

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

A large, bold, black watermark with the word "COPY" in a stylized font, preceded by a small square icon containing the letter "C".

WITNESS: Witness Number 29

PAGES: 1 through 36

PLACE: Securities and Exchange Commission
100 F Street, N.E., Room 2264
Washington, D.C.

DATE: Friday, May 1, 2009

The above-entitled matter came on for hearing, pursuant to notice, at 3:29 p.m.

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1 PROCEEDINGS

2 MR. KOTZ: We're on the record at 3:29 p.m. on
3 May 1, 2009, at the United States Securities and Exchange
4 Commission, Office of Inspector General.

5 Can I swear you in?

6 MS. BARRY: Yes.

7 MR. KOTZ: Would you please raise your right hand?
8 Whereupon,

9 TINA CRAWFORD BARRY

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

12 EXAMINATION

13 BY MR. KOTZ:

14 Q Could you state and spell your full name for the
15 record?

16 A My name is Tina Crawford Barry. Tina is spelled
17 T-i-n-a; Crawford, C-r-a-w-f-o-r-d; Barry, B-a-r-r-y.

18 Q Ms. Barry, my name is David Kotz. I'm the
19 Inspector General of the United States Securities and
20 Exchange Commission. Heidi Steiber, my colleague from the
21 Office of Inspector General will be participating in this
22 interview.

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

1 court reporter will record and later transcribe everything
2 that is said. Please, therefore, provide verbal answers to
3 the questions, as a nod of the head or another non-verbal
4 response won't be picked up by the court reporter.

5 Also, so the record will be clear, please let me
6 finish my question before you provide your response, and I'll
7 try to let you finish your response before I ask the next
8 question.

9 In addition, it is important that you understand
10 the questions and give accurate answers. If there's anything
11 you don't understand or anything you do not know or are not
12 sure about, please let me know otherwise I will assume that
13 you heard and understood the question.

14 Do you understand those instructions?

15 A Yes.

16 Q I'll give you this other standard language.

17 As you can see, your responses and statements given
18 today are provided after you've sworn an oath and will be
19 taken down verbatim by the court reporter. This is an
20 official U.S. government law enforcement investigation. The
21 claims asserted in this case are serious ones. It is very
22 important you tell me everything you know about the matter at
23 hand and are completely forthcoming and truthful with me.

24 I'm formally advising you that your testimony today
25 is subject to the laws of perjury. Providing false or

1 misleading testimony under oath is a very serious offense.

2 If the evidence shows that the testimony you have given is

3 false, we may refer it as appropriate.

4 Do you understand those instructions?

5 A Yes.

6 Q Okay, I'm going to start with a little bit of
7 background. Could you describe your education beginning with
8 college?

9 A Sure. I went to Virginia Tech. I got a degree in
10 finance there and then I went directly to law school at
11 George Mason University and after that I started work at
12 FINRA for a couple years. And while I was at FINRA, I
13 started an LLM program and finished that program. It was at
14 Georgetown. I finished it once I moved here to the
15 Commission.

16 BY MS. STEIBER:

17 Q What year did you graduate from law school?

18 A 1996.

19 BY MR. KOTZ:

20 Q What year did you get your LLM?

21 A I don't remember exactly. I think it was 2000.
22 I'd have to double check.

23 Q And so what years were you working at FINRA?

24 A I worked at FINRA from November 1996 until May of
25 1999.

1 played into enforcement's decision not to go further in terms
2 of the information that you learned in your exam?

3 A I don't think so.

4 Q How come?

5 A That's just never the impression I've gotten while
6 here at the Commission. I've never gotten the impression
7 that the Commissions shies away from going after high-profile
8 individuals.

9 Q Any other Madoff-related matters you worked on?

10 A I don't recall any other.

11 Q Do you recall a QQQ inspection?

12 A I recall -- yes, a QQQ inspection. It was --

13 Q All right, why don't we show you some documents
14 that relate to it.

15 A -- okay.

16 (SEC Exhibit No. 1 was marked for
17 identification.)

18 BY MR. KOTZ:

19 Q We'll mark as Exhibit 1. This is an e-mail from
20 Matt Daugherty to you --

21 A Okay.

22 Q -- dated 5/29/2003 with an attached planning memo
23 and we are going to mark this as Exhibit 1.

24 A Okay.

25 Q Maybe take a look at the planning memo a little bit

1 and maybe that will refresh your recollection about this
2 particular exam.

3 A It refreshes my recollection to the extent that I
4 knew it was something our office was doing, but I wasn't
5 involved in the exam. I think maybe the reason this was sent
6 to me is, you know, being a branch chief in the office I
7 think a lot of times you're just consulted generally on hey,
8 can you take a look at this. Let me know what you think.

9 So I can only imagine that that's why this was sent
10 to me because I was not involved in this exam.

11 Q Okay. Do you have any recollection of the
12 conclusions or findings from this exam? You'll notice on the
13 front page of the planning memo it says, "the staff is
14 concerned that when the market is locked across, market
15 makers and exchange specialists may be handling customer
16 orders in violation of their fiduciary best execution
17 obligations."

18 Do you recall anything about whether that was the
19 finding in connection with Madoff Securities?

20 A Whether that was the ultimate finding in the exam?

21 Q Yes.

22 A I don't.

23 (SEC Exhibit No. 2 was marked for
24 identification.)

25 BY MR. KOTZ:

1 Q Okay. I'm going to show you another document. I'm
2 going to mark this first one as Exhibit 2. This is an e-mail
3 from [REDACTED] OCIE Staff Attorney to Tom Eidt dated September 12, 2003 read
4 Madoff Activity on QQQ. Mark this as Exhibit 2.

5 Do you see in this document [REDACTED] OCIE Staff Attorney is saying, "we
6 decided to investigate trading in the security based on the
7 fact that the market for QQQ is often locked or crossed. We
8 had suspected that when one of these types of markets exist
9 for a security that market makers and specialists were
10 violating their duty of best execution on customer trades.

11 As detailed below, I've come to the conclusion that
12 MADF" -- which is Bernard L. Madoff Investment Securities,
13 LLC -- "specifically has violated duty of best execution for
14 a number of trades, although perhaps not with a frequency
15 that was expected."

16 A Okay.

17 Q Do you see that? I'm going to show you another
18 document at the same time. This, we're going to mark as
19 Exhibit 3.

20 (SEC Exhibit No. 3 was marked for
21 identification.)

22 BY MR. KOTZ:

23 Q This is a memorandum from [REDACTED] OCIE Staff Attorney to Eric Swanson
24 dated November 10, 2003. And I direct your attention in this
25 document, third page of Exhibit 3 where it says, "Conclusion:

1 based on the activity outlined in this memo staff believes
2 there is a best execution problem with Madoff."

3 Do you see that?

4 A Hmm-mm, I do.

5 Q So that seems to indicate that in this memorandum,
6 as well, they found concerns or problems with Madoff
7 Securities?

8 A It definitely appears that way.

9 Q Okay. Do you know if in this case, the QQQ
10 inspection, a deficiency letter was sent out?

11 A Okay.

12 Q We had another individual, an examiner, who
13 testified about this matter, and he indicated that there was
14 no deficiency letter that was ever sent out and this is the
15 explanation he gave and I'm interested in your thoughts on
16 it.

17 A Okay.

18 Q "I remember seeing this memo and, frankly, there
19 were a lot of projects at the time that would kind of die
20 off. I mean, you know, you do some initial review, you go up
21 the chain; I think the superiors had determined, well, I got
22 other things to worry about. Those old projects just kind of
23 languished and I had a lot of projects like that."

24 Did that happen from time to time where there were
25 kind of old projects that languished and things were not

1 followed up with?

2 A During that time period?

3 Q 2003.

4 A 2003 to 2005?

5 Q Yes.

6 A Yes, I think I can understand why that person may
7 have said that. I think at that time we did have a lot of
8 projects going on so yeah, I can --

9 Q And who was ultimately responsible for making sure
10 that cases were resolved and closed and kind of didn't fall
11 through the cracks?

12 A -- I think it probably would start, the
13 responsibility would start with the branch chief on the
14 project and then ultimately the assistant director.

15 Q Were you the branch chief on the QQQ inspection?

16 A No.

17 Q Do you have any idea why John McCarthy would
18 testify that you were responsible for making sure cases were
19 resolved and closed and if it fell through the cracks it was
20 your fault?

21 A As a branch chief?

22 Q Yes, and not the assistant directors?

23 A During that time period?

24 Q Yes.

25 A Yeah, I mean I think the first line of

1 responsibility is with the branch chief to make sure things
2 don't fall through the cracks and to make sure projects keep
3 moving.

4 Q But it wouldn't be the sole responsibility would
5 it?

6 A No, no, I think --

7 Q Wouldn't the associate director also have some
8 responsibility to ensure that --

9 A -- well, I think it flows up the chain. I think
10 the first line of responsibility is the branch chief and then
11 the assistant and then ultimately, yeah, the associate.

12 Q -- so, in fact, the associate director is the one
13 who has ultimate responsibility, would you say?

14 A I guess so, yes.

15 Q Okay.

16 BY MS. STEIBER:

17 Q Do you know why he would say that you were keeping
18 track of all the matters for OCIE at some point?

19 A We did have a project management spreadsheet during
20 that time which I did update. And that spreadsheet listed
21 out all the projects that were going on. So it was a listing
22 of all the projects that we had in our office and I
23 maintained that spreadsheet. So I think maybe that was what
24 he was referring to. I did have the responsibility of
25 keeping the spreadsheet and providing it to him from time to

1 time.

2 BY MR. KOTZ:

3 Q Right, but would that responsibility of keeping the
4 spreadsheet and providing it to him from time to time, would
5 that include responsibility for ensuring that an inspection
6 that was not within your area was completed appropriately?

7 A No, no.

8 Q So there was no sense during that time period that
9 you were responsible for ensuring that all inspections,
10 whether you were the branch chief on the inspection or not,
11 were completed?

12 A No, my responsibility was for my projects, the
13 projects that had been assigned to me. And then this
14 maintaining of the spreadsheet was an administrative type
15 responsibility that I did for the office overall. And I
16 think even on the spreadsheet it listed, you know, the
17 personnel that, you know, the branch chiefs that were
18 responsible for each project, and assistant director.

19 Q So if a branch chief or assistant director or
20 associate director wanted to let you know that something
21 happened you would incorporate it into the spreadsheet?

22 A Hmm-mm.

23 Q Is that a yes?

24 A Yes, yes.

25 Q But that doesn't mean that you're responsible for

1 making sure they did their work right?

2 A No.

3 Q Okay, I just wanted to clarify that. Now who would
4 have been the branch chief on the QQQ inspection?

5 A Well, I would love to have a copy of that
6 spreadsheet in front of me because it would tell me. As to
7 my recollection of the branch chief and looking at these
8 documents that you've given me, I cannot discern that.

9 Q Who would have been the assistant or associate
10 director?

11 A The assistant would have been Eric Swanson or Mark
12 Donohue.

13 BY MS. STEIBER:

14 Q Were there projects at the time that didn't have a
15 branch chief?

16 A I believe there were, yes. And I think -- I know
17 eventually Matt Daugherty became a branch chief so he could
18 have been the branch chief on this project.

19 BY MR. KOTZ:

20 Q Well, let's say during the time of this project
21 there wasn't a branch chief, then who would then have
22 responsibility to ensure that the matters followed through
23 appropriately?

24 A Then I would think it would be the assistant
25 director's responsibility if there was no branch chief.

1 Q And then the associate directors responsibility
2 above that?

3 A Yes.

4 Q And the associate director in that case would have
5 been John McCarthy?

6 A That's correct.

7 Q Okay, I want to show you another document. We're
8 going to mark this as Exhibit 4.

9 (SEC Exhibit No. 4 was marked for
10 identification.)

11 BY MR. KOTZ:

12 Q This is an e-mail with attachments from [REDACTED]
13 [REDACTED] to Mavis Kelly; Wednesday, May 21, 2003 5:47 p.m.

14 A Okay.

15 Q Do you recognize this document?

16 A No.

17 Q Were you aware at any point in time that a
18 complaint came in to Mavis Kelly with allegations about
19 Bernie Madoff?

20 A No.

21 Q Okay, all right. Did you have any involvement in
22 the next examination that was conducted of Madoff Securities,
23 cause examination, that headquarters conducted beginning in
24 late 2003, 2004?

25 A Cause exam -- I think I have a recollection of

1 another exam that was done of Madoff out of our office, so I
2 do recall another exam of Madoff if that's what you're
3 referring to.

4 Q Yes, what do you recall about that exam?

5 A I recall there was some articles in the press about
6 Madoff's returns and there was some concerns that they were
7 front-running and so I remember seeing the article. I
8 remember the fact that our office started an exam to look at
9 that issue. I remember that Mark Donohue, I believe, was
10 involved.

11 Q Did you participate in that exam?

12 A No.

13 Q Okay, let me show you some documents. We're going
14 to mark the first one as Exhibit 5.

15 (SEC Exhibit No. 5 was marked for
16 identification.)

17 BY MR. KOTZ:

18 Q This is an e-mail from you to John McCarthy,
19 12/11/2003, 1:03 p.m.

20 A Yes.

21 Q You remember this?

22 A I do.

23 Q So you put an article from Barron's on John
24 McCarthy's chair?

25 A Yes.

1 Q Okay, let me show you another e-mail. We're going
2 to mark it Exhibit 6.

3 (SEC Exhibit No. 6 was marked for
4 identification.)

5 BY MR. KOTZ:

6 Q A copy of an article in Barron's called "Don't Ask,
7 Don't Tell: Bernie Madoff Is So Secretive He Even Asked His
8 Investors To Keep Mum;" from you to John McCarthy dated
9 12/11/2003 2:30 p.m.

10 We're going to mark this as Exhibit 6. Is this the
11 article you left on John McCarthy's chair?

12 A I can't be 100 percent sure, but I'm guessing it
13 was.

14 Q Okay. And at that time did you read this article?

15 A I did.

16 Q What was your impression of the article?

17 A At that time?

18 Q Yes.

19 A I think I thought it was interesting.

20 Q What was the relationship, from your understanding,
21 between this article and the cause exam, or the exam that you
22 referenced earlier?

23 A I think this article helped lead to the fact that
24 our office initiated an exam.

25 Q Do you know if there was anything else that also

1 led to the fact that the office initiated the exam,
2 particularly the complaint we showed you previously from
3 [REDACTED] to Mavis Kelly on May 21, 2003?

4 A I don't know if there were other factors.

5 Q Okay.

6 BY MS. STEIBER:

7 Q Did John McCarthy ask you to do some research? Is
8 that how you found the article?

9 A He did not ask me to do research. I think, if
10 anything, he probably came to me and said, Hey, I heard there
11 was an article about Madoff in Barron's. Can you find it for
12 me; because he would do that from time to time. He would ask
13 me to find articles that he had seen or heard about so it's
14 likely that that's what happened in this case.

15 BY MR. KOTZ:

16 Q And you mentioned that the examination was focused
17 on front-running. Do you know why there was a decision to
18 focus the exam on front-running?

19 A I think the concern was that Madoff was using
20 knowledge of orders that were coming into the market-making
21 unit and using knowledge of those orders to make profits on
22 the investment management side. I think that was the
23 allegation.

24 Q Let me go back to another document, Exhibit 4,
25 [REDACTED] complaint. You see, attached to Exhibit