

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. OIG-509
OIG-509)

CC COPY

WITNESS: Number 38
PAGES: 1 through 49
PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
DATE: Friday, May 1, 2009

The above-entitled matter came on for hearing, pursuant to notice, at 2:02 p.m.

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1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, ESQ. Inspector General

5 HEIDI STEIBER, ESQ. Investigator

6 Office of Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10 202-551-6037

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12 On behalf of the Witness:

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C O N T E N T S

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WITNESS

EXAMINATION

[REDACTED]

4

EXHIBITS:

DESCRIPTION

IDENTIFIED

1

Memorandum from K. Kaepplein,
to H.D. Kotz, dated 12/19/08

23

P R O C E E D I N G S

MR. KOTZ: Okay. We are on the record at 2 minutes after 2:00 p.m. on May 1, 2009, at the United States Securities and Exchange Commission, Office of Inspector General.

I'm going to swear you in if that's all right.

MS. [REDACTED]: That's fine.

Whereupon,

[REDACTED]

was called as a witness and, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. KOTZ:

Q Okay. Could you state and spell your full name for the record.

A My name is [REDACTED] [REDACTED] is capital [REDACTED], capital [REDACTED] period, [REDACTED], [REDACTED] hyphen [REDACTED].

OIEA Branch Chief

Q Okay [REDACTED], my name is David Kotz. I'm the inspector general of the United States Securities and Exchange Commission. I have Heidi Steiber, my colleague from the Office of Inspector General, with me as well.

Personal Privacy

This is an investigation by the Office of Inspector General, Case Number OIG-509. I'm going to ask you certain questions. You'll have to provide answers under oath. The

1 A No. From what I see here, there is no referral and
2 the reason is this. With the referral section of it, there
3 is no reference.

4 Q And is there any reason given for why it wasn't
5 referred?

6 A There is nothing on this document that says why it
7 wasn't referred.

8 Q And is the actual letter present?

9 A The letter is not present. It is August 9, 2002.
10 Generally what happens with these types of complaints is
11 this. A file will actually be made in what we call our brown
12 folders. And the support staff will put a file number on it.
13 That will be done when the support staff actually inputs the
14 information into the ACTS System.

15 What will happen is a number will automatically be
16 generated and then also a staff member would have placed it.
17 What happened here is it looks like one of the staff
18 members --

19 MS. STEIBER: Can we go off the record for a
20 second.

21 (A brief recess was taken.)

22 MR. KOTZ: Back on the record.

23 BY MR. KOTZ:

24 Q Is it your understanding that OIEA attempted to
25 find an actual copy of the complaint, but wasn't able to do

1 so?

2 A Yes. Yes. What happened is this. Basically what
3 happens is within our office, we have a file room. Those
4 records are kept there for two years. After a two-year
5 period, we send it on to records management, which will then
6 send it to the Federal Records Center. After that time
7 period, records are destroyed. There was an attempt made by
8 our office to actually find this particular file. What you
9 will see, I guess pages 10, 11 are the attempts made by the
10 office to recover the file.

11 Q Okay. So just to be clear, a complaint came in on
12 August 8, 2002, to [Personal Privacy], who was [Personal Privacy]
13 [Personal Privacy], by an investor alleging
14 that Bernie Madoff had manipulated securities prices for
15 markets. And that complaint letter was not referred to
16 anyone; is that right?

17 A That's what I see from the records, yes.

18 Q Okay. Let's go to the next one. Okay. So the
19 next one is page 12 to 13. Why don't you take a minute to
20 read over pages 12 and 13 and then I'll try to summarize it
21 and ask you if it's correct.

22 A Okay.

23 (The witness examined the document.)

24 THE WITNESS: All right.

25 BY MR. KOTZ:

1 A That is correct.

2 Q Now it was received by OIEA on November 24, 2006.

3 A Correct.

4 Q And what does it indicate, if anything, was done
5 about a referral?

6 A No referral was provided in this case.

7 Q Is there any indication as to why there was no
8 referral?

9 A Under the initial contact, there is a comment and
10 analysis, and basically states that the complaint -- it tells
11 you what the complaint was. Have no losses, but no other
12 information provided.

13 BY MS. STEIBER:

14 Q So why do you think this complaint wasn't
15 forwarded?

16 A More than likely, it was not enough information,
17 specific information, to forward it in this particular case.

18 Q And the branch chief, in that case, would have
19 signed off on that decision not to refer it.

20 A Right. What happened during that time -- you'll
21 see a signature here. In this case, the branch chief would
22 have signed off on it, it looks like it's December 14th. It
23 would have been [REDACTED] So that was [REDACTED] who was branch
24 chief at that particular time.

25 BY MR. KOTZ:

1 that they're not providing enough information. Why are you
2 sending me this stuff?

3 A If it's any, just any --

4 Q In general, does that happen?

5 A That happens, yeah. That happens, but it happened
6 sometimes in the New York office. Particularly there was one
7 person that generally did that a lot.

8 Q Was that Jason Gettinger?

9 A Yes.

10 Q What did he do, Jason Gettinger?

11 A What did he do as far as --

12 Q Well, you said there's one person who did that.
13 What do you mean?

14 A Well, basically what he would do is he would send
15 information back to us and said, "Well, why are you doing
16 this" or he would say, "We're not interested." Or sometimes
17 he would actually say, "I'm working on it." And he would
18 tell us what it was that we're doing. And then he would
19 provide you with information as to why you shouldn't have
20 sent it to him.

21 Q So he was particularly vocal sometimes in saying
22 that he didn't understand why you were sending him particular
23 information.

24 A Yes. Yes.

25 Q More so than other offices?

1 A More so than other offices. Generally the other
2 offices would thank us for the information or tell us what it
3 is that they were doing or we sometimes would hear nothing.

4 BY MS. STEIBER:

5 Q Now did he have a tendency to embarrass staff if
6 they sent him a complaint he didn't approve on by copying
7 maybe an assistant director or someone else?

8 A I would get -- as a branch chief, I would get
9 copies of it. If the staff would send it to him, he would
10 send it back and basically I was named on it or either the
11 other branch chiefs were named on it. And he would send it
12 back to the staff even if they sent him a telephone, what we
13 call the telephone. And he would courtesy copy and just say,
14 "Hey, look. Why are you people sending this to me" and
15 provide you with all the information regarding as to why you
16 shouldn't --

17 Q So that person might feel embarrassed to have you
18 copied on the rejection of their complaints.

19 A Yes.

20 BY MR. KOTZ:

21 Q And the staff folks knew that Gettinger had done
22 that in the past. So when they were referring complaints to
23 him, they might have thought about what the reaction would
24 be?

25 A Oh, yes.

1 Q And so that might have caused more of a hesitance
2 to send complaints to New York because of that?

3 A Particularly to that person.

4 Q Yeah.

5 A Particularly.

6 Q So is that a yes?

7 A I would guess particularly.

8 Q Okay.

9 MS. STEIBER: Can we go off the record for a
10 second.

11 (A brief recess was taken.)

12 MR. KOTZ: Back on the record.

13 BY MR. KOTZ:

14 Q Okay. We want to just establish one thing if we
15 could.

16 A Okay.

17 Q On page 20 of the attachment to this memorandum,
18 which we've marked as Exhibit 1, it indicates that there was
19 an NRSI search for Bernard L. Madoff Investment Securities,
20 LLC; is that correct?

21 A That is correct.

22 Q And that search was done by Personal Privacy according
23 to this document?

24 A That is correct.

25 Q Yet, when you look at the appendix in the back --

1 MS. STEIBER: D.

2 BY MR. KOTZ:

3 Q -- D, there is a listing of NRSI searches for
4 Madoff, Bernard. You don't see Personal Privacy name on this
5 list. Is that right?

6 A Right. And it could be because this specifically
7 searched Bernard L. Madoff Investment Securities, LLC. So
8 you don't have that one. The search was done when the staff
9 supplied the information and put in a wild card search. So
10 there may have been a separate listing for Bernard L. Madoff
11 Investment Securities.

12 BY MS. STEIBER:

13 Q But whatever the reason, it appears that Appendix D
14 may have some inaccuracies.

15 A Might.

16 BY MR. KOTZ:

17 Q And so I mean, it is your understanding that
18 Personal Privacy did the NRSI search, as indicated here.

19 A Right.

20 Q And in fact, that would be the only reason that we
21 could see why he would send it to Simona Suh because he would
22 find out that Simona Suh was working on it by doing an NRSI
23 search.

24 A That is correct.

25 BY MS. STEIBER: