

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

**COPY**

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

WITNESS: Number 26

PAGES: 1 through 58

PLACE: U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20545

DATE: Monday, April 20, 2009

The above-entitled matter came on for hearing, pursuant to notice, at approximately 2:05 p.m.

Diversified Reporting Services, Inc.  
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1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 DAVID KOTZ, ESQ., Inspector General

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10

11 On behalf of the Witness:

12

[REDACTED]

13

[REDACTED]

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[REDACTED]

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[REDACTED]

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C O N T E N T S

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WITNESS:

former OIEA Branch Chief



EXAMINATION

6

EXHIBITS:

DESCRIPTION

IDENTIFIED

1 -	File entry, File HO-948937	27
2 -	File entry, File HO-1190190	31
3 -	NRS Enforcement Detail, table of contents for Bernard Madoff	38
4 -	File entry, File HO-1193524	39

P R O C E E D I N G S

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MR. KOTZ: We're on the record at 2:05 on April 20, 2009 at the United States Securities and Exchange Commission, Office of the Inspector General.

I'm going to swear you in now, if that's all right.

former OIEA Branch Chief : All right.

MR. KOTZ: Could you please raise your right hand?

Whereupon,

[REDACTED]

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

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

THE WITNESS: All right. The name is [REDACTED] First name is [REDACTED] last name is [REDACTED]

MR. KOTZ: Okay. Thank you. [REDACTED] my name is David Kotz. I'm the Inspector General of the United States Securities and Exchange Commission. And this is an investigation by the Office of the Inspector General, Case No. OIG-509.

I'm going to ask you questions. You'll provide answers under oath. The court reporter will record and later transcript everything that is said. Please try to provide verbal responses to the questions; a nod of the head or another nonverbal response won't be picked up by the court

1 interest in examinations. You know, realistically, they'd  
2 have more of a hunger, if I can call it that, for the  
3 business that we'd send them.

4 And of course, in terms of referrals from our  
5 office, OIEA, I think there's a great deal of interest  
6 because you're looking to demonstrate your own worth.

7 BY MR. KOTZ:

8 Q And anything about the New York Regional Office in  
9 particular in terms of their interest in referrals?

10 A Yeah. During -- the New York office, at least at  
11 the time I was there, I recall the person for referrals for  
12 regulatory matters -- in other words, by entity subject to  
13 examination -- let's see. It was Ellen Hirsch, and Jason  
14 Gettinger was the one on the enforcement side, fraud side,  
15 most of the time.

16 And the -- again, you'd have to make a judgment.  
17 Boy, is this past examination stage? Is somebody stealing or  
18 so? And I'd have to say in terms of my own work, and  
19 probably reflected in e-mails if they're still in existence,  
20 Jason Gettinger was the highest hurdle we have ever had in  
21 the time I was with OIEA.

22 And I don't say that negatively. But he sent back  
23 a number of referrals that we made to our office. I wouldn't  
24 say the language was insulting, but let's say just harsh, and  
25 maybe with some reason. But what he was looking for, he was

1 looking for something very close to a payoff. You know,  
2 you'd have to do all of the basic research -- and  
3 understandable; I'm not sure we had much screw-up in that.

4 But in terms of the likelihood of getting somebody,  
5 whether it was sufficiently specific, whether it was just a  
6 general allegation, he didn't want that. And with Gettinger,  
7 that was -- nobody -- when referrals were made to him, there  
8 wasn't any other referral there, or at least my unit, worked  
9 as hard to make sure that it wouldn't be shot back.

10 Q So would you say overall, Mr. Gettinger was  
11 dismissive of OIEA forwarding of complaints?

12 A Well, I guess that's a good polite word of it.  
13 Some was good. I don't think he was cavalier. I thought  
14 he -- you know, he gave -- I recall he gave -- well, a few  
15 times, at least, I have the impression he gave good comments.  
16 But he wasn't gushy or anything like that; instead,  
17 essentially saying, well, okay. It seems to meet the  
18 minimum.

19 And as you can imagine, New York still generates  
20 more business than any other offices. But it's -- you know,  
21 there was such a difference in sending it to other offices  
22 versus to New York, particularly Gettinger and -- because  
23 there's only one other person I recall, even, in the SEC that  
24 approached Jason Gettinger's standards, and that was a guy in  
25 the Fort Worth office. He was in Miami, then went to Fort

1 Worth, and then on to private practice.

2 Q So just to kind of clarify this for the record,  
3 Mr. Gettinger was less welcoming to OIEA forwarding of  
4 complaints than others? Is that what you're saying?

5 A Absolutely. Absolutely.

6 Q Okay. And so there was less of a feeling among  
7 OIEA that if a complaint was forwarded to Mr. Gettinger, that  
8 it would be followed up on and --

9 A Well, true, but also the fact that he'd probably be  
10 shooting back some sort of criticism. And maybe he'd be  
11 passing that criticism on to his supervisors. And I know  
12 those people also -- I mean I'm sure Jason goes to, what,  
13 chief enforcement attorneys' conferences that are held  
14 annually, and word gets around.

15 Q So he would be critical of OIEA? I mean, OIEA's  
16 not sending in the complaint. You know what I mean? I don't  
17 understand.

18 A No. The whole -- but OIEA is referring it. It's  
19 our work product.

20 Q So he would say, you shouldn't have referred that  
21 complaint? Is that what he was saying? Because he can't  
22 blame OIEA for what was sent to OIEA. I mean, you didn't  
23 draft the complaint.

24 A But he -- no. He looked for vetting, and that's  
25 what the referral process is about. If you have -- the

1 referral process at OIEA requires a certain amount of  
2 screening as to whether, you know, is this something that  
3 somebody just cut out a headline from the paper there or  
4 thinks, you know, this terrible stuff? It's to those, you  
5 know -- well, why have Timothy Geithner as Secretary of the  
6 Treasury? He can't do his taxes right, that type of thing.

7 No. You've got to have something there that's  
8 serious. And I think the equivalent is that OIEA does  
9 perhaps in a referral, a good referral, might do the first  
10 hour or two of work, quality work, done by Division of  
11 Enforcement staff.

12 Q So would you say there was more reluctance on the  
13 part of OIEA staff to refer matters to Gettinger because of  
14 his high standards?

15 A Because of his standards. I'm not -- I wouldn't  
16 call them high. But --

17 Q So that's yes?

18 A And I think -- yeah, the standards he wanted.  
19 Because again, he had this expectation, and he was at  
20 times -- at times he would, you know, CC the director of the  
21 office or something like that. In other words, it wasn't  
22 just between, say, the branch chief or the staff member.

23 Q So an OIEA person could actually look bad if they  
24 sent a referral up and Gettinger commented on it or  
25 criticized it?

1 A Sure. Well, that's what it reflects here.

2 Q Okay. Now, do you have any sense from this  
3 document what happened to it?

4 A No. I have no recollection of it. I think the  
5 disposition -- well, there's no response possible. But I  
6 think there --

7 Q It says disposition code 04.

8 A Yeah. No --

9 Q So what does that refer to?

10 A That means, in this case, there's nobody to send it  
11 back to. And 05 was where you had some essentially  
12 commenting there. This is --

13 Q Now, this doesn't look like an e-mail. Right?  
14 This looks like a letter?

15 A Yeah. This was an anonymous -- some sort of  
16 anonymous note put in.

17 Q Okay. And, now, even though there was no one to  
18 send it back to, what about the possibility of referring this  
19 on to another office like the Enforcement Division?

20 A All right. Now, something like that, I think this  
21 would be kind of very typical of the hurdles faced when  
22 referring something like to, say, New York or the Jason  
23 Gettinger type of thing, or others.

24 This is a person commenting on the performance of  
25 an investment firm. You've got to really be willing to

1 invest your resources to follow through on that. So that's  
2 the thing. This is -- no down months and little volatility  
3 all the time, as the person concludes.

4 Q And this relates to Bernard L. Madoff?

5 A Pardon me?

6 Q This relates to Bernard L. Madoff. Right?

7 A Well, it says here, Bernard L. Madoff Investment  
8 Securities, yeah.

9 Q Now, is there any indication on this document  
10 whether this was -- Exhibit 2 was referred to Enforcement or  
11 any other office? I mean, I understand that there was no way  
12 to respond to the individual. But is there any sense of  
13 whether it was sent anywhere?

14 A No. There's no -- if it was referred anywhere,  
15 there would have been an entry on that. And right at the  
16 bottom of the first page, there's a space for -- well, it  
17 goes on the second page, but a space for referrals.

18 Q All right. So based on your knowledge, having been  
19 a branch chief in this area, from reading this document you  
20 determined that it was not referred to anyone?

21 A Yes. And in fact, my initials are on the first  
22 page, December 14th.

23 BY MS. STEIBER:

24 Q And do you think that was the appropriate decision,  
25 to not refer it?

1           A     Well, I think based on our experience, that -- and  
2 I think that actually probably would go for most offices.  
3 Again, this is, I think, pretty much the type of situation  
4 where, like what you had with Putnam before that in OCIE's  
5 view, which was -- just changed day and night before and  
6 after the uncovering of that situation in Boston.

7           BY MR. KOTZ:

8           Q     So was Mr. Gettinger in that position to accept or  
9 review the referrals during this time period, do you know?

10          A     I think Gettinger is, for one -- probably for the  
11 last decade or more.

12          Q     Okay. So do you think one of the reasons that this  
13 was not referred to the New York office was because of  
14 Mr. Gettinger's standards?

15          A     Partly one reason. But I think you look at it,  
16 it's a -- it is the broadest of allegations, where to conduct  
17 an investigation on that, and having done that, it would take  
18 a great deal of resources. Well, where do you start looking?  
19 Somebody comes in. They say, you know, my money was missing,  
20 or they charged me this fee I didn't know about, or I can't  
21 contact the guy.

22          Q     Well, what about looking at the returns of Bernard  
23 Madoff and to see whether in fact there are down months that  
24 move volatility --

25          A     That would have to be something that Jason

1 Gettinger and his type would have to determine and devote  
2 resources to.

3 BY MS. STEIBER:

4 Q And in your experience, they didn't devote  
5 resources to those types of questions?

6 A I'm not so sure anybody did before Bernard Madoff,  
7 anybody in the SEC did before the Bernard Madoff case.  
8 That's really cutting-edge in terms of resources.

9 Q To look at returns?

10 A Yeah, type of things, that kind of analysis. I  
11 mean, the essential SEC case, an investor comes in. Help,  
12 you know. My money is missing, and the guy keeps putting me  
13 off. But in terms of examinations, how does the return on  
14 this company compare with what others are doing?

15 Especially what -- something seemingly successful,  
16 it can be done. And maybe it's like what Markopolos said:  
17 There are too many lawyers and too few financial analysts at  
18 the SEC. But to go into that and, you know, just to commit  
19 resources to it, that's pretty bold, especially if, you know,  
20 people get rated on their production.

21 And in an office like OIEA, there's a lot of people  
22 are taking off for educational matters. Like McCreery was in  
23 and out. You know, what's -- or I think a real -- and that's  
24 why also you get these things sent over from the internet  
25 enforcement. What's the payoff going to be? They're so

1 the added information might be helpful?

2 A Okay. Well, you mentioned kind of a standard  
3 practice in referrals, at least to Enforcement, because we  
4 had to check the NRSI system to see if there's any kind of  
5 activity going on. If it's on NRSI, the standing orders were  
6 it goes regardless. There's no evaluation involved, no  
7 subjectivity.

8 Now, I'm sorry to say, at least while I was there,  
9 we never had the information on what was going on with regard  
10 to examinations.

11 Q Okay.

12 A But you're mentioning -- you're touching upon one  
13 of the really fundamental issues in the whole referral  
14 operation with OIEA, at least with regard to enforcement  
15 matters.

16 Q So do you know if NRSI was checked in connection  
17 with Exhibit 2?

18 A I don't know if it indicates that specifically.  
19 But that was our -- that was our standard procedure.

20 Q Okay. Is there anything on this document that  
21 would indicate whether one -- is there like a box or  
22 something that says checked NRSI or didn't check NRSI?

23 A Not on this, no.

24 Q So there's no way of knowing from the face of  
25 Exhibit 2 whether NRSI was checked?

1           A     No.  But what about going back to -- NRSI has  
2 records of searches.

3           MS. STEIBER:  Yeah.  We did.

4           MR. KOTZ:  We did that.  So I'm going to show you  
5 another document.  And this is Exhibit 3.  We're going to  
6 mark this as NRS Enforcement Detail, table of contents for  
7 Bernard Madoff.

8                                 (SEC Exhibit 3 was marked for  
9                                 identification.)

10           BY MR. KOTZ:

11           Q     This seems to be an NRSI search of the different  
12 times it was checked vis-a-vis Bernard Madoff.  Is that  
13 right?

14           A     Start at the back.

15                                 (The witness examined the document.)

16           Q     I see there's a lot of checking subsequent to  
17 December 11, 2008.

18           A     Yeah.  That's -- I saw that.

19           Q     When Mr. Madoff confessed.  There seems to be fewer  
20 that were prior to his confession.

21                                 So is there any indication on Exhibit 3 that NRSI  
22 was checked during that time period?

23           A     No.  There's certainly none by [REDACTED]

24           BY MS. STEIBER:

25           Q     You said the complaint itself was very general.

1 Correct?

2 A Yes. I'd have to say that. I just don't -- maybe  
3 we're thinking about it a little different now. But it just  
4 strikes me as one of those things where you'd almost have to  
5 start up a special project. So --

6 Q And as the branch chief, what would you have done  
7 when [REDACTED] decided not to forward the complaint on and  
8 close the matter? Would you have reviewed the decision?

9 A Yeah, of course. Every branch chief should. It's  
10 like with the e-mails. And my decision is -- my initials are  
11 on there.

12 BY MR. KOTZ:

13 Q And that's Exhibit 2?

14 A Yeah.

15 BY MS. STEIBER:

16 Q So you reviewed his decision and you supported it  
17 to close the complaint?

18 A Yeah. I approved it. I approved his decision.

19 MR. KOTZ: All right. Why don't we show you the  
20 next one. We'll mark this as Exhibit 4. And this is another  
21 several-page document, file HO-1193524.

22 (SEC Exhibit 4 was marked for  
23 identification.)

24 (The witness examined the document.)

25 THE WITNESS: All right.

1 Q -- when you guys got it?

2 A Well, let's see. The date stamp is December 11th,  
3 received in the chairman's office. And it looks like pretty  
4 fast work.

5 Q And it looks like you -- okay. And so then you  
6 referred it out on -- or made a determination on  
7 December 14th.

8 A Right. Right.

9 Q So it does not indicate from these documents,  
10 Exhibit 4, that you, OIEA, got a copy of the April 26, 2006  
11 letter. Is that right?

12 A (Examining.) I don't know. Well, this --

13 Q There's no indication from this either way?

14 A Well, the indication would be the concerned citizen  
15 didn't get a -- well, it would be anonymous, but didn't see  
16 anything in the papers and just sent another one.

17 Q So they re-sent it?

18 A Kind of an unusual event, I must say. On the other  
19 hand, this is nicely typed and some interesting specifics.  
20 You've got an exact account to look at.

21 Q Now, what does it indicate happened to this?

22 A By our office?

23 Q Yeah.

24 A It was referred on the 14th of December to New  
25 York, to the New York office.

1 Q Simona Suh. Is that right?

2 A Yes. I have no familiarity with that person, but I  
3 assume it's some sort of paralegal or administrative person  
4 in New York, or it was at that time.

5 Q And do you have any indication from the document,  
6 Exhibit 4, why it was sent to Simona Suh?

7 A Let's see. Well, for something sent specifically  
8 to an individual in -- okay. Here I see it refers to a New  
9 York investigation. And this Simona Suh is one of the staff  
10 members assigned to the matter.

11 Q So do you think that perhaps in this case, NRSI was  
12 checked and that's how the determination was made to send it  
13 to Simona Suh?

14 A I think that's a strong likelihood, sure.

15 Q If you look back at Exhibit 3, do you see any  
16 reference? This would be around December of '06.

17 A Yeah. I think that we went over that. There's  
18 no -- well, let's see. There's no reference -- that's  
19 strange. So what you have is you have -- as I said  
20 previously, there's no reference here by [REDACTED]  
21 checking, but there doesn't seem to be -- no reference here  
22 by David Powers checking, either.

23 BY MS. STEIBER:

24 Q So how else would they know an investigation was  
25 going?

1           A     I don't know. I mean, if I was working it, there's  
2 no way I would know. And there are so many investigations,  
3 so much work, this -- well, everybody would know that there's  
4 a Madoff investigation now. But before everything went  
5 public --

6           Q     Could somebody have been using somebody else's  
7 password to get onto the system?

8           A     Well, that should not be done. That's a definite  
9 no-no. But the thing is, you take a look at -- take a look  
10 at those who are checking it from even November. And there's  
11 no checking in December of '06, and I don't know of any other  
12 way of getting the specific New York number for it, New York  
13 file number.

14          Q     So we'll just have to ask them.

15                   BY MR. KOTZ:

16          Q     Okay. Well, we can ask David Powers. But you do  
17 understand from reviewing this document, Exhibit 4, that the  
18 matter was sent to Simona Suh?

19          A     Yeah.

20          Q     And would you view the information in this to be  
21 more detailed than the previous two complaints we showed you?

22          A     Far more. This is -- I mean, this is great work.  
23 And maybe it's -- I don't know what happened in New York on  
24 it or whether Gettinger or whoever saw it. But yeah, it's  
25 laid out. You've got the firm identified. An account. And