

TD Bank Has 2 Weeks To Pay Rothstein Ponzi Investors \$67M

By **Nathan Hale**

Law360, Miami (February 11, 2015, 8:33 PM ET) -- A Florida federal judge on Wednesday ordered TD Bank NA to pay \$67 million within 14 days to a group of investors in jailed attorney Scott Rothstein's \$1.2 billion Ponzi scheme after denying the bank's request to reduce the award.

U.S. District Judge Marcia G. Cooke's order brings substantial closure to a drawn-out fight over the jury award won three years ago by Texas-based Coquina Investments LLC.

The \$67 million verdict, made up of \$32 million in compensatory damages and \$35 million in punitive damages, was **affirmed by the Eleventh Circuit** in July. The appeals court has since **refused to rehear** the case, the deadline to file a petition for writ of certiorari with the U.S. Supreme Court has passed, and the stay on the judgment has expired, yet the bank has refused to pay, Coquina said in its **motion to enforce the judgment**.

Coquina counsel David S. Mandel of Mandel & Mandel LLP likened TD Bank's latest play to trying to throw a Hail Mary pass at the end of a football game even though time has expired on the clock and the fans have gone home.

"The scoreboard shows that we won, 67-0," he said, adding, "It is unfair to make Coquina wait any longer."

Coquina launched the suit in May 2010, alleging the TD Bank branch in Weston, Florida, allowed large sums of money to pass through Rothstein's accounts. The suit also claimed the bank failed to act on fraud alerts on the accounts and that TD Bank employees knew about Rothstein's fraud and helped him carry it out.

In January 2012, a jury returned a verdict against TD Bank and awarded Coquina \$32 million in compensatory damages and \$35 million in punitive damages.

Later that year, Judge Cooke sanctioned TD Bank and its counsel at the time, Greenberg Traurig LLP, for failing to hand over an internal investigative protocol document during discovery. The judge ruled that the bank and the law firm had failed to conduct an adequate search for the document, which she said could have been found with a simple word search.

Mandel on Wednesday also argued that some of Coquina's members are elderly and deserve to be able to enjoy the award within their lifetimes, and he accused TD Bank of stalling at all costs because it is making money on the outstanding judgment while paying post-judgment interest at a rate near zero.

Wednesday's hearing focused substantially on TD Bank's arguments that the award should be reduced. The bank held that only \$7.5 million of the \$32 million in compensatory

damages are actual out-of-pocket damages. It said that Coquina will receive the rest from the trustee in the bankruptcy case of Rothstein's law firm, which served as the base for his fraud, so payment from TD Bank would result in a double recovery.

TD Bank Counsel Mark W. Kinghorn of McGuireWoods LLP argued that now that Coquina knows it is going to get 100 cents on the dollar in the bankruptcy case, portions of the damages in this case become "purely a windfall."

"That wedge of damages simply doesn't make sense," he said.

Mandel acknowledged that Coquina had already collected \$9.1 million from the bankruptcy trustee, but he said the plaintiffs had no intention of getting a double recovery and were requesting that Judge Cooke order the return of that portion to the bankruptcy estate.

Judge Cooke incorporated that request into her order, requiring Coquina to return the \$9.1 million within three days of being paid by TD Bank.

She said she thinks another \$12.1 million portion that TD Bank disputed falls under the jurisdiction of the bankruptcy court and can be dealt with there.

After issuing her order, Judge Cooke also denied a motion from TD Bank for another stay while it seeks relief from the instant order from in appeals court.

Rothstein, who **pled guilty** in January 2010 to five counts, including racketeering and fraud, is serving a 50-year prison sentence in protective custody. He **testified in December 2011** that three people at two TD Bank branches in South Florida helped create false statements designed to fool his victims.

Coquina is represented by David S. Mandel and Nina Stillman Mandel of Mandel & Mandel LLP.

TD Bank is represented by Marcos Daniel Jimenez and Audrey M. Pumariega of McDermott Will & Emery LLP and Peter J. Covington, Mark W. Kinghorn and Jason D. Evans of McGuireWoods LLP.

The case is Coquina Investments v. Rothstein et al., case number 0:10-cv-60786, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Carolina Bolado. Editing by Brian Baresch.
