

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of:

OIG-509

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WITNESS: NUMBER 28

PAGES: 1 - 50

PLACE: GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, New York

DATE: April 30, 2009

The above-entitled matter came
on for hearing at 2:55 p.m.

 **ORIGINAL**

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 RANDY M. MASTRO, ESQ.

16 GIBSON, DUNN & CRUTCHER LLP

17 200 Park Avenue

18 New York, New York 10166-0193

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1 MR. KOTZ: On the record at 2:55
2 p.m. on April 30, 2009 at the law offices
3 of Gibson, Dunn & Crutcher LLP.

4 M A R K S C H O N F E L D,

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

9 EXAMINATION BY

10 MR. KOTZ:

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

13 A. Mark, M-A-R-K, middle initial K,
14 Schonfeld, S-C-H-O-N-F-E-L-D.

15 Q. Mr. Schonfeld, my name is David
16 Kotz. I'm the Inspector General of the
17 United States Securities and Exchange
18 Commission. I have here with me from the
19 Office of Inspector General Noelle
20 Frangipane. I know that you have
21 representing you Randy Mastro from Gibson,
22 Dunn & Crutcher LLP.

23 This is an investigation by the
24 Office of Inspector General, case number
25 OIG-509. I'm going to ask you certain

1 seeing this document before?

2 A. No.

3 Q. When did you first hear the name
4 Harry Markopolis?

5 A. Sometime within the last couple
6 months in connection with the publicity
7 and hearing about this matter.

8 Q. So you don't remember anything
9 about Harry Markopolis providing
10 information to your office in either 2001
11 or 2005?

12 A. No.

13 Q. I show you another document.
14 We're going to mark this as Exhibit 4.

15 (Whereupon, the aforementioned
16 E-mail was marked as Exhibit 4 for
17 identification.)

18 Q. This is an E-mail from you to

19 Personal Privacy

dated 4/3/2001, 7:08

20 p.m.. Do you recall anything about having

21 Personal Privacy

check names in NRSI

22 regarding Bernie Madoff?

23 A. No.

24 Q. Who is

Personal Privacy

25 A. She was my secretary as of the

1 date of this E-mail.

2 Q. Do you know why you would have
3 names checked in NRSI after receiving some
4 information from the Boston office with
5 reference to a possible complaint?

6 A. Well, I can't state why I -- I
7 have no recollection of doing it, so I
8 can't state specifically why I did in this
9 case, but I can tell you why under these
10 circumstances I would do such a thing.

11 Q. Okay.

12 A. NRSI is or was at the time a
13 database of existing investigations and
14 contained the names of relevant people and
15 entities connected with investigations.
16 So, it is the way in which I would search
17 to determine if there was any existing
18 investigation or prior cases involving
19 anybody about whom we received a referral.

20 Q. It's fairly common that if you
21 get a referral you would look at NRSI to
22 see if you already have an ongoing case
23 about the same individual?

24 A. Right.

25 Q. I'm going to show you another

1 document. We're going to mark this as
2 Exhibit 5. This is an E-mail from Leslie
3 Kazon to you dated 4/5/2001, 11:54 a.m..

4 (Whereupon, the aforementioned
5 E-mail was marked as Exhibit 5 for
6 identification.)

7 Q. Do you recall any discussions
8 with Leslie Kazon about a complaint
9 received about performance claims for
10 funds managed by Bernie Madoff and making
11 a determination that the complaint would
12 not be pursued?

13 A. No.

14 Q. If you could take a look briefly
15 at Exhibit 3, which is the complaint.
16 Just take a quick look through it for me.

17 A. Okay.

18 Q. Did you from time to time
19 receive various tips and complaints in
20 your office about purported violations of
21 securities laws?

22 A. Yes.

23 Q. Comparing the different types of
24 complaints you've received over time,
25 would you say the complaint in Exhibit 3

1 from Harry Markopolis was more or less
2 detailed than the average complaint that
3 you received?

4 A. I guess I would say more
5 detailed than the average.

6 Q. What is the process that one
7 would go through when a complaint comes in
8 to determine if you would follow-up and
9 open a matter under inquiry or do an
10 investigation?

11 A. Well, at the time of this I was
12 probably an associate director. So, if
13 something came into me I would typically
14 assign it to somebody to do some level of
15 triage to determine whether it was worth
16 pursuing further.

17 Q. What would that triage be?

18 A. That's really hard to answer
19 because it would depend on what kind of
20 complaint it was and the issues it
21 raised.

22 Q. So let's assume the complaint
23 was Exhibit 3 the Harry Markopolis's
24 complaint, what do you think would
25 constitute appropriate triage of that?

1 A. Well, I have to say I have not
2 read this closely enough to answer that
3 specifically. Do you want me to take time
4 to look through it?

5 Q. Just a minute or two. I'm not
6 asking for specific investigative steps,
7 I'm just asking generally what you would
8 do to triage it?

9 A. Well, let me try to answer it a
10 little more generally.

11 Q. Sure.

12 A. If you characterize the nature
13 of the complaint most basically as an
14 allegation that an investment manager is
15 purporting to make returns that don't seem
16 plausible, I suppose the only way to
17 actually investigate it would be to
18 conduct an investigation of the managers
19 stated returns and determine whether
20 there's a basis for them.

21 I think your question was how to
22 triage something. I mean certainly one
23 way would be to look at the complaint
24 itself and try to assess whether it has
25 enough information that suggests it may

1 have a basis.

2 Q. Might that include going back to
3 the individual who submitted the complaint
4 and asking for further information?

5 A. That certainly could be, yes.

6 Q. Now, given your position at the
7 time, do you think it was likely that it
8 would have been Leslie Kazon not you who
9 did the triage and she may have discussed
10 it with you, but do you think it was
11 likely that she actually reviewed the
12 document?

13 A. Well, her E-mail to me in
14 Exhibit 5 says after reviewing the
15 complaint, so I presume she did.

16 MR. KOTZ: Off the record.
17 (Discussion was held off the
18 record.)

19 MR. KOTZ: Back on the record.

20 Q. If you look at Exhibit 2. It
21 seems to indicate that the documents were
22 overnighted to you on or about 4/3/2001.
23 Then if you look at Exhibit 5, Leslie
24 Kazon's E-mail to you where she says, "I
25 don't think we should pursue the matter

1 further," was dated only two days later,
2 4/5/2001. Are you surprised that a
3 decision whether to investigate or pursue
4 this type of complaint, the Harry
5 Markopolis complaint in Exhibit 3, was
6 done so quickly?

7 A. It's hard to answer that
8 question outside of everything that's
9 transpired since. But, you know, since I
10 don't know or have no recollection of what
11 she did, it's hard to say whether or not
12 it was adequate. You know, one of the
13 issues you're always dealing with in this
14 kind of situation is determining what's
15 worth pursuing and devoting resources to
16 and what's not. It's hard to say whether
17 I'm surprised. In the context of
18 everything that's happened since, yes.

19 Q. I mean, you said the complaint
20 was more detailed kind of than the average
21 complaint, it certainly has some specific
22 information in it. The question is how
23 could Leslie Kazon have made that
24 determination in such a short period of
25 time that the matter wasn't worth pursuing

1 at all?

2 A. I understand the question.
3 Without knowing what analysis was behind
4 her conclusion it's really hard to say.
5 So, it's hard for me to answer that in any
6 other way.

7 Q. Do you know generally when
8 complaints with that kind of detail of
9 the Harry Markopolis' complaint in Exhibit
10 3, came in, decisions would be made so
11 quickly not to pursue the matter?

12 A. Can you repeat the question.

13 Q. Were there other occasions, was
14 it a regular thing that complaints that
15 came in of the level of detail as the
16 Harry Markopolis complaint in Exhibit 3
17 were determined not to be pursued after
18 only two days?

19 A. Well, if you're asking me if I
20 can think of another specific example, no.
21 But I can give you -- for example, we
22 received inside trading referrals and
23 sometimes you would get a referral that
24 would have a lot of detail to it, but at
25 the end of day if you looked at it it was

1 referring a relatively small amount of
2 trading which even assuming an actual
3 violation wouldn't have made it a good use
4 of our resources to pursue. So, it's --
5 and I'm not saying that that's the case
6 with this complaint, obviously. But, I
7 think that only an example that there can
8 be referrals, complaints with a lot of
9 detail but which could result in a very
10 quick conclusion or to give you another
11 example. Sometimes we would get referrals
12 or complaints about things that had
13 nothing to do with securities, but they
14 would be very detailed and you could
15 determine very quickly that this is not
16 something within our jurisdiction. So,
17 you know, I understand your point about
18 this particular case, but it's really hard
19 for me to say without knowing what
20 actually went into her analysis whether it
21 was inadequate.

22 Q. Other than a resource issue,
23 simply the SEC didn't have sufficient
24 resources to handle the matter, can you
25 think of another reason why a decision

1 would be made to not pursue the issues
2 identified by Mr. Markopolis in Exhibit 3?

3 A. I can't think of one sitting
4 here today, but I don't know what analysis
5 Leslie had in mind when she sent that
6 E-mail in Exhibit 5.

7 Q. I'm going to show you another
8 document. We're going to mark this as
9 Exhibit 6. This is an E-mail from
10 Silvester Fontes to you dated 5/7/2001,
11 4:18 p.m..

12 (Whereupon, the aforementioned
13 E-mail was marked as Exhibit 6 for
14 identification.)

15 Q. Do you remember Mr. Fontes
16 sending you a Barron's article?

17 A. No.

18 Q. Let me show you the article and
19 just ask you if you recognize that. I'm
20 going to mark that as Exhibit 7. It's a
21 Barron's article, Monday, May 7, 2001.
22 "Don't ask, don't tell. Bernie Madoff is
23 so secretive he even asked investors to
24 keep mum."

25 (Whereupon, the aforementioned

1 article was marked as Exhibit 7 for
2 identification.)

3 Q. Other than a minute ago, have
4 you ever seen this article before or do
5 you recognize the article?

6 A. No.

7 Q. If you had a case like this
8 where information was sent in from the
9 Boston office, do you think that folks in
10 New York might go back to Boston and ask
11 them questions about the referral or about
12 the individual who brought forward the
13 referral?

14 A. I'm sorry, can you say that
15 again.

16 Q. Well, Boston refers you a
17 matter, something that came into them,
18 would there be situations where in order
19 to make a decision on whether to bring a
20 case you would go back to Boston and ask
21 them questions about the referral or
22 potentially ask them questions about the
23 person who made the initial complaint to
24 them?

25 A. If they had actually -- if they

1 had actually done something or had some
2 information, sure. I mine can't tell from
3 this, for example, whether they had any
4 substantive interaction with the person or
5 merely are conveying something from him.

6 Q. So, if you had someone who
7 provided a complaint such as Exhibit 3,
8 Harry Markopolis' complaint, and then
9 later on, a month later there was an
10 article in the newspaper that seemed to
11 suggest the same issues, would that be
12 more of a reason to open up a matter,
13 would that be relevant in the triage
14 determination?

15 A. Well, maybe, but maybe not. I
16 mean the initial E-mail from Silvester
17 back in April refers to a reporter working
18 on a story. So, the fact that a story
19 then comes out --

20 Q. But this is actually a different
21 story.

22 A. Yes, you're right. This refers
23 to two different stories. So, it could
24 cause somebody to go back and re-analyze
25 the issue, but since somebody referenced

1 the fact that a writer was doing a story
2 and a story then came out, might not cause
3 one to think there was really any reason
4 to do anything more.

5 Q. Were you familiar with Barron's
6 as a publication?

7 A. Sure.

8 Q. Is it a reputable publication?

9 A. As far as I know, yes.

10 Q. Do you know if there's anything
11 prohibiting enforcement lawyers from
12 contacting a reporter who did an article
13 to get more information if it could be the
14 subject of an investigation?

15 A. Well, there's nothing
16 prohibiting it. There can be strategic
17 reasons not to. Such as the SEC
18 investigations are suppose to be
19 non-public, and by calling a reporter and
20 asking questions about somebody could give
21 the reporter sufficient basis for them to
22 write a story that the SEC is conducting
23 an investigation of a person, and so that
24 can be a reason not to contact a reporter
25 for information.

1 Q. Would the fact that in addition
2 to a complaint being provided to you that
3 there were two newspaper articles
4 providing similar information as the
5 complainant, would that be a factor in the
6 triage effort to determine whether to
7 investigate the matter?

8 A. Well, I would say that all of
9 those things would be factors to consider
10 in triaging, yes. If the original
11 complaint and the articles are cumulative,
12 it may or may not cause someone to then go
13 back and do more analysis, but certainly
14 media reports are -- actually media
15 reports are one of several potential
16 sources for investigations. So, in that
17 sense media reports are relevant.

18 Q. So, in fact there are times on
19 the basis of just one media report an
20 investigation would be opened on a matter
21 or could be opened?

22 A. Yes.

23 Q. Are you aware of other
24 situations where not only was there a
25 detailed complaint provided, but two media

1 articles about the same subject that
2 seemed to support the complaint?

3 A. Well, yes. Although without
4 pointing to a specific example, sometimes
5 what happens is when somebody is
6 complaining about something within our
7 jurisdiction they are also talking to the
8 press, and so it's not atypical or not
9 unusual that media reports will accompany
10 us receiving, the SEC receiving
11 complaints.

12 Q. Are you aware of any other
13 situation where a complaint was provided
14 to you and there were two media reports
15 and a decision was made not to pursue it,
16 other than this one?

17 A. I can't think of something off
18 the top of my head. I can think of
19 examples where we did investigate under
20 those circumstances, but ultimately we
21 determined not to bring cases for them.

22 Q. But overall, I'll try one more
23 time, are you surprised that given this
24 detail level of information provided in
25 the Harry Markopolis complaint and that

1 there were two newspapers articles about
2 the same topic at the same time including
3 one by Barron's, that the decision was
4 made not to go forward and pursue it in
5 two days?

6 A. I think the question sort of
7 conflates a series of events, because the
8 decision not to pursue it that Leslie made
9 was made based solely on the complaint.
10 And the article, I only actually have one
11 article here, came out later and, you
12 know, arguably nobody went back and then
13 reevaluated the original decision.

14 Q. But I mean the first article is
15 referenced in the E-mail to you on
16 4/2/2001, assuming that you would have
17 provided this information to Leslie or
18 made the determination or looked into the
19 matter, she would have been aware of at
20 least the first article?

21 A. Well, it says the person is
22 potentially working on a news story. In
23 retrospect it was an unfortunate decision,
24 but it's hard to -- it's impossible to
25 evaluate that decision without knowing