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C O N F I D E N T I A L

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
11-CV-03605(JSR)(HBP)

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<p>IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>SAUL B. KATZ, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>Videotaped Deposition of:</p> <p>DR. STEVE POMERANTZ</p>
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TRANSCRIPT of testimony as taken by and before
NANCY C. BENDISH, Certified Court Reporter, RMR, CRR
and Notary Public of the States of New York and New
Jersey, at the offices of Davis, Polk & Wardwell,
450 Lexington Avenue, New York, New York on Sunday,
January 8, 2012, commencing at 9:27 a.m.

1 knows.

2 Q. And the same would be true with
3 Mr. Wilpon; other than whatever went on with BLMIS,
4 you don't know that he has any other experience with
5 stock brokerage accounts?

6 A. Well, I mean, there's an affiliation
7 with Sterling Stamos, and there's certainly a lot of
8 knowledge that is presented to general partners of
9 an entity like that. So, there's plenty of
10 experience with those types of things.

11 Q. Do you know what Mr. Wilpon's
12 connection to Sterling Stamos was, other than being
13 named a general partner?

14 A. I believe he was a general partner.

15 Q. Right. Other than that?

16 A. Other than what Sterling Stamos
17 offers his contribution to be, I don't know.

18 Q. Do you know whether he ever attended
19 any of the investment management meetings at
20 Sterling Stamos?

21 A. I don't know.

22 Q. Do you know whether he ever purported
23 to pick investments at Sterling Stamos?

24 A. I don't know.

25 Q. How about Mr. Friedman, do you know

1 Q. What was he doing?

2 A. He was monitoring these accounts.

3 Q. Was he making any investment
4 decisions with respect to them?

5 A. Ultimately the primary decision was
6 to place the money with BLMIS.

7 Q. And who made that decision?

8 A. The partnership.

9 Q. Well, for instance, is it your
10 testimony that Gregory Katz, one of the people who
11 had an account that's at issue in this case, is it
12 your testimony that Mr. Friedman made the investment
13 decisions for Gregory Katz?

14 A. The decision to invest in BLMIS is
15 made by the partnership, is made by Sterling
16 Equities partnership. As far as monitoring -- when
17 I talked about monitoring the accounts, I know for
18 sure that Mr. Friedman was involved in doing that.

19 Q. All right. Let's put the monitoring
20 aside. I want to focus on the investment decision.
21 Do you know who was making the investment decisions
22 for the various individual accounts that were at
23 BLMIS?

24 A. Well, the purported investment
25 decisions within BLMIS?

1 even have to learn how to do it. I think the two
2 words basically, you know, describe exactly what it
3 is. If you look at Sterling Stamos documents, for
4 example, you know, you'll see a form of peer
5 analysis. If you look at a description of the
6 401(k) plan that's being offered to Sterling
7 employees, you'll see some form of peer analysis,
8 peer review that's being do (sic). Comparing the
9 performance to a benchmark is a standard, albeit
10 simplistic, but a standard form of peer analysis.

11 Q. When you perform a peer analysis, do
12 you do quantitative assessments?

13 A. I think it requires both quantitative
14 and qualitative assessments.

15 Q. Do you run computations to develop
16 numbers so that you can compare the performance of
17 one fund with another?

18 A. Yeah, that's a part of it.

19 Q. And are there standard computations,
20 ratios and the like, that people use in the
21 industry?

22 A. I think there's a core set of
23 standards that everybody looks at. Sterling Stamos
24 and I would look at the same set, same types of
25 things.

1 Q. For instance, there's something
2 called a Sharpe Ratio?

3 A. Yes.

4 Q. What's a Sharpe Ratio?

5 A. A Sharpe Ratio is one of what's
6 called a measure of risk adjusted return. It's to
7 not to just look at the returns that are experienced
8 by investment, but to somehow capture the amount of
9 risk as well within that investment. The
10 mathematical definition is very simple, it's just
11 the return divided by the standard deviation. It's
12 a relatively simple formula.

13 Q. When you were at Berkeley, did you
14 take statistics?

15 A. I taught statistics.

16 Q. All right. A standard deviation is
17 something that comes up in the study of statistics;
18 is that right?

19 A. Comes up -- it's a statistical
20 measure.

21 Q. It's a mathematical concept --

22 A. Yeah.

23 Q. -- that is used in statistics?

24 A. Well, I would say it's used in
25 everything. It comes from the field of statistics.

1 But it is -- the concept is applied to everything.
2 It's applied to finance, it's applied to physics,
3 I'm sure it's applied to real estate.

4 Q. So did you learn about Sharpe Ratios
5 while you were at Berkeley?

6 A. No. I don't think I knew what a
7 Sharpe Ratio was.

8 Q. How about a Sortino Ratio?

9 A. That's like the Sharpe Ratio, it's
10 another standard statistical metric that's used in a
11 variety of industries as a measurement of
12 risk-adjusted return.

13 Q. Did you learn about the Sortino Ratio
14 while you were at Berkeley?

15 A. No.

16 Q. That's something you learned over the
17 course of your time working in the financial
18 industry?

19 A. Again, I think it's a very common
20 metric. I think there are many publications that
21 you would come across that would have it in there.

22 Q. Is it something that you learned
23 about after you started working in the financial
24 industry?

25 A. Yes.

1 an experienced investor?

2 MR. KORNFELD: Object to form.

3 That's not what it says.

4 A. I am assuming that Sterling Equities
5 is an experienced investor for reasons that I cite
6 within my report.

7 Q. My question is: Are the opinions
8 that you rendered in your report based on the
9 assumption that Sterling is an experienced investor?

10 A. No. No, definitely not. If they're
11 not a sophisticated investor, then I would view them
12 as having an obligation to obtain counsel and have
13 an agent operate in that capacity.

14 Q. What is the source of that
15 obligation?

16 A. Well, I believe they're a fiduciary.
17 I believe that they are managing other people's
18 accounts or have the appearance of responsibility
19 for other people's accounts.

20 Q. When you say they're a fiduciary,
21 you're referring to the 401(k) plan we talked about
22 earlier?

23 A. At minimum, yes.

24 Q. Do you know when that plan was
25 formed?

1 Q. You don't know whether in the United
2 States people are free to invest their own money as
3 they wish?

4 MR. KORNFELD: Object to form.

5 A. That's not what I'm saying. There's
6 a lot of information that is disclosed as part of
7 the investment management industry. There is a
8 prospectus, there are annual reports, there are
9 confirmations. If people were free to completely
10 ignore everything, then there would be no reason to
11 disclose any of this information. The reason it's
12 being disclosed is because it then imparts a
13 responsibility to an investor to understand and have
14 some basis for what's going on. You're not
15 completely free to ignore everything and -- and then
16 not have some legal consequence to it.

17 Q. And the opinions that you've rendered
18 in here are based upon the understanding that you've
19 just testified to?

20 MR. KORNFELD: Object to form.

21 A. That's not what I said.

22 Q. Well, are they?

23 A. No. I said that -- I've said that I
24 view these defendants as sophisticated investors,
25 for reasons that I cite, mainly that I see them as

1 having the indicia of sophisticated investors. And
2 I furthermore think that as a result of that
3 sophistication, there are expectations.

4 Q. Expectations by whom?

5 A. The court.

6 Q. So you think the law imposes an
7 expectation that investors will investigate their
8 investments?

9 MR. KORNFELD: Object to form.

10 A. That's not what I said. I said that
11 they have indicia of sophisticated investors and the
12 court will react to that as it sees fit.

13 Q. All right. Let's look at some of the
14 other things you say here.

15 You refer throughout your opinion to
16 "Sterling," and I think if we go back to page, page
17 7 of your report, the bottom line in the text. You
18 say, "similarly situated to Sterling Equities."

19 A. Yes.

20 Q. And then there's a parenthetical and
21 it says, quote, "Sterling," close quote; do you see
22 that?

23 A. Yes.

24 Q. So, I understand that you're adopting
25 the term "Sterling" to mean Sterling Equities; is

1 that right?

2 A. Yes.

3 Q. And that's true throughout this
4 entire report?

5 A. Yes.

6 Q. So your report is with respect to
7 Sterling Equities?

8 A. Yes.

9 Q. And then the footnote, footnote 18
10 says: "Sterling Equities," and then you have a
11 dash, "collectively, the partners and entities that
12 they own, operate and control - will hereinafter be
13 referred to as Sterling." Do you see that?

14 A. Yes.

15 Q. So, your opinion is limited, if I
16 understand this correctly, the opinions you express
17 in here, are limited to Sterling Equities, the
18 partners of Sterling Equities, and the entities that
19 those partners own, operate and control. Is that
20 right?

21 A. Yes.

22 Q. To the extent that there are accounts
23 which are at issue in this litigation that are not
24 accounts of Sterling Equities, and are not partners
25 of Sterling Equities, and are not entities owned,

1 controlled or operated by Sterling Equities, your
2 opinions do not apply; is that correct?

3 A. Well, I don't know. They might, they
4 might apply. I mean, I don't know that -- I don't
5 know what you're referring to. So, I don't know of
6 any entities that do not fall in that category --
7 I'm sorry, that do fall in that category. So, I
8 mean...

9 Q. Well, how about Robin Wachtler, was
10 she a partner of Sterling Equities?

11 A. No. But I said "own, operate and
12 control."

13 Q. Well, is Ms. Wachtler owned by one of
14 the partners?

15 A. I believe that her assets are
16 controlled by the partnership. Because as I've
17 testified, no money gets into BLMIS but through the
18 partnership.

19 Q. Oh, I see. So your view is, is that
20 because money was funneled through Sterling Equities
21 on its way to BLMIS, it was controlled by Sterling
22 Equities? Is that what you're saying?

23 A. In that particular case.

24 Q. Well, how about all the other
25 defendant accounts?

1 A. Well, if there's a partnership
2 somewhere, if there's an entity somewhere in
3 Illinois that the partnership controls and the
4 assets of that entity are in BLMIS, it would be the
5 same thing for me.

6 Q. Well, I'm trying to get your
7 understanding of what you mean -- this is your
8 report, right? You wrote this, right?

9 A. Yes.

10 Q. And you used the word "control,"
11 right?

12 A. Yes.

13 Q. I'm just trying to understand what
14 you mean.

15 So, to you, anybody who invested in
16 BLMIS, and the money went through Mr. Friedman at
17 Sterling Equities, that in your terminology means
18 that Sterling Equities controlled that person and
19 his account?

20 A. My report looks at those accounts,
21 yes. The opinions I offer have to do with those
22 accounts.

23 Q. But I mean, I'm just trying to
24 understand whether you are telling us that as you
25 wrote your report, you are assuming that anyone who

1 invested with BLMIS through Sterling Equities, that
2 is the check went through Sterling Equities on its
3 way to BLMIS, in your view that person is controlled
4 by Sterling?

5 A. Well, the assets are controlled by
6 Sterling.

7 Q. What do you mean the assets are
8 controlled by Sterling? Do you know whether that
9 person, for instance if they just decided, hey, I
10 made a bad decision, I want my money back, called up
11 Arthur Friedman and said, Arthur, you know that
12 money I sent you last week, I don't want to invest
13 it with BLMIS anymore, I want it back. Would you
14 consider that to be control?

15 A. Well, I mean, if that happened and
16 they got their money back, that doesn't matter. I'm
17 talking about the pool of assets that got into BLMIS
18 through the partnership.

19 Q. Well, that's what I said. You're
20 testifying that in your way of looking at things, if
21 the assets got into BLMIS through Sterling, in your
22 view that's control, right?

23 A. Yes.

24 Q. That's what you're saying?

25 A. Yes.

1 Q. Even if the individual account holder
2 at all times had the ability to decide to disinvest
3 that money, at any time?

4 A. Yes.

5 Q. And you still think that is money
6 that's controlled by Sterling Equities?

7 A. They, they have controlled the flow
8 of that money into BLMIS.

9 Q. They have certainly facilitated it,
10 but are you saying that notwithstanding the
11 individual investor, the individual account holder,
12 could at any time withdraw that money on demand,
13 that that individual account holder was no longer in
14 control of his account?

15 MR. KORNFELD: Object to form.

16 A. I'm not saying that.

17 Q. Now, at page 10, going back to page
18 10, paragraph 25, you say that Sterling, using the
19 general term --

20 MR. KORNFELD: Object to form.

21 Q. Well, this term "Sterling" meaning
22 any account that was run through Sterling Equities.
23 Is that fair?

24 A. Depends on the context of the
25 sentence.

1 A. I don't know, I don't know in detail
2 about other defendants.

3 Q. All right. And we agreed earlier
4 that you don't know what Mr. Wilpon studied in
5 college, right?

6 A. I don't know that that's relevant.

7 Q. You don't know whether that's
8 relevant to whether he had a high level of financial
9 expertise?

10 A. I didn't know what a Sharpe Ratio was
11 and I had a PhD in math.

12 Q. Do you know whether Mr. Wilpon knows
13 what a Sharpe Ratio is?

14 A. Yes.

15 Q. You think he does?

16 A. Well, the notion is very common
17 throughout Sterling Stamos, it's common throughout
18 the industry. Again, he's a general partner of the
19 firm. If I was investing my money with an
20 investment adviser, I would hope that the general
21 partner would understand those things that he's
22 representing himself to know.

23 Q. Do you know what Sterling Stamos was?

24 A. It was a fund of funds.

25 Q. Do you know why it was formed?

1 Q. And, two, monthly returns for the
2 feeder fund from 1997 to 2005. So that would be
3 Beacon's returns from '97 to 2005, right?

4 A. Yes.

5 Q. And then using that information, you
6 performed various quantitative calculations
7 including peer analysis, performance attribution and
8 reverse engineering. And based on that, you
9 observed warning signs that Madoff was not engaged
10 in the purported investment strategy, right?

11 A. Yes.

12 Q. Let me show you -- we're going to
13 show you some documents that were produced by Baker
14 Hostetler in response to our subpoena to you for
15 documents connected to this case. And we're just
16 going to see if we can do this fairly quickly
17 because there are a bunch of them. But let me begin
18 by asking, do you recall receiving the subpoena for
19 the -- this examination today?

20 A. Yes.

21 Q. And it called for various types of
22 documents?

23 A. Yes.

24 Q. Remember that? And did you search
25 your files to see whether you had any of those

1 confused. I thought that the work that you did for
2 this fund of funds client was done in 2005, reading
3 your report at page 6.

4 A. In 2000 -- 2005 was the first time
5 that I did a detailed due diligence on Beacon,
6 Bernie Madoff, and there are other documents that
7 we've yet to go through that illustrate that. I was
8 retained by that client to do many things over --
9 over the years. This is just another analysis that
10 I did in 2007, as just part of my overall retention.

11 Q. So your client was still interested
12 in Mr. Madoff in 2007?

13 A. Yeah. My report identifies that my
14 client divested from Bernie Madoff but never
15 completely eliminated their holdings.

16 Q. Well, when was the first time you
17 told your client you were suspicious that there was
18 a fraud going on in BLMIS?

19 MR. KORNFELD: Object to form.

20 MR. WISE: Withdrawn.

21 Q. Did you ever tell your client that
22 you thought there was a fraud going on at BLMIS?

23 A. Well, as I said in my report, in 2005
24 I had done some analysis that, that I think pointed
25 to some very suspicious results.

1 Q. Okay. Did you ever tell your
2 client --

3 A. Yes.

4 Q. -- that you thought -- when did you
5 first tell them that?

6 A. 2005.

7 Q. And in 2007 they were still invested
8 in Madoff; is that right?

9 A. Yes.

10 Q. And they were still asking you to do
11 work such as what we see in Exhibit 21; is that
12 fair?

13 A. Well, I don't know that they asked me
14 to do this particular analysis. This is just an
15 analysis that I did in 2007. But I don't recall if
16 they asked me to do this or if I had done this.

17 Q. I notice that things seemed to change
18 in January of 2001 on this exhibit. We go from a
19 situation in which Madoff's percentage of the
20 portfolio was 100 percent to a declining percentage.
21 It starts out at 82.67, and then again, without
22 having checked all the numbers, it looks like it
23 declines, with a few exceptions. It does bump up
24 occasionally, but it's basically on a declining
25 trend from then until the end of the -- the end of

1 A. No, no, they did not.

2 Q. -- investments? Were they still
3 holding some when Madoff went belly up?

4 A. Yes.

5 Q. After you had reached your conclusion
6 that Madoff was doing something fraudulent, did you
7 tell that to anyone else besides Mr. Gordon?

8 A. I had a conversation with a colleague
9 of mine, basically expressing my, my concerns.

10 Q. A colleague at Duff & Phelps?

11 A. No, no, no. Just someone I know in
12 the investment management industry.

13 Q. And who was that?

14 A. His name is Mitch Cantor.

15 Q. Does he work for an investment
16 management firm?

17 A. I don't -- right now I don't think he
18 does.

19 Q. Who was he working for in 2005, if
20 you know?

21 A. He was self-employed, running his own
22 money management firm.

23 Q. Was there anyone else that you
24 mentioned Mr. Madoff to?

25 A. No.

1 Q. Did you call anybody at the SEC?

2 A. No.

3 Q. Call anybody at FINRA?

4 A. No.

5 Q. Why not?

6 A. Well, I wasn't a witness to a crime.
7 I didn't see what was going on. I was not able to
8 get inside Bernie Madoff's operation to ask any
9 questions or do any diligence. I was asked by a
10 client to offer my professional opinion about a set
11 of data. I was asked to perform due diligence,
12 which I did, and I offered my client my conclusion.
13 That in my professional judgment, this is something
14 that they should consider. I'm not a witness to a
15 crime in any way.

16 Q. Well, you had concluded -- well, let
17 me back up. Mr. Madoff was running a great deal of
18 money at that time. Did you know that?

19 A. I did not know how much money he was
20 running.

21 Q. Had you looked into that?

22 A. At the time, no.

23 Q. Well, in 2006 you knew he became a
24 registered investment adviser; you know that, right?

25 A. I wouldn't have known that in 2005.

1 Q. But we looked at an exhibit before
2 from 2007, right?

3 A. Yes.

4 Q. So you were still looking at
5 Mr. Madoff in 2007?

6 A. Yeah, but it wouldn't be relevant to
7 me how much money he was running. That wouldn't
8 affect my opinion. I mean, I easily knew it was
9 over a billion dollars.

10 Q. All right. So he was running a lot
11 of money?

12 A. Yes.

13 Q. And you had concluded he was running
14 a fraud?

15 A. I did not conclude he was running a
16 fraud. I offered my professional opinion about
17 things that I thought were suspicious based upon a
18 very, very limited piece of information. There's a
19 big difference between that and concluding that
20 somebody is executing a fraud.

21 Q. I see. So you had suspicions but you
22 didn't have a conclusion; is that what you're
23 saying?

24 A. I had suspicions and I had a
25 professional level of judgment pursuant to those

1 observations. That's not a legal conclusion.

2 That's nothing more than my professional opinion
3 based upon a very limited piece of information.

4 Q. In any event, you didn't feel
5 comfortable enough, based upon what you had seen, to
6 go to the authorities?

7 MR. KORNFELD: Object to the form.

8 Q. At the time?

9 A. I did not -- it's not a question of
10 comfort. It's not my responsibility. I'm asked by
11 my client to analyze two pieces of paper and give
12 them my professional judgment. Which is what I did.

13 Q. At any time before December 2008 when
14 Mr. Madoff confessed, did you ever call anybody at
15 the SEC with your concerns?

16 A. No.

17 Q. Anybody from FINRA?

18 A. No.

19 Q. Ever go to the media?

20 A. No.

21 MR. WISE: All right. Let's mark a
22 few more of these and then we'll move on to
23 something else.

24 MR. KORNFELD: Why don't we grab a
25 few-minute break.

1 Then you have a discussion in
2 paragraph 77 about VWAP?

3 A. Yes.

4 Q. The volume weighted average price,
5 VWAP?

6 A. Yes.

7 Q. Do you know whether Mr. Friedman had
8 any familiarity with the concept of VWAP?

9 A. I don't know.

10 Q. At page 32 you talk about impossible
11 transaction prices on options. Do you see that?

12 A. Yes.

13 Q. And you discuss the pricing that you
14 found doing some analysis, you found that --
15 withdrawn.

16 You discuss in paragraph 78 some of
17 your conclusions based upon an analysis you did as
18 to what the options prices should have been; is that
19 right?

20 A. Yes.

21 Q. And to do that pricing analysis, what
22 did you use? Did you use a Black-Scholes model?

23 A. I did, but I want to say that with
24 respect to this one instance there was a handwritten
25 piece of paper by Mr. Friedman that had prices, and

1 before I even employed a Black-Scholes pricing
2 model, I merely looked at the piece of paper, and I
3 said, this can't be right. These prices are wrong.
4 There's nothing more than my intuition, experience,
5 and just a very basic knowledge of options that told
6 me that these prices could not make sense.

7 Q. Do you know whether Mr. Friedman had
8 any experience trading derivatives?

9 A. Well, he was overseeing all of these
10 accounts that were very heavily involved in
11 derivatives.

12 Q. I understand that. Do you know
13 whether he had any experience trading derivatives?

14 A. I don't know his personal experience.
15 I mean, the notion of derivatives and options is
16 very common within the real estate industry.

17 Q. Okay. So you don't know whether he
18 had any experience or not?

19 A. I don't know his particular
20 experience.

21 Q. Do you know whether he knew how to
22 perform a Black-Scholes analysis?

23 A. I'm sure that capability exists
24 within a real estate business. It's a very common
25 calculation, it's a very common concept within the

1 A. I don't see that as relevant. In
2 2002 something happens, that creates a concern. I
3 don't know what the future entails.

4 Q. Let me ask you this: You have, at
5 page 40, you say, "Sterling's cumulative returns are
6 over 48 percent while the market's cumulative
7 returns are down 27 to 44 percent for a three-year
8 period."

9 Let me ask you this: Is it possible
10 to make money in a down market?

11 A. Not with the purported strategy.

12 Q. That --

13 A. That was explained in the Gonder memo
14 exactly what the shortcomings of the strategy were
15 and when it would do good, when it would do bad.
16 So, yeah, there are some people who make money
17 during these periods, but not people who are
18 executing the strategy that Madoff purported to be
19 following.

20 Q. And you found that out after you did
21 some of the analysis that we looked at earlier,
22 right, you tried to replicate it and you couldn't?
23 The reverse engineering I'm talking about.

24 A. No, I wouldn't even need to reverse
25 engineer. I understand what the strategy is. I

1 mean, read the Gonder memo. He reaches the same
2 conclusion with just by understanding what the
3 strategy is, you understand that it cannot make
4 money in a -- in a down market.

5 The purpose of my reverse engineering
6 was actually not to examine whether Bernie could
7 make money, but really was to understand how stable
8 can Bernie's returns be. Can this strategy produce
9 the type of risk adjusted returns, can this strategy
10 produce a stability of returns that is being
11 illustrated.

12 That was the purpose of the reverse
13 engineering that I described. I believe
14 Mr. Gonder's observations had nothing to do with the
15 reverse engineering. They're merely based upon his
16 understanding of the strategy.

17 Q. Mr. Gonder is the man from Travelers,
18 right?

19 A. Yes.

20 Q. The insurance company?

21 A. Yes.

22 Q. Right? The institutional investor,
23 right?

24 A. Yes.

25 Q. Do you know whether Mr. Friedman