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## Deadline Looms For Bank to Pay \$67 Million Judgment to Rothstein Victims



*Judge, this is like a football game. And the game is over, the crowd has left, and the cleaning crew is working in the stands. In spite of TD's numerous unsportsmanlike conduct penalties, the scoreboard shows that we won 67 to nothing. And despite everything, TD is here today throwing a Hail Mary pass, not acknowledging that there is no time left on the clock. TD Bank's illusory damages game is over. That's what final and unreviewable means.*

*Having defrauded, lied, and cheated in this very courtroom, we respectfully submit that TD has been afforded enough due process by this Court. It has had a mountain of it. With respect, it is unfair to make Coquina wait any longer. Guided, as I know it is, always by fairness and decency, I ask the Court to rule that TD's day of reckoning is finally at hand.*

*- Counsel for Coquina Investments*

Over three years after a federal jury handed down a \$67 million verdict against TD Bank for its role in Scott Rothstein's \$1.2 billion Ponzi scheme, and following numerous efforts by the bank to reduce or otherwise overturn the verdict, a Florida federal judge has denied the bank's latest motion to reduce the judgment and [ordered](#) that the bank pay the judgment by February 25. Coquina Investments, which sued TD Bank for millions of dollars it lost after Rothstein's scheme collapsed in 2009, obtained a ruling from U.S. District Judge Martha Cooke on February 11 denying TD Bank's latest Motion for Partial Relief from Judgment. If TD Bank fails to pay the judgment on or before February 25, Coquina will be entitled to collect from the supersedeas bond posted by TD Bank when it originally appealed the \$67 million verdict.

### The Litigation

TD Bank had extensive ties with Rothstein, who promised investors the possibility of significant short-term returns through purported confidential settlements with whistleblowers and sexual harassment victims. To convince investors of the legitimacy of his operation, Rothstein claimed that the amount of the alleged settlements had already been deposited into TD Bank trust accounts administered by Rothstein's law firm and which were subject to strict transfer restrictions. Investors were provided with "lock letters" by TD Bank vice president Frank Spinosa attesting to the fact that the transfer restrictions were, in fact, in place and that the claimed balance was correct. However, there were no such transfer restrictions, and Rothstein was able to transfer funds freely. Additionally, rather than containing the significant balance represented in the "lock letter," many accounts contained nominal \$100 balances.

Coquina invested nearly \$38 million with Rothstein based on these representations. The partnership made several withdrawals during the course of its relationship with Rothstein, and ultimately lost nearly \$7 million when the scheme collapsed. However, despite its losses, Coquina was informed by the court-appointed trustee that it faced claims for the "clawback" of certain withdrawals made before the scheme's collapse. Coquina ultimately settled with the trustee, paying \$12.5 million and agreeing that the trustee could recoup up to \$18.6 million if Coquina prevailed in its suit against TD Bank.

At trial, a federal jury found in favor of Coquina on its aiding and abetting and fraudulent misrepresentation claims, and awarded \$32 million in compensatory damages and \$35 million in punitive damages for a total award of \$67 million. Following the verdict, the trial judge also imposed sanctions against TD Bank and its counsel for the failure to produce relevant evidence that reflected unfavorably on the bank.

On appeal, TD Bank raised several issues, including the propriety of drawing an adverse inference against Spinosa's invocation of his Fifth Amendment rights during testimony, whether the settlement agreement between Coquina and the trustee was properly admitted into evidence, and whether Coquina's damages claim was proper. The Eleventh Circuit addressed each contention, and ultimately found each unpersuasive. The Court also found that the trial court's imposition of sanctions, including accepting as true that TD Bank has actual knowledge of the fraud and that its account-monitoring systems were unreasonable, were consistent with the facts in the record for the significant [misconduct](#)<sup>27</sup> alleged by TD Bank.

### TD Bank's Latest Argument

After the Eleventh Circuit Court of Appeals "affirm[ed] [the underlying judgment] in all respects," TD Bank turned its efforts to reducing Coquina's \$67 million judgment on the basis that certain sums might constitute a "double recovery" when considering Coquina's status as a creditor in the Rothstein bankruptcy proceeding. TD Bank's argument revolved around the intricacies of Coquina's settlement with the bankruptcy trustee overseeing the Rothstein estate, which was reached just before the trial on Coquina's claims against TD Bank.

Under the terms of that settlement, Coquina paid the bankruptcy estate \$12.5 million up-front, regardless of the outcome of the TD Bank trial, and also agreed to pay the estate a percentage of any subsequent recovery from TD Bank until that sum reached the total amount Coquina received from Rothstein's scheme (roughly \$31 million). In return, Coquina was granted a release from any further claims it might face from the bankruptcy estate, as well as given an allowed general unsecured claim for payments it made to the estate.

While TD Bank appealed the underlying verdict, Coquina received a \$9.1 million payment from the bankruptcy estate as part of the court-approved distribution plan that represented a partial payment on the \$12.5 million previously paid by Coquina. TD Bank then sought to reduce the \$67 million judgment on the basis that Coquina stood to receive a "double recovery" and that any settlement damages were "speculative" and "nonexistent." Coquina revealed that it was required to return the \$9.1 million upon any partial or complete satisfaction of its judgment, and TD Bank's motion was denied.

TD Bank then moved for a stay of enforcement of the judgment while Coquina sought to collect on a bond previously posted by TD Bank to satisfy its judgment. At a hearing before the trial court on February 11, 2015, TD Bank again argued that Coquina's receipt of the \$9.1 million from the bankruptcy trustee would result in a "windfall" and warranted a dollar-for-dollar reduction in the judgment. Counsel for Coquina, [David Mandel](#)<sup>28</sup>, summarized the argument as follows:

*Judge, they are treating this like it's a newly filed complaint. It's not. We aren't supposed to wait around and see what happens later and see what develops. We had a hard-fought trial. These issues were raised and they lost. It is now time for them to pay the piper.*

*The jury had the settlement agreement with the trustee in evidence before it, they considered all of the things that TD is arguing now, and they were not persuaded. This Court heard and rejected those same arguments from TD Bank in their post-trial motions. And then what happened? They appealed to the Eleventh Circuit, which heard the defendant's arguments again attacking the damages, and the Eleventh Circuit squarely rejected them. They petitioned for rehearing en banc and lost again, not a single judge even asking for a poll. They keep on making these same arguments again and again and again. It's like they think the Court is a Turkish bazaar where they have to keep asking for a discount. It's not, Judge. It's not. This has the feel of deja vu all over again.*

Following argument, District Judge Marcia Cooke again rejected TD Bank's arguments, but did include an order in her ruling (as requested by Coquina) requiring Coquina to return the \$9.1 million to the bankruptcy estate within three days of payment of the judgment (or collecting on the bond, in the case TD Bank refused to pay). Predictably, TD Bank sought to stay the enforcement of the judgment, but Judge Cooke denied that request as well:

*I am going to allow Coquina to collect on the bond. You want to post another bond you can, but I'm going to allow them to collect on the first one. This has been going on for two years.*

With the 25th fast approaching, it remains unseen whether TD Bank will pay the judgment or force Coquina to collect on the bond posted on its behalf. Regardless, it appears that, over five years after the collapse of Rothstein's scheme, one of the only jury verdicts granted against a financial institution and in favor of a defrauded Ponzi scheme victim will come to fruition.

Coquina's response to TD Bank's "time-sensitive" motion for stay: [Coquina-TD 60\(b\) Appeal.2015!02!19.Coquina Response to TD Stay Motion \(1\)](#) <sup>Ⓜ</sup>



For more news and analysis of [Ponzi schemes](#) <sup>Ⓜ</sup>, visit [Ponzitracker](#), a blog by Jordan Maglich, an attorney at [Wiand Guerra King P.L.](#) <sup>Ⓜ</sup>

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