through 0014481 -- do not exist. The review process that I described in the foregoing paragraph apparently created a gap in the bates range, and therefore there are no documents bearing those bates numbers.

Sixth, you asked about documents produced to HUD by Hamilton as part of the termination inventory in October, 1997. Obviously, since the documents were produced to HUD, the information you seek is available from HUD. Nevertheless, I have attached to this letter the correspondence with HUD that relates to the termination inventory. You will see, as I informed you on November 26, 1997, that most of the material was produced in an electronic form, which renders meaningless any discussion of whether the documents were originals or copies.

Seventh, you have questioned the adequacy of Hamilton's searches of the home computers used by its employees. A Hamilton employee, Tristen Lee, was instructed to conduct that search. Mr. Lee has since left Hamilton's employ. Hamilton has absolutely no reason to think that Mr. Lee accomplished this task in anything other than his customarily thorough and competent manner. Hamilton perceives no reason why it should track down Mr. Lee in order to satisfy your vague and entirely unsupported suspicion that Mr. Lee could have been derelict in carrying out Hamilton's orders.

Compliance with the October 1997 subpoenas.

With respect to paper documents, Hamilton has produced to you 101 boxes of paper documents, which your representatives have reviewed at Jenner's offices. Recently, Hamilton discovered another box of documents, which you may review at my office at your convenience. As I have previously told you, these boxes represent all of the paper files generated in connection with Hamilton's work for HUD, with the exception of financial records. In your letter of December 22, 1997, you indicate that you believe the paper production is incomplete. That is incorrect. Apparently, you based your statement on the supposition that there are certain Hamilton employees from whom you expected to see more paper files. But as you noted earlier in the very same letter, Hamilton prided itself on being a paperless office. It is not surprising to anyone familiar with Hamilton's operations that, for some employees, there might exist few or no paper files. In any event, Hamilton has produced all that there is. Similarly, you referred in your December 22 letter to the fact that Hamilton did not produce to you all of the boxes of paper obtained from Hamilton's offices or retrieved from off-site storage. You seem to think that the boxes withheld from production contain responsive documents. They do not. The boxes pulled from production were pulled because they contained non-responsive documents.

Judith Hetheron
February 5, 1998
Page 5

In short, production of the paper files is complete. The only outstanding issues with respect to these files, from my perspective, are the production of a privilege index and the copying of the computer disks that were included with the paper files. As to the privilege index, although no documents were withheld from production on privilege grounds in response to the August 1996 subpoenas, a handful of documents were withheld from the paper production in response to the October 1997 subpoena. It is my intention to create an index for those documents. As to the computer disks, I had hoped to have them copied by Hamilton personnel, but events overtook us and Hamilton succumbed before we got the disks copied. I will attempt to find another way to copy the disks. I note, however, that the disks remain at Jenner & Block, and if personnel from your office wish to view the disks here, you are welcome to bring a laptop and we will provide a workspace.

With respect to financial records, you and I agreed at some point in the past that a representative of your office, Jim Martin, should meet with Hamilton's former chief financial officer, Brian Dietz, to work out an agreement for the production of those documents. It is my understanding that Mr. Dietz and Mr. Martin agreed that Hamilton would make available the financial records relevant to any incurred-cost audit. Mr. Dietz requested that a previously-scheduled audit of Hamilton's incurred costs by DCAA be allowed to go forward, but was informed that the IG's office was delaying that audit. Mr. Dietz and Mr. Martin were unable to work out any agreement with respect to other categories of documents. To the extent that an agreement was reached, the financial records remain available at Hamilton.

With respect to electronic files, Hamilton simply has not been able to conduct a search for reasons which I have explained to you on multiple occasions. To comply with the October subpoenas, Hamilton would have to create several computer databases before it could even begin to search. Because the subpoenas were served shortly after HUD terminated Hamilton's contract and withheld its final payments, Hamilton did not and does not have the resources to accomplish this task. You and I appear to have been talking past each other on this issue, since you continue to demand that Hamilton produce all documents responsive to the subpoenas and I keep trying to explain that Hamilton no longer possesses the ability to conduct the wide-ranging search of its computer systems that the October subpoenas would require. A resolution of the dispute over the back-up tapes would resolve this issue as well, however, since back-up tapes duplicating Hamilton's computer system exist for dates shortly before the October subpoenas were served. If some agreement is reached by which you are given access to the back-up tapes, you will be able to search Hamilton's computer system as it existed on the date the subpoenas were served.

Finally, with respect to the back-up tapes, unfortunately we have never reached any agreement. Since September of 1996, Hamilton has repeatedly advised you that a search of the tapes would be prohibitively expensive, time consuming and, ultimately, non-productive. The

Judith Hetherton
February 5, 1998
Page 6

issue was allowed to drift, unresolved, for fourteen months. Suddenly, in late October of 1997, after HUD had terminated Hamilton's contract and withheld the final contract payments, you began to insist that the back-up tapes be produced. At that point, due to HUD's actions, Hamilton did not have the resources to search the tapes. You requested that Hamilton simply turn over the tapes so that the IG's office could search them. Hamilton agreed to do so, provided (a) that a neutral third party removed from the tapes, at the IG's expense, all attorney-client communications, and (b) that a neutral third party removed from the tapes, at the IG's expense, all non-HUD related communications. You did not agree to the second condition, and agreed to the first condition only in part, asserting that the attorney client privilege belongs to HUD for any communications between Hamilton and Hamilton's attorneys that relate to Hamilton's work for HUD. Since I no longer represent Hamilton, I can no longer respond on its behalf to your theory that certain communications between Hamilton and its lawyers are not privileged vis-a-vis HUD. Personally, however, your theory strikes me as laughable. In any event, I have never responded to your request that I create a list of the persons having attorney-client communications with Hamilton because, absent any resolution of our dispute over the back-up tapes, that step seemed premature. As to your request that we provide technical information, as you know, the person most knowledgeable about Hamilton's computer systems is Mr. Tristen Lee, who left Hamilton's employ some months ago. Mr. Lee's last known address is P.O. Box 747, Boulder, Colorado, 80306. Beyond that, I can only say that Hamilton's primary e-mail system was cc:Mail, which I understand is the same system used by HUD, so I presume that your office should easily be able to figure out how to search that system in the event that the back-up tape issue is resolved.

In closing, I cannot let pass without comment your irresponsible and unsubstantiated allegations about the "security and integrity" of Hamilton's document production. In your letter of January 29, 1998, for example, you note Hamilton was considering moving the back-up tapes "off-site," and you profess alarm at this prospect. The off-site location is Jenner & Block. I do not understand why you think there is anything untoward in Hamilton's attorneys having possession of responsive documents. Similarly, I do not understand why you think the possibility that Hamilton might seek protection from its creditors in bankruptcy court somehow threatens the integrity of its document production. More disturbing, however, is your hypothesis that Hamilton plans to "secrete" documents responsive to the OIG subpoenas. This is rubbish.

Judith Hetheron
February 5, 1998
Page 7

Hamilton has preserved and will, I am sure, continue to preserve responsive documents. And on a personal note, although I will no longer be involved in this matter, I would appreciate it if you would abstain from the rather unprofessional habit of raising baseless questions about the integrity of the personnel involved in Hamilton's document production.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Handzo', with a long, sweeping horizontal line extending to the right.

David A. Handzo

cc: C. Austin Fitts
Brian Dietz
Kevin McMahan
Leslie H. Lepow
David E. Frulla
Richard Chapman
Daniel Van Horn