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COURTS

Rothstein fallout hits law firm, bank

■ A federal sanctions hearing involving Greenberg Traurig and TD Bank is sure to air ugly fallout from a \$67 million jury verdict won by investors burned by South Florida Ponzi schemer Scott Rothstein.

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When two of Miami's banking and legal giants step into federal court for a contempt hearing Thursday, they face an unusual public airing of embarrassing mistakes — or, worse, deliberate misconduct — that could tarnish their reputations.

The Miami-based Greenberg Traurig law firm and its client, Toronto-Dominion Bank, will be grilled by a federal judge over their failure to turn over key documents for a trial involving investors burned by convicted Ponzi schemer Scott Rothstein.

In January, Miami federal jurors found TD Bank and its officers collaborated with Rothstein by telling his investment victims their money was secure as he drained their trust accounts. The bank, which was ordered to pay \$67 million, was represented by Greenberg Traurig.

A lawyer for the investors, known as the Coquina Group, has accused TD Bank and Greenberg of failing to turn over incriminating financial documents, and of producing "doctored" paperwork that made Rothstein

• TURN TO HEARING, 2A

Bank, law firm face fallout from Rothstein scandal

• HEARING, FROM 1A

look like a low-risk customer when they knew he was, in fact, a "high risk" whom they needed to scrutinize.

The disbarred Fort Lauderdale lawyer is serving a 50-year sentence for orchestrating a \$1.2 billion investment scam involving the sale of fabricated legal settlements.

The landmark Coquina case ended with the nation's first civil verdict against a bank for "aiding and abetting fraud," by assisting Rothstein as he laundered millions of dollars in his law firm's trust accounts kept at TD Bank, to pay for what he has described as his "rock-star lifestyle."

U.S. District Judge Marcia Cooke now will weigh whether TD Bank and Greenberg lawyers violated so-called discovery rules — the exchange of evidence between the two sides — and whether they should be sanctioned, fined or held in contempt of court. The judge could also strike every pleading by TD Bank and Greenberg, which would cripple the bank's appeal of the \$67 million

judgment.

Coquina's lawyer, David Mandel, who has alleged that TD Bank committed "fraud" during the trial, has asked the judge to refer the matter to the U.S. attorney's office for a criminal investigation.

"Throughout this litigation, [TD Bank] has engaged in a calculated course of conduct designed to impede and obstruct the discovery process," Mandel and his lawyer-wife, Nina Mandel, wrote in a court filing. "TD Bank has buried documents, produced them out of order, late, or outright failed to produce them entirely."

Mandel declined to comment for this story. TD Bank, which earned nearly \$6 billion last year, and Greenberg, an 1,800-lawyer international firm with headquarters in Miami, both declined to answer questions about Mandel's allegations.

"There are a lot of big reputations riding on this case," said Charles A. Intriago, a lawyer and president of the Miami-based Association of Certified Financial Crime Specialists. "And with the

Internet, these reputations carry a long way."

Miami lawyer David Weinstein, former chief of public corruption and counterterrorism at the U.S. attorney's office, said the allegations of fraud could lead to heavy financial sanctions for TD Bank and possible malpractice claims against Greenberg.

"The only person who seems like he's going to come away from all this with clean hands is David Mandel," Weinstein said, referring to Coquina's attorney.

TD Bank has already fired Greenberg as its counsel in the controversial case, replacing that firm with another, McGuireWoods. Former U.S. Attorney Marcos Jimenez has also joined the bank's defense team. Meanwhile, one of Greenberg's attorneys, Donna Evans, who was based in Boston and worked with the firm's Miami lawyers on the Coquina case, has left Greenberg. She could not be reached for comment.

Although Mandel repeatedly accused TD Bank and Greenberg of withholding critical financial records

about Rothstein and his firm's trust accounts before and during trial, it wasn't until last month that Judge Cooke decided to hold the sanctions and contempt hearing.

The turning point came in late April: Greenberg lawyers admitted to the judge that TD Bank possessed a key financial document on its anti-money laundering policy that the bank and its lawyers had said did not exist during the trial. The document, called a "Standard Investigative Protocol," spelled out the steps TD Bank must take under federal law to know its customers and prevent money-laundering activities.

Before TD Bank supplied the document on April 24, Mandel had argued in court papers that the bank's failure to produce it during trial "improperly bolstered the defense and undermined Coquina's ability to present its case."

Mandel also convinced Judge Cooke to consider another sanctions issue: He has accused TD Bank of "doctoring" a document used at the Coquina trial

that showed the bank viewed Rothstein and his law firm as "low-risk" customers.

But in a separate Rothstein-related investment case awaiting trial, TD Bank produced the same document showing the lawyer and his firm were actually "high-risk" customers. Mandel, who is also representing the investors in the other case, said the bank's "Customer Due Diligence Form" was relevant to the "risk status" of Rothstein and his firm, Rothstein, Rosenfeldt & Adler.

"Even a cursory examination of the recently produced document shows that ... the document admitted into evidence in [the Coquina] case is a fraud," Mandel wrote in a court filing.

"In the 'true' document, a bright red band at the top of the page states unequivocally and in capital letters that the RRA accounts were designated 'HIGH RISK,'" he asserted. "In what can only be characterized as a fraud on the court and the jury, the 'HIGH RISK' designation appears to have been blackened out and omitted from" the document in the

Coquina case.

Mandel said TD Bank's alleged altering of the document was "relevant" because at trial Greenberg lawyers argued the bank did not view Rothstein and his firm as "high-risk" customers. As a result, the bank maintained it did not have to perform "robust monitoring or scrutiny" of Rothstein's accounts, and used that as an excuse for its "failure to detect the massive money laundering" going on in Rothstein's Ponzi scheme.

Eight other defendants, including lawyers and employees of Rothstein's defunct law firm, have been convicted in connection with his scheme.

Intriago, the anti-money laundering legal expert, said he now wonders how much the federal jury would have awarded the Coquina investors if jurors had considered the newly uncovered evidence.

"If they had seen the actual documents withheld, omitted and doctored, God only knows what they would have awarded to Rothstein's investment victims," he said.