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U.S. Federal Judge Sanctions TD Bank Over Rothstein-Related Trial Documents

Article

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By Caroline Van Hasselt

TORONTO--A U.S. District Court judge in Miami late Friday sanctioned Toronto-Dominion Bank's (TD) U.S. subsidiary, TD Bank, for engaging in a "willful" pattern of negligence during a trial earlier this year over its role in aiding a \$1.2 billion Ponzi scheme by disbarred and imprisoned attorney Scott Rothstein.

The ruling is a blow to Canada's second-largest bank, which is embarking on an aggressive expansion plan in the U.S., including into the sunshine state of Florida, a second home to many snowbird Canadians.

U.S. District Court Judge Marcia G. Cooke also issued sanctions against TD Bank's former law firm Greenberg Traurig, saying that together with TD, they abused the exchange of evidence known as discovery, Miami lawyers Mandel & Mandel said in a statement late Friday. In January, a jury awarded a \$67 million verdict to Mandel's client, Texas-based Coquina Investments against the bank. Ms. Cooke said that TD Bank's actions resulted in prejudice to Coquina at the January trial, Mandel said, adding that it believes the verdict would have been higher if certain TD Bank documents had not been altered.

She ordered TD Bank and Greenberg Traurig to pay attorney's fees and costs to Mandel & Mandel.

"TD Bank respectfully disagrees with the Court's Order and will appeal it and the underlying jury verdict at the appropriate time," Maria Leung, a TD Bank spokeswoman said in an email. "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."

A Greenberg Traurig representative said the law firm will comply with the judge's ruling. "We regret the deficiencies in the discovery that gave rise to this order," Lourdes Brezo Martinez said in an email.

TD Bank's law firm had entered into evidence an altered document, a TD Bank "Customer Due Diligence" form at the Coquina trial that had solid black bands concealing the fact that the bank had labeled Mr. Rothstein's law firm at "high risk" for money laundering, yet in testimony, TD Bank had maintained that since the account was not flagged as high risk, it did not conduct a more thorough due diligence that might have detected the fraud, Ms. Cook said.

Ms. Cook found that TD Bank had altered monitoring and alert systems were "unreasonable" and that it "had actual knowledge" of the fraud, the statement said. She also compared TD Bank and Greenberg's conduct to the antics of a popular who-done-it comedy, saying "it often times appears that 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," the statement from Mandel said.

"We are extremely pleased that Judge Cooke recognized the bank's misconduct for what it was, willful and in bad faith," David Mandel said of the judge's ruling. "Her sanctions ruling establishes once and for all that TD Bank knowingly participated in the Rothstein Ponzi scheme."

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