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UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
DALLAS REGIONAL OFFICE

-----X
MICHAEL GUTIERREZ, :

Appellant : Docket No.

v. :

DA-0752-07-0097-I-1

DEPARTMENT OF HOMELAND SECURITY, :

Agency :

ORIGINAL

-----X
: Deposition of Kenn Thomas

Washington, D.C.

Thursday, January 11, 2007

9:05 a.m.

Job No.: 1-94458

Pages 1 - 82

Reported by: Nancy Bond Rowland



DEPOSITION OF KENN THOMAS
CONDUCTED ON THURSDAY, JANUARY 11, 2007

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Deposition of KENN THOMAS, held at the
offices of:

Department of Homeland Security
Immigration and Customs Enforcement
425 Eye Street, N.W.
Washington, D.C.

Pursuant to agreement, before Nancy Bond
Rowland, Registered Professional Reporter and Notary
Public in and for the District of Columbia.

DEPOSITION OF KENN THOMAS
CONDUCTED ON THURSDAY, JANUARY 11, 2007

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A P P E A R A N C E S

ON BEHALF OF THE APPELLANT:

MARK CONRAD, ESQUIRE
LAW OFFICES OF MARK CONRAD
P.O. Box 8684
Dothan, AL 36304
(832) 326-7086

ON BEHALF OF THE AGENCY:

J. DOUGLAS WHITAKER, ESQUIRE
DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION AND CUSTOMS ENFORCEMENT
1717 Avenue H E
Omaha, NE 68110
(402) 536-4807

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C O N T E N T S

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EXAMINATION OF KENN THOMAS	PAGE
By Mr. Conrad	5, 65, 80
By Mr. Whitaker	41, 74

E X H I B I T S

(None marked)

1 A I don't know why the process for the
2 discipline cases are they come through. They come out
3 of OPR. They go to headquarters. They go to
4 Management Oversight for review. Management Oversight
5 sends them to the director for review. The director
6 sends them back. We send them out to the field for the
7 deciding official. This particular case was sent to
8 the field years ago and not acted on until recently I
9 guess.

10 Q All right. We'll kind of switch gears a
11 little bit. You already indicated, correct me if I'm
12 wrong or misstate this, you indicated earlier that
13 Anita Trujillo had problems with Curtis Compton?

14 A Yes.

15 Q Again for the record are you aware that Anita
16 Trujillo is also a client of mine?

17 A Yes, I am.

18 Q During that investigation, I just want to
19 make it absolutely clear in my mind, was Curtis Compton
20 honest, candid, and forthright in the answers he
21 responded during the management inquiry involving Anita
22 Trujillo?

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A No.

Q I'm sorry?

A No.

Q And was he less than candid more than one time in that investigation?

A Yes, he was.

Q Are we talking about a dozen times, three or four, to the best that you can recall?

A I recall substantiating a false statement allegation that included four or five examples.

Q Can I make of this that if Gutierrez had lied about more important things a number of times, he might be retained today?

MR. WHITAKER: Objection. Argumentative.

A I don't know.

MR. CONRAD: I'll concede the objection.

MR. WHITAKER: Thanks.

BY MR. CONRAD:

Q Do you know how long between the time the OPR red book or the management inquiry, whichever it was, was completed on Curtis Compton with regard to the Anita Trujillo matter and resolution of that issue?

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1 Q Okay. Management has the option of accepting
2 or rejecting any type of proposed disciplinary action
3 that's recommended to it, correct?

4 A That's correct.

5 Q Whether it comes from OPR or whether it comes
6 from LMR, is that correct?

7 A That's correct.

8 Q Okay. So it's management's discretion to
9 make that call?

10 A Yes.

11 Q Now, a lot of talk was made of Compton and
12 the investigation that was conducted against him. Who
13 disciplined Compton for those underlying allegations of
14 misconduct?

15 A Brock Nicholson was the acting SAC at the
16 time who signed what we call the action memo.

17 Q So Brock Nicholson was the deciding official
18 in that disciplinary action?

19 A Yes.

20 Q Who to your knowledge was the deciding
21 official in Michael Gutierrez's disciplinary action?

22 A I haven't seen that form. I'm thinking it

DEPOSITION OF KENN THOMAS
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1 proposing official or the deciding official. 52

2 Q Now I want to ask you about the proposing
3 official though.

4 A Okay.

5 Q Do you have any reason to believe that J.J.
6 Johnson was not the proposing official in Michael
7 Gutierrez's case?

8 A I think he was the proposing initially. I
9 don't know what happened after that. So I don't know.

10 Q All right. So you don't know if later on it
11 changed?

12 A Right.

13 Q Do you have any reason to believe that John
14 Johnson was the proposing official in both the Compton
15 case and the Gutierrez case or do you know?

16 A I've seen documents since I've been in
17 headquarters come across my desk that indicate to me
18 that John Johnson may have had a part in both of those.

19 Q My question is -- You need to listen to the
20 question.

21 A Okay.

22 Q It's not having a part. It's do you have any

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1 don't preclude someone that has a credibility problem
2 from testifying, is that correct?

3 A That's my impression, yes.

4 Q Your understanding is what they do is simply
5 require the agency to notify the defense in a criminal
6 case that the person may have something impeachable in
7 their past?

8 A That's correct.

9 Q Do you know what Mr. Curtis Compton's
10 ultimate discipline was in the matter that you
11 investigated?

12 A Yes.

13 Q What was that?

14 A There were two cases lumped together, and he
15 got one day, a one-day suspension.

16 Q Do you know what the charge was?

17 A There were two files. There was one
18 substantiated violation from what you're referring to
19 as the House of Death. I don't know what the actual
20 case title is. That had to do with a failure to timely
21 report. Then there was the allegations that I
22 substantiated when I was in OPR that had to do with

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1 violence in the workplace, misuse of a government
2 vehicle, time and attendance violations, and false
3 statements. The two cases were lumped together, and he
4 received a one-day suspension.

5 Q So the extra 13 years that Mr. Compton has,
6 that's a pretty heavy mitigating Douglas Factor,
7 wouldn't you say?

8 A Yes.

9 Q I believe you testified that when -- I'm
10 sorry. Clarify for me on Ron Wood's involvement in the
11 proposed action against Curtis Compton. I'm unclear.
12 I'll tell you why I'm unclear. I thought Ron Wood
13 ended up before he retired in Dallas.

14 A Yes. San Angelo actually. Ron Wood
15 transferred to El Paso as the assistant special agent
16 in charge a few years ago. Then he became the deputy
17 special agent in charge shortly after that. This was
18 at the time when the discipline case came down to the
19 SAC office, and he was either the assistant or the
20 deputy during that time. Then later he transferred to
21 San Angelo, and from San Angelo he retired.

22 Q Generally speaking has it been the policy of

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1 investigated. An allegation was disciplined. Who does
2 that apply to?

3 A I know that in Compton's case he received a
4 one-day suspension based on the two red books. So he
5 was suspended. I know that Todd Johnson, I think his
6 case was unfounded or unsubstantiated, one or the
7 other. He was not disciplined. I know Bencomo is
8 still pending. He is on some kind of admin. duty with
9 pay. I know that Giovanni Gaudioso was transferred to
10 D.C. and is now the SAC in Houston. I had heard that
11 he or I had seen something where he had gotten a letter
12 of reprimand. Patty Kramer was proposed a severe
13 discipline and chose to retire.

14 Q So I guess -- Let me ask you this question.
15 You have no firsthand knowledge that any of these
16 individuals were disciplined for lack of candor, making
17 misstatements, anything regarding truth or veracity?

18 A Only Compton is the one I know for sure.

19 Q Okay. And Compton was failure to timely
20 report something, correct?

21 A On the House of Death case, but they lumped
22 in the 2002 case also.

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1 Q Which was the sexual harassment case?

2 A That was the -- Well, what I substantiated in
3 OPR and what showed up on the action memo are two
4 different things. What I substantiated was a hostile
5 work environment, misuse of a GOV, something to do with
6 violations involving time and attendance, dereliction
7 of duty, and false statements. What showed up on the
8 action memo was conduct unbecoming and something else.
9 So that case was entirely recolored, and the discipline
10 was delved out based on that.

11 MR. WHITAKER: Okay. Nothing further.

12 MR. CONRAD: Just one question.

13 EXAMINATION BY COUNSEL FOR THE APPELLANT

14 BY MR. CONRAD:

15 Q Mr. Thomas, are you aware of any discussions
16 within the agency as to taking disciplinary actions
17 against the people involved in the House of Death, the
18 concern being the liability of the agency in that
19 matter if they took action?

20 MR. WHITAKER: Objection. That may be
21 privileged communications if an attorney was present.

22 MR. CONRAD: All right.