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Federal Judge Sanctions Law Firm and Client re Withheld Docs, Finds TD Bank Knew of Rothstein Fraud

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By **Martha Neil**

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Saying that a well-known law firm and its client bank had often handled a major case "in an Inspector Clouseau-like fashion," a federal judge in Miami has sanctioned both for what she called a "pattern of discovery abuses before, during, and after trial."

U.S. District Judge Marcia Cooke declined, however, to sanction individually any of the lawyers at Greenberg Traurig whose "handling of this case left much to be desired." That's because she found they didn't act willfully or in bad faith as they helped client TD Bank defend against a civil damages suit brought by some of the investors fleeced by then-attorney Scott Rothstein, reports [Bloomberg](#). Over 200 attorneys worked on the matter at Greenberg Traurig.

Cooke did find that TD Bank, against whom Texas-based Coquina Investors won a \$67 million verdict in January for aiding and abetting Rothstein's fraud, "willfully concealed relevant evidence from its trial counsel."

In addition to requiring both the bank and the law firm to pay the investors' legal fees for pursuing the sanctions motion, the judge also made a finding that TD Bank "had actual knowledge of Rothstein's fraud." While the finding was made after the verdict, it would benefit the investors in a potential appeal.

[Scribd](#) provides a copy of the judge's 30-page order.

Much of the discovery at issue in the Friday sanctions ruling involves documents that should have been timely produced but weren't. Cooke laid a heavier burden of blame on the bank, saying that its in-house general counsel had access to material that wasn't provided to the Greenberg firm.

The Toronto-based bank, which is one of the biggest lenders in Canada, respectfully disagrees with Cooke and plans to appeal both the sanctions ruling and the underlying \$67 million jury award, a spokeswoman told the news agency in an email.

A spokeswoman for the law firm said it will comply with the judge's decision. "We regret the deficiencies that gave rise to this order," she wrote in an email.

The \$67 million January award is the first civil jury verdict in this country against a bank for aiding and abetting fraud, the [Miami Herald](#) says.

Scott Rothstein, who swindled investors of some \$1.2 billion in various schemes has been disbarred and is serving a 50-year prison sentence in a secret location under the federal witness protection program. The South Florida law firm he ran, Rothstein Rosenfeldt Adler, is defunct and bankrupt.

Two documents were primarily at issue in the sanctions motion, the newspaper reports.

One, a "Customer Due Diligence" form, was redacted by the bank to conceal that the bank had put a "high risk" label on Rothstein's law firm concerning its potential for money laundering. That information was not blacked out when the same document was subsequently produced in a related case against the bank, however, alerting the plaintiffs' legal team to the alteration.

The information was highly relevant, argued attorney David Mandel, who represented the investors, because the bank contended at trial it had not considered Rothstein's firm high-risk, and hence was not required to

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monitor his accounts closely.

The second document, a standard protocol which detailed the bank's policy on knowing its customers and preventing money laundering, didn't exist, the bank claimed prior to trial. It was produced months later.

The delay in producing the Standard Investigative Protocol apparently was due to a mistake on the part of a Greenberg lawyer who is no longer with the firm, according to the newspaper.

The attorney for the plaintiffs, David Mandel, had sought more. However, he said in a written statement that "we are extremely pleased" with the ruling, reports [Dow Jones Newspapers](#).

The judge's decision "recognized the bank's misconduct for what it was, willful and in bad faith," said Mandel. "Her sanctions ruling establishes once and for all that TD Bank knowingly participated in the Rothstein Ponzi scheme."

The [Associated Press](#) and the [South Florida Business Journal](#) also have stories.

Earlier coverage:

ABAJournal.com: "Top Greenberg Traurig Lawyer Apologizes to Fed'l Judge, Calls Doc Errors in \$67M Case Unintentional"

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