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1 UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

2 -----X
In the Matter of:

3
4 OIG-509

5 -----X

6 WITNESS: NUMBER 63

7 PAGES: 1 - 26

8
9 PLACE: Richards Kibbe & Orbe LLP
10 One World Financial Center
11 New York, New York

12
13 DATE: June 10, 2009

14
15 The above-entitled matter came on
16 for hearing at 3:19 p.m.

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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 NOELLE FRANGIPANE, ESQ.
8 United States
9 Securities and Exchange Commission
10 100 F Street NE
11 Washington, DC 20549

12
13 On behalf of the witness

14
15 MARYJEANETTE DEE, ESQ.
16 RICHARD KIBBE & ORBE LLP
17 One World Financial Center
18 New York, New York 10281-1003

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1 P R O C E E D I N G S
2 MR. KOTZ: We are on the record at
3 3:19 p.m. at Lee Richards Law Offices on June
4 10, 2009. My name is David Kotz. I'm the
5 Inspector General of the United States
6 Securities and Exchange Commission. I have

7 with me Noelle Frangipane who is with the
8 Office of Inspector General.

9 EXAMINATION BY

10 MR. KOTZ:

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

13 A. Lee Sumner Richards, III.

14 Q. You have your partner with you?

15 MS. DEE: My name is Marjeanette
16 Dee.

17 Q. This is an investigation by the
18 Office of Inspector General, case number
19 OIG-509. I'm going to ask you certain
20 questions. Please provide verbal answers to
21 the questions, as a nod of the head or another
22 non-verbal response will not be picked up by
23 the Court Reporter. Also, so the record will
24 be clear, please let me finish my question
25 before you provide your response. In addition,

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1 it is important that you understand the
2 questions and give accurate answers. If
3 there's anything you don't understand or
4 anything you do not know or not sure about,
5 please let me know. Otherwise I will assume
6 that you heard and understood the question.

7 Even though we're not swearing an
8 oath, this is still an official U.S. Government
9 law enforcement investigation. The claims
10 asserted in this case are serious ones. It is
11 very important you tell me everything you know
12 about the matter at hand and are completely
13 forthcoming and truthful with me.

14 Do you understand those
15 instructions?

16 A. I do.

17 Q. I'm going to put into evidence as
18 Exhibit 1.

19 (Whereupon, the aforementioned
20 Confidentiality and Nondisclosure Agreement
21 were marked as Exhibit in evidence as of
22 this date by the Reporter.)

23 Q. It's the combined the
24 Confidentiality and Nondisclosure Agreement
25 which Lee Richards signed. Can you confirm you

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1 signed that?

2 A. I did.

3 MR. KOTZ: And also which
4 Maryjeanette Dee signed, could you confirmed
5 you signed this as well.

6 MS. DEE: Yes, I did.

7 Q. Let me ask you first, when did you
8 first hear of Bernard Madoff or Bernard Madoff
9 Securities?

10 A. I can't tell you when I first heard
11 from memory. It may well have been in or
12 around 1994, I think, in connection with my
13 service as the receiver of Avellino and Bienes.
14 It's possible I heard about it before, but I
15 don't recall.

16 Q. Do you think that might have been
17 1992?

7 with me Noelle Frangipane who is with the
8 Office of Inspector General.

9 EXAMINATION BY

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8 first hear of Bernard Madoff or Bernard Madoff
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11 from memory. It may well have been in or
12 around 1994, I think, in connection with my
13 service as the receiver of Avellino and Bienes.
14 It's possible I heard about it before, but I
15 don't recall.

16 Q. Do you think that might have been
17 1992?

18 A. Yes, 1992. Early '90s.
19 Q. In connection with your involvement
20 with Avellino and Bienes, what did you
21 understand precipitated the action that was
22 brought against Avellino and Bienes?
23 A. My understanding was that they were
24 acting as unregistered investment advisors.
25 Q. Were you ever aware at any point in

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1 time of a concern on the part of the SEC that
2 Avellino and Bienes were running a Ponzi
3 scheme?
4 A. I don't recall that concern. It's
5 possible I've forgotten it, but I don't recall
6 it.
7 Q. Let me show you a document we're
8 going to marked as Exhibit 2, an Order of
9 Preliminary Injunction and Other Equitable
10 Relief on Consent, Securities and Exchange
11 Commission against Avellino and Bienes, Frank
12 J. Avellino and Michael S. Bienes?
13 (whereupon, the aforementioned Order
14 of Preliminary Injunction was marked as
15 Exhibit 2 in evidence as of this date by
16 the Reporter.)

17 A. I assume you don't want me to read
18 the whole thing?

19 Q. No.

20 A. I'm happy to refer to any part
21 you're interested in.

22 Q. I'm interested in Pages 4 to 9, I
23 guess. My question for you is, was this the
24 document that appointed you as the trustee for
25 the purposes of the Avellino and Bienes

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1 investigation?

2 A. It appears to be.

3 Q. What did you understand based
4 either on the document or your recollection of
5 your role as a trustee in what you were suppose
6 to accomplish?

7 A. Well, I haven't had a chance to
8 review this again, so I'll from memory. My
9 memory is that the firm was being liquidated
10 and it was my obligation to oversee the
11 liquidation of the firm of Avellino and Bienes.

12 Q. Did you have an understanding as to
13 why Avellino and Bienes was being liquidated?

14 A. Again, my recollection is that it
15 was because they had operated as an investment
16 advisor without the proper licensing.

17 Q. Do you recall at any time any
18 discussion about the fact that Avellino and
19 Bienes were offering certain investments to
20 potential investors that had a very significant
21 rate of return and a very high probability of
22 the investment, and there were concerns that
23 the investments were so high and so consistent?

24 A. I don't recall that. I recall that
25 they were achieving a fairly high rate of

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1 return for their investors, but I don't recall
2 anyone expressing concerns that they were

3 fraudulent returns, if that's what you're
4 suggesting.

5 Q. And you don't recall anyone
6 suggesting concerns that they were perhaps not
7 actually trading, but operating some kind of
8 fraud like a Ponzi scheme?

9 A. No. Mr. Kotz, it's been, what,
10 17-years or so, my recollection is that we
11 found the money, it was there, and that all
12 investors were, if not a hundred percent
13 compensated pretty close to that. So,
14 ultimately I have no recollection of any
15 concern that they were operating a Ponzi
16 scheme, and by they I mean Avellino and Bienes.

17 Q. Do you remember whether you had any
18 role in looking at where the money came from
19 that was used to repay the investors to
20 Avellino and Bienes?

21 A. My only recollection, and it's very
22 vague, is that we had interaction with Madoff
23 Securities to be certain that the money and/or
24 securities that had been reported to Avellino
25 and Bienes investors were in fact there and

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1 available for liquidation or distribution.
2 I don't recall that we investigated Madoff
3 Securities in any way.

4 Q. Was there any attempt in that point
5 to independently verify Madoff's discretionary
6 brokerage account balances held on behalf of
7 Avellino and Bienes?

8 MS. DEE: You mean an attempt by
9 the trustee?

10 Q. You as the trustee or
11 Pricewaterhouse operating under your authority?

12 A. Do you mean did we attempt to
13 verify that the balances reported on Avellino
14 and Bienes' records were actually at Madoff, or
15 that the balances at Madoff were real?

16 Q. Well, let's start with the first
17 one.

18 A. I think we did attempt the first,
19 which was to make sure that money and
20 securities that Avellino and Bienes investors
21 thought they had they actually had. And we did
22 that simply by asking Madoff, I don't
23 necessarily mean him personally, but Madoff
24 Securities people, and verified that it was
25 there and in fact got those investors

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1 compensated.

2 I don't believe that it was my job,
3 nor do I remember, investigating the second
4 question, which is whether or not the money and
5 securities that Madoff Securities claimed to
6 have were legitimate, actually properly
7 generated or whatever else. I may be
8 articulating that poorly.

9 MS. DEE: I think the question is,
10 was there any effort to insure that that money,
11 independently of what they told you, was
12 actually physically at Madoff?

13 A. The reason I'm stumbling is that

14 yes, we did in a sense that we retrieved it and
15 got it to the Avellino and Bienes investors.
16 We didn't inquire as to how it got there or
17 what investing the Madoff Securities people did
18 or anything else along those lines, as I
19 recall.

20 Q. You also don't recall or do you
21 recall any concern expressed to you that you
22 should look at that Madoff could have
23 misappropriated other customer funds in order
24 to provide the capital needed to pay back the
25 investors of Avellino and Bienes?

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1 A. I don't recall that. I do recall
2 enough about my role to be able to add that I
3 don't think it was my job to ask that question
4 myself.

5 Q. I mean you were appointed as the
6 trustee for a particular purpose in the
7 litigation?

8 A. That's my understanding.

9 Q. Essentially that purpose was to
10 liquidate the accounts and insure to the best
11 of your ability that the investors were repaid?

12 A. Exactly.

13 Q. And so, if you achieved the
14 investors being repaid, you know, as much as
15 possible, then that was a successful result as
16 a trustee in this matter?

17 A. That was my understanding.

18 Q. At the same time you were also
19 asked to oversee an audit of Avellino and
20 Bienes' financial statements; do you remember
21 that?

22 A. Yes. I retained an accounting firm
23 that did that for me, I didn't do it myself.

24 Q. That was Pricewaterhouse?

25 A. That's my recollection.

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1 Q. Do you remember issues in terms of
2 difficulties encountered by Pricewaterhouse
3 during the audit, books and records being
4 missing, Avellino and Bienes not having
5 financial statements?

6 A. Only in a very vague since, very
7 vague recollection that we may have had some
8 difficulties along those lines.

9 Q. Let me show you a couple documents,
10 maybe that will help refresh your recollection.
11 Next document I'm going to mark as Exhibit 3.
12 This says Lee Richards, Esq., Trustee for
13 Avellino and Bienes, Re, SEC v. Avellino and
14 Bienes, et al, January 21, 1993.

15 (whereupon, the aforementioned
16 documents were marked as Exhibit 3 in
17 evidence as of this date by the Reporter.)

18 Q. Take a look at this document. It's
19 actually comprised of several documents. The
20 first is a January 21, 1993 letter from
21 Pricewaterhouse to you and then there are
22 exhibits to that letter.

23 A. I see this, yes.

24 Q. If you look at the letter, and I'll

25 let you spend whatever time you need to look at

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1 it.

2 A. Go ahead. I mean, it's going to
3 take me a long time to read it all, so if you
4 can focus me on something particular.

5 Q. On Page 2 the second full paragraph
6 it says, "since financial statements in
7 accordance with generally accepted accounting
8 principles had not been prepared and the
9 underlying accounting records of A and B for
10 the period of January 1, 1984 through December
11 1988 were not available, we could not perform
12 an audit or render an opinion related to that
13 period."

14 Do you remember that issue?

15 A. Again, that's consistent with this
16 vague recollection I had that we were
17 frustrated by some lack of record keeping, I
18 can't be more particular than that.

19 Q. Do you remember at all feeling that
20 it was unusual or odd for Avellino and Bienes
21 not to have prepared those records?

22 A. Well, you know, it's odd in general
23 perhaps, but not in the context of being a
24 receiver or trustee for an operation like this.
25 I mean, it's not unusual that organizations

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1 that are the subject of SEC investigations have
2 poor record keeping, so. It didn't surprise me
3 in that sense.

4 Q. Do you recall at any point in time
5 Pricewaterhouse or Pricewaterhouse and you
6 expressing concerns about needing more time to
7 complete the audit, having a hearing before
8 Judge Sprizzo where those concerns were
9 expressed and there was not a lot of sympathy
10 from the judge?

11 A. I frankly don't recall that. It
12 may well have happened, but I just don't
13 remember.

14 Q. Do you remember a request for an
15 extension of time to you as a trustee in order
16 to provide an opinion or have Pricewaterhouse
17 provide an opinion?

18 A. I don't.

19 Q. Let me show you this document,
20 maybe that will help refresh your recollection.
21 I'm marking this one as Exhibit 4?

22 (Whereupon, the aforementioned
23 transcript was marked as Exhibit 4 in
24 evidence as of this date by the Reporter.)

25 Q. This is a transcript of an

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1 appearance before Honorable John E. Sprizzo
2 January 19, 1993. If you turn your attention
3 to Page 12. You say on line 17 of Page 12 of
4 this transcript, "I think there are basic
5 records we need in order to give any opinion at
6 all and we tried to set those out in a letter.
7 The Court, then don't give an opinion. It
8 doesn't make any difference to me. Mr.
9 Richards, that will probably be the position we

10 will be in. The Court, if Pricewaterhouse
11 doesn't want to give an opinion they don't have
12 to. No one can force them to give an opinion.
13 But my job is to see that the assets do not
14 stay frozen unnecessarily over time. The
15 reason that this is happening in the first
16 place is that they agreed to the freeze order
17 on the assumption that these matters will be
18 resolved in a relatively brief period of time.
19 If the understanding of the assumption upon
20 which the agreement was based has been met, I'm
21 not going to keep their freeze order in
22 existence since it was by consent."

23 Then he says, you know, he's
24 willing to stretch it, "not that further, not
25 until the end of February, not until March, not

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1 until June, not until whatever period of time
2 Pricewaterhouse thinks it's most comfortable to
3 them, that is not what they agreed to."

4 Does that refresh your recollection
5 at all?

6 A. I'm afraid maybe only in the
7 vaguest sense. Now that I look at this I have
8 some vague recollection that we did ask for
9 more time, but I really don't have anymore than
10 that, and it may be simply because I've read
11 this. It does sound like Judge Sprizzo,
12 however.

13 Q. But you do recall kind of generally
14 that there was frustration with getting records
15 from Avellino and Bienes and if Pricewaterhouse
16 was unable to complete as much in terms of a
17 formal opinion as you would have hoped?

18 A. Yes. I have a general recollection
19 that not only were they not properly licensed,
20 but they weren't running the kind of operation
21 that they should have been, notwithstanding the
22 fact that the money seemed to be there and the
23 securities seemed to be there. That's my
24 overall recollection of the assignment.

25 Q. Was there any point in time where

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1 there was any suggestion because of the fact
2 that Avellino and Bienes didn't have certain
3 documents, that there would be potentially more
4 investigative work done of Avellino and Bienes
5 or anything related to that matter?

6 A. Well, I'm not sure if I'm inferring
7 from this document you just showed me or
8 remembering, but I want to say that we were
9 prepared to do that work if necessary, but it
10 appears that Judge Sprizzo didn't think it was
11 necessary.

12 Q. Was there any effort to
13 independently verify records by outside
14 organizations such as DTC that you're aware of?

15 A. I have no recollection of that.

16 Q. Did the auditors or PW's
17 responsibility include independently verifying
18 account balances?

19 A. It would be normal that their
20 responsibility would be to independently verify

6 J. Avellino and Michael S. Bienes dated
7 December 7, 1993. Do you recognize this
8 document?

9 A. Only the general form of it. I
10 don't have a specific recollection.

11 Q. Was it your general understanding
12 that this Final Judgment concluded the
13 litigation?

14 A. That would be my understanding. I
15 don't have recollection of it, but it would
16 certainly be my understanding.

17 Q. At the point in time after which
18 you served as a trustee to insure that the
19 money was refunded to Avellino and Bienes'
20 investors, you no longer had any involvement in
21 this matter; is that right?

22 A. That's my recollection.

23 Q. At any point in time did anyone
24 from the SEC ever indicate to you that there
25 was going to be an investigation of Bernard

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1 Madoff?

2 A. I do not remember that anyone
3 suggested that.

4 Q. So, to your knowledge
5 Pricewaterhouse wouldn't have been aware of any
6 particular claims against Madoff, would they
7 have been?

8 A. Claims against Madoff?

9 Q. If there were allegations of Madoff
10 engaging in any fraud or improper behavior,
11 Pricewaterhouse wouldn't have been aware of
12 that in connection with their review of the
13 records?

14 A. I can't say what they were aware of
15 and weren't aware of. I can't remember talking
16 with anyone at Pricewaterhouse about the
17 possibility of fraud at Madoff Securities.

18 Q. If we're getting into an area that
19 you're not happy with just let me know, but
20 just a couple of kind of basic questions.

21 You are now engaged in a matter
22 relating to Bernard Madoff as a trustee; is
23 that right?

24 A. I've been relieved of my
25 obligations by the judge about several months

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1 ago.

2 Q. But you were at some point in time?

3 A. I was for a few weeks with respect
4 to the American entity and a couple months with
5 respect to the U.K. entity.

6 Q. With respect to that U.K. entity,
7 what is your understanding of the U.K.
8 affiliates role in the Ponzi scheme, if that's
9 something you're comfortable talking about?

10 A. I'm just wondering whether there's
11 anything that prevents me from talking about
12 it.

13 Q. We have testimony from SEC
14 enforcement lawyers who worked in the matter,
15 and so we'll deal with that information
16 separately. It's more for background for our

17 purposes, not something that will go into our
18 investigative report.

19 A. Can we go off the record.

20 Q. Sure.

21 MR. KOTZ: Off the record.

22 (Discussion was held off the
23 record.)

24 MR. KOTZ: Back on the record.

25 Q. Just one more question.

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1 When you were first approached
2 about taking part, however small, in the
3 ongoing Madoff litigation, was there any
4 concern that you had participated in this
5 Avellino and Bienes matter previously?

6 A. Well, I didn't make the connection
7 with Avellino and Bienes it being 17-years
8 before. I did not remember that Madoff was
9 involved in that matter, and no one at the SEC
10 who spoke to my about my appointment in the new
11 Madoff matter expressed any concern about it.
12 I'm not sure that they knew about it. To my
13 knowledge the people who worked on the early
14 stages of the Madoff matter that's current
15 before the courts were not involved 17-years
16 ago on the Avellino and Bienes matters.

17 Q. But you don't know whether the SEC
18 was aware of that connection with you, all you
19 know is that the SEC never said to you there's
20 a concern?

21 A. I believe they were not aware of
22 it, because I was asked about it several weeks
23 into my assignment. Someone said they heard
24 about it and wanted to understand it. Somebody
25 from the SEC asked the questions.

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1 Q. I'm sorry, what questions did they
2 ask?

3 A. They just said did you realize that
4 Madoff was involved in Avellino and Bienes and
5 asked me, you know, a few questions about that.

6 Q. And at that point --

7 A. At that point it refreshed my
8 recollection, as vague as it still is today,
9 that there was some connection between Avellino
10 and Bienes and Madoff.

11 Q. And at that point did anyone from
12 the SEC say to you because of that connection
13 that you shouldn't be the receiver?

14 A. No.

15 MR. KOTZ: That's all I have.

16 Thank you.

17 (Time noted: 3:45 p.m.)
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