

COPY

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HAMILTON SECURITIES ADVISORY SERVICES, INC.,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 98-169 C

(Judge Horn)

DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

To: Mr. Claude P. Goddard, Jr.
Kilcullen, Wilson and Kilcullen, Chtd.
1800 K Street, N.W.
Suite 300
Washington, D.C. 20006

Defendant, the United States, pursuant to Rule 34 of the Rules of the United States Court of Federal Claims ("RUSCFC"), hereby requests that Plaintiff produce, for inspection and copying, the documents called for by this request within 30 days from the date of service hereof, at the offices of: Mr. David J. Gottesman, U.S. Department of Justice, Civil Division, 1100 L Street, N.W., Room 10012, Washington, D.C. 20005.

DEFINITIONS AND INSTRUCTIONS

1. The term "HUD" shall mean and refer to the United States Department of Housing and Urban Development and any of its components.

2. The term "you" or "Hamilton" shall mean and refer to Plaintiff Hamilton Securities Advisory Services, Inc. and/or Hamilton Securities Group, and their respective officers, directors, employees, agents, attorneys, and anyone acting on their behalf.

3. The term "Hamilton's 12/20/96 Report" shall mean that certain document dated 12/20/96, entitled "Report on Optimization," from Hamilton Securities to Nic Retsinas and Kathy Rock.

4. The term "Lucent" shall mean the entity referred to by Hamilton as "Lucent/Bell Labs" in Hamilton's "Report on Optimization" dated December 20, 1996.

5. The term "Contract 18161" shall mean and refer to contract number DU100C000018161 between Hamilton and HUD, including any amendments thereto and task orders thereunder.

6. The term "Contract 18505" shall mean and refer to contract number DU100C000018505 between Hamilton and HUD, including any amendments thereto and task orders thereunder.

7. The term "Multifamily Mortgage Sales" shall mean and refer to any and all sales of HUD-held multifamily mortgages as to which Hamilton performed any services for HUD in connection with Contract 18161 or Contract 18505.

8. The term "National Performing Sale" shall mean the National Performing MF Sale, to which Hamilton's 12/20/96 Report (page 2, par. 3) refers.

9. The term "WOM Sale" shall mean the West of Mississippi MF Sale, to which Hamilton's 12/20/96 Report (page 2, par. 4) refers.

10. The term "NOC Sale" shall mean the North and Central Sale, to which Hamilton's 12/20/96 Report (page 4, par. 17) refers.

11. As used herein, one thing shall "relate" or be "related" to another if, and only if, the former constitutes, contains, embodies, evidences, reflects, identifies, states, refers to, or is legally, logically or factually relevant to or connected with the latter.

12. The term "documents", as used herein, shall mean, refer to and include all written, recorded, graphic or data-stored matters whatsoever, which are in your possession, custody and control or that of your attorneys, accountants or agents. This term includes all such materials, however produced, reproduced, stored or transcribed, whether draft, revision or final, and also all tangibles or intangibles from which written, recorded or graphic matters may be generated, produced or transcribed. This term includes, but is not limited to:

all advertisements, affidavits, agreements, announcements, appointment books and records, assignments, bank records, bills, books, books of account, brochures, bulletins, cablegrams, calendars, catalogs, certificates, charts, checks (front and back), communications, compilations, computer data or files (whether on tape, disk, hard drive,

or any other means of data storage), computer printouts, contracts, correspondence, deposit slips, delivery records, diaries, drafts, drawings, e-mail messages, estimates, faxes, files and file labels, financial statements or reports or analyses or compilations, forms, intraoffice or interoffice communications, instructions, invoices, itemizations, jottings, journals, ledgers, letters, licenses, lists, manuals, memoranda, messages, microfilm, microfiche, minutes, notes, notations, notices, pamphlets, papers, permits, photographs or depictions, plans, proofs, publications, receipts, recordings (whether written, visual, sound or otherwise), records, reports, sketches, statements, studies, summaries, tapes or disc recordings, telegrams, telex messages, texts, transcripts, videotapes, wire transfer orders or receipts, writings and work papers.

This term includes the original document (or a copy thereof if the original is not available to you) and any copies which differ in any way from the original or from each other, by reason of additional writing, notations, underlining or otherwise.

Electronically or machine-stored data is to be produced in a legible and readable form.

13. Whenever appropriate herein, the singular form of a word shall be interpreted as the plural, and the plural interpreted as the singular.

14. "And" as well as "or" shall be construed in either the disjunctive or conjunctive form as necessary to bring within the scope of the request any information which may otherwise be construed to be outside its scope.

15. The term "communication" or "communications", as used herein, shall mean and refer to and include any transmission of words or thoughts by a person or between or among two or more persons, including but not limited to spoken words, discussions, conferences, conversations, negotiations, agreements,

understandings, interviews, inquiries, promises, correspondence, statements, whether oral or written, and whether transmitted in person or by electronic or other means, including but not limited to radio, telephonic, fax, e-mail or other means.

16. For each document, or portion thereof, that you seek to withhold on the basis of privilege or work product protection, provide a written response identifying the document (omitting only such information necessary to protect the privilege), identify each person to whom the contents of the document has been disclosed, and state the basis of the privilege or protection that covers the document.

17. Pursuant to RUSCFC 34(b), you are requested to segregate documents produced in response hereto according to the paragraph or subparagraph to which they are responsive, or to produce them as they are kept in the ordinary course of business. You are also requested to identify in writing paragraphs or subparagraphs as to which no documents are produced.

DOCUMENTS TO BE PRODUCED

1. All documents related to or evidencing any instructions by Hamilton to Lucent with regard to the use of "floors" in connection with running the "optimization model" for the National Performing Sale, the WOM Sale, or the NOC Sale.

2. All other documents related to or evidencing any communications by or between Hamilton or Lucent with regard to

the use of "floors" in connection with running the "optimization model" for the National Performing Sale, the WOM Sale, or the NOC Sale.

3. All documents related to or evidencing how the optimization model was expected to be run, or the results or purpose that it was intended to accomplish, in connection with any Multifamily Mortgage Sales.

4. All documents related to or evidencing the results of running any optimization model to analyze bids in connection with the National Performing Sale, the WOM Sale, or the NOC Sale.

5. All documents related to or evidencing any discrepancies between the way that "floors" or other criteria were used or applied by Lucent in running the optimization model and the way that "floors" or other criteria were described in instructions to bidders or stated in the bids submitted by bidders, in connection with the National Performing Sale, the WOM Sale, or the NOC Sale. Note: The "discrepancies" to which this paragraph refers include but are not limited to the "discrepancy" referred to in paragraphs 6 and 20 of Hamilton's 12/20/96 Report.

6. All other documents related to or evidencing any discrepancies or errors of which Hamilton is aware in connection with the running of any optimization model in any Multifamily

Mortgage Sales. Note: The "discrepancies" to which this paragraph refers include but are not limited to the "discrepancy" referred to in paragraphs 6 and 20 of Hamilton's 12/20/96 Report.

7. All documents related to or evidencing any communications by Hamilton or anyone else with regard to whether Hamilton breached Contract 18161 or Contract 18505, or otherwise acted contrary to the requirements of those contracts.

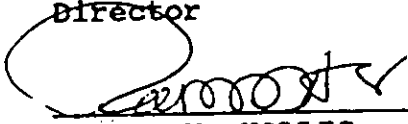
8. All documents related to or evidencing any analysis or communications concerning the effect that any discrepancies or errors in running the optimization model had on revenues to HUD in connection with the National Performing Sale, the WOM Sale, or the NOC Sale. Note: The "discrepancies" to which this paragraph refers include but are not limited to the "discrepancy" referred to in paragraphs 6 and 20 of Hamilton's 12/20/96 Report.

9. All other documents related to or evidencing the errors or discrepancies in the running of the optimization model, as described in Hamilton's 12/20/96 Report.

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

DAVID M. COHEN
Director



ROBERT M. HOLLIS
Assistant Director

(CONTINUATION OF SIGNATURES; DEFENDANT'S FIRST REQUEST FOR PRODUCTION)



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Attorneys for Defendant

Dated: March 30, 1998

OF COUNSEL:

U.S. Department of Housing
and Urban Development
Office of General Counsel
451 7th Street, SW
Washington, D.C. 20410

CERTIFICATE OF SERVICE

I declare, under penalty of perjury, that on the 30th
day of March, 1998, a copy of the foregoing DEFENDANT'S FIRST
REQUEST FOR PRODUCTION was served upon:

Mr. Claude P. Goddard, Jr.
Kilcullen, Wilson and Kilcullen, Chtd.
1800 K Street, N.W.
Suite 300
Washington, D.C. 20006

by sending the same by messenger.

