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TD Bank Owes $67M for Aiding Ponzi Schemer

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(CN) - TD Bank must pay $67 million to a victim of Scott Rothstein's Ponzi scheme because a bank vice president assisted the scheme, assuring investors that Rothstein's account held millions of dollars, when it only contained $100, the 11th Circuit held.

As recounted in the opinion of the three-judge panel, Scott Rothstein was a prominent South Florida lawyer who purported to represent whistleblowers and victims of sexual harassment against high-value defendants.

According to Rothstein, defendants paid large sums of money to his law firm, Rothstein, Rosenfeldt, Adler (RRA), to settle the cases against them, but with the proviso that the money be released to the victims over time, to be forfeited if the victims breached a confidentiality clause.

Rothstein recruited investors by claiming that a number of victims wanted money immediately, and were willing to forgo a large part of the settlement to get immediate payment.

He assured investors that the settlement money had already been deposited into a TD Bank trust account administered by the law firm, so there was very little risk to their money.

But in fact, the opinion states, the RRA ran an elaborate Ponzi scheme. The clients, defendants, and the settlements were all fake, and Rothstein used investors' money to finance his lavish lifestyle.

The scheme was aided by TD Bank regional vice president Frank Spinosa, who assured investors that Rothstein's account held millions of dollars, when it only contained $100. He also signed "lock letters," claiming that the funds in the account could only be disbursed to investors, when in fact Rothstein was able to transfer funds to himself from that account.

Coquina Investments lost $6.7 million when the scheme collapsed, and subsequently sued TD Bank for allegedly perpetuating the fraud.

A jury found for Coquina and awarded it $67 million in compensatory and punitive damages. The Eleventh Circuit affirmed the judgment last week.

"We have no difficulty concluding that the adverse inferences drawn against TD Bank based upon [Vice President Frank] Spinosa's invocation of the Fifth Amendment privilege - namely, that while acting as TD Bank's regional vice president, Spinosa had knowledge of Rothstein's fraud and assisted in its perpetration - were 'trustworthy,'" Judge Lanier Anderson said, writing for the three-judge panel.

The trial court permitted Coquina to ask Spinosa leading questions even though he already invoked his right to remain silent, in order to let the jury draw its own conclusions from his refusal to respond.

"Because the only adverse inferences that could have been drawn from Spinosa's refusal to answer the questions implicating the alleged error were essentially duplicative of other questions amply supported by properly admitted evidence, any error by the district court in allowing Coquina to ask those questions and in authorizing the jury to draw negative inferences therefrom is harmless," the 41-page opinion said.

Anderson also found no fault with the value of the jury's damages award, or the with the trial court's imposition of sanctions for egregious discovery violations.

"For example, two TD Bank employees apparently failed to reasonably search for a document in the relevant shared drive before signing affidavits denying the document's existence. As another example, TD Bank's Rule 30(b)(6) designee was, at best, woefully unprepared: he testified that there were no AML alerts for Rothstein's bank accounts until late September 2009 and less than five thereafter, when in fact, there were at least 150 pages of alerts spanning 2008 to 2009," the judgment said.Given the overwhelming evidence that TD Bank, through Spinosa, knew of Rothstein's Ponzi scheme, any error in the imposition of sanctions is harmless.