

ROTHSTEIN FALLOUT Ruling could affect 29 suits

Trustee battles bank over answers from firm's ex-officer

by John Pacenti

After kick-starting a fight for the deposition of scamster Scott Rothstein, the court-appointed bankruptcy trustee for his defunct law firm joined the skirmish Tuesday in a battle over the firm's COO Debra Villegas' proffer to investor attorneys.

Attorney John Genovese, representing the firm's bankruptcy trustee, said he is afraid opening the proffer would have implications for the 29 clawback lawsuits filed on behalf of investors by altering settlement talks and the ability to get proffers in those cases.

Villegas has been sentenced to 10 years in prison for helping Rothstein fleece investors by forging documents in a \$1.2 billion settlement financing scheme. He received a 50-year sentence.

Her attorney also offered answers to questions from investors represented by the Fort Lauderdale law firm Conrad & Scherer in a lawsuit against third parties in Broward Circuit Court. The proffer doesn't waive the Fifth Amendment right against self-incrimination but is often discoverable by opposing parties.

She told her sentencing judge she would assist in the recovery of assets for investors but is refusing to cooperate with one of Rothstein's former banks, Coral Gables-based Gibraltar Private Bank & Trust.

Gibraltar, which wants the Villegas proffer, is one of many targets of the litigation in state court and a defendant in a clawback suit filed by bankruptcy trustee Herbert Stettin.

"The trustee and Conrad & Scherer are trying to act like junior G-men," said Gibraltar attorney Joseph DeMaria, a partner at Tow Cardenas in Miami. "They are trying to act like they have the same right to do these proffers as the government does, but they do not."

U.S. Bankruptcy Judge Raymond Ray earlier this month ordered Villegas to answer foundational questions for Gibraltar, but Conrad & Scherer filed a motion for an emergency hearing to protect what it said was work product in anticipation Gibraltar would renew its motion for the full proffer.

Gibraltar is mulling over whether to renew the motion for the rest of her answers after learning this week that she is not under any investigation by other law enforcement.

At the hearing on the emergency motion Tuesday, Genovese said a ruling in favor of Gibraltar would set a precedent for third parties to request work product from Stettin. This would jeopardize the delicate bargaining with others involved in the Ponzi scheme and at the law firm who are targets of federal investigators.

"We have great concern," said Genovese, a partner at Genovese Joblove & Battista in Miami.

His objection got Ray's attention, and he allowed Conrad & Scherer to intervene in Gibraltar's action. Ray said he wanted briefs from Stettin on the legal issue because more defendants are expected.

Attorney Jim Silver, a partner at Conrad & Scherer, told Ray that Gibraltar is not interested in Villegas' answers but



MELANIE BELL

Former COO Debra Villegas was given a 10-year prison sentence.

"to get at the work product and thought process of its adversary."

DeMaria told Ray all his client wants to see is Villegas' answers, not the questions posed by Conrad & Scherer.

"I don't believe answers by a witness will ever be work product," he said.

Villegas' attorney, Robert Stickney of Miami, has said he wants to protect his client because she could face criminal charges in state court or other federal courts. But he said he knows of no other criminal investigations.

An ancillary issue at the hearing was the U.S. attorney's objection filed Friday to allowing Rothstein to be questioned by civil attorneys. The U.S. attorney's office said it is preparing cases against more than the six people already charged and doesn't want the investigation jeopardized by civil depositions that could alert would-be defendants.

"It is difficult to predict with exactitude when the proposed indictment will be returned, but such indictment is anticipated within the next six months," prosecutors wrote Friday in their objections to a Rothstein deposition.

Prosecutors also said in a vague footnote that they wouldn't grant Stettin's request for limited questioning of Rothstein but would help.

"The government is prepared to make accommodations to the trustee which will enable him to receive all of the information necessary to his carrying out his responsibilities," the response reads.

Stettin said the clock is ticking on the November deadline to file adversarial lawsuits. He has said he might file placeholder lawsuits that could be expanded later against people who profited from Rothstein's scheme.

DeMaria said outside court that prosecutors are offering what would constitute "a secret meeting," which Ray warned against in recommending Rothstein be made available.

John Pacenti can be reached at (305) 347-6638.