

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of:

OIG-509

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WITNESS: NUMBER 33

PAGES: 1 - 41

PLACE: Securities and Exchange Commission  
3 World Financial Center  
New York, New York

DATE: April 30, 2009

The above-entitled matter came  
on for hearing at 11:12 a.m.

 **ORIGINAL**

1 A P P E A R A N C E S:

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3 On behalf of the Securities and Exchange  
4 Commission

5

6 H. DAVID KOTZ, ESQ.

7 NOELLE FRANGIPANE, ESQ.

8 United States

9 Securities and Exchange Commission

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## P R O C E E D I N G S

MR. KOTZ: On the record at 12 minutes after 11:00 a.m. on April 30, 2009 at the United States Securities and Exchange Commission.

L E S L I E K A Z O N,

having first been duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. KOTZ:

Q. Could you state and spell your full name for the record, please?

A. Leslie, L-E-S-L-I-E, my middle name, I don't use, is Barbara, B-A-R-B-A-R-A, Kazon, K-A-Z-O-N.

Q. Ms. Kazon, my name is David Kotz. I'm the Inspector General of the United States Securities and Exchange Commission. Noelle Frangipane from the OIG is here with me as well.

This is an investigation by the Office of Inspector General, case number OIG-509. I'm going to ask you certain

1           A.       Sandy Sagwin works in the New  
2 York broker dealer examination program,  
3 and she is extremely helpful and extremely  
4 knowledgable about things like broker  
5 dealer registration, disciplinary action,  
6 CRD records, that kind of stuff.

7           Q.       Do you remember having received  
8 a referral in or around April 2001  
9 involving Madoff, do these documents  
10 refresh your recollection?

11          A.       They don't.

12          Q.       Let me show you some additional  
13 documents, maybe that will help. The next  
14 document is a ten-page document. It says  
15 at the top Objective, in 25 Minutes Or  
16 Less I Will Prove One Of Three Scenarios  
17 Regarding Madoff's Hedge Fund Operation.  
18 We're going to mark this as Exhibit 3.

19                   (Whereupon, the aforementioned  
20 document was marked as Exhibit 3 for  
21 identification.)

22          Q.       Take a minute to look at this.

23          A.       I don't recall the document.

24          Q.       I'm going to show you another  
25 document that we're going to mark this as

1 Exhibit 4. This is an E-mail from you to  
2 Mark Schonfeld dated 4/5/2001, 11:54 a.m..

3 (Whereupon, the aforementioned  
4 E-mail was marked as Exhibit 4 for  
5 identification.)

6 A. I have no recollection of this,  
7 I'm sorry.

8 Q. It does seem to indicate that  
9 you did receive a complaint from Harry  
10 Markopolis about Bernard Madoff and the  
11 decision was made not to pursue the  
12 action, is that a fair representation of  
13 the E-mail?

14 A. I certainly did -- yes, the  
15 E-mail indicates that I received such a  
16 complaint and that I reviewed it and that  
17 either on my own or after consulting with  
18 Mark, I concluded that we shouldn't pursue  
19 it.

20 Q. Do you have any recollection of  
21 any conversations with Mark Schonfeld  
22 about something that Harry Markopolis  
23 provided?

24 A. I don't.

25 Q. Now, our records indicate that

1 Sheryl Marcus searched NRSI for Madoff on  
2 or around that time period, do you have  
3 any idea why she would be the one who do  
4 the NRSI search?

5 A. I don't even know who she is.

6 Q. You said previously that you  
7 remember hearing something before  
8 September 11, 2001 about allegations about  
9 Madoff or --

10 A. No.

11 Q. About Madoff being very good at  
12 executions?

13 A. Yes.

14 Q. Do you think that might have  
15 referred to this complaint that came in?

16 A. It might have, but not  
17 necessarily. It might also have come up  
18 in the context of -- it might have been in  
19 this context or it might have been in the  
20 context of, you know, some completely  
21 unrelated investigation dealing with trade  
22 execution and his name being held out as  
23 someone who was expert or got really good  
24 execution, so -I don't remember.

25 Q. When do you remember first

1 hearing the name Harry Markopolis?

2 A. When the whole Madoff scandal  
3 came out.

4 Q. December 2008?

5 A. Yes.

6 Q. Now, take me through, if you  
7 could, when you would get a referral in  
8 like Exhibit 3, what would be the process  
9 that you would undertake to determine  
10 whether to go forward with it?

11 A. Generally I would just -- see,  
12 usually I actually -- this is sort of -- I  
13 don't remember. Usually I got exam  
14 reports, and I would review the exam  
15 report with a view to whether enforcement  
16 should further pursue something. You  
17 know, I mean in general, you know, when we  
18 get a complaint we would read it, we would  
19 try to figure out whether within the four  
20 corners of it it stated a possible  
21 violation of securities laws as opposed to  
22 a violation of something else. And then  
23 talk to -- and usually I would talk to a  
24 supervisor about, you know, whether we  
25 should pursue it or how we should pursue

1 it.

2 Q. In this case it looks like the  
3 complaint was referred from the Boston  
4 office. You see in the E-mail it says via  
5 the BDO, doesn't that refer to the Boston  
6 office?

7 A. Yes, you're right.

8 Q. So, is there anything different  
9 you would do when it comes in from the  
10 Boston office, maybe contact the folks up  
11 in Boston?

12 A. It would sort of depend on how  
13 it came to me. In other words if I  
14 thought it would be productive to contact  
15 the source, you know, the Boston office, I  
16 would have done that. If it was just, you  
17 know, something like, here, for your  
18 information, for whatever action you deem  
19 appropriate, you know, here's something  
20 that came into us but looks like it's more  
21 appropriate for you, then I wouldn't  
22 contact the Boston office.

23 Q. Could you do me a favor and just  
24 take a little bit more close look at  
25 Exhibit 3, which is the Harry Markopolis



1 complaint, and see if there's anything you  
2 can tell me about how you might have  
3 analyzed it?

4 A. Well, first of all, I have to go  
5 upstairs and get my reading glasses, which  
6 I should have brought with me.

7 Q. Okay. We can go off the record.

8 MR. KOTZ: Off the record.

9 (Break was taken.)

10 MR. KOTZ: Back on the record.

11 Q. You have your glasses?

12 A. Yes.

13 Q. So if you can take a look at  
14 Exhibit 3, which is the Harry Markopolis  
15 complaint, and then maybe you can give me  
16 a little bit of a sense of what your  
17 impressions are of it. Do you have any  
18 impressions of this document?

19 A. My impressions are that this is  
20 a document that I probably would have  
21 needed to consult somebody about, I hope I  
22 consulted somebody. I honestly don't  
23 remember. I also would have thought that  
24 the author of this document was odd, to  
25 say the least, but I hope that would not

1 have led me to dismiss this, but I just  
2 don't recall.

3 Q. But do you believe that this  
4 document, the Harry Markopolis complaint,  
5 did provide some credible information that  
6 one could follow-up on?

7 A. Well, actually without -- there  
8 are certainly some things in here one  
9 could follow-up on, that I could tell one  
10 could follow-up on. I think I would have  
11 needed to consult somebody with greater  
12 expertise to figure out the full extent to  
13 which it could be followed up on.

14 Q. What kind of expertise would you  
15 need?

16 A. Options expertise.

17 Q. But they would be people in the  
18 SEC with that expertise, right?

19 A. I think there -- at that time I  
20 think there would have been, I'm not sure.  
21 Probably at that time in my career  
22 probably the people I would have consulted  
23 would have been in the IA exam program or,  
24 you know, or Mark. Not because he's an  
25 expert in options, but just because he's a

1 really smart guy.

2 Q. That's Mark Schonfeld?

3 A. Yes.

4 Q. You don't recall ever speaking  
5 with Harry Markopolis?

6 A. No.

7 Q. You would remember if you had  
8 spoken to him, don't you think?

9 A. I suspect so, yes.

10 Q. If you look at these E-mails,  
11 these other E-mails which are Exhibits 1  
12 and 2, you see there's a reference in the  
13 first one, "the IA people have been  
14 checking. Madoff does not appear to be  
15 registered as an IA or IC. So, I would  
16 like to take a look at the copy of the  
17 most recent exam report for Bernard Madoff  
18 Investment Securities when you get the  
19 chance."

20 Do you see that? Do you have  
21 any idea from reading the Markopolis  
22 complaint why you would have been  
23 interested in that exam report?

24 A. Well, first of all, I probably  
25 would have been interested just because

1 it's the only, you know, it is some  
2 information about the firm or related  
3 entity. You know, whether I was also  
4 interested in it to see -- I mean, again,  
5 I do not fully absorb what's in here, but  
6 it looks like there's some stuff about,  
7 you know, the way he executes trades or  
8 how much money he's making or whether he's  
9 doing something improper about trading.  
10 So, that would have been something that  
11 might have been discussed or illuminated  
12 by the examining board.

13 Q. If you look at the other  
14 document, Exhibit 2, "the registrants I'm  
15 aware with whom Madoff might be associated  
16 are Broadhill Management and BMC Funds,  
17 Inc.."

18 Do have any idea why you would  
19 have been interested in that?

20 A. If they were, you know,  
21 registered -- I'm sorry, does it say that  
22 they were registered entities or just  
23 entities? I mean I would have been trying  
24 to find -- I would have been trying to see  
25 the extent to which Madoff was associated

1 with a registered entity and then probably  
2 -- and this may also have been in the  
3 context of my request from the BD exam  
4 report. I may have been trying to give  
5 her a hint. I just don't remember, you  
6 know, as to what the name of the register  
7 BD might be.

8 Q. So, Sandy Sagwin you would have  
9 went to to assist in getting documents.  
10 Would she be somebody that you would  
11 consult with in a substantive way?

12 A. No.

13 Q. At that time in your career had  
14 you ever either investigated or overseen  
15 the investigation of a Ponzi scheme case?

16 A. I'm trying to remember. I don't  
17 recall. I somehow -- I don't know that I  
18 have. I don't recall.

19 Q. Do you have any sense as to  
20 whether at any point in time, particularly  
21 around that time, Ponzi scheme cases may  
22 not have been the most favorite cases to  
23 take in the SEC?

24 A. I doubt that very much.

25 Q. Did you receive a lot of

1 different tips and complaints as a  
2 referral or otherwise?

3 A. Yes, I must have. I remember I  
4 got IM exam referrals. We also -- I don't  
5 know. There was a time when we have what  
6 I call Jason referrals. They are -- Jason  
7 Gettenger is someone in the New York  
8 office who is sort of like a clearing  
9 house for referrals. And at one time the  
10 referrals went to the branch chief and  
11 other times they went to the assistant  
12 directors, and so I just don't remember.

13 Q. How would you compare this  
14 document, the Harry Markopolis complaint  
15 Exhibit 3, to the Jason referrals or other  
16 referrals you've seen in terms of detailed  
17 information?

18 A. I suspect this is more detailed  
19 than the average complaint in those days  
20 that came through the Jason referrals.

21 Q. Is it fair to say that Harry  
22 Markopolis in this complaint, Exhibit 3,  
23 identified some red flags that could have  
24 been evidence of a Ponzi scheme?

25 A. I would really have to read it

1 more thoroughly, but I certainly -- I mean  
2 the one thing -- the easiest thing or the  
3 thing that strikes me now is somewhere in  
4 here where he said that he wasn't allowing  
5 audits.

6 Q. Not allowing external auditors  
7 in to verify performance would be  
8 something that a Ponzi scheme operator  
9 would do?

10 A. Yes.

11 Q. So that in your mind would be a  
12 red flag?

13 A. Yes.

14 Q. How would you go about  
15 investigating a Ponzi scheme case?

16 A. Typically you try to find out  
17 where is the trading that's supposedly  
18 being conducted, where is it going on, and  
19 you get records to confirm that A, that it  
20 is in fact going on.

21 Q. Would you try to get independent  
22 records other than from the entity that  
23 you're investigating?

24 A. Generally, ideally if I was  
25 seriously pursuing it, yes.

1 Q. How come?

2 A. Well, I mean in hindsight, yes.  
3 And, again, when I say in hindsight I'm  
4 basing that not so much on my review of  
5 this exhibit, which I, you know, just seen  
6 today and hadn't remembered seeing  
7 earlier, but on what I know now.

8 Q. Putting that aside, putting  
9 aside the fact that Bernie Madoff  
10 confessed to running a Ponzi scheme in  
11 December of 2008. Just based on the  
12 document, would it be fair to say that  
13 given the complexity, there were some  
14 details in the documents, that it would  
15 take some period of time, weeks perhaps,  
16 at least, to make a determination as to  
17 whether the matter was appropriate for  
18 investigation?

19 A. It should have in the hindsight.  
20 Again, I don't know whether it was that I  
21 asked someone in the exam program to  
22 review it, and just based on whatever that  
23 person told me or whether it was based on  
24 resources or priority, I just don't  
25 recall.