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Bank in Madoff Case Settles With Some Plaintiffs and Gets Favorable Jury Ruling

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Westport National Bank and its parent company, Connecticut Community Bank, were not liable for the losses of investors in Bernard Madoff's vast Ponzi scheme in its role as a custodial bank, a jury found on Wednesday. Separately, the bank agreed to pay \$7.5 million to 240 investors in a related case, a lawyer for the bank said.

A federal jury in Hartford had finished hearing eight days of evidence last month in a case before Judge Vanessa L. Bryant of the United States District Court for the District of Connecticut. The case had consolidated three similar lawsuits against the bank. Two of those cases settled before the jury began its deliberations.

After the other cases settled, the jury did evaluate the bank's custodial duties in a case brought by two Florida investors, but sent a mixed message.

After 14 hours of deliberation, the jury said that the bank was not a fiduciary, and thus owed no fiduciary duty to two elderly Florida investors, Audrey Short and Faye Albert.

The jury ruled that the bank breached its custodian agreements when it calculated its fees based on the Madoff firm's reports instead of on the actual assets it held. It also said that the two plaintiffs had proved that the bank breached its agreements when it failed to issue accurate annual statements and failed to audit or verify the existence and value of the assets.

But the six jurors determined that neither plaintiff had proved that she suffered any economic loss as a result of the actions.

"They found we failed to maintain accurate records, but they found that nothing the bank did caused any harm," Tracy A. Miner, one of the bank's lawyers, said in a telephone interview. Ms. Miner said that the bank's liabilities involving the accounts that were settled could have reached \$70 million to \$80 million.

Steve Gard, a lawyer for Mrs. Short and Mrs. Albert, said that he planned to file a motion within two weeks asking for a judgment in the investors' favor because the jurors findings "are inconsistent."

Mr. Gard said that the jurors determined that his clients had not suffered a loss as a result of the bank's inadequate recordkeeping before getting a chance to hear all the evidence.

During the trial, the bank stressed that its contracts with the plaintiffs only obligated it to perform ministerial duties. Lawyers for the bank also made much of the fact that financial regulators, including the [Securities and Exchange Commission](#), had not been able to catch Mr. Madoff, so it would be unrealistic to expect a small Connecticut bank to be able to do so.

For their part, the plaintiffs emphasized that there were cautious investors who stayed away from Mr. Madoff's firm because of the lack of transparency in his operation.

The case had been watched for its implications on the duties of custodial banks. Investors sometimes assume that a custodian actually takes custody of their assets, but the bank's obligations can vary widely depending upon how its contract is worded.

Custodial relationships become problematic "when there is ambiguity about the bank's duties and the customer expects more than the bank thought it had agreed to" said Kathy Bazoian Phelps, a Los Angeles-based lawyer and co-author of "The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes."

The interpretation of contractual obligations was "exactly where the trouble lies" in the Connecticut Community Bank case, she said.

Disputes over the obligations of custodians will only get more frequent and more heated, said Edward Siedle, a former S.E.C. lawyer who investigates pension fund abuses.

Investors are increasingly setting up so-called self-directed [I.R.A.](#)'s that invest in hedge funds and real estate, Mr. Siedle said. Each of those accounts must be kept with a custodian, which may have no obligation to do more than keep records that it never verifies.

"The risks are getting greater than ever," he said.