

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS
Houston Division

HOUSTON INDUSTRIES INCORPORATED,)

Plaintiff—Cross-Respondent,)

vs.)

Civil Action No. H-95-5237

DANIEL C. KAUFMAN, *et al.*,)

Defendants—Cross-Petitioner.)

4/4/96

GOVERNMENT'S MOTION FOR CLARIFICATION

The government respectfully moves for clarification of this Court's March 6, 1996, Order, which enforces in part Civil Investigative Demand No. 13591 (the "CID") served on respondent Houston Industries Incorporated ("HII"). In its order the Court explicitly overruled HII's objections to CID specifications 8 and 9. The government views the Order as requiring immediate production of documents responsive to those specifications. Respondent, however, takes the position that the Order has no effect until HII's unrelated objections to other specifications are determined by Magistrate Judge Marcia A. Crone. We seek clarification to resolve this difference among the parties.

The Order denies HII's petition to set aside the CID, grants the government's motion for enforcement in part, and rejects certain of the objections interposed by HII in its petition to modify the CID. The Order also refers the remaining objections to Magistrate Judge Crone for hearing and determination. This Court specifically noted that HII's sole objection to specifications 8 and 9, predicated on the *Noerr-Pennington* doctrine, had been rejected as a defense to subpoena enforcement and excluded these specifications from the matters referred to Magistrate Judge Crone. See Order at p. 9, n. 2 and accompanying text. This Court's reference to Magistrate Judge Crone contains no language staying enforcement of CID specifications not subject to the referred objections.

HII has refused to produce nonpublic documents responsive to specifications 8 and 9, but has not sought a stay of the court's *Noerr-Pennington* ruling. HII insists that it does not have to obtain a stay until the unrelated objections referred to Magistrate Judge Crone are resolved and the Order becomes final and appealable. HII apparently views an order it ostensibly cannot appeal as an order it need not heed. The government however believes that judicial orders — interlocutory or not, appealable or not — must be obeyed unless unequivocally stayed.

The Order adheres to the well established principle that administrative subpoenas are to be enforced through proceedings of a summary nature, proceedings in which courts afford the government wide latitude and allow rapid exercise of the government's important law enforcement functions. Further delay pending resolution of unrelated objections would run counter to that salutary principle. This Court should clarify its order as affording the government immediate access to documents responsive to CID specifications 8 and 9.

Respectfully submitted,



Daniel C. Kaufman
D.C. Bar No. 118422
U.S. Department of Justice, Antitrust Division
Transportation, Energy & Agriculture Section
325 Seventh Street, N.W. — Suite 500
Washington, D.C. 20530
(202) 307-6627
(202) 307-2784 (fax)

Certificate of Service

The undersigned hereby certifies that true and correct copies of the foregoing document were, on this 4th day of April, 1996, served by telefax (with hard copy by overnight courier) to the counsel of record listed below.

J. Gregory Copeland
Rufus W. Oliver III
BAKER & BOTTS, L.L.P.
910 Louisiana
One Shell Plaza
Houston, Texas 77002
Phone: (713) 229-1373
Fax: (713) 229-1522

Hugh Rice Kelly, Senior Vice President
and General Counsel
Michael Jines, Senior Counsel
HOUSTON INDUSTRIES INCORPORATED
25th Floor — Electric Tower
Houston, Texas 77002
Phone: (713) 207-7265
Fax: (713) 207-5503


Daniel C. Kaufman

Certificate of Negotiation

After good faith negotiations, the parties have been unable to reach agreement on the issues set forth herein


Daniel C. Kaufman

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS
Houston Division

HOUSTON INDUSTRIES INCORPORATED,

Plaintiff—Cross—Respondent,

vs.

DANIEL C. KAUFMAN, *et al.*,

Defendants—Cross—Petitioner.

No. 95-CV-5237

ORDER

The United States of America has moved the Court for clarification of its March 6, 1996, Order denying HII's petition to set aside Civil Investigative Demand No. 13591 (the "CID"). Having considered the memoranda filed by the parties,

It is HEREBY ORDERED that:

The Government's Motion for Clarification is GRANTED, and Houston Industries Incorporated shall make all documents responsive to Specifications 8 and 9 of the CID available to the government FORTHWITH.

SIGNED at Houston, Texas, on this the ____ day of _____, 199__.

DAVID HITTNER
UNITED STATES DISTRICT JUDGE