



physical custody. However, this has not taken place because the government has yet to make logistical and cost decisions about moving and storing these materials.

3. Respondents have told the Special Masters that they continue to work on the certification of compliance with the Court's Order of March 6, 1998 concerning delivery of all materials to the Special Masters.

4. A dispute has arisen concerning certain of Respondents' materials which had been designated as "trash" pursuant to arrangements with Respondents' prior counsel.<sup>1</sup> It is the opinion of the Special Masters that all "trash" items should be immediately made available to the government. The affidavit at Tab B hereto sets forth the factual background on this question.

5. The next important issue involves Respondents' potential claims of privilege and potential challenges as to relevance pertaining to the remaining bulk of materials not designated "trash." Counsel for Respondents have argued that some of the materials may be subject to the attorney-client privilege and that some may be proprietary in nature and completely unrelated to the Respondents' dealings with the Department of Housing and Urban Development ("HUD"). Respondents want an opportunity to make objections in order to avoid the government scrutinizing privileged or irrelevant materials, particularly proprietary material which could contain business secrets unrelated to HUD. The Special Masters suggest that Respondents be required to designate each particular document for which a privilege claim is made. For electronic records, if Respondents prefer not to designate particular documents, particular tapes or disks which on their face concern attorney communication could be designated for review by

---

<sup>1</sup> It is apparent that new counsel is not completely aware of the arrangements agreed to by his predecessor.

or disks which on their face concern attorney communication could be designated for review by the Special Masters. Respondents' concerns about business secrets can be dealt with by the Court issuing a protective order to assure that proprietary business secrets are appropriately protected. A proposed Order is attached at Tab C.

Respectfully submitted,  
STORCH & BRENNER LLP  
1001 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 452-0900



Irving M. Pollack, Co-Special Master



Laurence Storch, Co-Special Master

Date: April 27, 1998

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of April, 1998, a copy of the foregoing Second Report of Co-Special Masters Irving M. Pollack and Laurence Storch was sent via first-class mail, postage prepaid, to:

Judith Hetheron, Esquire  
Counsel to the Inspector General  
Department of Housing and Urban  
Development  
Suite 8260  
451 7th Street, S.W.  
Washington, DC 20410-4500

Michael J. McManus, Esquire  
Jackson & Campbell, P.C.  
1120 Twentieth Street, N.W.  
South Tower  
Washington, DC 20036-3437



---

C:\MISC\VIHAMILTON - 2ND SPEC MASTER REPT



STORCH & BRENNER LLP

1001 CONNECTICUT AVENUE, N. W.

WASHINGTON, D. C. 20036

(202) 452-0900

TELECOPIER (202) 452-0930

April 16, 1998

Michael J. McManus, Esq.  
Jackson & Campbell, P.C.  
1120 Twentieth Street, N.W.  
South Tower  
Washington, D.C. 20036-3437

Re: Gaffney v. The Hamilton Securities Group, Civil Action 98-92 (SS)

Dear Mr. McManus:

As you are aware, I asked my staff to speak to several employees of Hamilton regarding entry into the Hamilton offices at 7 Dupont Circle between approximately 8:00 p.m. on Friday March 6, 1998, and 3:00 p.m. on Sunday, March 8, 1998.

After our conference the evening of Friday, March 6, it had been our understanding that no Hamilton personnel would enter Hamilton's offices without the advance permission of the Special Masters and the presence of their representative. We expressly understood Austin Fitts to say on the evening of March 6 that she had instructed the appropriate Hamilton personnel to observe this requirement. There was no permission for entry before my staff and I agreed that we would meet with Hamilton representatives at 3:00 p.m. on the following Sunday afternoon.

In order to monitor the security of the files entrusted to the authority of the Special Masters, I asked Kastle Systems LLC to provide the computerized logs of entry into Hamilton's offices. Those logs showed that during the time period when the records were supposed to be secure in Hamilton's offices, several persons had access to the premises, as follows:

- Elliot Cook entered the offices at 8:40/41 p.m. and 9:12/13 p.m. on March 6.
- Ozzie Blake entered the offices at 8:37 a.m. on March 7.
- Richard Duffy entered the offices at 8:54 a.m. on March 7.
- Elliot Cook entered the offices at 9:19 a.m. on March 7.

In order to determine quickly what had happened, our offices conducted a limited inquiry. In summary, we gathered the following information:

- According to Austin Fitts, she spoke to Elliott Cook at about 8:30 pm. on March 6 and told him and Iyante Anderson to stop all work at the offices and to leave and not reenter the premises until authorized to do so by the Special Masters. Fitts left a similar message for Ozzie Blake, but he did not receive it until she telephoned him at the offices the following morning. Fitts said that she was unaware that Elliot Cook had reentered the offices Friday night and Saturday morning.
- According to Blake and Duffy, neither of them got the word Friday night. When they entered the offices on Saturday morning to continue their boxing assignment, they received a call from Austin Fitts telling them to cease work and leave the premises, which they did. We did not discover any evidence contradicting Blake's or Duffy's version of events.
- Elliot Cook admits that he was instructed not to re-enter the premises, but did so anyway. According to Cook, after he got this instruction, he took Iyante Anderson to dinner near the office. He and Anderson left their personal possessions in the office while visiting the restaurant. According to Cook, after eating they reentered the office to retrieve their personal belongings. Cook provided a restaurant receipt showing that he paid for a meal at a nearby restaurant at about 8:37 p.m. Iyante Anderson says that she did not understand that the order to leave the office meant that all reentry was prohibited and that she and Cook removed only their personal effects from the office.

According to Cook, he entered the offices on Saturday morning to help Carol Steinbach. Steinbach had earlier purchased a laptop computer from Hamilton, but it was not working correctly. Elliot and Steinbach entered the offices Saturday morning so that Elliot could swap Steinbach's malfunctioning laptop for a good one. Steinbach also states that the Saturday entry was for this purpose. Steinbach says that she did not know that entry was forbidden and she did not see Cook remove anything other than the computer for her.

Michael J. McManus, Esq.

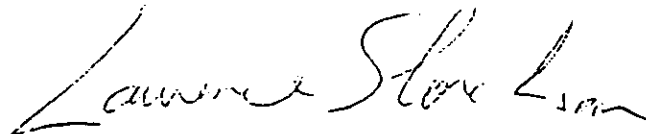
April 16, 1998

Page 3

- Cook admits that he knew better than to reenter the offices, but claims that he disregarded Fitts's instructions because he did not give due importance to them and because he was angry about what was happening to Hamilton. He says that he now takes the Special Masters' role more seriously.
- Cook's restaurant receipt does not square with Anderson's and Fitts's recollections that Cook was in the office at 8:30 p.m. Friday night. Cook could not remember why he entered the offices twice after Friday night's dinner. Cook denies removing anything from the offices other than personal effects on Friday and the computer for Steinbach on Saturday.
- Steinbach says that she did not erase any data on the computer Cook that gave her on March 7. When we contacted her, she quickly returned the computer to us for downloading.

It is clear from the above that I need to reiterate to all involved in this matter that the security of the records and information at issue in this case is of the highest importance. Our limited inquiry did not establish that subpoenaed information was lost in this instance. If the contrary should be discovered later, or if future violations of our agreements should occur, we will not hesitate to ask the Court to take appropriate action.

Very truly yours,

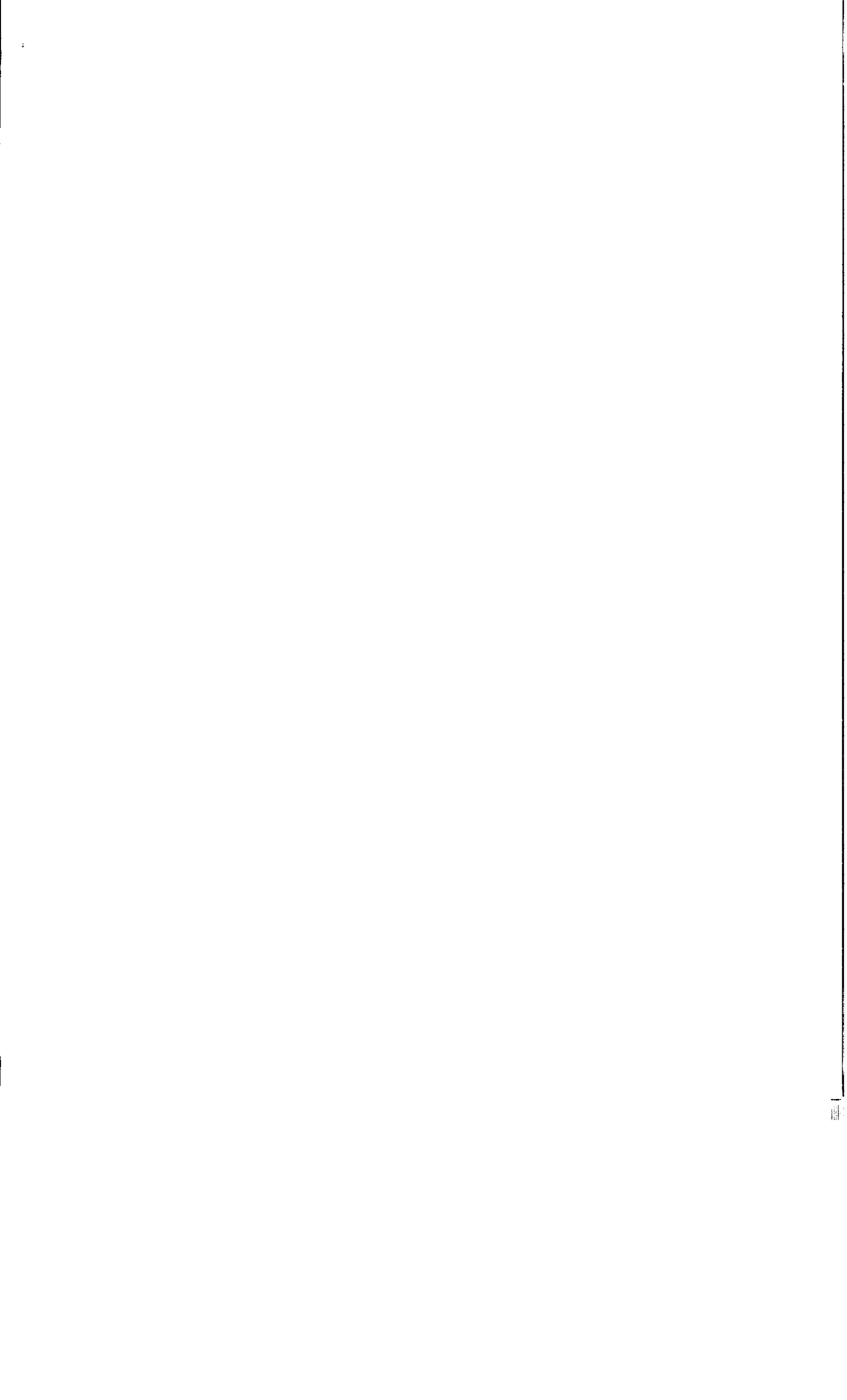


Laurence Storch

cc: The Honorable Stanley Sporkin

Judith Heatherton, Esq.





**AFFIDAVIT**

DISTRICT OF COLUMBIA, SS:

The undersigned Affiant, SOVAIDA MA'ANI, being first duly sworn, on oath, makes this her affidavit and states:

(1) I am an attorney with the law firm of Storch & Brenner, 1001 Connecticut Ave., N.W., Washington, D.C. 20036.

(2) On March 8, 1998, I was asked by Special Master Laurence Storch to be present at a meeting held at Hamilton's offices located at 7 Dupont Circle to determine the scope of the materials subject to the Order, their location and to initiate steps to expedite the delivery of all such materials into the custody of the Special Master. I was charged with the duty of taking notes and memorializing the proceedings.

(3) The following persons were present at that meeting: Laurence Storch; David Frulla, Esquire and Stan Salus, Esquire (attorneys for Hamilton); Brian Dietz (CFO of Hamilton); Carolyn Betts (former Hamilton employee); Christopher Rasmus (auctioneer); Michael Dixon, Esquire (of Storch & Brenner); and myself.

(4) My notes of the meeting reflect that Mr. Storch, with the full agreement of Hamilton's lawyer, David Frulla, instructed Hamilton to segregate the boxes of materials at Hamilton's offices into three separate piles consisting of:

1) Boxes to which Hamilton needed immediate access for its ongoing operations; they were to be moved to Storch & Brenner to facilitate such access;

2) Boxes which did not need to be immediately accessed that could be moved to an off-site storage facility under the control of the Special Master; and

3) Boxes labelled "trash". These, Hamilton informed Mr. Storch contained trash that could be thrown out, as did all the trashbags that were lying both in front of the upstairs elevator before the entrance to the Hamilton offices and in the stairwells. All the copies of the Federal Register lying in the stairwell were also trash according to Hamilton. All the materials in this third category, Hamilton told Mr. Storch, could be thrown out. Mr. Storch recommended and it was agreed that prior to discarding the "trash", government representatives would be invited to go through the "trash": materials that the government representatives determined to be trash would be thrown out and those materials they thought ought to be saved would be stored by the Special Master until further determination by him.

  
\_\_\_\_\_  
Sovaida Ma'ani

The foregoing was acknowledged before me this 24<sup>th</sup> day of April, 1998.

  
\_\_\_\_\_  
Notary Public

KAREN A. JACKSON  
NOTARY PUBLIC, DISTRICT OF COLUMBIA  
My Commission Expires October 14, 2000



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

SUSAN GAFFNEY, in her official capacity  
as Inspector General, U.S. Department of  
Housing and Urban Development,

Petitioner,

v.

THE HAMILTON SECURITIES GROUP, INC.  
and HAMILTON SECURITIES ADVISORY  
SERVICES, INC.,

Respondents.

Misc. No. 98-92 (SS)

ORDER

Respondents having requested an opportunity to make claims of attorney-client privilege to deny the government access to certain information which is or may become under the control of the Special Masters; and

Respondents having also requested an opportunity to restrict the government's access to certain of its proprietary data which is or may become under the control at the Special Masters; and

Upon consideration of the briefs filed by the government and the Respondents and upon consideration of the Special Masters' Reports, it is hereby

ORDERED that Respondents shall within twenty (20) days of the entry of this Order, designate each particular document for which a claim of attorney-client privilege is made. For electronic records, Respondents may designate for future review by the Special Masters, specific tapes or disks which concern attorney client communications; and it is

FURTHER ORDERED that government personnel shall not disclose Respondents' property information to non-government personnel and that all government personnel who have access to Respondents' documents and records shall execute a non-disclose agreement acceptable to the Special Masters which restricts disclosure of Respondents' proprietary information to non-government personnel.

---

STANLEY SPORKIN  
UNITED STATES DISTRICT JUDGE