UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.

SECURITIES AND EXCHANGE COMMISSION,	)
	)
Plaintiff,	)
v.	)
	)
FRANK A. SPINOSA,	)
	)
Defendant.	)
	)

COMPLAINT

Plaintiff Securities and Exchange Commission alleges as follows:

I. INTRODUCTION

1. From no later than August 2009 until October 2009, Frank A. Spinosa defrauded investors in connection with the sale of purported lawsuit settlements from now-convicted Ponzi schemer Scott Rothstein.

2. Rothstein perpetrated a massive Ponzi scheme through the sale of fake discounted settlements utilizing his law firm Rothstein, Rosenfeld and Adler, PA ("RRA"). Rothstein told investors that defendants to the settled lawsuits had paid the settlements in full, and RRA held these funds in RRA's trust accounts at TD Bank, N.A. for periodic payments to plaintiffs in the settled lawsuits. Rothstein told investors the plaintiffs would assign their periodic settlement payments to investors in exchange for a discounted immediate cash payment.

3. As Rothstein's scheme began to unravel in the fall of 2009, Spinosa, in his capacity as Regional Vice President for TD Bank, made a series of material misstatements and omissions to investors to continue the fraudulent scheme. For example, Spinosa made false

statements concerning the safety of the investment. Specifically, Spinosa, orally and through a series of so-called "lock letters," told investors TD Bank irrevocably restricted the RRA trust accounts from transferring funds to any account other than the investors' bank accounts. These representations were false. Spinosa did not apply any procedures to lock the accounts or implement any system that would have restricted Rothstein from moving the money out of the trust accounts.

4. Additionally, Spinosa provided false assurances to at least two investors that certain RRA trust accounts at TD Bank held the account balances Rothstein claimed totaling hundreds of millions of dollars. This was false. The settlements Rothstein sold to investors did not exist and the purportedly "locked" accounts generally held no more than $100.

5. Spinosa's work with Rothstein collapsed along with the Ponzi scheme in October 2009.

II. DEFENDANT AND RELATED PARTIES

A. Defendant

6. Spinosa, 50, resides in Fort Lauderdale, Florida. Spinosa worked for Commerce Bank from April 2006 until March 2008, when TD Bank acquired Commerce Bank. He served as a Regional Vice President for TD Bank until the Bank terminated him in November 2009. He was responsible for generating loans and deposit growth for TD Bank's branches within Broward County, Florida and Palm Beach County, Florida, as well as coordinating the efforts of TD Bank's lenders and branch managers within that region.

B. Related Entities and Individual

7. TD Bank is one of the ten largest banks in the United States with more than 7.8 million customers at more than 1,280 locations. TD Bank is a member of TD Bank Group and a

subsidiary of The Toronto-Dominion Bank of Toronto, Canada. The Toronto-Dominion Bank trades on the NYSE Euronext under the ticker symbol "TD." TD Bank is a national banking association with its main offices in Wilmington, Delaware, and its principal place of business in Cherry Hill, New Jersey. TD Bank acquired Commerce Bank and its legacy branches, systems, and customer accounts, including the RRA trust accounts, in March 2008. The Bank's integration of Commerce Bank was completed in September 2009.

8. Rothstein, 51, is currently serving 50 years in federal custody for operating his massive Ponzi scheme. Rothstein was an attorney licensed by the State of Florida until he was permanently disbarred on November 25, 2009.

9. RRA was a prominent law firm based in Fort Lauderdale, Florida. Rothstein was a founding partner in the firm and utilized the firm in his Ponzi scheme. RRA has disbanded and been forced into bankruptcy due to Rothstein's scheme. RRA's affairs are handled by a bankruptcy trustee overseeing the firm's dissolution.

III. JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77t(d) and 77v(a), and Sections 21(d), 21(e), and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e) and 78aa.

11. The Court has personal jurisdiction over Spinosa and venue is proper in the Southern District of Florida because many of the acts and transactions constituting the violations alleged in this complaint occurred in the Southern District of Florida, and Spinosa worked and resided in the Southern District of Florida at all times relevant to the complaint.

12. In connection with the conduct alleged in the complaint, the Defendant, directly or indirectly, singly or in concert with others, made use of the means or instrumentalities of interstate commerce or the mails.

IV. BACKGROUND

A. Rothstein's Ponzi Scheme

13. Beginning in 2005, Rothstein began offering others the opportunity to purchase purported legal settlements at a discount. Rothstein falsely claimed to represent plaintiffs who had reached confidential settlements in sexual harassment, whistle-blower, and qui tam actions against large corporate defendants.

14. Rothstein explained to prospective purchasers that the defendants had deposited the full amount of the settlements in RRA trust accounts for the benefit of the plaintiffs, but the settlement agreements required that the plaintiffs receive periodic payments to ensure the plaintiffs' compliance with the settlements' confidentiality terms. Rothstein claimed the plaintiffs were willing to assign their settlement payments from the RRA trust accounts in exchange for a discounted, immediate cash payment. For example, Rothstein sold one individual the right to receive a $450,000 settlement paid out in three monthly $150,000 payments for an immediate payment of $375,000.

15. Rothstein's scheme was based upon the issuance of promissory notes. In most instances, Rothstein provided each investor with a promissory note his firm issued promising to pay to the investor the settlement payments that were due to be distributed from the RRA trust accounts. RRA issued these notes in exchange for the discounted lump sum payments each investor made to purchase the settlements and which Rothstein purportedly transferred to his clients. Investors received a separate promissory note for each settlement purchased. Rothstein

also provided to each investor redacted copies of what he claimed were the engagement letter between the purported plaintiffs and his firm, and the settlement agreement between the purported plaintiff and defendant. Additionally, most investors received a purported sale and transfer agreement and acknowledgements from RRA containing, among other things, various claims about the purported plaintiff's ability to transfer the settlement funds, descriptions of the role RRA played in negotiating the settlement and securing the one-time payment for the purported plaintiffs, and details regarding the confidentiality provisions of the original settlement.

16. Contrary to Rothstein's representations, there never were any legal settlements and the plaintiffs and defendants did not exist. In classic Ponzi fashion, Rothstein simply used the funds investors paid to purchase the settlements to make the purported settlement payments that were due to other investors and to support his lavish lifestyle. At the end of October 2009, Rothstein's scheme collapsed, and shortly afterwards he surrendered to federal authorities. He pled guilty to federal charges related to the operation of the Ponzi scheme and was sentenced to 50 years in federal custody.

B. RRA's Trust and Operating Accounts at Commerce Bank and TD Bank

17. Between November 2007 and mid-October 2009, Rothstein opened 22 attorney trust accounts and four RRA operating accounts at TD Bank and Commerce Bank, which TD Bank acquired. Rothstein used RRA's operating accounts to receive funds from investors in his purported legal settlements and to operate his law firm. Rothstein used the attorney trust accounts purportedly to receive money from settling defendants and to make payments to settlement investors.

18. Rothstein led settlement investors to believe that he set up a separate trust account for each investor, and that the defendants fully funded these trust accounts with the settlement proceeds prior to the investors' purchases of the promissory notes. This was false, and the trust accounts typically held less than $100. When payments were due to settlement investors, Rothstein transferred enough money from RRA's main operating account into the investor's trust account to make the scheduled payment.

19. Between RRA's law firm operations and Rothstein's Ponzi scheme, approximately $1.2 billion flowed through RRA's operating and trust accounts over the life of Rothstein's Ponzi scheme. TD Bank benefited from the interest and fees it earned on the activity in these accounts.

20. Beginning in no later than October 2008, Rothstein's point of contact at TD Bank was Spinosa, who had primary responsibility for the management of Rothstein's accounts. Rothstein often emailed and spoke directly with Spinosa regarding his accounts and materials he needed to provide to investors.

21. Spinosa received compensation and bonuses from TD Bank and Commerce Bank based, in part, on the size and volume of accounts at branches he managed, including the Rothstein and RRA accounts. The Rothstein and RRA accounts were among the largest within the region at TD Bank.

C. Spinosa's Misrepresentations and Omissions to Investors

22. Investors had no independent way to verify the account balances other than through Rothstein and TD Bank. Several investors therefore sought assurances from TD Bank that the trust accounts were fully funded as Rothstein claimed, and that their funds were protected. Rothstein and Spinosa provided these assurances to investors. As described below,

Spinosa misrepresented to investors that TD Bank had restricted the relevant bank accounts for the investors' benefit. Spinosa also falsely verified the account balances.

1. Spinosa Executed "Lock Letters" to Rothstein for Distribution to Investors

23. A key premise of Rothstein's Ponzi scheme was that investors were purchasing legal settlements that the settling defendants had paid in full, and the settlement proceeds were on deposit in one of several of Rothstein's attorney trust accounts at TD Bank. Rothstein promised to make distributions from these accounts to his investors in accordance with their structured settlement purchases. Rothstein's investors had no direct access to RRA's trust accounts to verify his claims. At the peak of Rothstein's Ponzi scheme in August 2009, several of Rothstein's investors sought confirmation concerning the security of the investment and that the settlement funds they purchased in the TD Bank accounts could be paid only to them.

24. In response to these investor inquiries, Rothstein and Spinosa sent at least four letters to investors making false representations about the accounts. For example, on August 17 and 25, 2009 and September 9 and 16, 2009, Rothstein prepared so-called "lock letters" to individual investors stating TD Bank "irrevocably restrict[ed]" certain trust accounts designated for the investors. Rothstein provided these letters to Spinosa, who co-signed them on behalf of TD Bank.

25. In these letters, Rothstein and Spinosa stated that "all funds contained in the above account shall only be distributed upon [Rothstein's] instructions and shall only be distributed to [the investor]" at the investor's designated bank account. They further emphasized that "the letter is not meant to convey ownership of the account or access to the account to any other party, but rather is meant to irrevocably restrict conveyances" from the referenced RRA account to the investor's bank account specified in the letter.

26. From no later than September 18, 2009 until at least October 15, 2009, Spinosa prepared and executed at least seven additional lock letters to investors at Rothstein's request and for distribution to investors. Rothstein emailed the draft language for Spinosa to incorporate into these letters, which Spinosa executed on TD Bank letterhead and on behalf of TD Bank.

27. In these seven letters, dated September 18 and 24, 2009 and October 1 and 15, 2009, Spinosa stated, "all funds contained in the above referenced account shall only be distributed upon [Rothstein's or Rothstein's partner] instructions and shall only be distributed to [the investor]" at the investor's designated bank account. The letters further emphasized that "the letter is understood not to convey ownership of the account or access to the account to any other party, but rather is meant to irrevocably restrict conveyances" from the referenced RRA account to the investor's bank account specified in the letter.

28. Spinosa provided the lock letters he executed to Rothstein for distribution to investors, and Rothstein distributed them to investors. Spinosa, through his assistant, confirmed to at least one investor that he had, in fact, executed the October 1, 2009 lock letter.

29. Spinosa's representations in the lock letters were false. He had not applied any procedures to restrict the accounts. In addition, when Spinosa executed the letters, he knew Rothstein could transfer funds from the account without restriction through TD Bank's internet customer banking systems. In approximately late August 2009, A TD Bank Assistant Vice President and Branch Manager who worked at TD Bank's Weston, Florida branch and reported to Spinosa told Spinosa that any "lock" instructions put onto an account would have no practical effect because Rothstein could still transfer the money without bank officials being alerted.

30. Nonetheless, Spinosa executed at least ten more lock letters to investors, dated August 25, 2009, September 9, 16, 18, and 24, 2009 and October 1 and 15, 2009 falsely stating that TD Bank had locked the accounts and funds could only be transferred to investors' accounts.

31. Additionally, Spinosa made false representations to investors orally about the safety and security of the RRA accounts. For example, on August 17, 2009, Spinosa participated in a conference call with Rothstein and an investor that had received the August 17 lock letter Spinosa and Rothstein had executed. This investor is an investment partnership located in Texas, and the individual who participated in this conference call was an investor in that partnership. Spinosa and Rothstein prepared for the call by email that same morning. Rothstein emailed Spinosa a list of questions he would ask him during the call about the effectiveness of the lock letters and instructed Spinosa to "just answer yes to all the questions and we are done." Spinosa replied "no problem." During this call, Spinosa confirmed to the investor that he co-signed the lock letter and that the investment proceeds were in a restricted, segregated account that could only be disbursed directly to this investor. However, Spinosa had never restricted this account and knew Rothstein could transfer funds from it without restriction.

32. Spinosa also misrepresented to Rothstein's investors the lock letters and transfer restrictions set forth in the letters were commonplace at TD Bank. This was false. TD Bank had never before utilized a lock letter making the representations in the letters Spinosa executed, and the Bank did not place such restrictions on accounts.

33. Nonetheless, on August 17, 2009, Spinosa told the investor who had received his lock letter of that same date that the letter was not unusual at TD Bank, that many accounts at the Bank had similar restrictions in place, and that the Bank had systems in place to ensure compliance with the restrictions in the letter, including the transfer restrictions. Spinosa repeated

these false statements on September 10, 2009, during an in-person meeting with the investor who had received Spinosa's lock letter dated September 9, 2009.

2. Spinosa Provided False Balances To Investors

34. At all relevant times, Spinosa had full access to the Rothstein and RRA account information and balances. Nonetheless, he provided false balances to investors on at least two occasions.

35. For example, during a conference call on August 17, 2009 with Rothstein and an investor who had received the lock letter of that same date, Spinosa told the investor that the account held $22 million, which was the amount Rothstein had promised this investor. In truth, however, the account had a balance of no more than $100. After this call, the investor made four additional investments with Rothstein in August and September 2009.

36. On September 25, 2009, Spinosa met in person with these same investors and represented that: (1) he was familiar with the transactions in the investor's account; (2) the money in the account was safe; and (3) the investor had nothing to worry about since the provisions of the lock letter were in place restricting the movement of funds in the RRA account. Spinosa's representations were again false. The RRA trust account for this investor at TD Bank held only $100 at the time Spinosa made these representations.

37. Spinosa made similar false statements to at least one additional investor regarding the investor's balances in the RRA trust accounts. This investor received the lock letter Spinosa executed dated September 9, 2009 and was a Delaware company formed to make investments on behalf of investors. This investment company purchased a purported $20 million settlement from Rothstein on September 11, 2009. On September 10, a founding member and investor of this investment company asked Rothstein whether the $20 million settlement payment from the

purported defendant had been deposited into the RRA account because an account deposit slip of that same date showed a zero balance as of that morning. Rothstein falsely told this investor the funds were in the account, but the funds would not appear as "available" on the deposit slip because they were in TD Bank's "Federal wire queue." In truth, however, there was no settlement and thus no funds.

38. The next business day, Monday, September 14, 2009, Spinosa and Rothstein met with another founding member and investor of this same investment company. Spinosa told this investor that the $20 million did not appear as available funds because TD Bank was holding the funds in its Treasury Direct Wire queue for this account. This was false, and TD Bank was holding no such funds. Spinosa also falsely represented that the September 9, 2009 lock letter he had executed to this investor irrevocably restricted the movement of the money in the RRA trust account so it could only be transferred to the investor's account. This was also false. The RRA account did not contain the investor's settlement funds and Rothstein had unrestricted access to transfer funds from the account.

V. CLAIMS FOR RELIEF

COUNT I

Fraud in Violation of Section 17(a)(1) of the Securities Act

39. The Commission repeats and realleges paragraphs 1 through 38 of its Complaint as if fully set forth herein.

40. From at least August 2009 through October 2009, Spinosa, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

41. By reason of the foregoing, Spinosa directly and indirectly violated, and unless enjoined, is reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

COUNT II

Fraud in Violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act

42. The Commission repeats and realleges paragraphs 1 through 38 of its Complaint as if fully set forth herein.

43. From at least August 2009 through October 2009, Spinosa directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of securities: (a) obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (b) engaged in transactions, practices and courses of business which have operated as a fraud or deceit upon purchasers and prospective purchasers of such securities.

44. By reason of the foregoing, Spinosa directly and indirectly violated, and unless enjoined, is reasonably likely to continue to violate, Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77(q)(a)(2) and 77(q)(a)(3).

COUNT III

Fraud in Violation of Section 10(b) of the Exchange Act and Rule 10b-5

45. The Commission repeats and realleges paragraphs 1 through 38 of this Complaint as if fully set forth herein.

46. From at least August 2009 through October 2009, Spinosa, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly: (a) employed devices, schemes or

artifices to defraud; (b) made untrue statements of material facts and/or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices and courses of business which operated as a fraud upon the purchasers of such securities.

47. By reason of the foregoing, Spinosa directly and indirectly violated, and unless enjoined, is reasonably likely to continue to violate, Section 10(b) of the Securities Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder.

COUNT IV

Aiding and Abetting Violations of Section 10(b) and Rule 10b-5 of the Exchange Act

48. The Commission repeats and realleges paragraphs 1 through 38 of this Complaint as if fully set forth herein.

49. From at least August 2009 through October 2009, Rothstein, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts and/or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices and courses of business which operated as a fraud upon the purchasers of such securities.

50. Spinosa, from at least August 2009 through October 2009, knowingly or recklessly substantially assisted Rothstein's violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

51. By reason of the foregoing, Spinosa, directly or indirectly, violated and, unless enjoined, is reasonably likely to continue to aid and abet violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j, and Rule 10b-5(b), 17 C.F.R. § 240.10b-5.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I.

Permanent Injunctive Relief

Issue a Permanent Injunction restraining and enjoining Spinosa from directly or indirectly violating Sections 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

II.

Penalties

Issue an Order directing Spinosa to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78(d)(3).

III.

Further Relief

Grant such other and further relief as may be necessary and appropriate.

IV.

Retention of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may hereby be entered, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,

September 23, 2013 By: 

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