

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

) File No. OIG-509

OIG-509)

 **COPY**

WITNESS: Number 55

PAGES: 1 through 31

PLACE: Room 4365

Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C. 20549

DATE: Thursday, May 21, 2009

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

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1 APPEARANCES:

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On behalf of the Securities and Exchange Commission:

HEIDI STEIBER, ESQ. Investigator
Office of Inspector General
Securities and Exchange Commission
100 F Street, N.E.
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(202) 551-5067

On behalf of the Witness:

Former OCIE Attorney Advisor


PRO SE (Via telephone)

C O N T E N T S

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WITNESS

EXAMINATION

Former OCIE Attorney Advisor

6

EXHIBITS:

DESCRIPTION

IDENTIFIED

1 Confidentiality and non disclosure
agreement

6

2 Memo from Former OCIE Attorney Advisor to former OCIE Branch Chief

13

3 Memo from Former OCIE Attorney to Barry,
6/6/05

16

4 E-mail from Former OCIE Attorney Advisor to Donahue,
6/1/05

17

5 E-mail from Former OCIE Attorney Advisor to Donahue,
6/2/05

23

P R O C E E D I N G S

1
2 MS. STEIBER: Would you please raise your right
3 hand?

4 Former OCIE Attorney
Advisor Mm-hmm.

5 MS. STEIBER: Would you please state and spell your
6 full name for the record?

7 Former OCIE Attorney Advisor

8
9 MS. STEIBER: Oh, could you speak up, please? The
10 court reporter is having trouble hearing you.

11 MR. Former OCIE Attorney Advisor Oh, I'm sorry, yes. Former OCIE Attorney Advisor

12 Former OCIE Attorney Advisor

13
14 MS. STEIBER: My name is Heidi Steiber, and I am an
15 investigator in the Office of Inspector General at the United
16 States Securities and Exchange Commission.

17 This is an investigation by the Office of Inspector
18 General, case number 509. I'm going to ask you certain
19 questions, you are going to provide answers under oath. The
20 court reporter will record and later transcribe everything
21 that is said. Please provide verbal answers to the
22 questions. A nod of the head or other non-verbal response
23 will not be able to be picked up by the court reporter.

24 Also, so the record will be clear, please let me
25 finish my question before you provide your response, and I'll

1 try to let you finish your answer before I ask the next
2 question. It is important that you understand the questions
3 and give accurate answers. If there is anything you don't
4 understand, or anything you want more information of, please
5 let me know, otherwise I will assume that you heard and
6 understood the question.

7 I'm going to give you the standard language that we
8 give in these interviews. Your responses and statements
9 today are provided after you have sworn an oath, and are
10 taken down verbatim by the court reporter.

11 This is an official U.S. government law
12 enforcement investigation. The claims asserted in this case
13 are serious ones. It is very important you tell me
14 everything you know about the matter at hand and are
15 completely forthcoming and truthful with me.

16 I am formally advising you today that your
17 testimony is subject to the laws of perjury. Providing false
18 or misleading testimony under oath is a very serious offense.
19 If the evidence shows the testimony you provided is false, we
20 may refer it as appropriate.

21 Do you understand those instructions?

22 Former OCIE Attorney
Advisor Yes.

23 MS. STEIBER: Okay.

24 THE REPORTER: Former OCIE Attorney
Advisor

25 Former OCIE Attorney Advisor

1 the Exhibits?

2 A Yes, I recall signing that.

3 Q Okay, so I'm placing into evidence Exhibit number
4 1. Could you describe your education, beginning with
5 college?

6 A Yes. I went -- I received a four-year degree, a
7 Bachelor's of Business Administration from George Washington
8 University in Washington, D.C. After that I attended
9 Brooklyn Law School in Brooklyn, New York, and graduated with
10 a JD.

11 Q Okay. After graduating from law school, what jobs
12 did you hold?

13 A I worked at the Brooklyn D.A.'s office. After
14 that, I worked at the Commodity Futures Trading Commission in
15 Washington, D.C.

16 Q Okay. And what years did you hold these positions?

17 A The Brooklyn D.A.'s office, that was '96 to 2000.
18 The CFTC was 2000 to 2004. And then in 2004, I began
19 working -- in March 22, 2004, I began working at the U.S.
20 Securities and Exchange Commission in Washington, D.C., until
21 approximately May of '06, 2006.

22 Q Okay, from -- at -- when you joined the Commission
23 on March 22, 2004 --

24 A Yes.

25 Q -- what position did you hold?

1 A I worked on a couple of projects or exams, and had
2 assignments. Would you like to know in greater detail what
3 those were, or --

4 Q Yes, please.

5 A With Mark, I worked on -- let's see, the -- I'm
6 just going over -- trying to refresh my recollection. One of
7 the projects was reviewing the MSRB's surveillance of the
8 municipal securities transactions. That was -- we were also
9 looking at -- so basically over munis -- municipal securities
10 and their oversight.

11 Also, I completed an assignment for Mark relating
12 to Madoff, and that assignment was -- consisted of
13 calculating or adding up the commissions for Kingate global
14 fund for a period of a year. That time period, I believe,
15 was 2003, basically adding up all the commissions on the
16 securities trades and the options trades for that year, and
17 then presenting it in some type of -- at least, that was --
18 that's what I did, was put it into some form -- a spreadsheet
19 to make it easier to review. And that information was pulled
20 out from the P&L documents.

21 Q Okay. We'll go into that in greater detail later.
22 Any other projects with Mark Donahue?

23 A I'm trying to think. To my recollection, that was
24 it.

25 Q Okay. Did you ever receive a promotion during that

1 A If you look at the document, it's identifying who
2 the branch chief was responsible for a particular matter,
3 so -- just so that it would make it easier for the branch
4 chief to ask that individual questions if they needed to,
5 about performance or what we did.

6 Q So you understood that Donahue was the person
7 responsible for this project?

8 A As it related to what I was asked to do. I'm
9 not -- I don't know if there were other investigations
10 concurrently going on, or other parts with other branch
11 chiefs.

12 Q Okay.

13 A My view of -- or my, I guess, view of Madoff, it
14 was in a vacuum really, because I was not given background
15 information as to this is the -- what the plan was, the
16 investigative plan, if there was one, you know, from what
17 other individuals in OC were doing or looking at.

18 Q Okay.

19 A So as far as I knew at the time, that's -- that was
20 the individual that had assigned that project, and that's why
21 I put his name down.

22 Q Okay. Now further on down the page toward the end,
23 you write, "In addition, I also took on special assignments
24 without compromising the timeliness of any of my outstanding
25 projects. For example, in the Madoff Investment Securities

1 assignment, I had to calculate the fund's monthly commissions
2 on trades for securities and options for all of 2003, which I
3 completed in a day and a half."

4 Do you recall making this statement?

5 A Yes.

6 Q And does this description fit what you recall doing
7 on the Madoff project?

8 A Yes.

9 Q Do you recall doing any other work on the Madoff
10 examination, except for what is described in this memo?

11 A No, I don't recall anything else.

12 Q I'm going to mark as Exhibit 3, a memo from you to
13 Tina Barry, and the -- on the Re: line it says, "Employee
14 summary for FY 2005," and it's dated June 6, 2005.

15 A Right.

16 Q Did you provide me with a memo fitting this
17 description?

18 A Yes.

19 (SEC Exhibit No. 3 was marked for
20 identification.)

21 BY MS. STEIBER:

22 Q Okay. What is this?

23 A This is the next year's, I guess, write up, summary
24 that I provided to my branch chief at the time for the
25 evaluation, covering the time period that would have started,

1 Q And how long do you think it took you to create
2 this document?

3 A Based on the -- my memo, it -- I believe it took me
4 about a day and a half.

5 Q Okay. And after you created this document, what
6 did you do with it?

7 A As I recall, I provided this to Mark, I think in
8 paper form. I printed it out and gave it to him, and he took
9 it, looked at it, he said thank you, and that was it.

10 Q That was it. He never discussed this spreadsheet
11 with you?

12 A No.

13 Q Did you ever hear from Donahue about further work
14 that he wanted you to perform on the data?

15 A To my recollection, after I provided that -- this
16 spreadsheet to him, I never heard anything about Madoff again
17 until the e-mail that's been entered into evidence where he
18 asked certain individuals including myself questions, such
19 as, you know, can you meet for a discussion, but that was
20 the -- from that meeting -- to my recollection, from that
21 meeting where I provided Mark the spreadsheet, I didn't hear
22 anything about Madoff until that -- the May 31, 2005 e-mail.

23 Q Okay. Did you have other matters in OC in which
24 you performed work, turned it in, and never knew what
25 happened to the project?

1 A For example, could you be, again, more specific?

2 Q Did he work well with the people who worked with
3 him, or were difficulties that he had with Gen Walker common
4 to his other relationships, or similar to his other
5 relationships with the people who worked for him?

6 A It's hard to say, because that's one instance where
7 I was aware of, or had heard things about a difficult
8 relationship, working relationship, rather. I didn't hear of
9 any other instances like that, but I do know that there
10 was -- at least my impression was there was a source of maybe
11 tension, in the sense that there appeared to be some type of,
12 some sort of -- and this is just an observation, some type of
13 favoritism with certain individuals within the group, within
14 the department. And I think that there may -- that may have
15 created some tension.

16 Q Mm-hmm. Do you recall being able to assess Mark
17 Donahue's technical expertise?

18 A With respect to --

19 Q With respect to securities matters. Did he seem to
20 you fairly inexperienced in securities matters?

21 A Well, obviously there's a certain degree of
22 speculation here, but you know, it seemed to me -- well, in
23 my opinion, it seemed that his level of expertise was not
24 where it should be, given his -- what position he was at the
25 time, ultimately.

1 Q Mm-hmm, right. Okay, do you have any other
2 thoughts about the Madoff matter, or remembrances that you
3 want to share, or that you're able to share?

4 A Yeah, I just -- for the record, I just want to make
5 it clear that, again, my only involvement was calculating
6 commissions and -- on securities trades and options trades
7 for Kingate. I wasn't part of the team that was
8 investigating or conducting anything, and at no point was I
9 ever a team leader, most certainly, of that project or
10 investigation, and that's it.

11 Q Okay, great. Well, we're off the record.

12 (Whereupon, at 2:46 p.m., the examination was
13 concluded.)

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