

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

ECOPY

WITNESS: Number 3
PAGES: 1 through 61
PLACE: Securities and Exchange Commission
 100 F Street, N.E.
 Washington, D.C. 20549
DATE: Thursday, February 19, 2009

The above-entitled matter came on for hearing, pursuant to notice, at 2:20 p.m.

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(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, ESQ., Inspector General

5 HEIDI STEIBER, ESQ. Investigator

6 CHRISTOPHER WILSON, ESQ. Investigator

7 Office of Inspector General

8 Securities and Exchange Commission

9 100 F Street, N.E.

10 Washington, D.C. 20549

11 202-551-6037

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13 On behalf of the Witness:

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OCIE Staff Accountant

, PRO SE

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C O N T E N T S

WITNESSES

EXAMINATION

OCIE Staff Accountant

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EXHIBITS

EXHIBITS:

DESCRIPTION

IDENTIFIED

8	1	3/4/06 Sadowski/Swanson e-mails	23
9	2	4/7/06 Sadowski e-mail to Swanson	25
10	3	4/17/06 Swanson e-mail to OCIE Staff Accountant	29
11	4	8/15/06 Swanson e-mail to OCIE Staff Accountant	31
12	5	4/22/06 Swanson e-mail to Sadowski	34
13	6	8/21/06 OCIE Branch Chief invitation to	
14		McCarthy for Swanson farewell reception	42
15	7	4/18/06 McCarthy e-mail to Sadowski	48
16	8	4/24/06 Swanson e-mail to Sadowski	49
17	9	3/1/07 McCarthy e-mail to Swanson	50

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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 on February 19,
3 2009 at the United States Securities and Exchange Commission
4 Office of Inspector General.

5 I'm going to give you the oath. Would you please
6 raise your right hand?

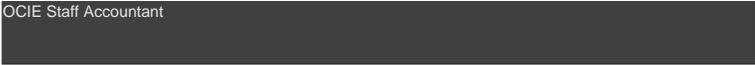
7 Whereupon,

8  OCIE Staff Accountant

9 was called as a witness herein, and after being first duly
10 sworn, was examined and testified as follows:

11 MR. KOTZ: Could you state and spell your full name
12 for the record?

13 THE WITNESS:

 OCIE Staff Accountant

14  OCIE Staff Accountant

15 MR. KOTZ: Great. My name is David Kotz. I'm the
16 Inspector General of the United States Securities and
17 Exchange Commission. This is an investigation by the Office
18 of Inspector General, case No. OIG-509.

19 I'm going to ask you certain questions. You're
20 going to provide answers under oath. The court reporter will
21 record and later transcribe everything that is said.

22 Please provide verbal answers to your questions.
23 If you give a nod of the head or another nonverbal response,
24 it won't be able to be picked up by the court reporter.

25 Also, so the record will be clear, please let me

1 Q Okay. Did he ever confide in you about romantic
2 relationships he was having?

3 A He did.

4 Q Okay. When you first met him in February 2001, was
5 he involved with somebody, do you remember?

6 A If I remember correctly, he was dating a girl from

7  Personal Privacy

8 Q And how long did that last?

9 A I don't have numbers on that, not that far back.

10 Q Do you know if he ever had a very serious
11 relationship with somebody other than Shana Madoff, who he
12 eventually married?

13 A Yes.  Jane Doe . As far as the serious nature of a
14 relationship, meaning like somebody I know he was with for a
15 period of time,  Jane Doe,  Personal Privacy

16  Personal Privacy

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24 Q Okay. Now, in the 2003 time period, around say
25 April to August 2003, we have some documents which I can show

1 you which demonstrate some communications between Eric and
2 Shana Madoff.

3 A Okay.

4 Q Do you know if during that period of time he was
5 friendly with Shana?

6 A All I know is that I really never even heard of
7 Shana Madoff until he started dating her.

8 Q Okay.

9 A But I will -- but I do know that he was -- he and
10 John McCarthy used to go and do these symposiums, these
11 speaking events. And as far -- and I did have a very -- I
12 had a front-row seat with him and Shana as their relationship
13 grew once I -- you know.

14 But in my opinion, and this is -- I'm almost
15 certain of it, Eric's a very emotional guy, okay, to the
16 point to where he and I would really talk and he would -- you
17 know. He had -- things just sprang up between him and her.
18 And basically what happened was is somewhere between the
19 dissolving of his marriage, the marriage that was supposed to
20 happen, and I would probably say late spring/early summer --

21 Q And this is 2005?

22 A No. This is 2006.

23 Q Okay. Because October 2005 --

24 A October 2005 he was supposed to be marrying

Jane Doe

25

1 Q Right.

2 A And they were in a very serious relationship.

3 Q Right.

4 A I never even heard of Shana probably -- and I'm
5 telling you what -- my dates could be off by two or three
6 months. I would say -- but I will say the earliest that I
7 probably heard of Shana was probably late spring 2006.

8 Now, once again, I would probably err to a month
9 before that. But it could have been -- I guess it couldn't
10 have been too far after that because basically what happened,
11 it was just out of the blue, bam, all of a sudden, you know.
12 I know from his conversations with me that they had known
13 each other through the symposium, but that it was never
14 anything more than a working relationship for most of that
15 time.

16 After the dissolving of the relationship and
17 probably into the spring, it remained the same until at some
18 point during, I don't know, one of the dinners or something
19 afterwards, you know, I think it became a little more
20 personal. I think there was some kind of connection there.

21 Q And you think, given your relationship with Eric,
22 that if he had feelings for her prior, in the 2003/2004 time
23 frame, you would have known about it?

24 A Absolutely.

25 Q So when he first talked about the fact that

1 A I can't -- I don't remember. I don't -- in my
2 mind, until this thing came up in the news, I had no idea
3 that she was compliance. He may have said it and I just
4 didn't -- I wasn't really paying attention to that part of it
5 because, you know, all I remember is being -- I always
6 thought it was kind of funny how she kind of did what I did
7 but she did it in the industry, you know.

8 Q And so when was the first time you heard that Eric
9 was interested in her?

10 A Once again, I think it was either late spring or
11 early summer. He kind of bemoaned his relationship with
12 Jane Doe for a period of time, to the point to where I was
13 almost kind of like, hey, Eric, you know, you've been broken
14 up with her almost as long as you were with her, you know,
15 like in my head.

16 So he really did go through a mourning period. So
17 let's just say November, December, January, February, March,
18 April, May. You know, now you're talking about six or seven
19 months. They might have been together for nine months before
20 things broke down with the wedding.

21 BY MS. STEIBER:

22 Q Had he ever dated anyone during the time that he
23 met Jane Doe to the point where he met Shana? Do you know if he
24 ever saw any other women?

25 A No. Eric Swanson is a -- he's not the type of guy

1 that plays the field. He's a relationship guy. When he gets
2 in a relationship, you know, he kind of -- just kind of sets
3 the tone. But he also gets very involved very quickly, you
4 know.

5 MR. KOTZ: Okay. I'm going to show you a couple of
6 documents.

7 This is an e-mail on March 4, 2006. And it's from
8 Alex Sadowski to Eric Swanson. And then --

9 THE WITNESS: This is it right here?

10 MR. KOTZ: Yeah. And then Eric Swanson to Alex
11 Sadowski. And we're going to mark this as Exhibit 1.

12 (SEC Exhibit No. 1 was marked for
13 identification.)

14 BY MR. KOTZ:

15 Q Take a look at this, and maybe this will give you a
16 better sense of the time frame in which the relationship
17 between Swanson and Shana Madoff started.

18 A Oh, okay. (Examining) This is Eric to Alex.
19 "There was an option. I took a pass."

20 Q Then it says, "Quite an earful from [REDACTED] Last night
21 re Madoff. Apparently I'm a sycophant."

22 Do you have any idea what that refers to?

23 A Who's [REDACTED] Personal Privacy

24 Q Could it be [REDACTED] OCIE Branch Chief ?

25 A It could be because I know [REDACTED] Personal Privacy was a branch chief

1 Eric truly did not want to lose John as a friend. He didn't
2 want to end the relationship with Shana because he was
3 falling in love with her.

4 Honestly, I'm not so sure how -- I think
5 eventually -- let's just say none of this stuff happened, and
6 let's say John never mentioned any problems with Eric dating
7 Shana. I'm pretty sure that, down the road, Eric probably --
8 because she was firmly planted in New York. I'm sure he
9 would have left the SEC, taken a job in New York anyway. But
10 I think he left earlier because of the deteriorating
11 relationship with John McCarthy.

12 Q So did his relationship -- Eric's relationship with
13 John McCarthy ever recover from this situation?

14 A I do believe so. John McCarthy was at the wedding.

15 Q Okay. But there was -- how long of a time period
16 where John McCarthy and Eric Swanson were at odds, so to
17 speak, over this matter?

18 A Once again, I don't have a definitive time. But I
19 would say six weeks, maybe more. Can I ask, when did this
20 stuff start hitting the fan, and when did Eric leave? Do you
21 have those dates?

22 Q Yeah. Let me show you another document. This is a
23 farewell reception for Eric Swanson.

24 A Yes. And when did this stuff start?

25 Q We'll mark this as Exhibit 6. And this is from

1 met Shana. I don't remember the first time I've gone out,
2 once again, date-wise. But I do have specifics of when, you
3 know --

4 Q And was John McCarthy ever out as well?

5 A John McCarthy out? I was never -- I can't recall
6 ever being at a restaurant with Shana, Eric, and John at a
7 time that this was happening. I was at the wedding. I
8 can't -- I don't believe I was ever -- off the top of my
9 head, I don't remember ever being with John, Shana, and Eric
10 during the time -- with all three together at a time that
11 this stuff was going on.

12 Q Okay. As Eric and Shana's relationship got more
13 serious, did Eric ever talk to you about the fact that, you
14 know, Shana was from a well-to-do family or a rich family?

15 A Well, yeah. He told me who she was, you know. But
16 he didn't --

17 Q How did he describe that as who she was?

18 A You know, he didn't really go into detail. Eric --

19 Q That she was the niece of Bernie Madoff?

20 A Yeah. I don't know if he said the niece of Bernie
21 Madoff. He said -- let's put it this way. When the stuff
22 hit the fan, I didn't know whether her father was Bernie or
23 the other guy. Okay? Honestly --

24 Q So Eric talked about the fact that Shana was in the
25 Madoff family?