

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, | : | |
| | : | |
| v. | : | Misc. No. 98-92 (SS) |
| | : | |
| THE HAMILTON SECURITIES | : | |
| GROUP, INC., and HAMILTON | : | |
| SECURITIES ADVISORY | : | |
| SERVICES, INC., | : | |
| | : | |
| Respondents. | : | |

**PETITIONER'S OPPOSITION TO
EXCEPTION OF [RESPONDENTS], THE HAMILTON SECURITIES GROUP, INC.,
AND HAMILTON SECURITIES ADVISORY SERVICES, INC.,
TO THE RECOMMENDATION OF THE SPECIAL MASTERS
REGARDING CERTAIN DOCUMENTS CLAIMED TO BE PRIVILEGED**

Petitioner, Susan Gaffney, in her official capacity as Inspector General, United States Department of Housing and Urban Development ("HUD"), by her undersigned counsel, hereby submits this response to the exception of Respondents, the Hamilton Securities Group, Inc., and Hamilton Securities Advisory Services, Inc. (collectively "Hamilton"), to the recommendation of the Special Masters with regard to 17 subpoenaed documents that Hamilton claims are subject to the attorney-client privilege. Hamilton's exception should be overruled, and the recommendation of the Special Masters should be sustained, because Hamilton has not carried its burden of demonstrating that its communications with the law firm of Holland & Knight were confidential and contained client confidences. Further,

Hamilton, by its actions, effectively waived any attorney-client privilege that may have existed.

BACKGROUND

In or about August of 1998, Hamilton submitted to the Special Masters a log claiming privileges with respect to approximately 311 records or compilations of records. The log identified 39 records from/to Holland & Knight. Of these, the Petitioner did not object to the withholding of six documents, Hamilton waived any applicable privilege and voluntarily produced six others, the Special Masters overruled Hamilton's claims of privilege with respect to another ten documents, and the Special Masters initially sustained or partially sustained Hamilton's claims for the remaining 17. The parties have identified the 17 records as item numbers 54, 62, 63, 64, 65, 75, 84, 90, 98, 100, 107, 109, 110, 111, and 125. Based upon Hamilton's descriptions of these records, item numbers 54, 107, 109, 110, 111, and 125 are invoices for legal services; item numbers 62, 63, 64, and 65 pertain to modifications of contracting arrangements between Hamilton and Coopers & Lybrand; item numbers 96, 98, 99, 100, and 101 relate to a transfer of HUD Contract 18161 from Hamilton Securities Group, Inc., to Hamilton Securities Advisory Services, Inc.; item number 75 concerns HUD Contract 18161; and item number 84 pertains to contract authority.

The Petitioner objected to the Special Masters' original determinations with respect to the 17 records from/to Holland & Knight that were preliminarily deemed privileged or partially

privileged. On April 2, 1999, the Special Masters requested that the Petitioner provide information in support of its objections to privilege determinations on the 17 records. Petitioner submitted this information via a letter dated April 13, 1999. (Attached as Exhibit 1.) In summary, Petitioner advised the Special Master that between December 14, 1993 and at least December 16, 1996, Holland & Knight provided legal assistance to Hamilton and HUD, pursuant to various Task Orders issued under HUD Contract 18161, and to HUD pursuant to HUD Contract 18436, which was awarded on March 7, 1996. Petitioner explained that according to documents in its possession—many of which Hamilton had supplied to Petitioner, Hamilton originally retained Dunnells & Duvall, which merged into Holland & Knight in 1994, "as a consultant to assist [Hamilton] in performing the scope of work contained in Task Order 003 of [Hamilton's] contract (No. DU100C000018161) with the U.S. Department of Housing and Urban Development." In the succeeding months, Holland & Knight not only provided Hamilton with advice concerning Hamilton's contract with HUD, but also with various subcontracts that Hamilton had with Coopers & Lybrand, which also provided contract services to HUD. Holland & Knight, as part of its consulting work for Hamilton, also provided HUD with contracting advice, programmatic advice, lobbying assistance, and disclosure law advice.

On April 21, 1999, Hamilton, via a letter to the Special Masters, responded to Petitioner's objections. (Attached as Exhibit 2.) In its response, Hamilton reiterated earlier

assertions that Holland & Knight attorneys were divided into two factions: (1) a faction headed by Richard Dunnells, which supplied advice to both Hamilton and HUD; and (2) a faction headed by Richard Moorhouse, which assisted Hamilton exclusively. Hamilton added that the records that Petitioner attached to its April 13, 1999 letter, as well as the 17 records, demonstrate this demarcation of responsibilities.

On April 26, 1999, the Special Masters reviewed the relative positions of the parties and the 17 records and determined that "[p]rivilege claims for items 54, 62, 63, 64, 65, 75, 84, 90, 98, 100, 101, 107, 109, 110, 111, and 125 are rejected as unsupportable. Because the law firm and its lawyers were advisors to both Petitioners and Respondents, no claim of privilege can be sustained for these records." (Attached as Exhibit 3.) Hamilton's exception followed.

LAW and ANALYSIS

The party asserting attorney-client privilege bears the burden of demonstrating each element of the privilege, and that the privilege has not been waived. "That burden is not, of course, discharged by mere conclusory or *ipse dixit* assertions, for any such rule would foreclose meaningful inquiry into the existence of the relationship, and any spurious claims could never be exposed." In re Bonanno, 344 F.2d 830, 833 (2d Cir. 1965). Further, "[b]ecause of the privilege's adverse effect on the full disclosure of the truth, it must be narrowly construed." In re Grand Jury Investigation of Ocean Transp., 604 F.2d 672,

675 (D.C. Cir.), cert. denied, 444 U.S. 915 (1979).

The elements that the party asserting the privilege must prove are:

- (1) A communication;
- (2) Between a client and an attorney, for the purpose of seeking, obtaining, or providing legal assistance; and
- (3) That is in confidence.

See, e.g., Mead Data Cent., Inc. v. United States Dep't of Air Force, 566 F.2d 242, 253 (D.C. Cir. 1977). Additionally, for the privilege to apply, it must not be waived. See In re Grand Jury Investigation of Ocean Transp., 604 F.2d at 675.

- A. Hamilton Failed to Demonstrate that its Communications with Holland & Knight Were in Confidence.

The Special Masters' recommendation and Hamilton's exception focus on the question of whether Hamilton's communications with Holland & Knight were in confidence. In that regard, based upon the record, the Special Masters determined that Hamilton's claims of privilege are "unsupportable" "[b]ecause the law firm and its lawyers were advisors to both Petitioners and Respondents." Hamilton argues that "precedent dictates that Hamilton should not be deprived of its legitimate expectations of attorney-client privilege merely because its attorneys also provided legal services to HUD and Hamilton on other matters of common interest." This same line of precedent also teaches that Hamilton cannot legitimately claim attorney-client privilege

under the circumstances of this case.

In support of its position, Hamilton relies entirely upon Eureka Inv. Corp. v. Chicago Title Ins. Co., 743 F.2d 932 (D.C. Cir. 1984). In Eureka Inv. Corp., the law firm of Fried, Frank, Harris, Shriver & Kampelman ("Fried Frank"), pursuant to an insurance policy, represented Eureka and its insurer, Chicago Title, in an civil action brought by Eureka's tenants. Id. at 935. Later, Eureka, represented by Fried Frank, sued Chicago Title for losses caused by its refusal to approve a settlement that Eureka negotiated with its tenants. Id. In the latter litigation, Chicago Title unsuccessfully sought to discover documents relating to Eureka's consultation with Fried Frank about legal action against Chicago Title, and the trial court and the Court of Appeals for the District of Columbia Circuit ruled that these documents were privileged. Id. at 935-36.

The Court of Appeals decision is based upon section 2312 of J.H. Wigmore, 8 Evidence in Trials at Common Law (rev. by J.T. McNaughton, 1961), which includes seven examples illustrating circumstances where the attorney-client privilege does and does not exist with respect to communications to an opponent or his/her attorney or in an opponent's presence. See Eureka Inv. Corp., 743 F.2d at 936-37. The Court of Appeals focused on Dean Wigmore's third example¹ and found that the communications

¹ Dean Wigmore's third example states:

A communication by A to X as A's attorney, X being then also the attorney of B, now become the party opponent, is ordinarily privileged because of the relation of X

between Eureka and Fried Frank were privileged, because "the communications . . . were made not only after the interests of CTI and Eureka diverged but after their common attorney knew they diverged and undertook separate representation of Eureka." Id. at 937 (emphasis added).

Hamilton's claims of privilege are dissimilar to those of Eureka. Unlike the communications in Eureka Inv. Corp., the communications that Hamilton claims are privileged occurred between October 12, 1994 and December 16, 1996, which is before the interests of HUD and Hamilton diverged with HUD's October 17, 1997 stop order regarding HUD Contract 18505, Task Order 1, and notification that HUD would offset amounts owed to Hamilton against an error in Hamilton's contract performance that resulted in a \$3.8 million loss to HUD. During the period of time that the allegedly privileged communications occurred, Holland & Knight, pursuant to various Task Orders issued under Hamilton's financial advisory contract, HUD Contract 18161, provided legal assistance to both Hamilton and HUD in connection with their common interest: HUD's note sale program. Holland & Knight's services in furtherance of Hamilton's and HUD's common interest included, among other things, providing contracting advice, programmatic advice, lobbying assistance, and disclosure law advice.

toward A. Nor does the fact of A's knowledge that X is already B's attorney, nor the fact of B's being already adversely interested destroy the privilege. . . .

J.H. Wigmore, 8 Evidence in Trials at Common Law § 2312 at 608.

Hamilton's claim of attorney-client privilege is, however, analogous to the case of Cherry v. Hungarian Foreign Trade Bank, 136 F.R.D. 369 (S.D.N.Y. 1991). In Cherry, the Hungarian Foreign Trade Bank ("HFTB") retained Cherry to represent it in a civil action against an oil refiner. Id. at 370. Pursuant to the retainer agreement, Cherry hired Beale, another attorney, to assist him. Id. Prior to the settlement of the litigation between HFTB and the oil refiner, Cherry asked Beale to advise and assist him in preparing to sue HFTB for \$12 million in legal fees after the then imminent settlement with the oil refiner was completed. Id. During the subsequent litigation, HFTB successfully sought discovery of Cherry's communications with Beale, which Cherry argued were protected by the attorney-client privilege. Id. at 372.

Overruling Cherry's claims of privilege, the Cherry court also looked to section 2312 of Dean Wigmore's treatise and distinguished Eureka Inv. Corp., which Cherry, like Hamilton, relied upon in support of his assertions of privilege. See Cherry, 136 F.R.D. at 371-72. The Cherry court determined that, because Cherry owed a fiduciary duty to HFTB at the time of the communications, Cherry relied on the wrong example posited by Dean Wigmore, as follows:

Here Cherry appears not to have read far enough in Dean Wigmore's treatise. Had he just read one page further, he would have encountered the following:

"In the foregoing case [the example relied upon in Eureka Inv. Corp.—Dean Wigmore's third example], if A consults X as his attorney, with the express purpose of

inducing him, while B's attorney, to act adversely to B, the communication would clearly cease to be privileged because, by a former part of the principle (§ 2298 *supra*), the privilege cannot cover communications designed to achieve a fraud."

8 Wigmore, Evidence § 2312 at 609 (McNaughton, rev.1961). That is this case. Beale was already HFTB's lawyer when Cherry approached him with the express purpose to act adversely to HFTB. That Cherry himself also owed HFTB a fiduciary duty simply adds weight to HFTB's position.

Cherry, 136 F.R.D. at 372. Like Cherry, Hamilton originally retained Holland & Knight to provide legal assistance for HUD. Further, like Cherry, Hamilton, pursuant to HUD Contract 18161, owed a fiduciary duty to HUD, and sought legal advice from Holland & Knight on issues that it concedes were "conceivably adverse to HUD." See Respondents' Exception to Recommendation of the Special Masters Regarding Certain Privileged Documents, at 7. Although Petitioner has not had access to all of the allegedly privileged documents, based upon Hamilton's descriptions of them, Petitioner believes that some of the items (e.g., those pertaining to Hamilton's internal transfer of its HUD contract and the invoices) could possibly represent or lead to evidence of a fraud upon HUD. Thus, Hamilton's claim of privilege is directly analogous to Cherry's, and was appropriately overruled by the Special Masters. Moreover, even if Hamilton were entitled to assert the attorney-client privilege, many of the communications that they allege are privileged have been deemed

As discussed below, based upon Hamilton's description, the Petitioner believes that it has a copy of item number 64.

not privileged historically.

B. Communications Claimed to be Privileged Do Not Contain Client Confidences.

A privileged attorney-client communication may be oral, written, and, depending upon the circumstances, may even be non-verbal. However, it is well established that attorney invoices ordinarily do not qualify as communications that contain confidential attorney-client information. See Montgomery v. Leftwich, Moore and Douglas, 161 F.R.D. 224, 227 (D.D.C. 1995); accord, Clark v. Am. Commerce Nat'l Bank, 974 F.2d 127 (9th Cir. 1992); Leach v. Quality Health Serv., 162 F.R.D. 499 (E.D. Pa. 1995); North Carolina Elec. Membership Corp. v. Carolina Power and Light Co., 110 F.R.D. 511 (M.D.N.C. 1986). Nevertheless, Respondents assert the attorney-client privilege with respect to six documents (i.e., item numbers 54, 107, 109, 110, 111 and 125) that they have described as invoices for legal services.

Respondents also assert attorney client privilege with respect to nine other documents (i.e., item numbers 63, 64, 65, 84, 96, 98, 99, 100, and 101), which they indicate were authored by attorneys. According to the court in Montgomery, "communications made by the attorney to the client are only shielded if they rest on confidential information obtained from the client." Montgomery, 161 F.R.D. at 226 (quoting In Re Sealed Case, 737 F.2d 94, 99 (D.C. Cir. 1984)). Thus, Hamilton's claims of privilege as to the six invoices and the nine other documents should be denied, or at a minimum each of the allegedly privileged records should be carefully reviewed to verify that

they "rest on confidential information obtained from" Hamilton.

C. Hamilton Waived the Attorney-Client Privilege.

Finally, if any of the 17 records is potentially eligible for protection by the attorney-client privilege, such protection should not be afforded because Hamilton waived the privilege. Even inadvertent or unintentional waivers by the client or the client's authorized representative (including the attorney to whom the communication was made) will render a communication ineligible for protection under the attorney-client privilege. See In re Grand Jury Investigation of Ocean Transp., 604 F.2d at 675. Here, Hamilton, both prior to and during this subpoena enforcement proceeding, produced to the Petitioner numerous documents representing communications between Hamilton and Holland & Knight. In its exception brief, Hamilton attempts to explain away this waiver by stating that "[t]he fact that Holland & Knight was providing legal advi[c]e on some issues responsive to Hamilton's contracts with HUD (and those documents have been produced) does not act as a waiver of the attorney-client privilege existing between Hamilton and Holland & Knight on other matters." Respondents' Exception to Recommendation of the Special Masters Regarding Certain Privileged Documents, at 2. Hamilton then alleges that Holland & Knight attorneys were divided into two factions: (1) a faction headed by Mr. Dunnells, which supplied advice to both Hamilton and HUD; and (2) a faction headed by Mr. Moorhouse, which assisted Hamilton exclusively, thus implying that Mr. Moorhouse's work remained confidential.

Hamilton's allegation is simply not true. Hamilton produced to Petitioner at least five communications with Mr. Moorhouse or an attorney whom Hamilton alleges worked under his direction. Three of these communications concerned modifications of Hamilton's contractual relations with Coopers & Lybrand, which is a topic that Hamilton, through its assertion of the attorney-client privilege with respect to item numbers 62, 63, 64 and 65, claims is confidential. Indeed, based upon Hamilton's description of item number 64, it appears that Hamilton produced to Petitioner one of the exact documents that it claims to be privileged. Compare item number 64, with the February 5, 1996 letter to Brian J. Dietz from Richard L. Moorhouse, Hamilton Bates Nos. 0011329-0011333 attached as Exhibit 4, previously produced by Hamilton to Petitioner.

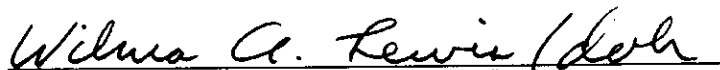
Further, Hamilton has provided absolutely no assurance that the 17 allegedly privileged records were not shared with or produced to third parties. Indeed, given that Hamilton has produced to the Plaintiffs in Ervin and Associates, Inc. v. Helen Dunlap, U.S Department of Housing and Urban Development, et al., Civil Action No. 1:96-CV-1253, all of the records produced to Petitioner in response to the Inspector General's subpoenas of August 6 and 22, 1996, Hamilton at a minimum should be required to affirm that each of the 17 allegedly privileged records were not disclosed to Ervin and Associates or to other third parties.

CONCLUSION

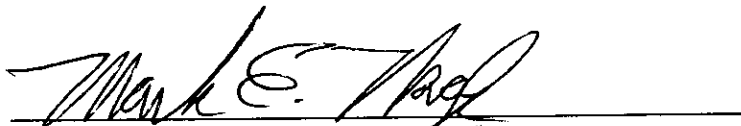
Accordingly, because Hamilton has not carried its burden of

demonstrating that its communications with the law firm of Holland & Knight were confidential and contained client confidences, and because Hamilton, by its actions, effectively waived the attorney-client privilege, Hamilton's exception should be overruled, and the recommendation of the Special Masters should be sustained. A proposed Order is attached

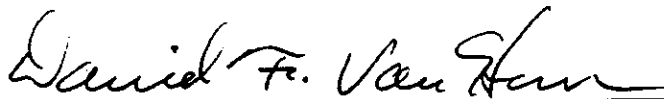
Respectfully submitted,



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U.S. Department of Housing and Urban Development

Office of Inspector General

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April 13, 1999

VIA COURIER

Irving M. Pollack, Esq.
Laurence Storch, Esq.
Special Masters
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Washington, D.C. 20036

Re: Gaffney v. The Hamilton Securities Group, Inc., et al., Misc. No. 98-92 (SS)

Dear Messrs. Pollack and Storch:

This is to follow up on certain issues discussed at our meeting of April 2, 1999 with Mr. Storch. At the meeting, Mr. Storch asked the government (1) to reply concerning the government's position on whether the Special Masters should continue to maintain custody of Respondents' original paper files; and (2) in connection with Respondents' claims of attorney-client privilege with respect to certain records, to provide additional information concerning the contractual relationships among HUD, Holland & Knight (and attorneys with that firm, and its predecessor, Dunnells & Duvall), and Respondents, The Hamilton Securities Group, Inc., and Hamilton Securities Advisory Services, Inc.

As to the first issue, the government still has need for the records in the possession of the Special Masters. This matter is still under investigation. The OIG subpoenas were issued for the original documents ("This subpoena seeks originals of all documents and records."). See Definition and Instruction No. 3, Exhibits 1-4 (August 6 and 22, 1996 subpoenas), and Instruction No. 1, Exhibits 5 and 6 (October 24, 1997 subpoenas), to Declaration of James M. Martin, filed March 3, 1998). The August 1996 subpoenas also provided that "legible, true and complete copies of the originals will be accepted in place of originals, provided that you make the original records available for inspection by representatives of the Office of Inspector General, upon request, during normal business hours." There was no such exception in the October 1997 subpoenas, which required the originals only. Thus far, the government has requested copies of only certain of the responsive documents in the possession of the Special Masters, and has not yet obtained the originals of any documents. If the Respondents still need access to these records, either they should be provided with copies of the



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records and the originals provided to the government, or the Special Masters should continue to maintain custody of the originals.

As to the second issue, Respondents have claimed attorney-client privilege with respect to certain documents pertaining to invoices and other records relating to the law firm of Holland & Knight and various attorneys with that firm, including G. Richard Dunnells, Esq., Richard L. Moorhouse, Esq., and Stephen J. Weiss, Esq. The Special Masters have indicated tentatively that they are inclined to sustain Respondents' claims of privilege with respect to certain of these documents, or certain portions of these documents. At our meeting on April 2, 1999, Mr. Storch stated that the burden would now be on the government to demonstrate why, with respect to Respondents' claims of attorney-client privilege, Respondents' relationship with these attorneys should be treated any differently from their relationship with other attorneys. Of course, ultimately it is the burden of Respondents, as the parties asserting attorney-client privilege, to demonstrate each element of the privilege, and that the privilege has not been waived.

Holland & Knight is a law firm which (1) had a contractual relationship with HUD, (2) had a relationship with Respondents as a subcontractor on a contract Respondents had with HUD, and (3) apparently during the same time periods, also provided legal advice to Respondents in connection with Respondents' contractual relationship with HUD. The documents in question are marked on Respondents' privilege log with the following handwritten numbers (the date of the document as listed on the privilege log is also listed below):

54 - 12/16/96
62 - 1/2/96
63 - 4/8/96
64 - 2/5/96
65 - 2/14/96
75 - 6/24/94
84 - 1/20/95
96 - 10/27/94
98 - 7/10/95
99 - 10/12/94
100 - 10/12/94
101 - 10/2/95
107 - 6/9/95
109 - 6/8/95
110 - 5/5/95
111 - 5/10/95
125 - 7/15/96

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Thus, the documents range in date from June 24, 1994 through December 16, 1996.

Enclosed are records previously produced by Respondents which give reason to believe that the above records that have been designated by Respondents as attorney-client privileged may in fact not be privileged as to HUD.¹ These previously produced records, as to which Respondents have asserted no claim of privilege, nor could they, indicate that between December 14, 1993 and December 16, 1996, Holland & Knight provided legal assistance to Hamilton and HUD pursuant to various Task Orders issued under HUD Contract 18161, and to HUD pursuant to HUD Contract 18436, which was awarded on March 7, 1996. According to these records, Hamilton originally retained Dunnells & Duvall, which merged into Holland & Knight in 1994, "as a consultant to assist [Hamilton] in performing the scope of work contained in Task Order 003 of [Hamilton's] contract (No. DU100C000018161) with the U.S. Department of Housing and Urban Development." See Letter to Barbara Preston from Carol Steinbach, dated December 14, 1993 (Bates No. 0011491). In the succeeding months, Holland & Knight provided Hamilton not only with advice concerning Hamilton's contract with HUD, but also concerning various subcontracts that Hamilton had with another HUD contractor, Coopers & Lybrand (see, e.g., Bates Nos. 0011294-0011333, 0011345-0011375, 0011622-0011634).

Of more importance for the issues at hand, however, Holland & Knight, as part of its consulting work for Hamilton, also provided HUD with contracting advice, programmatic advice, lobbying assistance, and disclosure law advice. With respect to contracting advice, Holland & Knight provided HUD with a legal opinion indicating that it saw no legal impediment to HUD paying subcontractors, under Task Order 5 of HUD Contract 18161, with both appropriated and non-appropriated funds. See Memorandum to Barbara L. Talts, Contracting Officer, Department of Housing and Urban Development, from Richard Moorhouse, dated June 9, 1994 (Bates Nos. 0024838-0024840). Holland & Knight also provided drafting and negotiating assistance to HUD. See Memorandum to [HUD employees] Greg Bolton, Jerry Salzman, and Rick Samson, from Dick Dunnells and Steve Niles, dated March 2, 1995 (Bates Nos. BS6518-BS6522 and 0015750-0015754); and Memorandum to "Attached

¹ The records marked with a seven-digit number or a handwritten number were produced by Respondents' attorneys directly to the government. The records marked with "BS" and a number were produced to the government through the Special Masters, Storch & Brenner. The two unnumbered contracting documents were obtained from HUD.

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Distribution List," which included Mr. Salzman, of HUD, from La Fonte Nesbitt of Holland & Knight, dated March 26, 1995 (Bates Nos. 00155635-0015648).

Regarding programmatic advice, an October 1994 "Research Responsibility Matrix" assigns responsibilities to HUD personnel, Hamilton staff, Coopers & Lybrand employees, and Holland & Knight (Bates Nos. BS6656-BS6659). Among other things, Holland & Knight was charged with responsibility for researching regulatory powers for Section 8 and FHA insurance, preservation issues, representations and warranties, and closings. Holland & Knight was also included among the Attendees/"Team Members" present at an initial meeting of HUD personnel and contractors, which was convened to discuss a proposed HUD initiative to sell partially assisted HUD-held mortgages to State housing finance agencies. See Notes from HFA Kick-Off Meeting-June 20, 1995 (Bates Nos. BS6622-BS6624).

With respect to lobbying assistance, Holland & Knight advised HUD that the Department of Labor's Prohibited Transaction Class Exemption 88-59 does not clearly permit pension plans to invest in HUD-held multifamily mortgages, and recommended that HUD seek a specific exemption covering such investments. See Memorandum to Helen Dunlap [of HUD], and Grace Huebscher from Ms. Nesbitt, dated December 12, 1994 (Bates Nos. 11280-11292). Holland & Knight then lobbied the Department of Labor concerning an exemption covering HUD-held multifamily mortgages. See Letter to Ms. Huebscher from Ms. Nesbitt, dated February 13, 1995 (Bates Nos. BS6579-BS6582); and Memorandum to Austin Fitts from Mr. Dunnells, dated February 22, 1995 (Bates No. BS6517). Holland & Knight also contacted federal regulators, namely the Office of Management and Budget, concerning the eligibility of mortgage loans for Credit Reform Act credits. See Memorandum to Ms. Fitts from Mr. Dunnells, dated February 22, 1995 (Bates No. BS6517).

Regarding disclosure law advice, Holland & Knight prepared a legal memorandum "intended to assist HUD in determining" the applicability to up-coming mortgage sales of the Freedom of Information Act, the Privacy Act, and the Trade Secrets Act. See Memorandum to Ms. Fitts from Mr. Dunnells, Mr. Niles, and Suzanne H. Pramet, dated January 9, 1995 (Bates Nos. BS6583-BS6597). This memorandum was forwarded to HUD on January 23, 1995, see Memorandum to HUD Attendees of FOIA Meeting from Ms. Huebscher, and stands as testament to the nature of Holland & Knight's fuzzy relationship with Hamilton and HUD. In that regard, on January 13, 1995, Ms. Huebscher had to inquire of both HUD and Coopers & Lybrand as to who requested the January 9, 1995 memorandum from Hamilton & Knight. See E-mail to Sue Ellis and Mr. Samson (Bates Nos. 0013998-0013999).

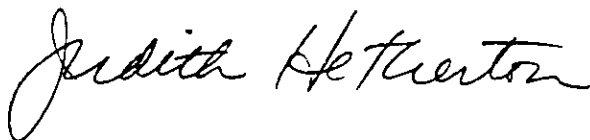
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In sum, these documents, as to which no claim of privilege has been asserted, nor could it be, suggest that the documents concerning Respondents' relationship with Holland & Knight as to which Respondents have asserted a claim of attorney-client privilege may not properly be subject to such a claim as to HUD.

We are working on the remaining issue discussed at our meeting on April 2, 1999--the copying of the electronic records--and will have a status report shortly.

Thank you for your continuing assistance in this matter.

Sincerely,



Judith Hetherton
Counsel to the Inspector General

Enclosures

cc with enclosures:

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