EXHIBIT DD

FINANCIAL INDUSTRY
REGULATORY AUTHORITY
CASE NO. 2009-017-9845

IN RE
THE MATTER OF:

BRIAN SHEA

ORIGINAL

INVESTIGATIVE TESTIMONY OF

BRIAN SHEA

WOODBRIDGE, NEW JERSEY

MARCH 17, 2010

ATKINSON-BAKER, INC.
COURT REPORTERS
500 North Brand Boulevard, Third Floor
Glendale, California 91203-4725
(818) 551-7300
www.depo.com

REPORTED BY: JILL A. PRAML-BUSSANICH,
CSR NO. XI01807

FILE NO.: A400616

FINANCIAL INDUSTRY
REGULATORY AUTHORITY
CASE NO. 2009-017-9845

IN RE)
THE MATTER OF:)
)
BRIAN SHEA)
)
)
)
)

Investigative testimony of BRIAN SHEA, taken on behalf of FINRA, District 9 at 581 Main Street, 7th Floor, Woodbridge, New Jersey, commencing at 9:40 a.m., March 17, 2010, before Jill A. Praml-Bussanich, CSR No. XI01807.

A P P E A R A N C E S

FOR FINRA:

FINRA
BY: CHRISTOPHER RATTINER, Principal Examiner
STEVEN E. ROWEN, Associate Principal Examiner
MICHAEL H. PAULSEN, Examination Manager
ROBERT McCARTHY, Supervisor
MICHAEL NEWMAN, Senior Regional Counsel
SCOTT GROSS, Associate Examiner
581 Main Street, 7th Floor
Woodbridge, New Jersey 07095

FOR BRIAN SHEA:

McGINN SMITH & COMPANY
BY: JOSEPH B. CARR, ESQUIRE
99 Pine Street
Albany, New York 12207

placement?

A. What I'm buying. Would I rather see the money put in a reserve account to protect people, yes.

Q. You voiced this concern?

A. I had, yeah.

Q. How was that -- give us the scenario behind that?

A. I didn't prevail.

Q. Who did you voice it with?

A. Mr. McGinn and Mr. Smith.

Q. Are we talking a specific transaction here or multiple times you voiced this?

A. Multiple times. Now we're talking over the course of two terms of duty.

Q. Stick with this term. Walk us through a recent deal where this would have came up?

A. The Fortress Trust transaction. Again, just -- everyone would have been more comfortable if there had been a reserve account.

Q. Fortress was approximately a $3 million raise?

A. I think you're right.

Q. They purchased an asset between a million and a half and $2 million?

A. I think you're right.

Q. The remaining funds, some of which were earmarked through underwriting. The other funds were given to Smith, McGinn and Rodgers?

A. Yes.

Q. What was your conversation surrounding that?

A. Actually, I think that transaction occurred when I wasn't at McGinn Smith & Company. Looking at it afterwards.

Q. You recently provided documentation on Fortress. Is that what brought it up?

A. No. I seen it before. I helped Cooper with the books. I'd seen it before.

MR. McCARTHY: Was this the style of transaction that occurred in your first tenure with McGinn Smith?

THE WITNESS: They did take -- they would take profits out of transactions.

Q. BY MR. RATTINER: Profits in excess of the typical underwriting fee?

A. Yes.

MR. ROWEN: Help me out with the term profit here, because I'm confused.

You referred to as profits, let's take

a hypothetical and say -- let's take a hospital.

There is an asset to be purchased worth $900,000. There would be a raise of $1 million with a 10 percent placement fee to the reps of McGinn Smith for selling it.

$1 million was raised and after selling commission, the entire amount thereof $900,000 would be sent to purchase an asset.

In this scenario, McGinn Smith may choose to raise more money or the PPM may allow them to raise more money and they raise $3 million.

Again, 10 percent goes to underwriting of $300,000, leaving 2.7 million. $900,000 goes to purchase the asset, leaving 1.8 million.

How is that $1.8 million profit.

A. If the asset you purchased for $900,000 was going to provide the income stream necessary to pay back the investors at your stated interest rate and amortization, in this case it would be a tremendous transaction, but that's basically your -- you're buying an income-producing asset. To the extent the income producing asset can pay back the money that you raised, the less you pay for it, the more money you make.

MR. ROWEN: So, the $1.8 million in

this scenario that is taken immediately by McGinn, Smith or Rodgers or McGinn Smith, is anticipated long-term profits that would be left in the entity that they own?

THE WITNESS: No. I think what they are doing at the time is really something Mr. McGinn and Smith --

Q. BY MR. RATTINER: We had those conversations.

A. So, you have a closing, and you purchase the asset that generates the income stream that you need. So -- it's going to be able to pay the investors back from the income stream that comes from that asset.

So, the difference they took is profit.

MR. ROWEN: Why in the hypothetical scenario I painted, why would 3 million be raised and not 1 million?

Only 1 million was needed to purchase the asset and pay fees.

3 million is raised, so the rest can be taken out by McGinn, Smith, Rodgers, the broker-dealer, someone else?

Why is 3 million being raised through the private placement, through the broker-dealer?

THE WITNESS: In order to make money. I think that's -- I think you stated it.

MR. PAULSEN: Why not raise 5 million, 10 million and purchase a 1 million --

THE WITNESS: Because a $1 million asset would not pay back $5 million. The income stream would be enough to make back $3 million.

MR. PAULSEN: Over what period of time?

THE WITNESS: It was hypothetical.

Q. BY MR. RATTINER: Let's use Fortress. They raised $3 million and bought an asset between $1.5 and $1.9 million.

There was enough of an income stream there, this is an ongoing placement, to cover the $3 million pay back within the next six years?

A. Fortress Trust started out with enough income to pay back in accordance with the private placement. It's since been restructured. Those payments have been reduced.

MR. McCARTHY: You guys get back the money?

THE WITNESS: Pardon me?

MR. McCARTHY: Did McGinn Smith and the other entities that took the money upfront, did they give back the money now that it was restructured.

Q. BY MR. RATTINER: How is this not fraud?

Pointblank, I'm giving you a dollar and only getting $0.33 of an investment?

A. At the time of the close of the transaction, you had the income stream that you needed to support the offering amount. In this case there was attrition, so the payments that came out of the fund were reduced.

Still people are going to get a good portion of their money back.

Q. Did this house of cards not fall down the first time, your first stay at McGinn Smith, due to the IASG public offering?

A. I'm not sure of the question.

Q. The IASG public offering saved the investors that bought into the loan contracts. We don't know if they could have paid off at the end of the day, but the public offering paid those investors off.

Without the public offering, would that have occurred?

A. I think ultimately it would have been

A. Yes.

Q. How does that work? They will call in to you or Mr. Cooper?

A. Yes.

Q. Do you have a process or procedure to document that information, make sure you're doing it correctly?

A. We -- that process is improved primarily due to Mr. Cooper's efforts. Writing up wire sheets and documenting transactions.

Q. I'm going to have you walk me through this exhibit, number 5?

(E-Mail was received and marked FINRA Exhibit 5 for identification.)

Q. BY MR. RATTINER: I'll hand you that. This is Exhibit 5. It's an e-mail from Mr. McGinn sent to a group of people. The cc is yourself and Mr. Cooper. The date was May 15, 2009.

The e-mail states, "Ladies, please journal $26,500 from TDM Cable Junior Trust 09 to McGinn Smith Transaction Funding Corp. Once there, please wire from McGinn Smith Transaction Corp. $72,000 to TDM Verifying Trust 07."

Why does this transaction take this method?

A. This was Mr. McGinn's way of doing

business, typically, e-mail Mercantile Bank. Since -- that has since stopped.

Q. What is the current process?

A. Most of the wires for Mercantile Bank Brian Cooper enters. So, we have -- it's originated from an internal person.

Q. Is there a pattern on Mr. McGinn's wires more convoluted than other?

A. Complicated, I would agree, yes.

Q. Is there a reasoning for that?

A. I don't believe so.

Q. Have you ever questioned it?

A. I've had discussions with him to simplify things, to make it easier to do accounting.

Q. Does he prefer not to simplify?

A. He agreed to simplify things.

MR. McCARTHY: Just one thing -- let's move along.

MR. RATTINER: I'll introduce Exhibit 6.

(E-Mail was received and marked FINRA Exhibit 6 for identification.)

Q. BY MR. RATTINER: In front of you is Exhibit 6. It's an e-mail from Brian Cooper to yourself dated November 3, 2009.