

Memorandum of Interview of [redacted] former New York Enforcement Staff Attorney

On Monday May 18, 2009, Inspector General Kotz and I interviewed by telephone [redacted], who is listed as an SEC attorney on the 1992 Commission case against Avellino and Bienes (A&B). [redacted] confirmed that he worked on the case while he was a Branch Chief in the SEC New York Office in 1992, and that his supervisor at that time was

former Enforcement Assistant
Regional Director

He did not recall who the staff attorney was who worked on the case.

[redacted] stated that he had a general recollection about the 1992 case, and recalled that the case was opened after either a customer called the SEC to complain, or that a letter was sent to the SEC, showing that A&B were issuing notes promising high rates of return, and there was a question as to whether A&B were registered.

[redacted] recollected that subpoenas were issued quickly in the case, and that A&B were represented by Ike Sorkin. Sorkin told [redacted] that there was "nothing wrong here" and that A&B's business was legitimate. [redacted] recalled Sorkin emphasizing that either one or both of A&B worked for the IRS as evidence of the legitimacy of their business.

[redacted] recalled taking A&B's testimony. Had a vague recollection of the TRO, but did not know how many investors had been solicited. He stated that the SEC investigators believed A&B were running a Ponzi scheme, and their primary concern in the investigation was that there would not be enough assets to cover all the investments. They concentrated on the fact that they were unregistered investment advisors selling unregistered notes.

He recalled Lee Richards being appointed as an examiner and finding that there was more money than there were investor claims. So the SEC investigators "were satisfied" it was not a Ponzi scheme.

[redacted] stated that sometime after the TRO, there were discussions about whether a BD Exam should take place, but did not recall if one was done. He stated nobody came back to him to report one, but they would probably only do so if they found a problem. He had no recollection of any follow up.

He vaguely remembered that A&B raised the money through Bernie Madoff, but stated they were focused on the "unregistered" aspect of the case. He had no recollection of looking into the issue of whether Madoff was a registered investment advisor.

He recalled lots of pushback from Sorkin, including fighting the costs associated with the books and records review. He recalled discussing having Price Waterhouse going back to review all of A&B's books and records, but that ultimately never happened.

[redacted] would be happy to receive a call back if we need any clarification. His telephone number is [redacted]

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