

# TD Bank Pays \$67 Million Judgment To Rothstein Ponzi Victims

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*"We are extremely pleased that TD Bank opted – at long last – to comply with the district court's order. The judgment has been satisfied in full."*

*- Nina Stillman Mandel, co-counsel for Coquina Investments*

With just hours to spare before the expiration of a deadline imposed by a Florida federal judge, TD Bank has paid the \$67 million judgment it owed after a federal jury found it liable for its role in Scott Rothstein's \$1.2 billion Ponzi scheme. Over three years after the jury's verdict, and roughly 5.5 years after Rothstein boarded a plane to Morocco with his scheme on the verge of collapse, a group of Texas investors known as Coquina Investments ("Coquina") finally collected on what was one of the only successful attempts to hold a financial institution liable for its role in a Ponzi scheme. The payment comes after years of legal wrangling by TD Bank, and featured attempts to both overturn the verdict and to later decrease the underlying owing sum. Indeed, despite payment of the judgment, the bank remains to contest several recent court rulings in Coquina's favor.

## *Rothstein's Scheme*

Rothstein touted lucrative returns to investors through the purchases of highly confidential legal settlements purportedly stemming from claims of sexual harassment, whistle-blower, and qui tam actions against large corporations. According to Rothstein, while the alleged settling defendant had already deposited the settlement funds with Rothstein's firm, an investor could "purchase" the right to payment of that settlement at a discount. With the investor sworn to secrecy and enamored by the prospect of an lucrative return, there was a built-in incentive for all parties to remain tight-lipped. Potential investors were assured that their funds would remain safe in a firm trust account held at TD Bank, with some provided "lock letters" authored by bank officials purportedly assuring them that their funds were impervious to ill will or influence.

As would later emerge in spectacular fashion, Rothstein's alleged secretive settlements were bogus and nothing more than what would later be revealed as the largest Ponzi scheme in Florida history. Indeed, as he would later confide in authorities as part of one of the most memorable (and effective) post-conviction cooperation campaigns, Rothstein pointed the finger at numerous individuals who he claimed shared blame for the scheme, including Frank Spinosa - the then-regional Vice President of the TD Bank branch in Ft. Lauderdale. As alleged by Rothstein (and later by both **civil** and **criminal** authorities), Spinosa played an integral role in the scheme through a series of actions that included making false representations to investors and authoring "lock letters" that were facially false.

## *The Suit, Verdict, and Appeal*

Coquina, represented by **Mandel & Mandel LLP**, sued TD Bank in May 2010, alleging the bank was integral to Rothstein's fraud and that it shared liability for the losses it caused. The bank tried several tactics, including claiming not only that it was the bank of Rothstein's firm, Rothstein Rosenfeldt Adler, and that Rothstein defrauded investors, but also that it **should** have been "obvious" to Coquina that they were purchasing fraudulent investments. Not buying either argument, a federal jury took several hours to hand down a \$67 million verdict finding that the bank "provided substantial assistance to advance the commission of the fraud against Coquina." It was also later revealed that TD Bank failed to turn over documents in the discovery process, including documentation supporting Coquina's arguments that the bank ignored Rothstein's status as a high-risk client, that might have even supported a large punitive damage award. The bank and its counsel were later **sanctioned** for these mishaps.

Even following the verdict, TD Bank mounted a vigorous campaign to eradicate the verdict that included the assertion of multiple grounds for reversal. The Eleventh Circuit Court of Appeals considered and **rejected** each ground. The bank then attempted to reduce the size of the amount it owed, contending that Coquina's status as a creditor in the bankruptcy estate of Rothstein's firm and the payment it had already received as part of the estate's historic plan to return 100% of each investor's losses might serve as the basis to reduce the \$67 million judgment. This argument was **rejected** by both the trial and appellate court, and on February 11, 2015, U.S. District Judge Marcia G. Cooke **gave** the bank until February 26th to satisfy the judgment or face the prospect of seeing Coquina collect on the \$73.7 supersedeas bond posted by its surety.

While the bank appealed Judge Cooke's pertinent order, it appears that they chose to heed that order in satisfying the judgment on the day of the deadline. Indeed, a declaration filed today by Coquina's counsel confirmed that TD Bank had satisfied the judgment and also provided evidence of Coquina's payment of \$9.1 million to the RRA bankruptcy estate representing the repayment of an initial distribution to creditors.

### *Conclusion*

Like many facets of Rothstein's larger-than-life persona, Coquina's outcome - and that of the RRA creditors who realized a 100% return on their investment - can only be met with a healthy share of bewilderment and admiration. The verdict is believed to represent the largest (and one of the only, if not the only) verdict against a financial institution for its role in a Ponzi scheme, and comes as similar suits around the nation fall flat based on a heightened standard that courts rarely find satisfied. Yet, the Rothstein verdict is not an anomaly, but rather the result of the existence of an (alleged) bad actor whose conduct and voracious appetite for a large client ultimately landed a national banking institution in the crosshairs. Through this verdict and other settlements, including with the RRA bankruptcy trustee, TD Bank's financial exposure alone to Rothstein amounted to over half of one billion dollars.

Previous Ponzitracker coverage of the Rothstein scheme is **here**.

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