

**IN THE 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,)	
)	Misc. No. 98-92
v.)	
)	
THE HAMILTON SECURITIES GROUP,)	
INC. and HAMILTON SECURITIES)	
ADVISORY SERVICES, INC.,)	
)	
Respondent.)	

**JOINT STATEMENT OF PETITIONER AND RESPONDENT
CONCERNING PENDING ISSUES AWAITING RESOLUTION BY THE COURT**

Pursuant to the Court's directive on September 25, 1998, entered at a hearing in C. Austin Fitts v. The United States Department of Housing and Urban Development, Misc. No. 98-262 (SS), Petitioner and Respondent hereby submit their Joint Statement Concerning Pending Issues Awaiting Resolution by the Court in this matter.

The matters awaiting resolution by the Court are the following:

1. Petitioner's Petition for Summary Enforcement of Administrative Subpoenas.

It is Petitioner's position that five principal issues related to its Petition for Summary Enforcement of Administrative Subpoenas, which was filed on March 3, 1998, are ripe for judicial decision at this time, or after any additional briefing that the Court may order. Respondents take the position that the matters are not ripe for judicial decision, at least not until there is further briefing of certain of the issues.

Respondents also take issue with Petitioner's characterization of the issues and the present status of each as set forth in Petitioner's Position, below.

By order of March 6, 1998, the Court appointed Irving M. Pollack and Laurence Storch as co-Special Masters in this matter and directed them to take certain action. Respondents filed their Opposition to the Petition for Summary Enforcement on April 10, 1998. Petitioner filed its Reply on April 27, 1998.

The Special Masters have filed three status reports with the Court - on March 23, April 27, and September 8, 1998.

a. Petitioner's Position

Petitioner filed its Status Report with the Court on September 25, 1998. In its Status Report, Petitioner states that the time is ripe for judicial resolution of certain principal pending issues which the parties have been unable to resolve with the assistance of the Special Masters. Petitioner asks the Court to resolve these issues immediately, or after any additional briefing that the Court deems appropriate. The issues Petitioner believes are ripe for resolution are as follows:

i. Respondents' claim that proprietary information must be protected. In this regard, Petitioner asks the Court to vacate a portion of its order of April 29, 1998, issued at the request of the Special Masters I their Second Status Report to the Court of April 27, 1998, concerning an agreement not to disclose unidentified "proprietary information" of Respondents. In Petitioner's view, until this issue is resolved, Petitioner is unable to review any records in the custody of the Special Masters and the proceedings have come to a halt;

ii. Respondents' objection to production to Petitioner of the backup tapes and other electronic records, and their refusal to review the backup tapes and other electronic records for items responsive to the subpoenas;

iii. Respondents' objection to production to Petitioner of the electronic financial records of Respondents' and their affiliated entities;

iv. The adequacy of Respondents' Initial Certificate of Compliance; and

v. Respondents' claims of privilege. In this regard, Petitioner wishes the Court to review, or to direct the Special Masters to review, certain of the claimed privileged documents to ascertain whether they are in fact privileged.

b. Respondents' Position

It is Respondents' opinion that all of the matters that Petitioner lists above are not ready for resolution by the Court at this time. For example, Petitioner has not identified the specific documents as to which it questions the claims of privilege, or attempted to resolve the issues **with Respondents or** with the assistance of the Special Masters. Further, Respondents do not believe that the other issues are appropriately framed in pleading form adequately setting forth the parties' respective positions in a manner that would make convenient reading for the Court. If Petitioner believes that they are, then Respondents would like to file a substantive opposition **within two weeks**.

c. Petitioner's Reply

Petitioner believes that the issues have been framed by the pleadings already on file. With respect to Petitioner's desire to challenge certain of the privilege claims, all that Petitioner asks at this time is that the Court empower the Special Masters to make initial determinations on such matters. With respect to the other issues, if Respondents would like to file a substantive opposition to Petitioner's Status Report, Petitioner suggests that the Court order such an opposition filed within two weeks, and that Petitioner be granted an additional two weeks to reply. As for the first issue concerning Respondents' claim to protection for unidentified "proprietary information," however, Petitioner requests an immediate ruling, since this issue has brought to a halt Petitioner's review of records in the possession of the Special Masters. If Respondents wish to brief this issue, Petitioner asks that the Court direct Respondents to file ~~an immediate~~ a response to the argument set forth in Petitioner's Status Report at pages 5-9.

2. Respondent's Motion for Leave to Conduct Discovery.

Respondents filed their Motion for Leave to Conduct Discovery on September 21, 1998. Petitioner filed its Response in Opposition to the Motion on September 25, 1998. **Respondent is in the process of preparing a Reply to Petitioner's Response, after which** ~~The~~ **the** parties agree that the motion is ready for judicial resolution.

3. Respondent's Motion to Unseal Record.

Respondents filed their Motion to Unseal Records on September 21, 1998. Petitioner filed its Response on September 25, 1998. Petitioner stated in its Response that it did not oppose the unsealing of the record, but reserved the right in the future to seek an in camera filing with respect to any particular pleading or

document it provides to the Court that may contain confidential investigative information or details concerning the qui tam action.

At the hearing before the Court on September 25, 1998, in C. Austin Fitts v. U.S. Department of Housing and Urban Development, Misc. No. 98-262 (SS), Petitioner stated that it did not oppose the unsealing of proceedings in Misc. No. 98-92 (SS), and the Court directed that the proceedings in Misc. No. 98-92 (SS) be unsealed. Thus, it appears that this matter has been ruled upon, and the Court should sign the attached proposed order.

Respectfully submitted,

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September 29, 1998