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CANADA

TD staff knew about \$1.2B Ponzi scheme: U.S. judge



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A U.S. judge has condemned Toronto-Dominion Bank for having an “unreasonable” fraud alert system, and declared that bank staff knew about a \$1.2-billion Ponzi scheme using the bank’s facilities before it unravelled.

The judicial slap in Florida comes after a civil trial pressed by investors swindled by Scott Rothstein, a



Scott Rothstein told investors his clients were settling suits against wealthy defendants in exchange for a series of payments. AP Photo/Charles Trainor Jr., The Miami Herald

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former lawyer now serving 50 years in prison.

TD, Canada's second largest lender, had already been ordered to pay investors US\$67-million after a jury accepted the bank aided Rothstein through meetings held in a bank branch; flurries of transactions before Rothstein fled with ill-gotten millions; and other acts and omissions.

"This litigation was conducted in an Inspector Clouseau-like fashion. However, unlike a Pink Panther film, there was nothing amusing about this conduct and it did not conclude neatly," Judge Marcia Cooke wrote in her ruling this month, chastising TD and its U.S. law firm over disclosure of documents.

TD denies any wrongdoing and is appealing the decisions.

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Rothstein, a Fort Lauderdale lawyer during the 2009 scam, sold stakes in fictitious lawsuits. Rothstein told investors his clients were settling suits against wealthy defendants in exchange for a series of payments. He said his clients were selling the long-term payments for a discounted lump sum. The settlements did not exist.

At the civil trial in Miami, TD's former regional vice-president, Frank Spinosa, was accused by investors of making fraudulent representations and omissions. The bank was also accused of failing to inform investors the account at issue did not contain millions but just \$100.

"TD Bank lied. It lied corruptly and with the intention and purpose to mislead," said David Mandel, a lawyer representing investors, in his closing address to the jury in January.

"Rothstein needed TD Bank because without it, the fraud would not have been possible. He couldn't do it by himself... He needed a big bank, with a big name that would sway investors and make them feel safe," Mr. Mandel told the jury.

On behalf of TD, during closing argument, Holly Skolnick told the jury the investors – most of them sophisticated professionals – ought to have known Rothstein's offers were "too good to be true."

"There is no evidence that anyone at TD Bank knew that Rothstein was selling phony settlements," she said.

In 2009, as the fraud crumpled, Rothstein wired \$16-million through TD to Morocco even though Morocco is on a list of high-risk jurisdictions, court heard.

Last Friday's ruling was about how the bank and its lawyers handled documents during the discovery process and trial.

“TD Bank lied. It lied corruptly and with the intention and purpose to mislead

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“TD Bank acted willfully in failing to comply with its discovery obligations,” she ruled. “The discovery violations in this case resulted in [the investors’] diminished ability to prove that TD Bank’s actions were unreasonable and it had knowledge of fraud.”

As sanction, she directed “the facts that TD Bank’s monitoring and alert systems were unreasonable and that TD Bank had actual knowledge of Rothstein’s fraud be taken as established for purposes of this action.”

The ruling could affect the bank’s pending appeal.

“We are extremely pleased that Judge Cooke recognized the bank’s misconduct for what it was, wilful and in bad faith,” Mr. Mandel told the National Post. “[It] establishes once and for all that TD Bank knowingly participated in the Rothstein Ponzi scheme. The implications of the court’s factual findings and legal conclusions will be far reaching.”

TD, however, does not accept the conclusions.

“TD Bank respectfully disagrees with the court’s order and will appeal it and the underlying jury verdict at the appropriate time,” Rebecca Acevedo, TD spokeswoman, told the Post.

“We do not believe that the record before the court supports the findings that were made regarding willfulness or the sanctions that were imposed. The bank plans to continue to vigorously defend itself.”

The ruling comes as TD faces allegations in a much larger fraud case.

Robert Allen Stanford was sentenced in June for a US\$7-billion fraud involving Stanford International Bank. Investors are suing TD in Quebec for losses, claiming most of Stanford’s billions moved through TD accounts in Toronto. The bank denies any wrongdoing in the case.

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