

SPECIAL REPORT

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Case set high bar for sustained aiding and abetting fraud case

David Mandel and
Nina Mandel
Mandel & Mandel



Nina Mandel

David Mandel

A \$67 million federal jury verdict in favor of a group of Texas investors revealed how TD Bank aided Fort Lauderdale attorney Scott Rothstein's \$1.2 billion Ponzi scheme and set in motion a string of settlements to follow.

After 22 days of trial and only 4½ hours of deliberations, the jury awarded Coquina Investments \$32 million in compensatory damages and \$35 million in punitive damages Jan. 18.

Since the Cherry Hill, New Jersey-based bank posted an appellate bond, the 15 Coquina investors cannot collect on the award with the case pending in the U.S. Court of Appeals for the Eleventh Circuit.

Eventually, the Coquina investors' share of the total award is expected to be \$49 million plus interest and minus legal fees. The trustee in the Rothstein Rosenfeldt Adler bankruptcy case gets a portion of the award — \$18 million — for the estate. When claims in bankruptcy against the estate are finally settled, Coquina will be eligible to get some of that back.

After the trial ended, evidence trickled out showing the bank and its law firm at the time, Greenberg Traurig, failed to turn over damaging evidence during pretrial discovery. U.S. District Judge Marcia Cooke in Miami ordered sanctions against the bank and the lawyers.

Plaintiffs attorney David Mandel, managing partner of the husband-and-wife litigation firm Mandel & Mandel in Miami, said the case has broader implications because it's the first time a major financial institution was held responsible for a Ponzi scheme conducted by a customer.

"It established the high water mark for what is necessary in a sustained aiding and abetting fraud case," he said. "The evidence in the case is unusual because there is tremendous evidence of insider conspirators at the bank."

The Mandels began work on the case in early 2010.

In addition to the Mandels, the team

included two associates and two paralegals. They hired an electronic discovery consultant to help sift through about 1.5 million documents. Nina Mandel handled most of the bank witnesses and took depositions of bank officials in New Jersey and New York.

Nina Mandel said one of the first things they did was seek preservation of surveillance videos at the Weston branch, where Rothstein put on road shows to attract new money.

"That was an unusual part of the fraud case — when we realized that Rothstein would go from his office on Las Olas [Boulevard] and drive across town to meet with investors at the branch in Weston," she said. At trial, they played the videos showing fraudulent documents and, at various times, Rothstein, his uncle, a bank official and unwitting investors.

The trial had its share of drama when the bank's fired regional vice president, Frank Spinosa, repeatedly asserted his Fifth Amendment right to refuse to answer questions on the grounds that it might incriminate him.

"He took the Fifth to every question we asked. You can imagine the impact on the jury. He had a criminal defense attorney," said David Mandel.

Since the verdict, cases brought by other investor groups against TD Bank and co-defendants have been settled for more than \$200 million.

Mandel opened his practice in 1997. He and Nina Mandel are former Miami federal prosecutors.

"It was fun — we've been in practice for a while but we never tried a case [together] before," David Mandel said.

Mandel & Mandel is working on the appeal with the Washington office of Gibson Dunn & Crutcher.