

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of:

OIG-509

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WITNESS: NUMBER 46

PAGES: 1 - 37

COPY

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

DATE: May 11, 2009

The above-entitled matter came on
for hearing at 2:35 p.m.

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

2
3 On behalf of the Securities and Exchange
4 Commission

5
6 H. DAVID KOTZ, ESQ.

7 United States

8 Securities and Exchange Commission

9 100 F Street NE

10 Washington, DC 20549
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1 MR. KOTZ: We are the record at
2 2:35 on May 11, 2009 at the Securities and
3 Exchange Commission.

4 The Court Reporter will swear you in.
5 J A S O N G E T T I N G E R,
6 having first been duly sworn by a Notary
7 Public of the State of New York, was
8 examined and testified as follows:

9 EXAMINATION BY

10 MR. KOTZ:

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

13 A. Jason Gettinger.

14 Q. Mr. Gettinger, my name is David
15 Kotz, I'm the Inspector General of the United
16 States Securities and Exchange Commission.

17 This is an investigation by the
18 Office of Inspector General, case number
19 OIG-509. I'm going to ask you certain question
20 and you'll have to provide answers under oath.
21 The Court Reporter will record and later
22 transcribe everything that is said. Therefore,
23 please provide verbal answers to the questions,
24 as a nod of the head or another non-verbal
25 response will not be picked up by the Court

1 as a first lieutenant, reserve commission
2 officer on active duty with the U.S. Army.
3 Served for just short of two-years. I was a
4 captain when I left and I went to certain Army
5 service schools, which I don't think are
6 pertinent.

7 Q. When did you start with the SEC?

8 A. I started with the SEC on April 1,
9 1975.

10 Q. Can you just briefly go through the
11 different positions you've had with the
12 Commission?

13 A. I started as I think a GS12 staff
14 attorney, promoted to GS13. I was then made a
15 GS14 special trial counsel in the late '70s.
16 In about 1981 I was made senior trial counsel.
17 At some point in the mid '80s when Ann Flannery
18 was the only associate for enforcement, she
19 appointed me as assistant director. I was an
20 assistant director until the end of 1992 when I
21 assumed my present position, regional
22 litigation counsel.

23 Q. What are your duties and
24 responsibilities as a regional litigation
25 counselor?

1 A. Essentially whatever the associate
2 regional directors and the senior supervising
3 senior trial counsel Alex Vasilescu tells me.
4 I will tell you that I do not run
5 investigations or litigations anymore.

6 Q. Who is your current supervisor?

7 A. Alex Vasilescu.

8 Q. Do you have involvement in tips and
9 complaints that are brought to the SEC?

10 A. Yes.

11 Q. What would that involvement be?

12 A. At some point when that system was
13 formalized I was designated as the main person
14 to get complaints, tips and referrals as
15 defined by some memo by Steve Kutler when he
16 was head of enforcement. Before that
17 informally I got some referral matters, we
18 called them, that's just part of our office
19 procedures. And I was really just told to
20 essentially perform the ministerial task of
21 determining which branch would get them.

22 Originally it was done on a system
23 where every branch chief was suppose to tell me
24 about their workload every week or every two
25 weeks. I was suppose to figure out which

1 they come directly from this office, so we
2 don't know as much about it. And we'll either
3 recommend to the associates that something be
4 opened or we will without writing them a memo
5 unless it seems to be, you know, more
6 interesting than normal, of unusual concern,
7 but it's just sort of developed that if it
8 looks like we don't have enough to work on, if
9 the two or three of us don't think it merits
10 further working after, you know, just a cursory
11 look, we'll shut it down. We'll just close it
12 and we'll put in the CTR that we reviewed it
13 and the review is complete and put in a reason.
14 Usually if one of the investigators comes up
15 with a memo, I will send the memo on to the
16 three associates with a recommendation from me
17 with a concurrence from Rob or a disagreement
18 as to whether we should assign it to a branch
19 or not.

20 Q. How specific do you require the
21 complaints to be in order to be investigated?

22 A. That's a very subjective question.
23 Let me attempt to answer it this way. If the
24 complaint cannot tell us that there's more than
25 one victim, if the complaint can't tell us who,

1 what, when, where, particularly if it's
2 anonymous, it's probably not enough for us go
3 on. For example, a complaint about a company
4 as opposed to an investment scam might come in
5 and say -- you really have to look at X, Y, Z
6 ridges because they are really lying in their
7 reports to the SEC and it's a big scam or it's
8 a Ponzi scheme. Even though it's company
9 they'll call it a Ponzi scheme. We wouldn't
10 know where to begin, and we don't have access
11 to companies unless we have a formal order
12 because we don't examine them.

13 On the other hand, let's say
14 somebody writes in and they said there's a guy
15 in Mudville, New York, and I saw an ad in the
16 paper and he was offering ten percent return,
17 so I gave him 75,000 and this was in 2006. And
18 I asked for my money back last December because
19 I was afraid that he might be another Madoff
20 and I haven't heard from him again, you know.
21 That type of thing isn't terribly specific, you
22 don't really know what the investment is about
23 or something else. But we will try to, you
24 know, look up the name and figure out if there
25 have been any other complaints to the SEC

1 essentially forward what they had?

2 A. It was my understanding that they
3 essentially forward what they had, give it to
4 us or OIE.

5 Q. And sometimes the information you'd
6 get, there was nothing you could do with it?

7 A. There was nothing reasonable that
8 we could do or it looked to be like a private
9 dispute.

10 Q. Let me show you this document.
11 We're going to mark this as Exhibit 2. It's an
12 E-mail from you to [REDACTED] January 14,
13 2004, 1:41 p.m..

14 (Whereupon, the aforementioned E-mail
15 was marked as Exhibit 2 for identification
16 as of this date by the Reporter.)

17 Q. In the E-mail you reference
18 something about burning resources to chase
19 Ponzi schemes. Do you see that?

20 A. Yes, my comment on the top.

21 Q. Did you have this feeling that some
22 of it didn't make sense to, like you say, burn
23 resources to chase Ponzi schemes, what did you
24 mean by that?

25 A. That they were crimes and they

1 probably, unless they involved registered
2 entities, you know, people within are ambit of
3 regulations, and that carried the parameter of
4 SEC registered entities, that they probably
5 should be chased by the FBI, local prosecutors.

6 Q. Did you get the sense at any point
7 in time in the enforcements division that Ponzi
8 scheme cases were not considered kind of the
9 most favorite cases to bring?

10 A. No. As a matter of fact, I was in
11 a minority of thinking that we would be hurting
12 our overall effort if we spent too much
13 resources on localized Ponzi schemes that
14 weren't connected to what's now called off
15 market Ponzi schemes. I wouldn't define Madoff
16 as an off market Ponzi scheme, by the way. And
17 there were a lot of reasons behind that,
18 because I had seen us use resources, you know,
19 to get quick TROs and going after people who
20 were essentially, you know, crooks, and these
21 were essentially criminal matters. And I don't
22 know if you were here during when Harvey Bick
23 was chairman, but he had a phrased called add
24 value, what could we add as an agency.

25 Q. You didn't feel like in Ponzi

1 scheme cases we could add a lot of value?

2 A. I didn't feel we could add a lot of
3 value in the small ones that were unrelated,
4 where the public was not relying on some type
5 of association with the regulated entity.

6 Q. But other than --

7 A. But I think my view was a minority
8 view. I mean, I was at a -- I started to watch
9 a training program before coming to talk to you
10 today, and it was about working together with
11 the CFTC in cooperation. And the first case
12 study they had was presented by a woman from
13 the Philadelphia office who was boasting that
14 she had spent a substantial part of her career
15 working on Ponzi schemes.

16 Q. This is post December 2008?

17 A. But she been with the agency for a
18 long time, you see. We've all done these
19 cases.

20 Q. Do you have any sense or theory or
21 idea of how it is that the SEC did this
22 investigation and did two examinations of
23 Madoff but was unable to uncover the Ponzi
24 scheme?

25 A. I'm not sure exactly of how many

1 have seen complaints come in?

2 A. Absolutely.

3 Q. Until the present?

4 A. Yes.

5 Q. Okay.

6 A. Do you want that document?

7 Q. Yes, I do. Could you follow-up and
8 get that to me.

9 A. Yes. It would be in two parts,
10 because at one point it got to be so long that
11 I stored it as another document.

12 Q. Okay.

13 A. I'll probably be able to get you
14 both.

15 Q. Okay. I don't have anything
16 further. I just ask if you not discuss your
17 testimony with anyone else.

18 A. Okay.

19 I just want to elaborate a little
20 further on my answer on the Ponzi schemes.

21 Q. Yes, please.

22 A. I have been quite candid with
23 people before the Madoff thing blew up, that I
24 felt that if we didn't try to find homes for at
25 least some of the Ponzi schemes that came to

1 us, that we would wind up not only using
2 resources, but disappointing the professional
3 expectations of our staff. Because it's an
4 ironic thing that in the wake of Enron, which
5 was in the early '90s, right, 2001, and the
6 wake of the shift in the compensation that we
7 got paid in the wake of Enron and the wake of
8 certain policies that Wayne Carlin had the guts
9 to implement here, namely not hiring people
10 directly out of law school for the most part.
11 We started getting applications from extremely
12 talented experience people with experience at
13 top racket firms. And I felt that they were
14 coming here mainly because they wanted to work
15 on big corporate and securities industry fraud,
16 and not essentially duplicate the efforts of
17 local prosecutors on relatively minor things.
18 And then if they got too many small matters
19 like that, and if we started making them do TRO
20 matters where you're here all weekend with the
21 court papers, because you always have to
22 reinvent the wheel when you do these things,
23 that there would be a certain amount of
24 disappointment and we wouldn't be giving them
25 the experience that they deserved and we