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Suit: \$2.7B went through Agape World

By David Winzelberg

An amended class action lawsuit claims more than \$2.7 billion went in and out of bank accounts tied to the alleged Ponzi scheme Agape World in just three years – almost seven times more than the \$413 million listed in the federal fraud indictment against its owner, Nicholas Cosmo.

The suit alleges that Bank of America was instrumental in setting up a labyrinth of bank accounts, helping Cosmo expand his fraudulent investment scheme while making millions in fees.

The suit, filed last week, claims at least two bank employees profited personally from Agape's good fortune. Thomas Sullivan, a senior client manager with BofA's business banking division in Melville, earned hefty commissions from the bank for managing the account, one of the largest on Long Island, according to the suit. It also alleges that the husband of another bank employee received payments from Agape directly.

Attorney Jacob Zamansky, whose Manhattan-based firm Zamansky & Associates joined six other law firms to file the amended suit, said the new information came to light from more than

50,000 documents subpoenaed from the Agape bankruptcy trustee, Ken Silverman of Silverman Acampora in Jericho.

Zamansky said account information shows Agape bank deposits totaling \$2.7 billion between January 2006 and January 2009, and transactional analysis reveals that money left Agape's account as fast as it came in. In August 2007, for example, Agape took in deposits of \$163 million, and recorded withdrawals of \$162 million, maintaining an average balance of only \$168,500.

"That should have been a red flag to anyone at the bank," Zamansky said.

However, a federal source said the bank's records still support the original \$413 million figure, suggesting that attorneys who filed the civil suit may have counted the same deposits more than once. But another source close to the Agape investigation said the firm's main operating account had more than a dozen sub-accounts, and a complete accounting of all of the money the company took in will take months more to complete.

Bank of America spokeswoman Shirley Norton said an earlier version of the suit was dismissed in January. "But

plaintiffs were permitted one more opportunity to re-plead and that's what they are now doing," she said.

In January, Judge Arthur Spatt dismissed three lawsuits filed against Bank of America and two commodities brokerages that alleged the firms aided Cosmo in defrauding more than 5,000 investors. The judge ruled the plaintiffs failed to prove that the bank and the trading firms had knowledge of the alleged \$413 million fraud, and therefore shouldn't be held liable.

Spatt left open the possibility of revisiting the claim against the bank, but only if further evidence was found that it helped carry out the alleged fraud or that Bank of America breached its fiduciary duty

to customers. **Zamansky contends the amended suit does just that. "We believe that the evidence more than meets the judge's test set forth in his order," Zamansky told Long Island Business News.**

Spatt was on the bench for the prosecution of Cosmo's first fraud, in which 10 victims lost about \$170,000 to the then 26-year-old stock broker. The judge sentenced him to 21 months in Allenwood Federal Corrections facility and ordered Cosmo to undergo extensive gambling therapy. Cosmo founded Agape World upon his release in August 2000.

Arrested and charged with fraud on Jan. 26, 2009, Cosmo is currently being held at the Nassau County jail in East Meadow. His next court appearance is scheduled for May 21.