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Dramatic moments at TD Bank contempt hearing

South Florida Business Journal by Paul Brinkmann, Reporter

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The contempt hearing for TD Bank and Greenberg Traurig generated some dramatic moments in U.S. District Judge [Marcia Cooke](#)'s courtroom on Friday.

There were big names, a packed courtroom and [a dramatic apology by the chairman of South Florida's largest law firm.](#)

And there was the testimony of [Vincent Auletta](#), senior VP at the bank.

Auletta has arguably been at the heart of the controversy surrounding evidence in the case, Coquina Investments vs. TD Bank. The bank lost a \$67 million verdict in the case in January, but questions about its production of evidence in the case have grown steadily since then. Coquina has filed five motions to sanction the bank for violations. Cooke called for last week's contempt hearing.

Auletta took the stand to explain why he incorrectly said in a written document in January that the bank didn't have a document called a standard investigative protocol or SIP document.

Instead of the providing the SIP, the bank had submitted a spreadsheet that Auletta called a standard investigative tools document. Auletta also signed a statement saying that, to his knowledge, the bank didn't have the SIP document. But in April, three months after the verdict against the bank, it suddenly acknowledged the document did exist.

Coquina's attorney, [David Mandel](#), asked Auletta to describe the standard investigative tools document that was submitted at first.

Auletta testified: "It is a procedure, a protocol, a guide."

Mandel: "Then why did you authorize this statement: 'This document is not a procedure, policy or protocol.'"

Auletta: "It is not a protocol or a procedure. It is a guide or an outline."

I looked around the courtroom quickly at that point, and saw several others in the room with puzzled looks or raised eyebrows.

Mandel provided some drama when TD Bank objected to the relevance of some of the questions Auletta was being asked, and Judge Cooke said, "What is the relevance, Mr. Mandel?"

Mandel replied loudly, "The relevance, your honor, is that this witness is a liar!"

Cooke, however, has yet to rule on any sanctions and admonished Mandel to "rein it in."

The court was shown emails that Auletta received in April 2011 where the subject line was "standard investigative protocol" and had three attachments that were also titled "standard investigative protocol."

Mandel asked Auletta why he filed an affidavit eight months later saying there was no such document. Auletta testified that he "couldn't locate" a document with that name despite doing searches on his computer and the bank's database for anti-money-laundering.

Auletta is a former **FBI** special agent who ascended quickly at TD Bank's New York offices to become one of its top executives in the area of anti-money-laundering.

In response to sharp questions, Auletta sighed loudly sometimes. He grew a little defensive at one point.

"You don't know me very well, Mr. Mandel," Auletta said. Later he added, "Mr. Mandel, there's two things in life I take very seriously. One is my family, and the other is my integrity."

Mandel contends the SIP was important because it described how the bank should have proceeded when it received fraud alerts on Rothstein's accounts. The court might have awarded more money to his clients if the jurors would have seen the SIP and considered how well the bank followed it, Mandel has argued.

After Auletta and fellow TD banker [Amanda Spencer](#) testified, Mandel said he was not even going to question Greenberg Traurig attorneys who handled the case.

[Stephen Zack](#), former president of the **American Bar Association**, made a passionate plea for the Greenberg attorneys. Zack, of Boies Schiller & Flexner, was retained to represent GT in the matter.

Following Zack's comments, former Greenberg Traurig attorney [Donna Evans](#) took the stand and apologized for not only saying the document didn't exist, but accusing Mandel of making it up. Evans said she based her original assertion on what the bank told her.

Greenberg Traurig Chairman [Cesar Alvarez](#) then apologized to the judge, after two current attorneys at Greenberg, [Holly Skolnick](#) and [Mark Schapp](#), also said they had relied on the bank's statements about evidence. Skolnick and Schnapp said Evans was the main contact for evidence issues.

TD Bank replaced Greenberg Traurig as its defense firm following the disclosure that the SIP document existed.

Cooke ordered the parties involved in the hearing to submit briefs as she took the arguments under advisement. She will take up the fifth motion for sanctions in a closed hearing because the documents were filed under seal. Although the reason for the closed hearings hasn't been disclosed, evidence in the case has sometimes been sealed when it concerns the federal Bank Secrecy Act.

For additional coverage of other issues covered at the hearing, [see my previous blogs in "Scott Rothstein: Picking up the Pieces."](#)

Cooke said on Thursday she was trying to determine if the matter before her fell under rules for "civil contempt or criminal contempt."

An assistant U.S. attorney sat in for part of the hearing.