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TD Bank Settles With Feds In Rothstein Case

TD Bank agrees to pay $52.5 million to settle charges filed by federal regulators for handling money in ex-law firm chairman Scott Rothstein's $1.2 billion Ponzi scheme.

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TD Bank N.A. agreed to pay $52.5 million in penalties to federal regulators for moving money around for ex-law firm chairman Scott Rothstein’s $1.2 billion Ponzi scheme.

The Financial Crimes Enforcement Network ordered a $37.5 million penalty, and the Securities and Exchange Commission added a $15 million penalty for violating the Securities Act of 1933.

The SEC cease-and-desist order said Rothstein’s Fort Lauderdale law firm, Rothstein Rosenfeldt Adler, banked with TD Bank from 2005 to October 2009 when the Ponzi scheme collapsed.

The SEC order said a TD Bank regional vice president, who was not named in the order, helped Rothstein fool investors in his scheme by providing so-called lock letters to reassure potential investors about the safety of their commitments.

Rothstein, who is serving a 50-year federal prison sentence, said in depositions that he paid $50,000 in bribes to TD Bank regional vice president Frank Spinosa, who left the bank shortly after the Ponzi collapsed.

TD Bank made no admission of wrongdoing in the settlements, and Spinosa did not reach a settlement.

The SEC order said the vice president “made material misstatements and omissions to investors and prepared false and misleading documents that he knew Rothstein would provide to investors.”

Eric Bustillo, the SEC regional director in Miami, said the agency is seeking a civil injunction against Spinosa in Miami federal court.

“In essence, the message is obviously financial institutions need to be vigilant,” he said. “In this case, Spinosa played a key supporting role of Rothstein’s Ponzi scheme by providing a false sense of comfort to investors that their money was safe and secure in accounts in TD Bank.”

Rothstein told his investors that plaintiffs wanted to collect a lump-sum cash settlement from their employment lawsuits, and investors would receive periodic payments for financing the early payouts. It turned out Rothstein was forging judge’s signatures on bogus settlements.

TD spokeswoman Rebecca Acevedo released a statement saying the settlements resolved regulatory issues on the bank’s relationship with Scott Rothstein.

“TD Bank is pleased to resolve these regulatory concerns and to put the Rothstein matter behind us,” the statement said. “TD works very closely with our regulators to ensure that it complies with all applicable laws and regulations.”

‘Rehash’

Miami attorney Sam Rabin, who represents Spinosa, called the SEC complaint a "rehash of allegations made by fraudster Scott Rothstein" and said his client was being used as a scapegoat.

"Many of these allegations have been disproved through the examination and cross-examination of Mr. Rothstein," Rabin said. "Mr. Spinosa did not know about the fraudulent conduct perpetrated by Scott Rothstein."

Spinosa does not face criminal charges. The investigation by federal prosecutors is continuing.

Rabin said his client has been targeted as a patsy for TD Bank's internal regulatory deficiencies.

Spinosa was given the opportunity to settle with regulators but did not. "Mr. Spinosa is a victim in this massive fraud," Rabin said.

When Spinosa appeared as a witness in the only Rothstein-related trial, he refused in 2011 to answer questions, citing his constitutional right against self-incrimination. The civil trial ended with a $67 million award to one group of Rothstein investors, Texas-based Coquina Investments LLC $67 million.

'Virtually anemic'

Miami attorney David Mandel, a partner at Mandel & Mandel, represented Coquina. He called the regulatory response to TD Bank "unimpressive, virtually anemic."

"Considering the enormous scope of the fraud, these fines are a pittance and not a deterrent for an $800 billion financial institution," Mandel said. "Unfortunately, all of the heavy lifting in this case was left to be done by TD Bank's victims."

Attorney William Scherer, a partner at Conrad & Scherer in Fort Lauderdale who represented a number of Rothstein investor groups that sued TD Bank, said the penalty was a pittance for a business that made $6 billion last year.

"I'm glad the OCC did something, I guess," he said "But here was 9,000 transactions missed. They turned a blind eye. How do you miss 9,000 transactions? It's more than Spinosa. It goes way beyond him in my view."

He noted Broward Circuit Judge Jeffrey Streitfeld has taken under advisement his motion for an evidentiary hearing to determine sanctions against TD Bank. He also expects federal indictments.

"How long do we have to wait?" Scherer asked. "We are coming up on the four-year anniversary this Halloween."

The Office of Comptroller of the Currency, which paired with FinCen on the larger penalty, in a statement cited TD Bank's failing to file suspicious activity reports, or SARs, on accounts belonging to Rothstein's law firm.

"The failures to file SARs were significant and egregious for a number of reasons, including the number of alerts generated by these accounts and the volume and velocity of funds that flowed through them," the OCC statement said.

OCC noted TD Bank has provided more than $600 million in restitution for investors of Rothstein.

The SEC order said Spinosa assured Rothstein investors that TD Bank restricted the movement of settlement funds held in law firm trust accounts.

"In reality, the settlements Rothstein sold to investors were fake, and purportedly 'locked' accounts generally held no more than $100," the SEC order stated.

TD Bank is one of the 10 largest banks in the United States with more than 7.8 million customers and a strong presence in South Florida.