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Judge sanctions Greenberg Traurig, TD Bank for violating evidence rules in civil case [The Miami Herald]

Aug. 04--A Miami federal judge on Friday sanctioned the venerable law firm Greenberg Traurig and behemoth client TD Bank for failing to turn over evidence to burned investors who won a $67 million civil judgment earlier this year against the former bank of convicted Ponzi schemer Scott Rothstein.

U.S. District Judge Marcia Cooke found the Miami law firm acted "negligently" and the bank "willfully" as they engaged in "a pattern of discovery violations" while exchanging evidence with attorneys for the so-called Coquina Investments Group from Texas.

Cooke did not issue sanctions against any of the lawyers from Greenberg Traurig, whose chairman, Cesar Alvarez, had issued an apology to the judge during a May sanctions hearing after admitting "mistakes were made."

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In her 30-page ruling, the judge compared the firm and TD Bank's legal defense to a popular comedy movie, saying "it often times appears that this litigation was conducted in an Inspector Clouseau-like fashion.

"However, unlike a "Pink Panther' film, there was nothing amusing about this conduct, and it did not conclude neatly."

As a remedy, Cooke ordered the law firm and client to pay for the post-judgment legal fees and costs of Coquina's attorney, David Mandel and his legal team, who had pushed for the sanctions penalties, including contempt. The judge did not go that far. But Cooke made a key legal finding that will likely bolster Mandel during the upcoming appeal. She found "TD Bank's monitoring and alert systems were unreasonable and that TD Bank had actual knowledge of Rothstein's fraud."

The landmark Coquina case marked the nation's first civil jury verdict against a bank for "aiding and abetting fraud," by assisting Rothstein as he laundered millions of dollars in his law firm's trust accounts kept at TD Bank. The disbarred Fort Lauderdale lawyer is serving a 50-year sentence for orchestrating a $1.2 billion investment scam involving the sale of fabricated legal settlements.

Eight other defendants, including lawyers and employees of Rothstein's defunct law firm, have been convicted in connection with his scheme.

"We are extremely pleased that Judge Cooke recognized the bank's misconduct for what it was, willful and in bad faith," said Mandel, who handled the Coquina case with lawyer/wife Nina Mandel and others. "The implications of the court's factual findings and legal conclusions will be far reaching."

TD Bank, which is headquartered in Toronto and earned nearly $6 billion last year, said in a statement it will appeal the judge's ruling and the jury verdict.

"We do not believe that the record before the court supports the findings that were made regarding willfulness or the sanctions that were imposed," the statement said. "The bank plans to continue to vigorously defend itself."

Greenberg Traurig, an 1,800-lawyer international firm with headquarters in Miami, was contrite, by comparison. "We will comply with Judge Cooke's ruling," the firm said in a statement. "We regret the deficiencies in the discovery that gave rise to this order."

Mandel's push for sanctions centered on two documents -- one that he alleged was "doctored" and another dealing with the bank's anti-money-laundering policy that was never turned over for trial.

Mandel accused TD Bank of altering one form called "Customer Due Diligence." Greenberg's lawyers submitted it as evidence at the Coquina trial with solid black bands concealing the fact the bank had labeled Rothstein's law firm as "HIGH RISK" for money laundering. However, the same form was produced as evidence later on in a related case against TD Bank with the words "HIGH RISK" in red as the document's heading.

Mandel said in court documents that TD Bank's alleged altering of the document was relevant because at trial Greenberg lawyers argued the bank did not view Rothstein and his firm as "high-risk" customers. As a result, the bank maintained it did not have to perform "robust monitoring or scrutiny" of Rothstein's accounts, and used that as an excuse for its "failure to detect the massive money laundering" going on in Rothstein's Ponzi scheme.

Cooke, the judge, expressed dismay over how this mistake happened in the processing of the document for trial, but stopped short of saying Greenberg Traurig or TD Bank "intentionally doctored or altered the document."

The second record was even more of a mystery. It didn't come to light until three months after the trial ended.

In April, Greenberg lawyers Mark Schnapp and Holly Skolnick disclosed to the judge that TD Bank possessed a document on its anti-money laundering policy that the bank and its lawyers had said did not exist during the trial. The document, called a "Standard Investigative Protocol," spelled out the steps TD Bank must take under federal law to know its customers and prevent money-laundering activities.

Evidence showed that the lead Greenberg lawyer held responsible for not producing the document was Donna Evans, who left the firm in the spring.

Before TD Bank supplied the document on April 24, Mandel argued in court papers that the bank's failure to produce it during trial "improperly bolstered the defense and undermined Coquina's ability to present its case."

In her ruling Friday, Cooke adopted that view, saying the law firm and TD Bank's failure to provide these documents "prejudiced" the investment group's case at trial -- despite the favorable outcome.

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