

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

WITNESS: Witness #72

ORIGINAL

PAGES: 1 through 41

PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

DATE: Thursday, July 30, 2009

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

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1 APPEARANCES:

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4 On behalf of the Securities and Exchange Commission:

5

6 H. DAVID KOTZ, ESQ., Inspector General

7 DAVID WITHERSPOON

8 DAVID FIELDER

9 Securities and Exchange Commission

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15 On behalf of the Witness:

16

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P R O C E E D I N G S

1
2 MR. KOTZ: We are on the record at 2:35 p.m. on
3 July 30, 2009 at the United States Securities and Exchange
4 Commission, Office of the Inspector General.

5 Whereupon,

6 Office of Internet Enforcement Official

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

9 MR. KOTZ: Could you state and spell your full name
10 for the record please?

11 THE WITNESS: My name is Office of Internet Enforcement Official

12
13 MR. KOTZ: Okay Office of Internet Enforcement Official, my name is David Kotz
14 and I am the Inspector General of the United States
15 Securities and Exchange Commission. I have with me my
16 colleagues from the Office of Inspector General, David
17 Witherspoon and David Fielder. This is an investigation by
18 the Office of Inspector General, case number OIG-509. I'm
19 going to ask you certain questions and you will have to
20 provide answers under oath.

21 A court reporter will record and later transcribe
22 everything that is said. Therefore, please provide verbal
23 answers to the questions as a nod of the head or some other
24 non-verbal response won't be picked up by the court reporter.
25 Also, so the record will be clear, please let me finish my

1 A I've seen a part of it.

2 Q Okay, which part?

3 A The bottom from the Nomen Nescio portion, I
4 believe, I saw this.

5 Q Okay, when did you see that?

6 A It was the day after Bernie Madoff was arrested.

7 Q So in 2008?

8 A Yes, if that was -- I believe he was arrested in
9 December of 2008. So it was the day after that. I don't
10 remember the date. But yes, sir.

11 Q Now you mentioned before you were familiar with a
12 complaint relating to Madoff that you thought was late 2004.
13 Is that the same one or is there a different one?

14 A No, this is the one.

15 Q So you've seen that in 2005 but you think that's
16 the same complaint you were referring to?

17 A Oh it's 2005. Yeah, this is the one I was
18 referring to. I apologize.

19 Q That's all right. I just wanted to make sure there
20 wasn't another one. So you're not aware of any other
21 complaints that came in at any time relating to Bernard
22 Madoff?

23 A No, sir.

24 Q Okay. Do you have an understanding of what
25 happened with the complaint from Nomen Nescio, Saturday,

1 **October 1, 2005, 10:10 a.m. to enforcement?**

2 A I've heard what happened to it, but only in small
3 detail. So I don't know ultimately where it was sent or what
4 was done with it, so no.

5 **Q What have you heard?**

6 A That we received this the day after Madoff was
7 arrested. That Enforcement Staff Attorney and Enforcement Senior Counsel, one of
8 them received it. I mean they discussed it with each other.

9 **Q But when you say we received it the day after**
10 **Madoff was arrested --**

11 A Oh I'm sorry, that's when I learned, I had --

12 **Q Did your group receive it in October of 2005, or**
13 **did they first time receive it in December of 2008?**

14 A My understanding is they received it around this
15 time, October of 2005, yes, sir.

16 **Q Go ahead. And then you said Enforcement Senior Counsel and Enforcement Staff Attorney**
17 **discussed it?**

18 A Yes. From what I understand there was some
19 dialogue between Enforcement Staff Attorney and Enforcement Senior Counsel about what
20 to do about with this complaint.

21 **Q And what was that dialogue?**

22 A I don't know.

23 **Q And what did they ultimately decide?**

24 A I don't know.

25 **Q So you don't know if this complaint was referred to**

1 enforcement?

2 A No, I don't.

3 Q Do you know if an NRSI search was done on Madoff?

4 A Yes. I'm sorry, by whom?

5 Q Either Enforcement Senior Counsel or Enforcement Staff Attorney or somebody
6 else on your staff?

7 A Yes, I do know that they both ran NSRI searches on
8 Madoff around the time of this complaint, yes.

9 Q And do you know what they found, if anything?

10 A I don't.

11 Q Are you aware that there was an ongoing
12 investigation of Bernard Madoff --

13 A No.

14 Q -- around this time by the enforcement division?

15 A I'm sorry. Can you repeat the question?

16 Q Are you aware that around this time in October of
17 2005 that there was an investigation of Bernard Madoff
18 conducted by the enforcement division?

19 A Am I aware now that there was an investigation
20 then?

21 Q Yes.

22 A No.

23 Q Pursuant to your procedures in your group and if an
24 NSRI search had been done and found an investigation that was
25 ongoing, a matter under inquiry or an actual formal

1 investigation, under those procedures would this complaint
2 have been referred to enforcement?

3 A If you receive a complaint and it pertains to an
4 investigation, you refer it to the staff attorney assigned to
5 that investigation. That is our standard procedure, yes,
6 sir.

7 Q Okay, so looking at this complaint in front of us
8 that is in Exhibit No. 1, if an NSRI search had been
9 conducted and they found an ongoing investigation involving
10 Bernie Madoff, under your procedures would this complaint
11 have been sent to the staff attorney involved in that
12 investigation?

13 A Yes, if there is an existing investigation,
14 certainly.

15 Q Are you certain that you never had a conversation
16 with either Enforcement Senior Counsel or Enforcement Staff Attorney about the
17 complaint from Nomen Nescio, Saturday, October 1, 2005, 10:10
18 a.m.?

19 A What timeframe?

20 Q In the October 2005 timeframe?

21 A I don't recall ever speaking to either of them
22 about this complaint.

23 Q Okay. But it was several years ago. So is it
24 possible you did have a conversation with them about it?

25 A I doubt it. But anything is possible.

1 Q Why do you say you doubt it?

2 A Because if I had seen a complaint about Madoff in
3 front of me, I would remember it because my Personal Privacy
4 were victims of the Madoff fraud.

5 Q But they weren't victims of the Madoff fraud in
6 2005.

7 A No. I knew at that time that my Personal Privacy had some
8 sort of investment with treasury securities with, I think,
9 Personal Privacy and Bernie Madoff.

10 Q Okay. Tell me about that. How long had your
11 Personal Privacy had an investment with Bernie Madoff?

12 A I don't know.

13 Q Do you know, I mean, approximately? When did you
14 first learn that your Personal Privacy had an investment with Bernie
15 Madoff?

16 A It was about ten years ago. We only had -- We
17 never talked about investments, my Personal Privacy and I. And I think
18 around ten years ago, in the context of a conversation about
19 something, he said that he had treasuries and muni bonds with
20 Personal Privacy and Bernie Madoff.

21 Q Do you know how much of the value of those
22 treasuries and muni bonds or of his investment with Bernie
23 Madoff was?

24 A No. I know how much was in their account when it
25 the fraud was revealed.

1 Q How much was that?

2 A [Personal Privacy]

3 Q Did you ever have personally any investments with
4 Bernie Madoff or any funds relating to Bernie Madoff?

5 A No, sir.

6 Q Anybody else in your family other than your [Personal Privacy],
7 ever have an investment with Bernie Madoff?

8 A Yes.

9 Q Who was that?

10 A My [Personal Privacy].

11 Q How long has your [Personal Privacy] had an investment with
12 Bernie Madoff?

13 A I don't know.

14 Q When did you first hear of [Personal Privacy] having an
15 investment with Bernie Madoff?

16 A After Bernie Madoff was arrested.

17 Q And do you know how much was in [Personal Privacy]
18 account after Bernie Madoff was arrested and the fraud came
19 out.

20 [Personal Privacy]

21 Q What is your [Personal Privacy] name?

22 [Personal Privacy]

23 Q And what was your [Personal Privacy] name?

24 [Personal Privacy]
25 [Personal Privacy]

1 Q Anybody else in your family have investments with
2 Bernie Madoff?

3 A Not that I know of.

4 Q So you only know of [Personal Privacy] and [Personal Privacy]
5 [Personal Privacy]

6 A Yes, sir.

7 Q Do you know if the two of them ever met Bernie
8 Madoff, either of them?

9 A Yes.

10 Q Both of them did?

11 A Yes.

12 Q Do you know on how many occasions?

13 A No.

14 Q Did they tell you about their meeting with Bernie
15 Madoff? I mean how do you know?

16 A I know that my [Personal Privacy] friend, [Personal Privacy]
17 [Personal Privacy] with Bernie Madoff so there were times when my
18 [Personal Privacy] socialized with [Personal Privacy] and saw Bernie Madoff. I
19 don't know if my [Personal Privacy], I know of at least one occasion
20 where my [Personal Privacy] may have seen Bernie Madoff.

21 Q Do you know if your [Personal Privacy] were ever at
22 Bernie Madoff's house or apartment?

23 A I don't know.

24 Q Was there something about babysitting for Bernie
25 Madoff's kids or grandkids or something?

1 A No, sir.

2 Q Okay. Have you ever met Bernie Madoff?

3 A Yes.

4 Q When was that?

5 A Once. Personal Privacy

6 Personal Privacy

7

8 Q And did you talk to him at that point?

9 A Yes.

10 Q For a long period of time?

11 A No.

12 Q Just a few minutes?

13 A Just a few minutes.

14 Q And when was that?

15 Personal Privacy

16

17 Q Okay, so it was before Madoff had confessed to the
18 Ponzi scheme.

19 A Yes, sir.

20 Q So Madoff confessed to the Ponzi scheme in December
21 of 2008. This would have been December of 2007 do you think?

22 Personal Privacy

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1 believe that the complaint as written should have been
2 referred? If you were to look at this complaint, you're the
3 head of the office, what is your determination as to whether
4 this complaint should have been referred?

5 MS. GROHOVSKY: So you're asking him to speculate
6 about what he would have done in 2005?

7 MR. KOTZ: Well just tell me know. You're getting
8 the complaint in and you're looking at it. Your job is to
9 oversee the group that makes these decisions. So my question
10 is what decision to be made on this kind of complaint?

11 THE WITNESS: I think any time a complaint involves
12 a registered entity, it should be referred to either the
13 Office of Compliance Inspections and Examinations or referred
14 to enforcement staff or further looked at. Anytime a
15 registered entity is involved, that's my view. I'm not sure
16 if this is a registered entity.

17 BY MR. KOTZ:

18 Q All right, but I'm asking in looking at this
19 complaint itself, Nomen Nescio, Saturday, October 1, 2005,
20 10:10 a.m. in Exhibit No. 1, in reading this complaint, do
21 you believe this is a complaint that should have been
22 referred?

23 A Yes.

24 Q You became aware of this complaint after Bernie
25 Madoff confessed and was arrested, right?

1 A Yes, sir.

2 Q Was there concern expressed in the office about
3 what happened to this complaint?

4 A Yes.

5 Q And did you investigate as to what happened to the
6 complaint based on that concern, look into it?

7 A No.

8 Q Did you ever ask Enforcement Staff Attorney [REDACTED] or Enforcement Senior Counsel [REDACTED]
9 how come it wasn't referred or what happened?

10 A No, I recused myself. I'm sorry. Maybe I should
11 explain. Can I walk you through what happened that day?

12 Q Please.

13 A When I came into the office everybody was talking
14 about Madoff so I believe I instructed the phase-one people
15 to do an archive search to see if we had ever received
16 anything, which is fairly standard when one of these types of
17 situations happens. And they found this complaint and they
18 figured out that Enforcement Staff Attorney [REDACTED] and Enforcement Senior Counsel [REDACTED] had gotten
19 it during phase three. So I immediately informed my
20 supervisor, Personal Privacy [REDACTED] of the complaint a few hours into
21 that morning and told her that I was recused from any sort of
22 investigation or anything having to do with Madoff. And at
23 that point I don't know what happened next.

24 Q And then since that point, you haven't been
25 involved in whatever inquiry was done to find out what

1 weren't caught. But on the other hand, I've been here for 18
2 years and I know how difficult the investigations can be,
3 especially when someone is a real con artist. So I guess I
4 don't have an answer.

5 BY MR. KOTZ:

6 Q Okay, that's fine. Do you know anybody else who
7 works for the SEC whose family had had investments with
8 Madoff?

9 A No.

10 Q Would that be something that you might have talked
11 to people about? Or do you think it would have come up at
12 all? I mean this thing hits and obviously it hits you more
13 personally than a lot of the people. Did you have
14 conversations with, do you know anybody else or is it
15 something that came up at all?

16 A No.

17 BY MR. FIELDER:

18 Q Did you ever hear from Enforcement Senior Counsel that she had
19 referred the complaint sometime in 2005 when it came in or
20 that she thought she had?

21 A Yeah, she told me that she thought she had. I
22 thought it had been referred.

23 Q When did that conversation occur and can you tell
24 me a little bit more about that conversation?

25 A It was right around the time that we did the