



U.S. Department of Justice

Civil Division

Commercial Litigation Branch

David J. Gouesman

P.O. Box 875 Ben Franklin Station
Washington, D.C. 20044-0875

Tel: (202) 307-0183
Fax: (202) 307-0494

March 6, 1998

BY FAX (202/737-7565)

Mr. David E. Frulla
Brand, Lowell & Ryan
923 15th Street NW
Washington, DC 20005

Re: Hamilton Securities v. HUD

Dear David:

This is to remind your clients, Hamilton Securities Group, Inc. and Hamilton Securities Advisory Services, Inc. (collectively, "Hamilton"), their officers and other representatives of the effect of the Federal Priority Statute, 31 U.S.C. § 3713, and other applicable laws with regard to the disposition of Hamilton's assets and funds. We have learned that Hamilton plans to sell various of its assets at an auction on March 10, 1998. The laws to which we refer in this letter might have particular impact on the disposition of proceeds from the sale of such property.

We have directed this letter to you on the assumption that you represent Hamilton with regard to the subject matter discussed herein. If that is not so, please inform us and pass this letter along to Hamilton and any counsel who represents it with regard to this matter.

1. The Government's Claim

By prior correspondence, the United States Department of Housing and Urban Development ("HUD") demanded that Hamilton pay HUD \$3,883,551.00, based upon certain failures by Hamilton to perform properly under contracts involving the sale of HUD-held mortgages. While this figure was based upon admissions and information supplied by Hamilton, independent analysis by HUD might result in demands for additional amounts. HUD has withheld payment of \$1,505,256 claimed by Hamilton as contract payments, pending possible recoupment or setoff by HUD.

After netting the above figures, Hamilton still owes HUD at least \$2,378,295.

2. The Federal Priority Statute

The Federal Priority Statute, 31 U.S.C. § 3713, provides in pertinent part:

"Priority of Government claims

(a) (1) A claim of the United States Government shall be paid first when—

(A) a person indebted to the Government is insolvent and—

(i) the debtor without enough property to pay all debts makes a voluntary assignment of property;

(ii) property of the debtor, if absent, is attached; or

(iii) an act of bankruptcy is committed;

* * *

(b) A representative of a person or an estate (except a trustee acting under title 11) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government."

Thus, for example, if any representative of Hamilton uses proceeds from the upcoming auction to pay debts other than those permitted to be paid under this statute before satisfying the Government's claim, such representative might be personally liable to the Government for the amount of the payment.

3. Other Laws

Other laws also might restrict Hamilton's ability to dispose of assets or monies prior to complete satisfaction of the debt to the Government. We do not undertake to list all possible laws that might apply, but please pay particular attention to laws concerning fraudulent conveyances, such as those found in the Federal Debt Collection Procedures Act, 28 U.S.C. § 3301 et seq.

If you have any questions, please do not hesitate to call us.

Very truly yours,



DAVID J. GOTTESMAN

Trial Attorney

Commercial Litigation Branch
Civil Division