



BofA, Citizens Bank Defeat Investors' \$102M Ponzi Suit

*By Hailey Konnath
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A New York federal judge on Friday tossed out a suit brought by a proposed class of investors claiming Bank of America and Citizens Bank facilitated a \$102 million Ponzi scheme, finding the investors hadn't plausibly alleged the banks knew about the scheme.

Investors Mary Beth Heinert and Richard H. Schultz Jr. alleged Bank of America NA and Citizens Bank NA knew about and were responsible for the scheme because of frequent atypical transactions and suspicious activity that took place in the accounts of individuals later accused of orchestrating the scheme.

But U.S. District Judge David G. Larimer ruled Friday that none of those arguments is sufficient to plausibly claim either of the banks "had actual knowledge of the individual defendants' actions."

"It is well settled in the Second Circuit that a bank's negligent failure to identify warning signs of fraudulent activity, such as atypical transactions — even where such signs converge to form a veritable 'forest of red flags' — is insufficient to impute actual knowledge of ongoing fraud," Judge Larimer said.

He continued, "Because plaintiffs fail to allege actual knowledge of the individual defendants' fraudulent activities on the part of either bank, plaintiffs have failed to state a claim against them for aiding and abetting fraud."

Counsel for the parties didn't immediately return requests for comment late Friday.

Heinert and Schultz hit the banks with their suit in June 2018 after the U.S. Securities and Exchange Commission launched its own civil suit against Perry Santillo, Christopher Parris, Paul Anthony LaRocco, John Piccarreto and Thomas Brenner over an alleged scheme that started in 2011.

The SEC claimed the five men persuaded more than 600 people to invest in their companies, which purported to do business in real estate, stock investments and medical research. In reality, the men funneled the money into bank accounts and used it for payouts to previous investors and personal purposes, the SEC said.

Bank of America knew what the five conspirators were doing and had a duty to act on the signs of a Ponzi scheme, the investors said in their initial suit. Citizens Bank wasn't mentioned in that suit.

However, Bank of America got discovery paused in the case after a federal judge in Florida said the bank's dismissal arguments may have merit. In late November, Heinert and Schultz moved for voluntary dismissal of their suit.

The investors refiled their suit in New York in January, accusing both Bank of America and Citizens Bank of aiding and abetting fraud, breach of fiduciary duty and conspiracy. Both banks moved for dismissal in March.

In May, Heinert and Schultz urged Judge Larimer to **keep their suit alive**, arguing they had sufficiently shown the banks knew about the fraud.

But Judge Larimer on Friday disagreed, shooting down their claims. He also said the banks "had no duty, and no right, to explore the source of monies deposited by their accountholders."

"As such, plaintiffs' aiding and abetting breach of fiduciary duty claims must be dismissed," Judge Larimer said.

The investors were represented as recently as August by Benjamin Widlanski, Harley S. Tropin, Rachel Sullivan, Robert J. Neary and Tal J. Lifshitz of Kozyak Tropin & Throckmorton LLP, George Franjola of Gilligan Gooding Franjola & Batsel PA, and Fernando Santiago and Michael Burger of Santiago Burger LLP.

Bank of America is represented by Pamela Miller of O'Melveny & Myers LLP.

Citizens Bank was represented as recently as May by Pete S. Michaels and Michael E. Pastore of Mintz Levin Cohn Ferris Glovsky and Popeo PC.

The case is Mary Beth Heinert et al. v. Bank of America NA et al., case number 6:19-cv-06081, in the U.S. District Court for the Western District of New York.

--Additional reporting by Reenat Sinay. Editing by Breda Lund.