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Why Suspicions About Fla. Firm's Alleged Ponzi Scheme Weren't Voiced

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Plenty of smoke surrounded attorney [Scott Rothstein](#) and his well-heeled Fort Lauderdale, Fla., law firm. But nobody called the fire department until it was too late.

The worst-kept secret in the South Florida legal community this fall was that the firm [Rothstein Rosenfeldt Adler](#) spent more money on payroll than it had coming in the door. The firm spent three times more on advertising than the three biggest firms combined in South Florida.

"Obviously, that business model didn't work," said Florida Bar president Jesse Diner, a Fort Lauderdale attorney with [Atkinson Diner Stone Mankuta & Ploucha](#). "A lot of it didn't make sense."

Chuck Malkus, who runs Malkus Communications Group in Fort Lauderdale, served on the board of the charity Neighbors 4 Neighbors, which refused to accept a Rothstein donation.

"This was building up for over a year, and many of us believe this is just the tip of the iceberg," Malkus said. "I wish I picked up the phone and called the FBI."

The highly secretive Rothstein made sure nobody within or outside the firm had the smoking gun needed to go to authorities or to The Bar.

"It was very surprising that a lawyer nobody ever heard of a few years ago is suddenly throwing around money in a recession," said Robert Jarvis, a law professor at Nova Southeastern University's Shepard Broad Law Center.

"Of course it raised lots and lots of eyebrows, but that is not enough."

According to the U.S. Attorney's office, there were no legitimate complaints about Rothstein to federal agencies. And The Bar never launched a serious investigation until Rothstein returned from Morocco early last month to face his accusers and voluntarily surrendered his law license.

The man who hobnobbed with sports figures, celebrities and top-tier politicians allegedly burned through \$1.2 billion in an alleged Ponzi scheme related to bogus investments in lawsuit settlements, targeting friends and clients of RRA.

He spent millions of dollars on himself, buying sports cars, yachts, mansions and expensive jewelry.

Now he sits in a federal detention center facing a litany of fraud charges. As a result, the South Florida legal profession collectively is nursing a black eye.

Attorneys worry how the Fort Lauderdale powerbroker's spectacular downfall might affect the public trust in the profession, which is implicitly relied upon as an honest broker in business and policy matters in both the public and private sector.

"Here we have an attorney, an officer of the court, whose core values should be honesty and integrity, and instead he is unlawfully enriching himself at the expense of his clients," said Daniel Auer, the special agent in charge of the Internal Revenue Service for the Miami field office for criminal investigation.

When asked about Rothstein, local lawyers put on their best face. Rothstein is the cliché "one bad apple," said some, pointing to the many attorneys who do unsung pro bono work for clients who can't afford legal services. They said

Rothstein may have been an attorney, but he was a conman first and foremost.

"I don't think he made us all look bad. I think he made lawyers wearing \$5,000 suits and driving \$500,000 cars look bad," said David Markus, a Miami criminal defense attorney.

Ed Davis, a founding shareholder in Miami's Astigarraga Davis, said Rothstein's alleged actions didn't help the breach of trust issues the public always has with attorneys, "but you can't judge the entire profession by the acts of a few."

Still, if there is only 1 percent of bad lawyers in a state with 85,000 attorneys, the public could be more than vulnerable, Jarvis said.

"That is 850 rogue attorneys. That is a lot of rogues," Jarvis said. "So is the glass half full? There are a lot of bad lawyers out there, just like there are a lot of bad doctors, bad car salesmen and bad journalists."

Still, the rumors that Rothstein and his firm were far from legitimate were a main topic of conversation in early October among attorneys lunching along Fort Lauderdale's Las Olas Boulevard, where RRA had its offices.

Within weeks, Rothstein had flown to Morocco in possession of millions, only to have a change of heart and return to face charges of racketeering, fraud and money laundering.

Attorneys said they had confronted some RRA attorneys, who pointed to full-page advertisements glorifying the firm's legitimacy.

And there were some who were wary of Rothstein and his piles of cash from the start. "The question always was: Where is the money coming from? We don't see him in court. The rumor was they were behind some deals," Malkus said.

There were no deals. Just bogus and forged paperwork, prosecutors said in a criminal information filed last week after federal agents arrested Rothstein.

RRA was, in essence, a front for illegal activity, bringing in \$8 million in business a year with \$18 million in payroll.

Federal investigators want to know who in the firm averted their eyes to apparent crimes -- or, worse, were complicit with Rothstein.

"There is deliberate ignorance, which is not an excuse," acting U.S. Attorney Jeff Sloman said.

Diner, The Florida Bar president, said there was not a lot the organization that regulates attorneys could do without a legitimate complaint about Rothstein's business practices.

"It's a very interesting question if The Bar can be preemptive," Diner said. "The Bar is not in the position of just going out willy-nilly and auditing people."

Diner said that in the future The Bar should take a more proactive role when there are such questions about an attorney's practices.

No doubt, any Bar investigator would have had his hands full with the blustery Rothstein, who protected his empire with threats of litigation against anyone who questioned it.

Diner said The Bar is concerned with other RRA attorneys who may have been complicit in making political donations in return for bonuses or expense reimbursements. He said attorneys also may have violated ethics standards by not reporting Rothstein's questionable business practices and promoting themselves as partners of the firm when they were not fulfilling their fiduciary duties by keeping track of trust funds.

RRA partner Stuart Rosenfeldt has said Rothstein refused to show him the firm's financial books.

"There are certainly ethical concerns, and it doesn't stop with the disbarment of Scott Rothstein," Diner said. "The law firm is going to have to be looked at closely."

But can one really blame attorneys who accepted good salaries during a recession, or charities that didn't want to reject generous gifts from a man they believed was a respected attorney?

Yes, says Jay Cohen, a Fort Lauderdale attorney and member of The Florida Bar's Board of Governors.

"I don't think that's a hard decision," he said. "If there is any potential wrongdoing, if there is any question as to either the source of the funds or with the manner in which the funds are distributed, I don't think that's a hard question."

For law enforcement's part, Sloman said that without a complaint from a member of the public, there is little federal authorities can do. The FBI can't operate on mere rumor.

Jarvis said there is little anyone can do to stop such white-collar crimes. Ponzi schemes run on greed, and there is always an abundance of that vice.

"We've learned nothing from Scott Rothstein. We've learned nothing from Bernie Madoff," he said.