



DAILY BUSINESS REVIEW'S
MOST EFFECTIVE
LAWYERS 2012

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FINALIST

Arnstein & Lehr attorneys worked bankruptcy case with \$130 million at risk in Doral developement

Phillip M. Hudson and Michael Denberg
Arnstein & Lehr



Michael Denberg **Phillip M. Hudson**

The attorneys represented BTI Partners in a bankruptcy case where the Hollywood-based land developer had a \$130 million investment at risk.

The real estate market crashed around the time the Town Center at Doral's developer, Elie Berdugo, died. BTI asked Landmark at Doral Community Development District, the conduit for nearly \$71 million in CDD bonds, to foreclose.

Town Center stayed the foreclosure suit by filing a Chapter 11 petition in September 2011. A third party, Miami developer Pedro Martin's Terra World Investments LLC, offered up to \$20 million to fund a reorganization plan,

but BTI and the district opposed a plan because it required a substantial write-down of the bond debt.

"We had to convince the bank this was not a valid bankruptcy," said Hudson, who along with Betty Shumener, a partner at Shumener, Odson & Oh in Los Angeles, handled all litigation and the bankruptcy aspect for BTI Partners.

The CDD had legal standing to sue on behalf of BTI, which held the bonds

Berdugo obtained to pay for infrastructure.

One problematic issue was that a bankruptcy judge in Tampa ruled in August 2011 that bondholders should not be considered creditors and therefore had no say in reorganization plans.

Bond markets took notice, and there was fear this would have a chilling effect if the Tampa ruling spread to other courts. Denberg, a real estate attorney, handled all transactional aspects related to the real estate and bond documents and worked with the bankruptcy attorneys for more than a year.

The legal team had to creatively make a compelling argument that would give bondholders standing as creditors. Hudson and Denberg concentrated on the constitutional issues and federal and state taxing powers to argue bankruptcy courts cannot usurp the authority of

community development districts before U.S. Bankruptcy Judge Robert Mark in Miami.

"We filed our own plan. We convinced the judge that the landowner's plan wouldn't work," Hudson said.

BTI submitted its own plan and on June 22 was allowed to take the property — almost 120 acres of land that will be split among two or three buyers expected to pay a combined \$80 million to \$100 million. Ultimately, the land will be used for single-family residential, multifamily housing and commercial purposes.

"It's possible the entire outstanding debt will not be repaid," Hudson said. "However, BTI is in a better position than it would have been otherwise."

The decision means developers cannot come into bankruptcy court and get a discount at the expense of bondholders.

The work of Hudson and Denberg is likely to have far-reaching consequences for other CDD bondholders, Hudson said. There are more than 600 CDDs in Florida, and about one-third of them are in default.

BUSINESS LITIGATION

Litigators reached \$170M settlement for defrauded Rothstein investors in state court

William Scherer
Conrad & Scherer
Harley Tropin
Kozyak Tropin & Throckmorton

It cost \$50 million in legal fees to prepare a case on behalf of 55 Razorback investors defrauded in Scott Rothstein's Ponzi scheme, but the effort paid off with a \$170 million settlement — the largest in Broward Circuit Court history.

After two years of preparation and on the eve of trial in February, litigators William Scherer and Harley Tropin reached the agreement to settle their suit against TD Bank for conspiring to aid and abet Rothstein's \$1.2 billion dollar fraud.

The settlement amounted to more than 90 percent of the Razorback investor losses of \$186 million, said Scherer, a partner at Conrad & Scherer in Fort Lauderdale. Within a week, the clients received their share — \$120 million. Legal fees were \$50 million.

A few days later, the attorneys reached a \$10 million cash settlement for their clients with a co-defendant, Gibraltar Private Bank & Trust of Coral Gables. The attorneys are still working to collect another \$10 million from Gibraltar's insurer.

A third co-defendant, New York-based Platinum hedge fund, settled for an undisclosed amount.

TD Bank and Gibraltar held accounts that were used to funnel investment funds to Rothstein. The bilked investors accused the banks of colluding with Rothstein.

"We ran this case like a large business," said Scherer. "We met every Friday for the two years that we litigated until the settlement, and we are still meeting. "We took over 100 depositions; the transcripts were hundreds of thousands of pages. Some of them went on for days."

Scherer said early on he knew the case was too big for his 27-lawyer firm, and he asked Tropin to come in as co-counsel. The two firms had 21 lawyers and about the same number of legal assistants working on the case.

He said his firm had extensive experience with Ponzi scheme litigation.

"Our job was to shape the case in a way we could bring it to trial quickly and with the legal theory that would streamline and unify the case." He said ultimately they chose to go with a conspiracy-fraud strategy.

MOST EFFECTIVE LAWYERS 2012



CANDACE WEST



J. ALBERT DIAZ

William Scherer, left, and Harley Tropin coordinated efforts for money-losing investors suing TD Bank.

"They conspired together with Rothstein to aid and abet him in what he did."

The firms split the depositions. "That was one of the reasons we needed the additional troops," Scherer said. They did a mock run of the trial nine times.

Scherer coordinated 10 days of depositions of Scott Rothstein last December. He spent 2½ days taking Rothstein's deposition himself.

Settlement momentum picked up after TD Bank lost a \$67 million verdict to the Coquina investor group in January in Miami federal court.

Scherer said the trial acted as a dry run for Razorback. "Of course our case was the same. I think

TD forced that case to go to trial because they wanted the experience for my case, which was a lot bigger."

Razorback investors also received \$4.5 million in a settlement with Rothstein's accounting firm, Berenfeld Spritzer Schecter & Sheer of Coral Gables.

"We kept pressing and pressing, and we worked a lot of weekends, and we worked a lot of nights. We all felt this was going to be a milestone case for us," Scherer said. "I kept telling my lawyers, 'Cherish every moment of this. No matter how successful you are, these cases come around only once in a lifetime.'"