

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 99-5046

September Term, 1998
98ms00092

Susan Gaffney, In her Official Capacity as
Inspector General, HUD,
Appellee

v.

Hamilton Securities Group, Inc. and Hamilton
Securities Advisory Services, Inc.,
Appellants

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED

JUL - 2 1999

CLERK

BEFORE: Williams, Randolph, and Tatel, *Circuit Judges.*

ORDER

Upon consideration of the motion for summary affirmance, the response thereto, and the reply; the motion for summary reversal, the response thereto, and the reply, it is

ORDERED the motion for summary affirmance be granted and the motion for summary reversal denied, for the reasons stated in the memorandum accompanying this order. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294,297 (D.C. Cir. 1987) (per curiam); Walker v. Washington, 627 F.2d 541, 545 (D.C. Cir.) (per curiam), cert. denied, 449 U.S. 994 (1980).

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

SAW/mjt



MEMORANDUM

Although appellants (collectively, "Hamilton") assert that the Attorney General improperly delegated her False Claims Act investigatory authority to appellee, the Inspector General ("IG") at the Department of Housing and Urban Development, the record demonstrates a cooperative effort, not a wholesale delegation. Cooperation, even with significant guidance from the Department of Justice ("DOJ"), is not improper. See *United States v. Aero Mayflower Transit Co.*, 831 F.2d 1142, 1146 (D.C. Cir. 1987) ("So long as the Inspector General's subpoenas seek information relevant to the discharge of his duties, the exact degree of Justice Department guidance or influence seems manifestly immaterial." (footnote omitted)); S. Rep. No. 95-1071, at 7 (1978), reprinted in 1978 U.S.C.C.A.N. 2676, 2682 (creating an IG in an agency "strengthens cooperation between the agency and the Department of Justice in investigating and prosecuting fraud cases").

Nor do we agree with Hamilton's assertion that DOJ may not obtain information for a False Claims Act investigation when that information was originally obtained from a non-DOJ subpoena. Hamilton claims that, given the ostensibly greater restrictions applicable to information gained by DOJ through grand juries and civil investigative demands than to subpoenas from IGs at other agencies, Congress must not have intended for DOJ to be able to obtain information in this manner. In *Aero Mayflower*, however, we found nothing wrong with the use of a Defense Department IG subpoena instead of a DOJ grand jury, for the purpose of avoiding heightened grand jury

restrictions. See *Aero Mayflower Transit Co.*, 831 F.2d at 1146. The situation here is comparable and does not present a reason for not enforcing the subpoena. Cf. *RTC v. Thornton*, 41 F.3d 1539, 1547 (D.C. Cir. 1994) ("a prospective conflict between an administrative subpoena and the [more restrictive] civil discovery rules provides no basis for refusing to comply with [a] subpoena").

Finally, we reject Hamilton's argument that the subpoena should not be enforced—or that the HUD IG should at least be enjoined from sharing the results of the subpoenas at issue with DOJ—because otherwise DOJ might gain access to information it otherwise could not reach. While the legal rule presented by Hamilton appears to be correct, see *Aero Mayflower Transit Co.*, 831 F.2d at 1146 ("Nor is there a suggestion of any restriction on the Justice Department's power to obtain through the grand jury process all the information sought by the [DOD Inspector General] subpoenas here at issue. The Inspector General subpoenas clearly did not operate to circumvent statutory or other limitations on the Justice Department's investigative powers."); see also S. Rep. No. 95-1071, at 34, reprinted in 1978 U.S.C.A.N. at 2709 ("The use of subpoena power to obtain information for another agency component which does not have such power would clearly be improper." (footnote omitted)), Hamilton offers general assertions instead of evidence that this is the case here. Such assertions are inadequate to block enforcement of the subpoenas. See *Aero Mayflower Transit Co.*, 831 F.2d at 1145 ("a court may inquire into the agency's reasons for issuing the subpoena upon an adequate showing that the agency is acting in bad faith or for an

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improper purpose" (emphasis added)).