

# Deep-pocketed defendants added to investors' lawsuit

by Julie Kay  
jkay@alm.com



MELANIE BELL

Fort Lauderdale attorney William Scherer said he would love to ask Scott Rothstein if he had an exit strategy.

the complaint after being named in other lawsuits and newspaper articles and being called for depositions by the bankruptcy attorneys.

Scherer said he hopes this will be the final complaint and is hoping to go to trial in January before Circuit Judge Jeffery Streitfeld.

The initial version was filed last Nov. 20. Rothstein was arrested Dec. 1 and accused of operating a \$1.2 billion Ponzi scheme that sold phony settlement financing based on forged judicial orders. The 47-year-old pleaded guilty to five federal counts Jan. 27 and is due to be sentenced May 6.

Scherer announced the new complaint at a lunch benefiting the Boys & Girls Club of Fort Lauderdale at which he was the keynote speaker.

When asked what he would ask Rothstein first in a deposition, Scherer replied, "What were you thinking? What was your exit strategy?" He added, "Every one of these fraudsters lacks an exit strategy."

Scherer also was asked why he believes federal prosecutors have not charged anyone besides Rothstein.

"They are building their case against the low hanging fruit," he said. "They are busy trying politicians. The federal government doesn't have the same resources we do, with our team of lawyers."

With the new defendants — notably the hedge funds — Scherer said he believes he will find enough money to compensate victims.

"We have added deep-pocket defendants," he said. "I believe there will be enough deep pockets to fill the hole."

Finally, Scherer was asked by the well-heeled crowd how they could avoid becoming victims of a Ponzi scheme. He said he didn't have much advice to offer besides "keep using your same business judgment. You know that risk equals reward. It's easy to say the investors are greedy. But this guy hoodwinked a lot of people. He was good. He was real good."

Julie Kay can be reached at (760) 535-2222.

## ROTHSTEIN FALLOUT

# Lawyer adds more defendants to lawsuit

by Julie Kay, DBR.

Investors who claim they lost \$125 million in Scott Rothstein's \$1.2 billion



Scherer

Ponzi scheme filed an amended complaint Tuesday, adding high-profile and

deep-pocket defendants including Gibraltar Bank, accountants, financial ad-

visers and hedge funds.

The book-length complaint filed by attorney William Scherer of Conrad & Scherer casts a wider net in its quest to recover funds for victim-investors. The complaint also offers more evidence to substantiate claims against Rothstein, top lieutenants at his former law firm and others.

The firm dissolved amid charges that Rothstein ran the fraud through the firm.

**SEE STORY, PAGE A2**

Investors who claim they lost \$125 million in Scott Rothstein's Ponzi scheme added a number of high-profile defendants Tuesday to a lawsuit seeking recovery. The latest version of the suit names Gibraltar Private Bank, financial advisers, hedge funds and accountants who worked for Rothstein.

In a second amended complaint filed by Razorback Funding and others, Fort Lauderdale attorney William Scherer cast his net farther in the \$1.2 billion fraud run through Rothstein's former law firm, Rothstein Rosenfeldt Adler.

The 1,329-page complaint filed in Broward Circuit Court still lists Rothstein as the lead defendant but expands to Coral Gables-based Gibraltar for allegedly allowing millions of dollars of Rothstein's illicit funds to pass through the bank while underlings raised red flags.

Also named in the new suit are Tracy Weintraub, Gary Berkowitz and Brian Leitstein, Fort Lauderdale accountants with Berenfeld Spritzer Shechter & Sheer who worked closely with Rothstein, and such hedge funds as Platinum Partners Value Arbitrage Fund and Centurion Structured Growth.

"We have more defendants and a lot more evidence to support the claims we made earlier," said Scherer of Conrad & Scherer.

Gibraltar spokesman Peter Whalen said the investors' recovery effort is "understandable." But "what is not understandable is attempting to blame Gibraltar for Mr. Rothstein's misdeeds. ... The law firm of Rothstein Rosenfeldt Adler maintained traditional banking accounts with Gibraltar for law firm operations and, in regard to these accounts, the bank upheld all of its regulatory duties."

Rothstein invested in the bank, which has offices in Miami, Fort Lauderdale, Naples, New York, Ocean Reef and South Miami.

TD Bank and senior vice president Frank Spinosa, another bank for Rothstein's firm, was sued in a previous version of the complaint.

The banks allegedly provided "lock letters" — a term Scherer's team believe Rothstein devised — to show to investors to satisfy them that their money was safe.

A representative of the accountants said they had not seen the complaint but a statement would be forthcoming. It was not received before deadline.

In an explosive deposition last month for the law firm's bankruptcy attorneys, Berkowitz said he regretted not raising more red flags in his dealings with Rothstein.

The complaint also listed as defendants Ballamor Capital Management, Barry Bekkedam, Pearson & Associates and Richard Pearson — all financial advisers that Scherer and his team allege placed clients in Rothstein investments.

When asked if he alleged the banks and financial advisers committed errors of commission or omission, Scherer said, "both."

He said he doubted if any of the defendants would be surprised to be named in



WARREN R. TRAZENFELD, P.A.  
ATTORNEY AT LAW

April 16, 2010

Robert D. Critton, Jr.  
Burman, Critton, Lutttier & Coleman, LLP  
303 Bayan Blvd  
Suite 400  
West Palm Beach, FL 33401

**RE: Jeffrey Epstein v. Scott Rothstein, et al.**

Dear Mr. Critton:

Enclosed is a copy of the counterclaim I filed as requested in your letter dated March 29, 2010 which has been stayed by the bankruptcy proceeding. You should also know that a declaratory action has been filed in the bankruptcy seeking to void the malpractice policies based upon misrepresentations allegedly made in the insurance application. Due to the bankruptcy filing and the coverage issues, I have not taken any discovery.

I have no knowledge with regard to the names mentioned in your letter.

I regret I could not be of more assistance to you.

Very truly yours,

WARREN R. TRAZENFELD, P.A.

By: 

Warren R. Trazenfeld, Esq.

WRT/hm  
Enc.

IN THE CIRCUIT COURT OF THE 17TH  
JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

Case No: CACE0937836(05)

Florida Bar No: 317071

ROTHSTEIN ROSENFELDT ADLER,  
P.A., a Florida professional  
Association,

Plaintiff(s),

vs.

WHITNEY EDUCATION GROUP,  
INC., a Florida corporation AND  
WHITNEY INFORMATION  
NETWORK, INC., a Florida  
corporation,

Defendant(s)

WHITNEY EDUCATION GROUP,  
INC., a Florida corporation AND  
WHITNEY INFORMATION  
NETWORK, INC., a Florida  
corporation,

Counter-Plaintiffs

vs.

ROTHSTEIN ROSENFELDT ADLER,  
P.A., a Florida professional  
Association,

Counter- Defendant

COUNTERCLAIM

CIRCUIT CIVIL-3  
09 NOV -9 PM 1:26  
FILED IN CASE NO. 0505  
CLERK OF CIRCUIT COURT  
BROWARD COUNTY, FLORIDA

AT TRUE COPY  
DEC 01 2009  
HOWARD C. FORMAN  
CLERK OF CIRCUIT COURT  
BROWARD COUNTY, FL

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The Defendant/Counter Plaintiffs, Whitney Education Group, Inc., ("WEG") and Whitney Information Network, Inc. ("WIN"), sue Plaintiff/Counter defendant, Rothstein Rosenfeldt Adler, P.A. and states as follows:

1. This is an action seeking damages in excess of \$15,000.00, exclusive of costs.

2. At all times relevant hereto, the Plaintiff/Counter-Defendant, Rothstein Rosenfeldt Adler, P.A. (the "Law Firm"), was an active professional association doing business in Broward County, Florida.

3. The Law Firm represented to WEG and WIN (collectively referred to herein as "Whitney") that it was qualified to represent Whitney as litigation counsel with regard to claims made by M Barry Strudwick and Susan Weiss and others related to Monterey del Mar, S.A., a Panamanian company ("MDMSA").

4. Whitney, relying upon the aforesaid representation of the Law Firm, retained the Law Firm to provide legal representation to Whitney.

5. The Law Firm owed a duty to Whitney to exercise that level of skill and care which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by similar and reasonably careful litigation counsel

6. In December 2006, upon the advice of the Law Firm, Whitney filed suit in the United States District Court for the Eastern District of New York (the "New York Litigation") against Weiss for defamation. Weiss filed a counterclaim seeking \$2.5 million in compensatory damages and punitive damages in an amount exceeding \$7.5 million.

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7. On January 31, 2008, Strudwick and Weiss filed suit against Whitney, and others, in Maryland state court for defamation, injurious falsehood, abuse of process, tortious interference with prospective business advantage, and invasion of privacy. The case was removed to the United States District Court for the District of Maryland. The claims relate to acts and statements surrounding the attempt by Strudwick to develop and sell real property in Costa Rica and Weiss' attempt to seize control of MDMSA. On October 27, 2008, Strudwick and Weiss filed a First Amended Complaint adding Rothstein Rosenfeldt Adler, P.A. and Scott Rothstein as defendants. On January 5, 2009, the lawsuit was removed to the U.S. District Court for the District of Maryland.

8. The claims made against Whitney by Strudwick and Weiss in the Maryland litigation were directly related to the negligent advice provided by the Law Firm, and the actions taken by the Law Firm, which breached its duty to Whitney by:

A. Filing the New York Litigation which was frivolous and defamatory. In response to a motion for sanctions in the New York Litigation, Rothstein filed a notice of discontinuance. As a result, the New York Litigation was dismissed by the New York Federal Court on August 2, 2007;

B. Authorizing the posting of the complaint from the New York Litigation on the Internet, along with defamatory statements that, among other things, accused Strudwick of being "busted" for "conspiracy, fraud, civil RICO, racketeering and mail fraud" before the New York Litigation was filed;

C. Authorizing the distribution of brochures at hotels in Costa Rica, where potential Strudwick customers were known to be staying, which falsely stated

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that Strudwick had been "busted" for "conspiracy, fraud, civil RICO, racketeering and mail fraud";

D. Sending an e-mail on December 22, 2006 authored by Scott Rothstein on behalf of the Law Firm, a copy of which is attached hereto as Exhibit "A", falsely asserting that he had filed a lawsuit against Strudwick in New York, that he was "setting" Strudwick's video deposition in the New York litigation, which had not yet been filed, "immediately" and that he would immediately take a video tape deposition. Rothstein went on to accuse Strudwick of being involved in "a pattern and practice of illegal activities ... as well as other unlawful business dealings, for the sole purpose of illegal gain" and of "lies and deceit." Rothstein further threatened to continue to sue Strudwick "in every available jurisdiction," stating that, unless Strudwick withdrew from "the Monterey project," Rothstein would burden Strudwick with numerous court actions that were "certain to be protracted, expensive and embarrassing." In fact, at the time of the e-mail, the New York Litigation was not filed and could not have been properly filed by Rothstein who is not a member of the New York bar;

E. Approving the conduct of Michael Caputo and his company in posting and implementing a defamatory Website entitled "BARRYBUSTED.COM" with a URL address of "barrybusted.com". Caputo created the website at the direction of the Law Firm and its affiliated company Rothstein Rosenfeldt Adler Consulting Group. The Website attacks Strudwick's ability and integrity in his business by asking readers, "Are you thinking about investing with Barry Strudwick?" and telling readers that they should "THINK AGAIN." The Website then

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tells readers that "Barry and his partner William Ramirez are being sued in Federal Court in New York for conspiracy, fraud, civil RICO, racketeering and mail fraud";

F. Filing a complaint in the New York Litigation, which was drafted by Rothstein as an authorized agent of the Law Firm, that made defamatory statements concerning Strudwick and Weiss that were posted on the Internet, including, but not limited to the following:

a. Strudwick committed violations of the Racketeering Influence and Corruption Organization Act and falsely states that Strudwick, among others, "used [MDMSA] to commit criminal acts, including extortion, mail fraud and wire fraud;

b. Strudwick and his business partner William Ramirez Leon "concocted [a] conspiracy to illegally wrest control of [MDMSA]";

c. Strudwick "agreed and combined with and assisted Susan Weiss ... in obtaining control of [MDMSA] through illegal, improper and fraudulent means";

d. Strudwick, with his business partner, executed a "fraudulent letter of intent with Susan Weiss to purchase the assets of [MDMSA] despite the fact that Susan Weiss had, and has no authority to sell these assets because she lacked a controlling interest in, and was not duly elected president of Monterey Delmar, S.A.";

e. Weiss committed violations of the Racketeering Influence and Corruption Organization Act and that Weiss, among others, "used [MDMSA] to commit criminal acts, including extortion, mail fraud and wire fraud;"

f. Strudwick "agreed and combined with and assisted Susan Weiss ... in obtaining control of [MDMSA] through illegal, improper and fraudulent means;"

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g. Susan Weiss "falsely held herself out as controlling a majority of the shares of [MDMSA]. This was and continues to be a blatant lie for the purpose of attempting to seize and maintain her illegal control over [MDMSA]" ; and

h. Susan Weiss "staged an illegal shareholders meeting in Panama" which she "had no authority to call" and for which she "unlawfully withheld notice from the true majority of the shareholders, including Whitney in violation of the express mandate of the Operating Agreement of MDMSA and the laws of Panama."

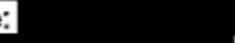
9. As a direct and proximate result of the breaches of the duty owed to Whitney by the Law Firm, Whitney was damaged. Whitney was faced with damages exceeding Thirty Five Million (\$35,000,000) Dollars as a result of the Law Firm's negligence. To minimize the damages caused by the Law Firm, Whitney settled the claims against it for Three Million Eight Hundred Thousand (\$3,800,000,00) Dollars.

WHEREFORE, Whitney demands judgment for compensatory damages against the Law Firm, for the costs of this action, a jury trial on all issues so triable, pre-judgment interest, attorneys fees for the underlying litigation pursuant to the wrongful act doctrine and for such other and further relief as this Court deems just.

WARREN R. TRAZENFELD, P.A.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served via facsimile and U.S. mail this 6<sup>th</sup> day of November, 2009 upon all persons on the attached service list.

WARREN R. TRAZENFELD, P.A.

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WARREN R. TRAZENFELD, P.A.

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Facsimile: [REDACTED]  
[REDACTED]

# EXHIBIT A

Candice Martin

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From: Scott Rothstein [srothstein@rra-law.com]  
Sent: Friday, December 22, 2006 6:09 PM  
To: Barry Strudwick; Scott Rothstein  
Cc: Carl Linder; mariecode@russwhitney.com; Russ Whitney  
Subject: Monterey

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Dear Mr. Strudwick,

As you should be aware via the lawsuit filed in New York against you, Susan Weiss, and your fellow co-conspirators, this firm is senior litigation counsel to the Whitney Group of companies.

As you are well aware, you, Susan Weiss, and your co-conspirators, have been involved in a pattern and practice of illegal activities with regard to the above mentioned project, as well as other unlawful business dealings, for the sole purpose of illegal gain and to cause substantial injury to investors other than you and your co-conspirators. Your activities are well documented and are clearly unlawful.

As you may or may not be aware, we have been conducting a detailed confidential investigation of you and your co-conspirators for an extended period of time. Our investigation has revealed that you are engaged in activities in direct violation of the banking laws of the United States, in direct violation of the laws of Panama and Costa Rica, and in direct violation of a myriad of other laws of the United States, including, without limitation, the Civil Remedies for Criminal Activities Statute. Further, your actions and inaction, along

1/18/2008

with that of your co-conspirators brings you well within the ambit of the State and Federal Civil Rico statutes. As you should now be aware, the lawsuit against you and your co-conspirators now includes multiple counts implicating all of you in a conspiracy of unprecedented magnitude. Moreover, we will not only continue to add to and amend the lawsuit until such time as all remedies available are exhausted but we intend to pursue you and your co-conspirators in every available jurisdiction.

I have been instructed to immediately and vigorously pursue all legal remedies available to bring your activities and those of your co-conspirators to an immediate halt, to bring your activities and those of your co-conspirators to the attention of the appropriate authorities, and to insure that you and your co-conspirators are punished to the full extent of the law. Further, I have been instructed to insure that all shareholders that have suffered injury at your hands and at the hands of your co-conspirators be fully and fairly compensated. Moreover, we have researched the applicable law and your actions clearly mandate the imposition of punitive damages and thus we will be seeking same.

Additionally, you are advised that we intend to continue to add defendants to our actions against you and your co-conspirators until we are certain that anyone and everyone involved is a named defendant and thus, held fully accountable for their actions.

Our investigation has revealed that information relevant to our

1/18/2008

actions against you and your co-conspirators is in your care, custody and/or control. Thus, we hereby demand that you immediately secure, sequester, and preserve all documentation in your possession, custody and/or control related to the above referenced project and your illegal/unlawful activities.

Such documentation shall include, without limitation, all records of any type, in any format, whatsoever, whether electronic, handwritten, photographic, voice recorded or otherwise. Such documentation shall include, without limitation, all e-mail, hard drives, pda's, floppy discs, text messages, other forms of recording and/or correspondence, handwritten notes, data of any type regardless of storage mechanism and voice mail. Such documentation shall include, but not be limited to, all communications with any of your co-conspirators, any and all shareholders, any and all persons with knowledge of any of your actions and the actions of your co-conspirators, any and all attorneys including without limitation, Jaime Darenblum, all bank records, ledgers reflecting any monetary transactions, travel logs, passport information, proof of travel documentation, identities of all co-conspirators, locations of bank accounts, telephone logs, financial transfer logs, corporate records, corporate minutes, and the like.

You are advised that you have an absolute obligation pursuant to state and federal law to maintain all records pertaining to the above referenced project that fall within your care, custody or control, in their exact condition without manipulation, as such constitutes evidence in a case against of which you have knowledge. Destruction or manipulation of such

1/18/2008

evidence/records would constitute spoliation of evidence. Any attempt to alter or destroy any such evidence will be dealt with in the harshest manner available to this firm through the courts.

Please be advised that we are well aware of your pattern and practice of lies and deceit as it relates to this project and other business transactions. However, unlike the manner in which you were permitted to escape liability for your illegal activities in the past, I have been instructed to pursue you and all your co-conspirators until all remedies available have been achieved. You may rest assured that you will be pursued accordingly.

I am planning on setting your deposition immediately. Thus, please have your attorney contact the undersigned immediately to arrange same. If I do not hear from your attorney by Tuesday, I will simply set your deposition unilaterally and pursue your attendance through the courts.

Further, you are to immediately cease all contact with anyone related to any of the Whitney companies. All correspondence should be directed to the undersigned and Carl Linder.

Finally, I expect you to cease all actions pertaining to the Monterey project. Failure to comply will result in further legal action that is certain to be protracted, expensive and embarrassing.

I look forward to meeting you at your deposition. Please

1/18/2008

advise your attorney that I intend to take the deposition using videotape so that I can use same as is mandated by your actions.

1/18/2008