

Banks Are Not Liable For Clients' Suicide, Fla. Court Says

By Nathan Hale

Law360, Miami (November 18, 2015, 8:08 PM ET) -- A Florida appeals court ruled Wednesday that banks do not have any duty that makes them liable for a client's suicide, finding that Regions Bank, despite allegedly pledging not to contact a customer with a fragile mental condition did not have "control or custody" to prevent his death.

The Fourth District Court of Appeal's decision affirmed a lower court's dismissal of the suit brought against Regions by a representative of the estate of Arthur B. Surloff, who went to a motel and ingested a lethal quantity of medication after being told a loan was denied.

The suit brought claims for negligent undertaking and negligent infliction of emotional distress, arguing that Regions' voluntary agreement not to contact Surloff about financial or substantive issues with his loan meant that it owed him a duty and breached that duty when a Senior Vice President Mark Anderson communicated the bad news to him. Anderson was also named as a defendant in the suit.

On appeal, the estate again held that Regions had undertaken a duty and also argued that the trial court erred in dismissing the case on the grounds that Surloff's death was foreseeable.

"A legal duty requires more than just than just foreseeability alone," the Fourth District said, citing the First District's ruling in the 2004 case *Aguila v. Hilton Inc.* "A duty requires one to be in a position to 'control the risk.'"

The court explained that, generally, there is liability to prevent a suicide only where one takes a specific duty of care, which can be done by "taking custody and control over another," such where a patient is committed to a psychological institution or a school takes on supervision of a child.

In this case, Regions did not assume such a duty of care, the Fourth District found. Although the bank allegedly was aware of Surloff's condition and agreed to withhold complex financial information from him, Regions could not take on a duty to prevent his suicide because he was not in its "custody or control."

"Regions simply had no ability or responsibility to protect the decedent from committing suicide," the court said.

Surloff's family made Regions aware that he suffered from an inability to "deal with complex information, especially negative financial information," which would cause him great anxiety, according to the opinion. The bank agreed to the family's request not to contact him except with

minor documentary requests and reaffirmed this commitment several times, according to the allegations.

After Surloff was accidentally sent a letter about his loan being denied, he became very upset. The family repeated its request to Regions and bank representatives even met with Surloff's doctor, who told them that he had a permanent disability and was in a "fragile condition." It was also believed that the doctor shared notes with the bank representatives about Surloff's potential for self-harm, the opinion says.

Anderson continued to speak with Surloff, even after these incidents and receiving a reminder from Region's vice president and relationship manager. Just two days after that reminder, however, Anderson told Surloff about his loan denial, after which Surloff went to the motel and overdosed, resulting in his death three days later.

In its opinion, the Fourth District also rejected the estate's reliance on the Third District's ruling in the 1995 case *Rafferman v. Carnival Cruise Lines Inc.*, noting that the case applied federal maritime law, which assigns a more comprehensive set of responsibilities upon employers.

"Obviously, banks and their clients do not share the same, close relationship as shipowners and their seamen. A bank neither supervises its clients' day-to-day activities, nor exerts any type of supervisory control over them," the court said. "Because a bank does not have this responsibility, it also does not have the corollary responsibility to protect its clients against self-inflicted injury."

Counsel for the estate could not immediately be reached for comment. A spokesman for Regions declined comment.

Judges Spencer D. Levine, W. Matthew Stevenson and Mark W. Klingensmith sat for the Fourth District.

Surloff is represented by Joel D. Eaton of Podhurst Orseck PA.

Regions Bank and Anderson are represented by Joshua D. Lerner and Jessica G. Lagos of Rumberger Kirk & Caldwell PA.

The case is *Surloff v. Regions Bank et al.*, case number 4D14-842, in the Fourth District Court of Appeal of Florida.

— Editing by Ben Guilfooy.