

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
C. AUSTIN FITTS,)	
)	
Movant,)	
)	
v.)	Misc. No. 98-347 (SS)
)	
THE UNITED STATES)	
DEPARTMENT OF HOUSING)	
AND URBAN DEVELOPMENT)	
)	
Respondent.)	
_____)	

NOTICE OF FILING
PURSUANT TO THE SUPPLEMENT TO LOCAL RULES CH. II(I)(2)

Respondent, the Office of Inspector General ("OIG") of the United States Department of Housing and Urban Development ("HUD"), pursuant to the Supplement to Local Rules Chapter II(I)(2), has on this date filed *in camera* its Memorandum of Points and Authorities in Opposition to C. Austin Fitts' Motion for Order Pursuant to Customer Challenge Provision of the Right to Financial Privacy Act of 1978 ("Opposition"), with an accompanying Declaration.

Section 1110(b) of the Right to Financial Privacy Act of 1978, 12 U.S.C. § 3410(b), in part states that the Government's response to a customer challenge "may be filed *in camera* if the Government includes in its response the reasons which make *in camera* review appropriate." *In camera* review is appropriate in this case because filing this matter *in camera* will prevent disclosure of the details and strategy of an ongoing criminal

investigation to the subjects of the investigation, and preserve the seal on a related *qui tam* complaint.

In connection with the ongoing investigation, OIG issued a subpoena *duces tecum* to Morgan Guaranty Trust Company of New York for financial records associated with Morgan Guaranty Trust Company account number 001-36-184. The subpoena was issued on July 13, 1998, but was not forwarded to Morgan Guaranty Trust Company until July 15, 1998. Movant has filed the instant customer challenge with respect to the July 13, 1998 subpoena.

The criminal investigation with respect to which the challenged subpoena was issued is related to a *qui tam* complaint, which was filed under seal in the United States District Court for the District of Columbia, Case No. 1:96-CV-1258(SS), in June of 1996. The *qui tam* complaint is pending before this Court. Two of Movant's businesses, The Hamilton Securities Group, Inc., and Hamilton Securities Advisory Services, Inc. (collectively "Hamilton"), are among the named defendants in the *qui tam* complaint. By this Court's order on or about November 25, 1997, the seal on the *qui tam* complaint was lifted in part for the limited purpose of advising Hamilton that they are named as defendants. The details of the *qui tam* complaint were not revealed to Hamilton or Movant.


The Government's Opposition and Declaration contain details concerning both the Government's investigative strategy in this matter and the allegations in the *qui tam* complaint. Accordingly, in order to safeguard the confidentiality of the criminal


investigation and preserve the seal on the *qui tam* complaint, the Government has filed the Opposition and Declaration *in camera*.

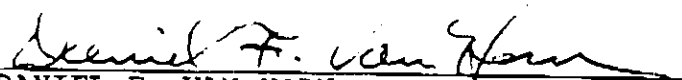
The Government has also provided the attached letter notice to the Movant in connection with a claim raised by Movant's counsel at a hearing before the Court in the related case of C. Austin Fitts v. United States Department of Housing and Urban Development, Misc. No. 98-262 (SS), on September 25, 1998.

A proposed Order denying Movant's customer challenge in this case is also attached hereto.

Respectfully submitted,


 WILMA A. LEWIS, D.C. Bar #358637
 United States Attorney


 MARK E. NAGLE, D.C. Bar #416364
 Assistant United States Attorney


 DANIEL F. VAN HORN, D.C. Bar #924092
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Movant,

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THE UNITED STATES
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Misc. No. 98-347 (SS)

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U. S. Department of Housing and Urban Development

Office of Inspector General

451 7th St., S.W.

Washington, D.C. 20410

September 30, 1998

VIA FACSIMILE (202-842-8465);
CONFIRMATION BY FIRST CLASS MAIL

Michael J. McManus, Esq.
Drinker, Biddle & Reath
901 - 15th Street, N.W., Suite 900
Washington, D.C. 20005-2333

Re: Fitts v. HUD, Misc. No. 98-262 (SS)
Fitts v. HUD, Misc. No. 98-347 (SS)

Dear Mike:

This responds to your letter dated September 29, 1998, faxed to Mr. Van Horn and myself this morning, concerning the adequacy of the notice of the nature of the law enforcement inquiry provided to your client, C. Austin Fitts, in connection with the subpoenas for certain of her personal financial records issued to Citibank, N.A., and Morgan Guaranty Trust Company. These subpoenas are the subject of the above customer challenges under the Right to Financial Privacy Act ("RFPA"), 12 U.S.C. §§ 3401 et seq., pending before Judge Stanley Sporkin.

At the hearing in Misc. No. 98-262 on September 25, 1998, you raised a question as to the adequacy of the notice of the nature of the law enforcement inquiry provided to Ms. Fitts, pursuant to 12 U.S.C. § 3405(2), in connection with the customer notices provided to her with respect to these subpoenas. While we do not agree that as a matter of law the notice provided was inadequate, we nevertheless advised the Court that we would provide additional information. We did so by our letter of September 28, 1998.

Your letter of September 29, 1998, indicates that you do not consider our reference to the detailed description of the inquiry contained in the government's Memorandum in Support of its Petition for Summary Enforcement (pages 2-6), and the accompanying Declaration of James M. Martin (paragraphs 3-9), filed in Misc. No. 98-92 on March 3, 1998, to be sufficient, since that description was not provided to you in connection with these particular subpoenas for certain of Ms. Fitts' personal financial records.

Accordingly, we hereby provide you with the following notice as to the nature of the law enforcement inquiry to which the subpoenas for Ms. Fitts' financial records are related:

1. On June 5, 1996, Ervin and Associates filed a 253-page civil complaint against the United States, HUD, the Secretary of HUD, the Small Business Administration ("SBA"), the SBA Administrator, and Helen Dunlap, the former Deputy Assistant Secretary for Operations within HUD's Office of Housing-Federal Housing Administration, in U.S. District Court for the District of Columbia, Ervin and Associates, Inc. v. Helen Dunlap, U.S. Department of Housing and Urban Development, et al., Civil Action No. 1:96-CV-1253 ("Bivens Complaint"), alleging corruption and favoritism in the procurement of services associated with HUD's sale of defaulted mortgage notes. Ms. Dunlap was sued in her individual capacity. The complaint also alleged that HUD, through Ms. Dunlap and its financial advisor, The Hamilton Securities Group, Inc., and Hamilton Securities Advisory Services, Inc., (both collectively, "Hamilton"), used Hamilton's control over the note sales process to embark on a complex scheme to deliver huge blocks of discounted multifamily and single family HUD-owned notes to prominent Wall Street firms.
2. Specifically, it was alleged that Dunlap had "usurped control and exercised unlawful influence over HUD's contract procurement process to confer huge procurements on her favored, hand-picked contractors and personal friends and companions, and to prevent Ervin from winning new contracts or hav[ing] its existing contracts renewed or extended." Bivens Complaint, ¶ 12 (emphasis in original).
3. Among other things, the Bivens complaint alleged that the first financial advisor contract awarded to Hamilton in September 1993 was enormously and illegally expanded, from \$5 million dollars to \$19 million, through non-competitive modifications, thereby depriving other contractors of the opportunity to compete fairly for the work. The complaint further alleged that the supposed competitive process by which the second financial advisor contract was awarded to Hamilton and three other financial advisors in 1996 was phony. Complaint, ¶¶ 191, 194, 210-221, 278-280, 513. Further, it alleged that the award of a lucrative "crosscutting task order" to Hamilton under the second financial advisor contract (which was ultimately worth \$20 million), was rigged for Hamilton by Dunlap, for the specific purpose of ensuring that Hamilton maintained control over all of the other financial advisors and the note sales process. Complaint, ¶¶ 13, 171-174, 190, 543-545.

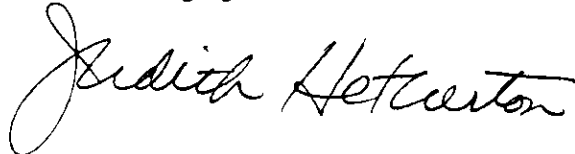
4. The Bivens complaint also alleged that HUD, through Hamilton and Dunlap, used Hamilton's control over the note sales process to embark on a complex scheme to deliver huge blocks of discounted multifamily and single family HUD-owned notes to a "tag team" of two prominent Wall Street firms, Goldman, Sachs & Co. and BlackRock Capital Finance L.P., with inside knowledge over the note sale process and connections with the Democratic Administration. It was alleged that this was accomplished through disclosure of material, inside information to select bidders, and provision of disinformation to other bidders. Complaint, ¶¶ 50-63, 148, 464, 469, 493-494, 499-500.
5. The Bivens complaint alleged other irregularities in the award of a due diligence contract ultimately worth \$30 million to a minority firm, Williams Adley & Company, who was allegedly forced subsequently to sub-contract with Hamilton for \$5 million worth of financial advisory services. Complaint, ¶¶ 33, 36-41, 111-114, 181-182, 188, 239-241, 250-265, 313-326, 512. The complaint also alleged that numerous other awards of HUD contracts had been affected by favoritism, discrimination, and political influence. The Bivens complaint further alleged that Dunlap and other HUD employees were using Hamilton and other contractors to perform personal services--acting as their personal staffs, as legislative liaison, and conducting negotiations with the Office of Management and Budget--and were using contractors to engage in lobbying, all in violation of the Federal Acquisition Regulation. Complaint, ¶¶ 104, 169.
6. On June 6, 1996, a qui tam complaint pursuant to 31 U.S.C. §§ 3729 et seq. was filed under seal in United States District Court for the District of Columbia, Civil Action No. 1:96-CV-1258 ("qui tam action"). The Hamilton Securities Group, Inc., and Hamilton Securities Advisory Services, Inc., were among the named defendants in the qui tam action. Hamilton has been apprised of the existence of the qui tam action, but has not been advised of the nature of the allegations or of any other information concerning the qui tam, which remains under seal.
7. During the first week of July 1996, the Civil Division of the United States Attorney's Office contacted the HUD OIG, advised OIG of the existence of the qui tam action, and requested the OIG's assistance in investigating the allegations in the qui tam action. Thereafter, the OIG commenced an investigation of the allegations contained in both the Bivens Complaint and the qui tam action.

Michael J. McManus, Esq.
September 30, 1998
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8. In August 1996, shortly after the OIG investigation began, the Civil Division of the United States Attorney's Office sought the involvement of the Criminal Division of that Office in the investigation. Since that time, the OIG has been conducting its investigation in consultation with both of those divisions.
9. In the 26 months since the investigation began, the OIG, in coordination with the U.S. Attorney's Office and other law enforcement agencies, has conducted an extensive investigation in an effort to explore methodically the many, complex allegations in both the Bivens Complaint and the qui tam action, as well as many related allegations that have arisen in the course of the investigation, including potential conflicts of interest on the part of Hamilton. These allegations concern the actions not only of Hamilton and HUD employees, but of numerous other entities and individuals. The investigation is aimed at finding the truth in these matters, thereby either refuting the allegations and putting them to rest, or developing evidence for potential administrative, civil, and/or criminal actions and remedies the United States might pursue.

This is the same information that is contained in the government's Memorandum in Support of its Petition for Summary Enforcement (pages 2-6), and the accompanying Declaration of James M. Martin (paragraphs 3-9), filed in Misc. No. 98-92 on March 3, 1998.

Sincerely yours,



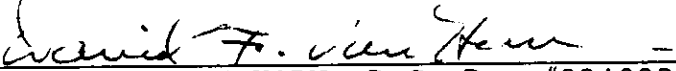
Judith Hetherton
Counsel to the Inspector General

cc: VIA FACSIMILE:
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Daniel F. Van Horn, Esq.
Assistant United States Attorney
Civil Division
United States Attorney's Office
555 4th Street, N.W.
Washington, D.C. 20001

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Filing Pursuant to the Supplement to Local Rules Ch. II(I)(2), together with the attached proposed Order was served on October 1, 1998, by mailing a copy thereof, first-class postage prepaid, to Movant's counsel at the following address:

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