



South Florida BUSINESS JOURNAL

Sign In | Register

Search

Choose a city ▾

Home

News

People

Events

Exclusives

How-To

Buy

Find

Jobs

Contact Us

Blogs

Subscriber-Only

Companies

Industries

Video

Photo Galleries

Entrepreneurs/Innovation

Press Releases

My News



SCOTT ROTHSTEIN: Picking Up the Pieces

News Made Easy Get today's news delivered to you.

Sign Up Now »

Jan 19, 2012, 12:33pm EST | UPDATED: Mar 20, 2013, 10:18am EDT

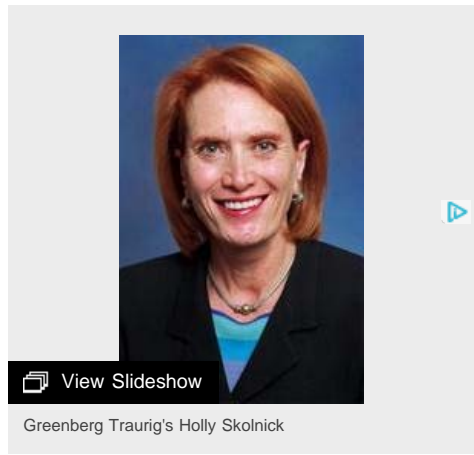
Greenberg Traurig and the \$67 million TD Bank verdict



Paul Brinkmann
Reporter-
South Florida Business Journal
[Email](#) | [LinkedIn](#) | [Twitter](#) | [Google+](#)

Wednesday's jury verdict for \$67 million against TD Bank can only be viewed as a setback for Greenberg Traurig's attorneys on the case, and a huge win for Miami legal couple [David Mandel](#) and [Nina Mandel](#).

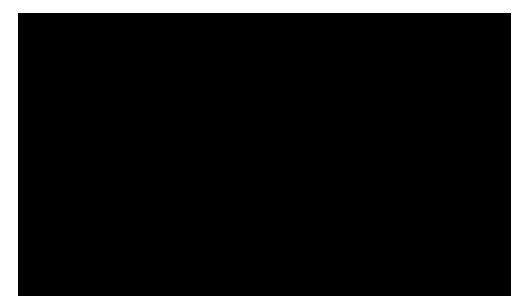
The Mandels and their small litigation firm took on Goliath and won. The verdict is nothing to sneeze at; experts I interviewed



View Slideshow

Greenberg Traurig's Holly Skolnick

Videos



[NRA-Commissioned Study Backs More Guns in Schools](#)

believe it is [one of the first cases where victims of a Ponzi scheme have successfully sued a bank for aiding the fraud.](#)

Texas-based Coquina Investments alleged that TD Bank (NYSE: TD) defrauded them by allowing Ponzi schemer [Scott Rothstein](#) to launder money at the bank and by providing misinformation about their accounts. The bank has denied the allegations and pointed the finger at Rothstein. U.S. District Judge [Marcia Cooke](#) will now consider certifying the jury verdict with a formal judgment.

The verdict included \$32 million in compensatory damages in \$35 million in punitive damages.

Greenberg Traurig's lead attorneys were [Holly Skolnick](#) and [Mark Schnapp](#). Throughout the trial, I was asking myself if the law firm and TD Bank may have calculated that their best opportunity to win this case is at the appellate level.

I asked the bank Thursday for additional comment.

Spokeswoman [Rebecca Acevedo](#) said: "Yes, counsel was trying to preserve a basis to appeal as the trial went on." But she didn't confirm if an appeal would be filed or not.

I watched this case for months and was in the courtroom for about half of the trial, which started Nov. 1.

As I've reported, Greenberg Traurig made several motions for a mistrial, which were all batted down by Cooke.

From my perspective, a turning point in the case came on the first day, when [former TD Bank regional VP Frank Spinosa](#) testified.

The judge had previously decided Spinosa wouldn't testify, but reversed herself at Coquina's request just before trial.

The issue was that Spinosa, Rothstein's main contact with the bank, was planning to simply take the Fifth Amendment against self-incrimination. TD Bank's attorneys believed he should not take the stand only for that. The impact of seeing a witness decline to answer questions can be huge for a jury.

In most civil cases, a jury can draw a negative inference if a defendant takes the Fifth. Cooke instructed the jury that they could draw negative inference from Spinosa's refusal to answer questions.

TD Bank made motions for a mistrial based on the fact that Spinosa took the stand, the judge gave the instruction about the negative inference and Mandel asked questions of Spinosa based on information provided by the bankruptcy trustee overseeing the Chapter 11 case of Rothstein's former law firm. The trustee had actually agreed not to provide that information to any litigation parties.

The most explosive allegation Rothstein made regarding Spinosa is that he bribed Spinosa with cash. Mandel asked Spinosa about that, one of the 170 times that Spinosa took the Fifth.



[Drugmakers to Benefit From Obama's Brain Initiative](#)



[Stocks Advance as Factory Orders Rise](#)

[View More Videos](#)

Most Popular



1. [Kim Rothstein pre-sentencing report filed: Will she go to prison? - slideshow](#)
2. [Perez has idea to create Lincoln Road-type mall on Miami Avenue](#)
3. [Ten South Florida attorneys disciplined, including Kim Rothstein's former lawyer](#)
4. [Inside the gala: The 2013 Palm Beach Ultimate CEO Awards - slideshow](#)
5. [Just how cheap is it to book a cruise on Carnival ships?](#)
6. [Jorge Perez's SLS Brickell to transform area - slideshow](#)
7. [Oasis of the Seas to visit Europe in fall 2014 - slideshow](#)
8. [Crandon Park tennis upgrade plans, timeline revealed - slideshow](#)
9. [Gov. Scott gives backhanded welcome to Obama's PortMiami visit - slideshow](#)
10. [Robotics competition highlights STEM education - slideshow](#)

Sponsored Links

[Cisco SmartPlay—UCS C22 M3 Rack Server](#)

Discounts on Cisco UCS C22 M3 Rack Servers with Intel® Xeon® processors. www.buildprice.cisco.com

[Office VoIP Phone Systems](#)

Get unlimited calling and faxing. Easy set-up. No contracts required. www.ringcentral.com/office

[Get Listed Here](#)

How-To: Marketing

[The UPS Store](#)

- [Eight tips for crafting a successful social media policy](#)
- [10 things to do for your business when you're snowed in](#)
- [3 tips for mastering social media engagement](#)

The Small Business Tool Kit Save up to 40%

[LEARN MORE >>](#)

[The UPS Store](#)

[View More How-To: Marketing](#)

Email Subscriptions

DailyUpdate

The latest local business news delivered to you each day.

[Sign Up Now](#)

Already have an account? [Sign in to add more newsletters](#)

People on the Move

I'm not an attorney, but motions for mistrial are, in many occasions, the precursor for an appeal.

Other areas of conflict and dueling legal theories in the case included a last-minute dispute over how the jury verdict form would parse out damage amounts, and a protracted dispute over the bank's production of internal fraud alerts.

In today's economy and foreclosure crisis, many attorneys have told me banks face an uphill battle in front of a jury. And several attorneys I spoke to also believe the appellate court is much more conservative and likely to view the bank differently than the jury did.

The jury forewoman told me after the verdict that there was plenty of discussion about the case and the verdict form, but she said most jurors agreed relatively early in deliberations that the plaintiff had proven its case.

Whatever happens, TD Bank is now facing even bigger damage requests in additional lawsuits related to Rothstein's \$1.2 billion scheme, including the so-called Razorback complaint in Broward County Circuit Court.

William Scherer, the attorney for the Razorback plaintiffs, recently filed motion seeking leave to pursue punitive damages against TD Bank and two hedge funds. Acevedo said Thursday the bank will continue to vigorously defend itself against the claims.

Paul Brinkmann covers law, accounting, automotive, energy and environmental issues.

Related links: [Bankruptcies](#)

Industries: [Legal Services](#), [Banking & Financial Services](#)



[See More People on the Move](#)

[Search and Contact all People on the Move](#)

South Florida Jobs



Careers at Verizon Wireless

Verizon Wireless | Local Opportunities

Senior Director

Smoky Mountain Center | Sylva, NC

Regional Development Director (Bilingual)

Constant Contact |

Inside Sales Manager (IT Call Center Sales Management)

Techzilla | Boca Raton, FL

Accounting Manager

Stephen James | Boca Raton, FL

[Post a Job](#) | [View More Jobs Listings](#)

Your News Made Easy

Sign up for the DailyUpdate

The latest local business news delivered to you each day.

[Sign Up Now](#)

[< Older posts](#)

[Newer posts >](#)



We recommend

- [Larry Ellison buys an airline; Check out his other cool toys here](#)
- [CPI's portrait studios to delay rent owed to Wal-Mart](#)
- [Biotech startup returns to Minnesota after fleeing to Wisconsin](#)
- [Search the DBJ's Top Brokers in North Texas](#)
- [Pilot Sullenberger lands \\$2.4M house in](#)

From around the web

- [The birth of a global currency](#) Business Without Borders
- [If you travel with a passport, you need this](#) USATODAY
- [Kitchen Cabinet Styles and Trends](#) HGTV
- [Bing It On Google: Why Bing May Share the Same Fate as Pepsi](#) Paragon Digital Marketing
- [8 College Degrees with the Worst Return on](#)

Commercial Real Estate Search

For Sale Type: All Property Types
 For Lease State: Alabama
 Sale & Lease City:

