

## Gibraltar attorney on Harris: 'We'll have to deal with it'



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Gibraltar  
Private Bank &  
Trust is

acknowledging for the first time that “if Scott Rothstein corrupted one of our employees, we’ll have to deal with it,” in the words of its attorney.

The bank is responding to the testimony of Ponzi schemer Rothstein about the bank’s alleged role in his money-laundering crimes. Gibraltar faces civil litigation with claims totaling \$200 million related to the fraud.

Rothstein said that he had two bank officials “in his pocket” – Chairman/CEO Steven Hayworth and Vice President John Harris, who left the bank after the Ponzi fraud was exposed.

Rothstein did not explicitly say either had done anything criminal wrong and neither has been charged. Harris has taken the Fifth Amendment against self-incrimination in civil depositions.

Harris’ attorney, **Michael Popok**, denied that Rothstein corrupted Harris. He said his client only engaged in typical “relationship building” that bank executives are expected to provide.

He said Harris also provided benefits to Rothstein such as paying for happy hours for RRA employees, so their relationship was a two-way street.

Popok acknowledged that Harris did make use of RRA’s suite for Dolphin’s football games. When asked if Harris received a valuable watch from Rothstein, Popok said, “The watch is the only thing I can’t talk about.”

“John Harris never was given cash or escorts or homes or anything of tremendous value,” Popok said. “John Harris didn’t have the juice to get credit levels increased above a certain amount, or to get investigation’s squashed. That was way above his pay grade.”

The bank has repeatedly denied actual knowledge of the fraud as it happened and attorney Eugene Stearns said Hayworth didn't do anything wrong.

Rothstein says in a freshly released deposition that he showered gifts on Harris in exchange for favors and the bank overlooked hundreds of overdrafts. Those allegations had already been made in civil lawsuits that cite email traffic between Rothstein and the bank.

Stearns, named partner at Stearns Weaver Miller, is dealing the allegation head on, saying, “If one of our officers was corrupted, it’s something we’ll have to deal with, but I’m confident we will.”

But Stearns said the question could be how badly Rothstein might have corrupted Harris, which could invoke the legal concept known as *ultra vires*, a Latin term referring to when someone acts beyond the scope of their authority.

“The really question is, if he was corrupted, he is an agent of the person who corrupted him, not of the bank,” Stearns said.

There are three major lawsuits connected to Rothstein against Gibraltar. The largest is the so-called Razorback lawsuit, which was filed by a group of investors in Rothstein's scheme. Their claims total more than \$100 million. That lawsuit also includes other defendants, such as hedge funds and TD Bank .

The trustee overseeing Rothstein’s former law firm in bankruptcy is suing Gibraltar for \$60 million. Auto dealer Ed Morse also filed suit against the bank seeking to cover losses of up to \$49 million.

However, in the past, settlements with the RRA trustee have negated other claims because the bankruptcy judge has barred other litigation to encourage speedy focused settlements.

According to recent financial data, the bank may have ability to absorb a large judgment or settlement, if it gets to that.

Gibraltar had \$148.8 million in Tier 1 capital on Sept. 30 and was “well capitalized” under regulatory guidelines. It was \$83.1 million above what regulators consider “undercapitalized” status – the point where banks usually face regulatory demands to raise capital.

One number that isn’t in Gibraltar’s public regulatory filings is the amount of its directors and officers liability insurance policy. Most banks have such a policy to cover legal costs, a settlement or a judgment.

In the aftermath of the failure of BankUnited FSB, its shareholders, creditors and the FDIC are fighting over about \$18 million in D&O coverage that the company had.