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[Home](#) > [Legal](#) > TD Bank avoids another trial with Rothstein settlement

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TD Bank avoids another trial with Rothstein settlement

By John Pacenti | [Contact](#) | [All Articles](#)
Daily Business Review | September 5, 2012



TD Bank avoided another potentially messy civil trial arising from a lawsuit brought by a group of cheated Scott Rothstein investors by settling the case for an undisclosed amount.

U.S. District Judge Joan Lenard in Miami previously agreed to allow New York-based Emess Capital Inc. to seek triple damages under the federal civil racketeering statute. The investment group was originally seeking \$33 million in damages plus \$5 million in interest for losses in Rothstein's Ponzi scam.

The case was dismissed without prejudice Friday, and Lenard said she would dismiss with prejudice in 30 days if all sides agreed to the proposed deal.

Rothstein, who is serving a 50-year prison sentence for masterminding a \$1.2 billion settlement financing scheme from his Fort Lauderdale law office, ran money from the scam through New Jersey-based TD Bank and Coral Gables-based Gibraltar Private Bank & Trust.

A jury in January awarded another Rothstein investment group, Coquina Investments LLC, \$67 million against TD Bank.

U.S. District Judge Marcia Cooke, who oversaw the Coquina trial, found last month that the bank aided and



Photo by Bloomberg News

abettted Rothstein and ordered sanctions for discovery violations by both the bank and its law firm, Greenberg Traurig.

The discovery violations in part led TD Bank to replace Greenberg as its law firm in Rothstein matters.

Rebecca Acevedo, a spokeswoman for TD Bank, confirmed the settlement.

"We feel it is in the bank's best interest to put this matter behind us," she said.

Attorney David Mandel, a partner at Mandel & Mandel in Miami, had no comment.

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Attorney Marcos Jimenez, a partner at McDermott Will Emery and former U.S. attorney who represented the bank after Greenberg's exit, could not be reached for comment by deadline.

The case was slated for trial in February.

It was the second major investor lawsuit settled by the Cherry Hill, New Jersey-based bank, which settled in February with Razorback Funding LLC, another Rothstein investor group, for \$170 million.

The court-appointed bankruptcy trustee for Rothstein's defunct law firm, Rothstein Rosenfeldt Adler, also has sued the bank for \$20 million.

Attorney Paul Singerman, a partner at Berger Singerman who represents the trustee, said the litigation against TD Bank is moving forward.

"We would like to think the Emess settlement is some indication that TD Bank is radically changing the manner in which it is responding to the claims against it arising out the RRA matters," Singerman said. "If TD Bank is making a radical change in the way its dealing with this quite substantial exposure, the trustee would welcome the opportunity to have principled discussions with TD Bank regarding the resolution of the estate's claims."

The Coquina case was a disaster for TD Bank. Not only did it lose at trial, but Cooke found the bank and Greenberg failed to turn over crucial documents.

TD Bank's new attorneys turned over 40,000 more documents to Mandel, who represented both the Coquina and Emess investors.

Discovery in the Emess case unearthed the missing documents in the Coquina case, as well as e-mail between TD Bank employees and executives about Rothstein's relationship with the bank. Rothstein, in a deposition with civil attorneys, said he paid former TD Bank regional vice president Frank Spinosa \$50,000 to help him with his fraud.

Rothstein testified that he put on "shows" for investors at TD Bank branches to persuade them to invest with him.

John Pacenti can be reached at (305) 347-6638.

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