



SEE PAGE A9

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## DAILY BUSINESS REVIEW

### INSIDE

#### LAW

##### E-BOOK GROUP FACES CHARGES

A group hawking e-books on the effects of caffeine actually sold another service: a bogus way to satisfy court-ordered community service requirements by doing little more than taking an online quiz, prosecutors said. **A2**

##### STATEWIDE ELECTIONS SOUGHT

A coalition challenging Florida's current congressional map argues that the state may have to hold statewide elections for two of its 27 congressional seats. **A6**

##### RIGHTS GROUP: TORTURE A PROBLEM

Torture remains a serious problem in Brazil despite government efforts to curb it, a leading human rights group. **A7**

##### PRACTICE FOCUS: CRIMINAL LAW

Hollywood attorney Jon May writes that after a recent ruling protecting information in cell phones, it's time for the U.S. Supreme Court to take another look at bank records, for which there is no expectation of privacy. **A8**

##### DEALMAKERS: SEAQUARIUM SALE

A legal team at Holland & Knight arranged the \$30 million sale of Miami Seaquarium for seller Wometco Enterprises. **A16**

##### COMMERCIAL REAL ESTATE

#### ROTHSTEIN FALLOUT

# Federal appeals court affirms \$67M verdict against TD Bank

by Mary Hladky  
Special to the Review

In a resounding victory for an investor group fleeced by disbarred attorney Scott Rothstein, a federal appeals court on Tuesday affirmed a \$67 million verdict against TD Bank for helping the lawyer-turned-con-man perpetuate his Ponzi scheme.

Rejecting TD Bank's appeal, a three-judge panel of the U.S. Court of Appeals for the Eleventh Circuit upheld the verdict won by Texas-based Coquina Investments LLC in its entirety, concluding the 2011 trial before U.S. District Judge Marcia Cooke in Miami was untainted by any significant errors and Cooke did not abuse her discretion.

"They say, 'Justice rides a slow horse,'"

SEE TD BANK, PAGE A5



J. ALBERT DIAZ

# TD BANK: Bank accused of enabling scheme by ignoring red flags

said Coquina attorney David Mandel of Mandel & Mandel in Miami. "The wait has been excruciating, but it was worth it."

TD Bank vice president said the bank was disappointed with the decision "and is considering all of its remedies."

The U.S. operations of the bank's Toronto parent are based in Cherry Hill, N.J.

Coquina accused the bank of enabling Rothstein's settlement financing fraud by ignoring red flags and providing him with "lock letters" to assure investors their money was safe in the bank when it was flying out the door.

Rothstein, whose scheme collapsed in 2009, is serving a 50-year prison sentence for stealing from hundreds of investors. About 25 other defendants, including his one-time law partners Stuart Rosenfeldt and Russell Adler, have been convicted.

Coquina, which lost \$6.7 million, was the only group of investors to take TD Bank to trial in the \$1.2 billion fraud. The bank settled a series of other investor lawsuits while the appeal was pending.

In a major issue on appeal, TD Bank

challenged Cooke's ruling that Frank Spinosa, the bank's then-regional vice president, could testify even though he invoked his Fifth Amendment privilege against self-incrimination 193 times during the trial.

The appellate court in a 41-page opinion said U.S. Supreme Court precedent allows such testimony in civil cases and any adverse inference the jury drew was harmless.

"The chance is remote that Spinosa would have invoked the Fifth Amendment if he neither knew of nor participated in Rothstein's Ponzi scheme because doing so increased his own exposure to criminal prosecution," Judge R. Lanier Anderson III wrote in the unanimous opinion. "The record is replete with evidence that Spinosa ... knew of and participated in Rothstein's fraud." Sitting by designation, Sixth Circuit Judge Ronald Lee Gilman and U.S. District Judge Inge Prytz Johnson of Alabama concurred.

## 'TOO GOOD TO BE TRUE'

TD Bank's main defense at trial was that Coquina waived its claims because its investors had to know Rothstein's

venture was a fraud, offering enormous rates of return that were "too good to be true." Coquina denied this.

TD Bank objected to Cooke admitting into evidence a settlement agreement between Coquina and a bankruptcy trustee that stated Coquina had no knowledge of the Ponzi scheme.

The panel concluded this did not substantially influence the outcome of the case and, in any event, Coquina presented considerable evidence that countered the "too good to be true" defense.

Coquina introduced evidence that TD Bank knew Rothstein's investments offered annual returns of 200 percent to 500 percent. Coquina also maintained the bank couldn't argue it had no reason to be suspicious but Coquina should have known something was wrong.

The court also shut down TD Bank's effort to reduce or vacate the award based on a bankruptcy settlement between Coquina and the estate of Rothstein's defunct Fort Lauderdale labor and employment firm, Rothstein Rosenfeldt Adler. The jury awarded Coquina \$32 million in compensatory damages, including \$25 million to cover settlement payments to the trustee.

Noting TD Bank didn't oppose the settlement, the panel held, "Coquina's decision to settle with the trustee and to seek from TD Bank \$25 million in connection therewith was therefore patently reasonable."

The panel rejected TD Bank's other arguments against the award, saying it found no fault with Cooke's rulings.

The panel similarly brushed aside TD Bank's objections to sanctions ordered by Cooke against the bank and Greenberg Traurig for purposely withholding key evidence and documents from Coquina, notably money laundering alerts.

"Significantly, TD Bank is not arguing that the district court erred in imposing sanctions at all," Anderson wrote. "Nor would such an argument be tenable."

The appellate court denied a cross-claim by Coquina over the denial of a request to amend its complaint to include

a racketeering claim, saying Coquina waited too long before seeking relief.

Greenberg Traurig was the bank's trial counsel. TD Bank switched afterward to Marcos Jimenez of McDermott Will & Emery in Miami and attorneys at Richmond, Va.-based McGuireWoods. Jimenez was out of the office and unavailable for comment Tuesday afternoon.



J. ALBERT DIAZ

"The wait has been excruciating, but it was worth it," says Coquina attorney David Mandel of Mandel & Mandel in Miami.



JILL KAHN

A three-judge panel of the U.S. Court of Appeals for the Eleventh Circuit concluded the 2011 trial before U.S. District Judge Marcia Cooke in Miami was untainted by any significant errors and Cooke did not abuse her discretion.

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