

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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|--|---|----------------------|
| SUSAN GAFFNEY, in her official<br>capacity as Inspector General,<br>U.S. Department of Housing<br>and Urban Development, | : |                      |
|  | : |                      |
| Petitioner,  | : |                      |
|  | : |                      |
| v.   | : | Misc. No. 98-92 (SS) |
|  | : |                      |
| THE HAMILTON SECURITIES<br>GROUP, INC., and HAMILTON<br>SECURITIES ADVISORY<br>SERVICES, INC.,                           | : |                      |
|  | : |                      |
| Respondents.   | : |                      |

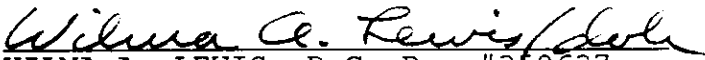
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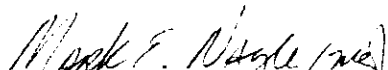
PETITIONER'S MOTION TO STRIKE  
RESPONDENTS' MOTION TO QUASH SUBPOENAE OR,  
IN THE ALTERNATIVE, MOTION FOR A PROTECTIVE ORDER

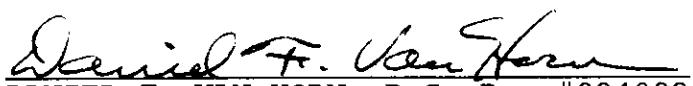
Petitioner, Susan Gaffney in her official capacity as  
Inspector General, U.S. Department of Housing and Urban  
Development, hereby moves this Court, pursuant to Rule 12(f) of  
the Federal Rules of Civil Procedure, to strike from the record  
in this matter Respondents' Motion to Quash Subpoenae or, in the  
Alternative, Motion for a Protective Order. The reasons for this  
motion are fully set forth in the accompanying Memorandum of

Points and Authorities. A proposed Order is also submitted  
herewith.

Respectfully submitted,

  
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United States Attorney

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

  
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(202) 708-1613

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| THE HAMILTON SECURITIES<br>GROUP, INC., and HAMILTON<br>SECURITIES ADVISORY<br>SERVICES, INC.,                           | : |                      |
|  | : |                      |
| Respondents.   | : |                      |

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
PETITIONER'S MOTION TO STRIKE  
RESPONDENTS' MOTION TO QUASH SUBPOENAE OR,  
IN THE ALTERNATIVE, MOTION FOR A PROTECTIVE ORDER<sup>1</sup>

This matter concerns a Petition for Summary Enforcement of Subpoenas Issued Pursuant to the Inspector General Act, 5 U.S.C. App. 3 § 6(a)(4), filed on March 3, 1998, by the Inspector General of the United States Department of Housing and Urban Development (HUD). The matter has been fully briefed by the parties. Further, the matter was argued before the Court at a hearing on December 3, 1998, at which Special Master Laurence

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<sup>1</sup> This memorandum also incorporates petitioner's opposition to respondents' motion to quash, pursuant to Local Rule 108(b), should the Court ultimately decide to entertain respondents' motion.

Storch, appointed by the Court, was present. At that time, the Court worked out with the parties the basic details of an order enforcing the subpoenas and asked Special Master Storch to prepare a final order. See transcript of December 3, 1998, at pages 17-79. The Special Masters subsequently provided the parties with a draft of a proposed Order. Over the next ten days, the parties exchanged comments on the draft and conferred with Special Master Storch to work out a final proposed Order. By letter of December 14, 1998 (Exhibit 1), the Special Masters presented the Court with a proposed order, advising that "[t]he Special Masters drafted the Order and solicited the views and comments of the parties, which have been taken into account and incorporated in the Order." After directing a few changes to the proposed Order, the Court signed the Order on December 18, 1998.

Meanwhile, on December 9, 1998, six days after the conclusion of the hearing, Respondents filed--within the subpoena enforcement proceeding initiated by the Inspector General--a Motion to Quash Subpoenae or, in the Alternative, Motion for a Protective Order. In their Motion to Quash, Respondents raise a claim that the OIG's administrative subpoenas are "unenforceable in light of certain provisions of the qui tam Civil Investigative Demands section of the False Claims Act, 31 U.S.C. § 3733 . . . ." Motion to Quash, at 1. Respondents provided the Court with a "courtesy copy" of their Motion to Quash, accompanied by a letter (Exhibit 2) in which their counsel asserts that, although the

issue presented in Respondents' Motion to Quash was argued in writing in pleadings Respondents filed, albeit belatedly, in opposition to the Petition for Summary Enforcement,<sup>2</sup> and orally at the hearing before the Court on December 3, 1998,<sup>3</sup> they have reargued the same issue in the Motion to Quash because they believe they have a "compelling legal argument" and fear that the Court "had not had the opportunity to review our pleadings at the time of the Hearing." Respondents' counsel states, "We simply ask that Your Honor review our papers, and any response the government wishes to make, and . . . provide the parties with the

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<sup>2</sup> Respondents first raised the issue in this matter in Respondents' Reply to Petitioner's Opposition to Motion for Leave to Conduct Discovery, filed October 9, 1998. They raised the argument again in Respondents' Second Supplemental Opposition to Petition for Summary Enforcement, filed December 1, 1998. Petitioner addressed the argument in a pleading it filed on October 19, 1998, in another matter, C. Austin Fitts v. U.S. Department of Housing and Urban Development, Misc. No. 98-347 (SS). Petitioner incorporated its argument in that pleading by reference in a pleading filed in this matter on November 12, 1998. See Petitioner's Reply to [Respondents'] Hamilton Securities' Supplemental Opposition to Petition for Summary Enforcement, filed November 12, 1998, at pages 2-3, note 3 (incorporating by reference "Reply to Movant's Opposition to Respondent's Filing of Pleading In Camera and Movant's Request That It Be Furnished a Copy of Respondent's Memorandum of Points and Authorities in Opposition to C. Austin Fitts' Motion for Order Pursuant to Customer Challenge Provisions of the Right to Financial Privacy Act of 1978," filed on October 19, 1998, in Misc. No. 98-347, at pages 8-12). To the extent deemed necessary by the Court, Petitioner incorporates that argument herein by reference.

<sup>3</sup> See transcript of proceedings of December 3, 1998, at pages 2 - 17. Respondents also argued this issue at the proceedings before the Court in this matter and in Misc. Nos. 98-262 and 98-347 on September 25, 1998.

Court's decision on the matter." Respondents' counsel states that his fear that the Court had not reviewed his previous pleadings is based on the fact that a copy of the pleadings filed in this matter, which he had recopied and assembled for the Court in a large white notebook, was inadvertently delivered to the Court of Appeals.<sup>4</sup>

Respondents' Motion to Quash is inappropriately filed within the proceeding on the Inspector General's Petition for Summary Enforcement of the subpoenas. Moreover, the Petition for Summary Enforcement has already been fully briefed, argued, and determined. See notes 1 and 2, supra. In entering its order of December 18, 1998, the Court implicitly rejected the argument made that the OIG's administrative subpoenas are "unenforceable in light of certain provisions of the qui tam Civil Investigative Demands section of the False Claims Act, 31 U.S.C. § 3733 . . . ."

Further, Respondents' suggestion that the Court did not have their written pleadings at the time of the hearing on December 3, 1998 is incorrect. The Court had the official court file; it just did not have the incomplete copy of the record assembled by

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<sup>4</sup> All of the documents contained in the large white notebook had already been filed with the Court well in advance of the December 3, 1998 oral argument. Moreover, the copy of the pleadings Respondents assembled for the Court was not complete. Among the items excluded were the Declaration of James M. Martin which Petitioner had filed with the Petition for Summary Enforcement, and all 37 exhibits Petitioner had filed in support of the Petition.

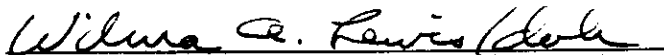
Respondents' counsel.

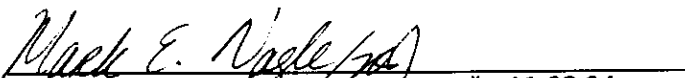
The record reveals that the Court directed procedures to ensure compliance with the subpoenas, which have been incorporated in the Court's order of December 18, 1998. The issue Respondents seek to raise in their Motion to Quash has already been fully briefed, argued, and effectively rejected by the Court in that order. Therefore, it is appropriate to strike Respondents' motion, which merely seeks to raise that issue anew, as redundant. See Fed. R. Civ. P. 12(f).


**CONCLUSION**

Based on the foregoing and on the entire record herein, Petitioner respectfully requests that the Respondents' Motion to Quash Subpoenae or, in the Alternative, Motion for a Protective Order, be stricken from the record in this case.

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  
Assistant United States Attorney

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Associate Counsel to the Inspector General

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Washington, D.C. 20410

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EXHIBIT 1

Misc. No. 98-92 (SS)

STORCH & BRENNER LLP  
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WASHINGTON, D. C. 20036  
(202) 452-0900  
TELECOPIER (202) 452-0930

December 14, 1998

HAND DELIVERED

The Honorable Stanley Sporkin  
United States District Court  
3rd and Constitution Avenue, N.W.  
Washington, D.C. 20001

Re: *Gaffney v. Hamilton Securities Group, Inc., et al.*, U.S.  
District Court for the District of Columbia, Misc. No.  
98-92(SS)

Dear Judge Sporkin:

Pursuant to Court's directions during the December 3 status conference in this matter, I enclose a proposed Order regarding electronically stored data and paper records currently in the possession of the Special Masters.

The Special Masters drafted the Order and solicited the views and comments of the parties, which have been taken into account and incorporated in the Order.

During the status conference on December 3, questions were raised concerning the number of tapes, disks, and other electronic media which contain Respondents electronic records and are in the possession of the Special Masters. While the Special Masters have not counted either the electronic records or the tapes, disks, and other media, the Special Masters' impression is that there are many thousands of electronic records contained in approximately 1,000 individual storage devices of several types, such as tapes and disks.

Sincerely,



Michael J. Dixon

Enclosure

cc: All counsel (with enclosure)

EXHIBIT 2

Misc. No. 98-92 (SS)

LAW OFFICES

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(610) 993-2200

December 9, 1998

**HAND-DELIVERED**

The Honorable Stanley Sporkin  
District Judge  
U.S. District Court for the District  
of Columbia  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001

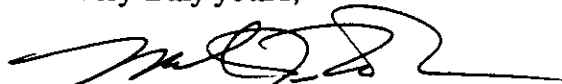
**Re: Susan Gaffney v. The Hamilton Securities Group, Inc., et al., Misc. No. 98-92 (SS), In the United States District Court for the District of Columbia**

Dear Judge Sporkin:

Enclosed please find a courtesy copy of Respondents' Motion to Quash Subpoenae or, in the Alternative, Motion for Protective Order filed with the Court today. The subject matter of this Motion - whether or not the subpoenae served on the Respondent by the HUD Office of Inspector General were legally issued - was discussed at the Hearing before Your Honor on Thursday, December 3, 1998. We had included some pleadings on this issue in a large white notebook which we had delivered to Your Honor (along with a copy of the attached letter which we now fear you also may not have received) a couple days prior to the Hearing. We subsequently learned that the notebook somehow was delivered instead to the Court of Appeals, and was not available to Your Honor at the time of the Hearing.

We believe that we have a compelling legal argument as to why the subpoenae issued by HUD OIG are not authorized, and therefore unenforceable. Because Your Honor had not had the opportunity to review our pleadings at the time of the Hearing, we have placed our argument in the attached Motion. We simply ask that Your Honor review our papers, and any response the government wishes to make, and to provide the parties with the Court's decision on this matter. I apologize for any inconvenience to the Court that may have arisen as a result of the misdelivery of these materials.

Very truly yours,



Michael J. McManus

MJM/gw  
Enclosure

DC2574291

The Honorable Stanley Sporkin  
December 9, 1998  
Page 2

cc w/Enclosure:

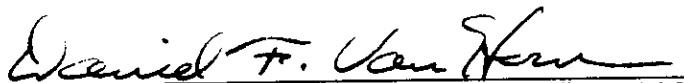
Irving M. Pollack, Esquire  
Laurence Storch, Esquire  
Daniel Van Horn, Esquire  
Judith Hetheron, Esquire

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Strike Respondents' Motion to Quash Subpoenae or, in the Alternative, Motion for a Protective Order, together with the accompanying memorandum of points and authorities and proposed order, was served by first class mail on December 23, 1998, addressed to the following:

MICHAEL J. McMANUS, ESQ.  
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considered and found to be without merit the argument Respondents seek to raise therein.

IT IS SO ORDERED on this \_\_\_\_ day of \_\_\_\_\_, 199\_\_.

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UNITED STATES DISTRICT JUDGE

COPIES TO:

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