

Interview of [redacted] former New York Enforcement Staff Attorney

On June 26, 2009 at 10:00am, Inspector General Kotz interviewed [redacted] former New York Enforcement Staff Attorney at the law offices of [redacted] Personal Privacy. Deputy Inspector General Noelle Frangipane and Assistant to the Inspector General Roberta Raftovich participated by phone and took notes of the interview. [redacted] former New York Enforcement was represented by [redacted] Personal Privacy, and both [redacted] former New York Enforcement and [redacted] Personal Privacy signed confidentiality agreements concerning this testimony. [redacted] Personal Privacy noted that [redacted] former New York Enforcement Staff Attorney participation in the interview was voluntary.

[redacted] former New York Enforcement first began working with the SEC in 1990 as a staff attorney. It was his first job out of law school. He was promoted to Branch Chief in 1992 (he did not recall the month). He also indicated that he served as Acting Branch Chief for a period of time prior to assuming the position. He left the SEC in 1994 to go into private practice. He does not recall if his title was Branch Chief or something else when he left the SEC.

He had not heard of Bernard Madoff before the Avellino & Bienes (A&B) case. He had no sense of Madoff's reputation, and has never met Madoff nor any member of the Madoff family.

Exhibit: King Arthur Account Fact Sheet
Exhibit: August 7, 1991 letter from Avellino & Bienes

[redacted] former New York Enforcement does not recall ever seeing these documents. He recalled generally that the investigation into A&B "started from a phone call or something coming in to the SEC." [redacted] former New York Enforcement also recalled the claims in the A&B letter that the investments were "100% safe," however, he does not recall this being a red flag in the case. [redacted] former New York Enforcement did agree that this "100% safe" promise would be a red flag.

Exhibit: June 24, 1992 Memo In the Matter of King Arthur

[redacted] former New York Enforcement had no recollection of this document, however, he confirmed that his initials were on the document. He stated that he did not recall getting a team together, and doesn't recall them working on it.

Exhibit: November 16, 1992 Memo relating to OCIE cause exam of BLM

[redacted] former New York Enforcement did not recognize this document. He stated that he "never would have seen it because it was in a completely different branch." Reading it during the interview, [redacted] former New York Enforcement stated that he recalled SEC staff DeLeonardis, Nee & Gentile calling investors and getting declarations for the A&B case. [redacted] former New York Enforcement recognized the cc: list as staff who worked as part of the examination program.

[redacted] former New York Enforcement stated that he had no recollection of an examination of BLM occurring, but had a "vague recollection" of "something occurring" over an unspecified time period regarding an exam of BLM. He stated that he did not recall the exam team telling him anything

positive or negative, but went on to state that if it was positive, “they’d immediately come to me.”

Miller stated that the document looked like it related to A&B, specifically, it “looks like there was an effort to check” what A&B said was going on with BLM, and it matched.

Exhibit: July 7, 1992 transcript of Avellino and Bienes Testimony

former New York Enforcement recalled requesting a voluntary interview with Avellino and Bienes. He recalled Ike Sorkin calling up and saying, “I represent Avellino and Bienes” and “nothing inappropriate is going on here. They are former IRS agents and I’ll bring them in for testimony.” former New York Enforcement stated that Sorkin’s statements about A&B did not provide him with any comfort, but rather, he “wanted to find out what was going on.”

When questioned as to why Avellino and Bienes were interviewed contemporaneously, he said that he thought it must have been because they were being represented by the same counsel. However, he did not specifically recall them being interviewed together in this case. When asked whether there was a concern that interviewing the subjects together at the same time would allow them to coordinate their answers, former New York Enforcement Staff Attorney stated that it “depends on the situation,” and that “if it occurred, I didn’t think it was a problem, obviously.”

p. 37-39 of Transcript

former New York Enforcement did not recall A&B stating that all their investments went to BLM. former New York Enforcement Staff did not remember A&B describing Madoff’s investment strategy.

p. 75 line 14 of Transcript:

former New York Enforcement Staff Attorney did not recall A&B testifying that there had “never been a loss” to investors.

former New York Enforcement recalled that there was more money at the broker-dealer than was owed to the investors. If it was the other way around, then they would have been concerned that it was a Ponzi scheme. But he recalled the amount owed to investors to be less than the amount with BLM. However, former New York Enforcement stated that the SEC staff didn’t know how many investors there were that they didn’t know about, and that was why they got a Trustee. He stated it was the Trustee’s job to figure that out.

former New York Enforcement recalled A&B giving above 15% return to investors, with A&B also getting a cut. This would mean that A&B were making more money than they were paying out to investors. former New York Enforcement stated the SEC staff “didn’t know if it was true or not.”

former New York Enforcement said that since A&B had more money in the brokerage account than they owed investors, they were not concerned that the money paid back in this case came from other investors’ funds. former New York Enforcement stated that one of the reasons a Trustee/Receiver was appointed was “to find out if there were other claimants out there.”

former New York Enforcement [redacted] did not recall why A&B were not charged with fraud. former New York Enforcement Staff Attorney [redacted] stated that that decision would not have just been him, because a Branch Chief would not have been in a position to make that decision. He said he was “sure it was a collaborative effort.”

former New York Enforcement [redacted] recalled former Enforcement Assistant Regional Director [redacted] being “heavily involved” as his supervisor, and stated that she “absolutely” had more of a say in the process than he did.

He recollected that they did not conclude that there were no misrepresentations of material fact in this case.

former New York Enforcement [redacted] stated that after Avellino and Bienes were brought in for interviews, he did not find them altogether convincing, stating he “didn’t know if these guys were telling the truth or not,” and thus, the SEC “needed to do further things.” However, he did not identify any other actions taken in the investigative phase of the matter after bringing in A&B in for testimony.

Exhibit: December 31, 1992 Action Memo

former New York Enforcement Staff Attorney [redacted] denied recollection of the Action Memo in the A&B matter. He stated that he only had a general recollection of the Action Memo process.

Exhibit: Complaint and Order of Preliminary Injunction

former New York Enforcement [redacted] denied recollection of the Complaint or Order of Injunction in this case. He generally remembered that a complaint was filed and there was a request for preliminary injunction “to stop A&B from acting as unregistered investment advisers.”

former New York Enforcement Staff Attorney [redacted] recalled Lee Richards was appointed “to get into A&B’s offices” and look at what was going on, because the SEC “didn’t know what was going on” and “didn’t know if there was additional money coming in.”

former New York Enforcement [redacted] stated that he recalled the PriceWaterhouse could not complete the audit and they requested going back and doing the procedures or doing the books and records.” former New York Enforcement [redacted] recalled A&B arguing in court that it was unfair to make them pay for PriceWaterhouse to go back and re-do the records. former New York Enforcement [redacted] recalled the Trustee saying it should be done, but did not recall the SEC’s position.

former New York Enforcement [redacted] stated that the SEC learned of Telfran as one of the investors in A&B, and they were concerned whether “there were any other Telfrans,” but there weren’t any. former New York Enforcement [redacted] recalled that the SEC discovered Telfran and Glanz were giving promissory notes to a number of individuals, taking their money, and investing in A&B. They were selling unregistered securities and acting as an investment adviser, but had no direct connection or relation to Madoff or BLM. Miller also recollected the Telfran case lasting longer in court than the A&B case due to more fighting in court.

former New York Enforcement stated that in the A&B case, after the permanent injunction, everybody got their money back and “we were quite satisfied this was a very good result.” He added that they were “completely” relieved that this was not a Ponzi scheme and that “everybody got their money back.” He stated that the “Receiver/Trustee told us he got all the money, there was money left over,” and there were “no unresolved issues” in the case.

former New York Enforcement had a general “vague” recollection of the exam staff effort to look into BLM, but that the Enforcement focus was on A&B. He didn’t recall discovery in the litigation other than testimony.

Exhibit: Final Judgment of Permanent Injunction

former New York Enforcement did not recall if civil penalties were paid, but noted that “these were the highest penalties at that time.”

former New York Enforcement stated that PriceWaterhouse was meant to assist the Trustee in going through the books and records of A&B, but that they had “nothing at all” to do with BLM. He said, “There was no focus on Madoff in this investigation at all.”