

South Florida BUSINESS JOURNAL

FRAUDSTER FALLOUT:

TD Bank's Rothstein
verdict looks like
a precedent setter
P2



Alan Levan is in the fight of his career

BY BRIAN BANDELL

Alan B. Levan has been involved in plenty of litigation before, but a lawsuit brought by the SEC is the most serious challenge to his livelihood.

The SEC's civil complaint, against Fort Lauderdale-based BankAtlantic Bancorp (NYSE: BBX) and its chairman and CEO, accuses them of misleading investors about the quality of the bank's residential development loans and committing accounting fraud. Should the regulators prevail, the company and Levan would face civil penalties and, most serious of all for Levan, a bar from servicing as an officer or director of a public company.

Levan is one of the region's most active business leaders. He has served on the boards of several companies and is a frequent speaker at industry events. SEE **BANKATLANTIC** | 38

Lenders targeted minorities with subprime loans

BY BRIAN BANDELL

Angela Samuels wasn't looking for a mortgage. The single, black woman needed legal help transferring the title of her deceased parents' house in Miami's Liberty City to her name as part of the probate process.

However, the broker involved slipped a \$136,000 mortgage application into the stack of documents.

MORTGAGE HEARTBURN

Samuels said she did not get a cent of that money and she cannot find the mortgage broker. Now her home has been lost to foreclosure, and she is relying on aid from the nonprofit Miami Workers Center to delay her eviction from a house that has been in her family for 43 years.

"I wasn't qualified for the loan," she said. "He told me what to do and I just signed the papers."

Samuels said she could not afford an attorney to fight the foreclosure or file a mortgage fraud claim.

Her case is part of a pattern of subprime

SEE **LENDING** | 36



MARK FREERKS

FTI Consulting Chairman Dennis Shaughnessy says his company is growing, despite the slowdown of the global economy and the complex regulatory climate.

FTI Consulting chairman: West Palm Beach is good for business

BY PAUL BRINKMANN

The most influential South Florida company you've never heard about may be West Palm Beach-based FTI Consulting.

The 3,800-employee, \$1.4 billion-revenue company relocated from Baltimore in 2008. Its customers include BP PLC, General Motors and Lehman Brothers.

The company often has a low profile, but

Chairman Dennis Shaughnessy granted an interview to talk about its growth and presence. The interview was edited for length and clarity.

SFBJ: Why are FTI Consulting's executive offices in West Palm Beach?

Shaughnessy: The company had outgrown our space in Baltimore. At the same time, my wife and I had competed in equestrian events

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FOOD FOR THOUGHT

■ Park Tavern's Anthony Pizzo and Brandon Belluscio hope their new restaurant will be even more successful than all the rest that crowd Delray Beach's Atlantic Avenue. Does the area have too many eateries? **P6**



CELEBRITY HOME SALES

■ Country music star Alan Jackson and his wife have put their Jupiter Island home on the market for \$14.95 million. Tennis greats Andre Agassi and Steffi Graf have bought a unit at the St. Regis Bal Harbour Resort & Residences. **P8**

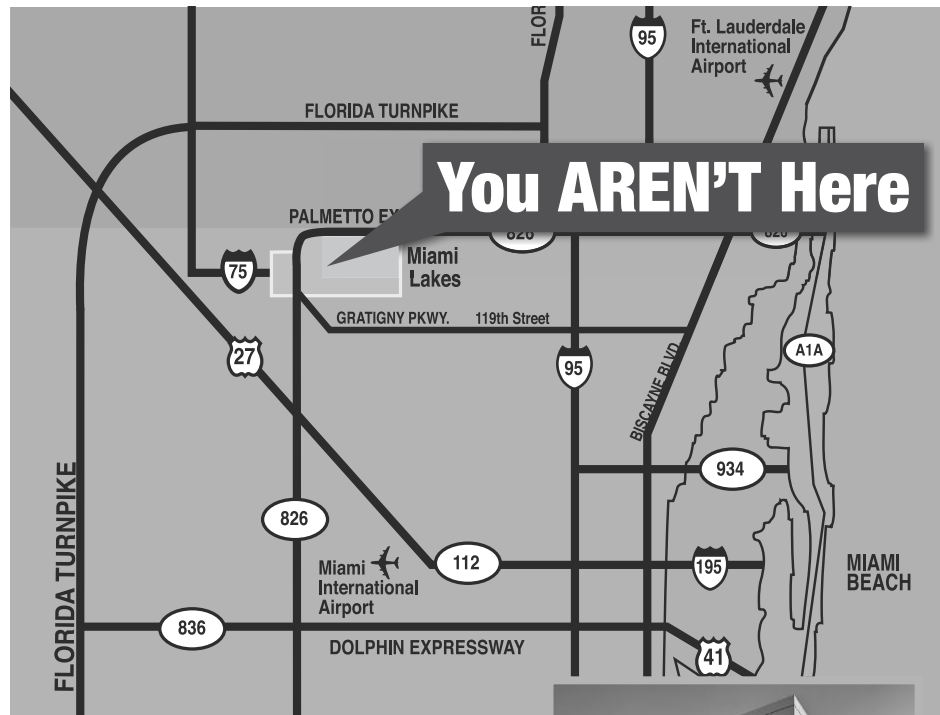


2012 CFO AWARDS

■ See which South Florida chief financial officers are considered to be tops in the region, and read about their business philosophies. **P13**

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Experts: TD Bank jury verdict could lead to more bank lawsuits

BY PAUL BRINKMANN

Some legal experts say the Jan. 18 jury verdict against TD Bank for fraud could lead to more lawsuits against TD and other banks.

A federal jury in Miami leveled the damages against TD Bank (NYSE: TD), awarding \$32 million in compensatory damages and \$35 million in punitive damages. The jury decided the bank had committed fraud against victims of Scott Rothstein's \$1.2 billion Ponzi scheme.



Kipnis

"I think copycat lawsuits are not just a possibility, but a probability," said Alan Kipnis, an attorney who represents banks with Arnstein & Lehr in Fort Lauderdale. "Other lawsuits won't necessarily be based on the same fact pattern, but on offshoots of this."

At least one analyst who follows TD Bank as a public company said the markets are definitely tracking TD's exposure to fraud claims. Cherry Hill, N.J.-based TD Bank is owned by Toronto Dominion Bank Group.

"Yes, I see the exposure here as an outstanding issue, but we don't know how long it will take to see it resolved," said Darko Mihelic, an analyst with Cormark Securities in Toronto. "As an investor, you have to take a calculated approach. The verdict of \$67 million is not enough to make an impact, but there are additional cases. If an appeal was thrown out, or the bank loses a second case, that would cause more alarm."

TD Bank is already facing several additional lawsuits connected to Rothstein's fraud. In the largest case, with about \$200 million in compensatory claims by a different group of victims, a Broward County judge ruled that plaintiffs can present punitive damages to a jury in March. Maximum punitive damages are usually three times the compensatory award.

Mihelic noted that the bank has yet to report any funds set aside to cover exposure to Rothstein-related litigation in its public filings with the SEC. The bank has continued to deny wrongdoing associated with the Rothstein case. Spokeswoman Rebecca Acevedo has repeatedly said the bank will continue vigorously defending itself.

The recent verdict is believed to be the first big case in recent history where victims of a fraud successfully sued a bank through which the perpetrator of that fraud laundered money. Most big frauds and all big Ponzi schemes require a bank that will not ask questions about high-velocity transfers of money, overdrafts and, in Rothstein's case, moving money out of trust funds and into personal accounts and operating accounts.

The case against TD Bank was orchestrated by Miami attorneys David Mandel and Nina Mandel on behalf of Texas-based Coquina Investments.

The Mandels had to craft a jury verdict



D. Mandel

form that may have been unique in asking the jury whether the bank committed fraud and aided Rothstein's fraud.

David Mandel said his phone has been busy since the verdict, as other people hoping to sue TD Bank are calling him.

"It's possible that this verdict may wind up being a watershed event in legal and banking history for such lawsuits," he said. "It's the first time I know of that this claim has gone to trial and succeeded."

Mandel said other federal fraud cases against TD Bank, whether related to Rothstein or not, can legally



N. Mandel

refer to the Coquina case.

Some elements of the Coquina case were unique, such as the alleged corruption of regional VP Frank Spinosa, whom Rothstein says was bribed. Spinosa took the Fifth Amendment against self-incrimination at trial. But evidence was presented that upper-level bank VPs raised suspicions about Rothstein's account activity and ignored internal fraud alerts.

Ironically, the verdict against TD Bank is exactly what Rothstein said he would try to accomplish to make "legitimate investors" in his scheme whole.



Nurik

"The verdict is consistent with Scott's testimony and position regarding TD Bank," said Marc Nurik, his attorney. "I would imagine the Coquina verdict has a profound effect on banks. As it is, banks are heavily regulated, and I think this creates a higher standard. But, of course, the Rothstein case is very unusual."

Kipnis said he has heard from bank clients about the Coquina verdict and about Ponzi schemes in general.

"I have a case right now where a bank is being sued for punitive damages, and they understand that just being in front of a jury could be damaging to their reputation," he said.

Kipnis said a major part of picking a jury is just trying to find people who do not have a prejudice against banks due to the foreclosure crisis, bank bailouts and impact of the recession.

"Flags get raised early in most Ponzi schemes, and sometimes they aren't noticed," he said. "My advice is that executives need to keep an eye on the ball. The most important thing for upper-level managers is not necessarily to make money in a vacuum. They have to make sure they are in compliance."

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CORRECTION

■ The name of City National Bank of Florida residential mortgage manager James Campanella was misspelled in two articles in the Jan. 20 edition.

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