

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of:

OIG-509

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WITNESS: NUMBER 47

**COPY**

PAGES: 1 - 16

PLACE: Securities and Exchange Commission  
3 World Financial Center  
New York, New York

DATE: May 11, 2009

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

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A P P E A R A N C E S :

On behalf of the Securities and Exchange  
Commission

H. DAVID KOTZ, ESQ.

United States

Securities and Exchange Commission

100 F Street NE

Washington, DC 20549

1 MR. KOTZ: We're on the record at  
 2 3:19 p.m. on May 11, 2009 at the United  
 3 States Securities and Exchange Commission.  
 4 The Court Reporter will swear you in  
 5 now.

6 OCIE Examiner

7 Having first been duly sworn by a Notary  
 8 Public of the State of New York, was  
 9 examined and testified as follows:

10 EXAMINATION BY

11 MR. KOTZ:

12 Q. Could you state and spell your full  
 13 name for the record?

14 A. My name is

OCIE Examiner

15 OCIE Examiner

16 Q. OCIE Examiner, my name is David  
 17 Kotz, I'm the Inspector General of the United  
 18 States Securities and Exchange Commission.

19 This is an investigation by the  
 20 Office of Inspector General, case number  
 21 OIG-509. I'm going to ask you certain  
 22 questions, you'll have to provide answers under  
 23 oath. The Court Reporter will record and later  
 24 transcribe everything that is said. Therefore,  
 25 please provide verbal answers to the questions,

1 as a nod of the head or another non-verbal  
2 response will not be picked up by the Court  
3 Reporter.

4 Also, so the record will be clear  
5 please let me finish my question before you  
6 provide your response, and I'll try to let you  
7 finish your response before I ask the next  
8 question. It is also important that you  
9 understand the questions and give accurate  
10 answers. If there's anything you don't  
11 understand or anything you do not know or not  
12 sure about, please let me know. Otherwise, I  
13 will assume that you heard and understood the  
14 question.

15 Do you understand those  
16 instructions?

17 A. Yes.

18 Q. I'll give you the perjury warning.  
19 As you can see your responses and statements  
20 given today are provided after you swore an  
21 oath and will be taken down verbatim by the  
22 Court Reporter. This is an official U.S.  
23 government law enforcement investigation. The  
24 claims asserted in this case are serious ones.  
25 It is very important you tell me everything you

1 know about the matter at hand and are  
2 completely forthcoming and truthful with me.

3 I'm formally advising you that your  
4 testimony today is subject to the laws of  
5 perjury. Providing false and misleading  
6 testimony under oath is a very serious offense.  
7 If the evidence shows that the testimony you  
8 provided is false we may refer it as  
9 appropriate.

10 Do you understand those  
11 instructions?

12 A. Yes, I do.

13 Q. Can you tell me your current  
14 position with the Agency?

15 A. I am currently a staff accountant  
16 slash risk management analyst with trading and  
17 markets.

18 Q. How long have you been with the  
19 Commission?

20 A. Since March of 2005, so a little  
21 bit over four-years.

22 Q. Have you had a different position  
23 with the Commission?

24 A. I used to be part of the OCIE  
25 broker dealer office.

1 Q. How long were you in that?

2 A. For a little bit under three years.

3 Q. What was your position in that  
4 office?

5 A. I was -- also I worked as -- I was  
6 hired under the CSE program, but I did a  
7 combination of -- I did basically examinations  
8 related to broker dealers, mostly large broker  
9 dealers.

10 Q. Who was your supervise at that  
11 time?

12 A. Personal Privacy, and above  
13 Personal Privacy was John knee, I was in that area,  
14 and Robert Salasso who was over them.

15 Q. Let me show you a document, if I  
16 could. I'll mark this Exhibit 1. This is an  
17 E-mail from Peter Lamore to you dated  
18 4/27/2005, 3:15 p.m..

19 (Whereupon, the aforementioned E-mail  
20 was marked as Exhibit 1 for identification  
21 as of this date by the Reporter.)

22 Q. If you could take a look at this  
23 document. You could see it's kind of an  
24 exchange.

25 A. Is it top to bottom or bottom to

1 top?

2 Q. Start from the bottom. See on the  
3 second page of this document Peter Lamore is  
4 sending an E-mail to you Wednesday, April 27,  
5 2005, 11:56 a.m.. Do you see that?

6 A. Oh, okay.

7 Q. "Hey Personal Privacy were you able to dig up  
8 any info regarding Madoff? What were the names  
9 of the funds that you worked on and invested  
10 with Madoff?" And then you have a response  
11 about getting some information. Do you  
12 remember this?

13 A. I do recall this, yes.

14 Q. What was it about?

15 A. Now, this is April 27, 2005. I  
16 started working for the SEC I believe it was  
17 March 6, 2005. Prior to that I worked for  
18 Jacobson Family Investments. It was a private  
19 wealth management company. We had investments,  
20 my firm, in various entities with Bernard  
21 Madoff. And soon after I started I spoke  
22 casually with Pete Lamore and probably John  
23 Knee because he was my supervisor, and they  
24 told me they were doing an exam with Madoff.  
25 So, I said oh, the firm I used to work for we

1 used to have investments with Madoff. So, they  
2 were interested in that because they were doing  
3 an exam. I wasn't involved with the exam at  
4 all.

5 So, initially I said well, I can  
6 give you -- they were interested in the names  
7 of the entities that invested. And I told them  
8 that I, you know, I could probably give them  
9 some statement information, initially that's  
10 what I said. And then, - which I remembered at  
11 the time as well, I was reluctant to do that  
12 because I had signed a confidentiality  
13 agreement when I left Jacobson Family  
14 Investments that I wasn't allowed to reveal,  
15 you know, investment details, that kind of  
16 thing. It would have been a conflict of  
17 interest, I guess.

18 Now, what I did was I had called  
19 someone that I used to work with and I told her  
20 that -- when the SEC does an examination you're  
21 never allowed to reveal who you're examining  
22 because if Madoff had no problems and I went  
23 and I told my former co-worker that they were  
24 doing an examination, somebody would say  
25 there's a problem there. So, that's why I told

1 her that my wife's uncle was interested in  
2 investing, so. I ended up not getting the  
3 information from her. And also to my  
4 recollection John Knee Peter spoke to their  
5 general counsel and they decided don't use me  
6 because I was worried about getting sued and so  
7 I guess they were too. You know, the SEC being  
8 sued by Jacobson Family Investments. Because  
9 Madoff from my experience with him it was  
10 always a good source of cash flow.

11 If we needed a million dollars for  
12 operations we would be able to pull out money,  
13 but he always had a rule. Don't pull out too  
14 much money, you know, he started saying to us,  
15 you know, I'm not going to let you back in if  
16 you keep taking out money. And also, if you  
17 tell anybody on the outside that you're  
18 investing with me, you're going to be out.

19 Q. Did you relay this to Peter Lamore,  
20 the way that process worked?

21 A. I don't recall. I don't recall, to  
22 be honest with you. I probably did in  
23 conversations because, you know, it was very  
24 informal.

25 Q. Now, could you have gone back to

1 Jacobson and said, you know, I just want to  
2 know, you know, here's where we are and, you  
3 know, would you be willing to share the  
4 information?

5 A. I didn't think that they would be  
6 open to it. Knowing what has happened, that  
7 would have been the best thing, obviously.  
8 Maybe it somehow would have helped.

9 Q. So, in the end you never followed  
10 up on this matter?

11 A. Correct. And because I had just  
12 started here, everybody thought the best thing  
13 not to, you know, since I just started and they  
14 were just investors. I never knew there was  
15 anything wrong.

16 Q. Any other involvement further on in  
17 any Madoff related matters?

18 A. No.

19 Q. Let me show you another document.  
20 I'm going to mark this as Exhibit 2. It's an  
21 E-mail from you to Peter Lamore 5/2/2005, 9:10  
22 a.m..

23 (Whereupon, the aforementioned E-mail  
24 was marked as Exhibit 2 for identification  
25 as of this date by the Reporter.)

1 Q. Is this about the same matter?

2 A. This is the same matter, yes. Jody  
3 was our contact person when I worked for  
4 Jacobson. Peter was trying to find -- they  
5 were trying to find investments outside of the  
6 broker dealer, and my recollection was that  
7 Jacobson Family's Investments were outside of  
8 the broker dealer. They wanted to know who the  
9 people were I guess inside the broker dealer or  
10 outside the broker dealer, and that's why he  
11 was asking me who the contact was that we had.

12 Q. Do you know if there was any  
13 follow-up from this?

14 A. I do not recall. I know that we  
15 had stopped -- because of the confidentiality  
16 we kind of came to an agreement that we  
17 shouldn't discuss it.

18 Q. So that happened subsequent to this  
19 5/2/2005 discussion that you decided not to  
20 move forward?

21 A. Yes, that's correct.

22 Q. Let me ask you just generally, is  
23 there a great focus when you did the  
24 examinations previously on timelines, getting  
25 them done in a specific period of time?

1 A. Yes.

2 Q. Are there times where there are  
3 situations where you might want to look further  
4 at something, but because of timelines you  
5 really aren't able to because you have to  
6 finish the exam within a certain period of  
7 time?

8 A. Again, I've only been here for  
9 four-years, but it has been my experience that  
10 if there's something that appears to be a  
11 problem, you are given the time to look into  
12 it, that's just been my experience.

13 Q. Did you ever do a cause exam  
14 without a branch chief on the exam?

15 A. No. And mainly the exams that I  
16 did were large firms for the most part.

17 Q. Have you ever been in a situation  
18 where in the middle of an exam you realized  
19 that another office was doing a similar exam  
20 that you didn't know about?

21 A. Not that I recall.

22 Q. Have you had ever had a situation  
23 on an exam where you dealt directly with the  
24 CEO, that that was your contact?

25 A. At the firm?

1 Q. Yes.

2 A. One small firm I had examined, yes.  
3 There were only five people in the firm.

4 Q. But none of any larger firms?

5 A. No.

6 Q. Have you ever had a situation where  
7 you felt it was too narrow a focus on the exam,  
8 it should have been enlarged?

9 A. No, that's not been my experience.

10 Q. Have you had any interaction with  
11 the Enforcement Division as when you were an  
12 examiner?

13 A. On one exam I did, yes.

14 Q. Did you have any concern about  
15 Enforcement not taking your opinion as much as  
16 it would if it came from another Enforcement  
17 person?

18 A. My experience was actually very  
19 positive, as far as they listened to what I had  
20 to say, and I think they followed up on what I  
21 said.

22 Q. When you did your cause exams,  
23 would you rely on exams done by the NASD or  
24 FINRA?

25 A. Yes I only did one cause exam.