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**COMMENTARY**

*FINDERS KEEPERS, LOSERS WEEPERS? BANKING ERRORS IN  
CRYPTOCURRENCY*

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In February 2021, a New York federal judge rejected Citibank’s attempt to recover \$504 million erroneously transferred to lenders.<sup>1</sup> Citibank intended to make a loan interest payment on behalf of Revlon, Inc., but instead paid the full outstanding amount of \$900 million.<sup>2</sup> Some recipients returned the money, but \$504 million remained unreturned and the contention of the case.<sup>3</sup> The court relied on *Banque Worms v. Bank America Int’l*, 77 N.Y.2d 362 (N.Y. 1998) which held that a creditor can keep payment erroneously made by a third party if the creditor did not realize it was sent in error and did not make any misrepresentations.<sup>4</sup> Here, the court determined that the lenders were not on constructive notice of Citibank’s error. Despite this ruling, Citibank argues that they are entitled to their funds and intends to appeal the court’s decision.<sup>5</sup>

This “finders keepers” sentiment has not always been applied to human banking errors. In a recent Ohio case, a woman was arrested for refusing to return more than \$1.2 million erroneously deposited into her securities account.<sup>6</sup> In the case, the financial services company, Charles Schwab, mistakenly transferred \$1.2 million into Kerin Spadni’s account instead of \$82 in a typo error.<sup>7</sup>

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<sup>1</sup> *In re Citibank August 11, 2020 Wire Transfers*, No. 20-CV-6539, 2021 WL 606167 at \*41 (S.D.N.Y. Feb. 16, 2021).

<sup>2</sup> Chris Dolmetsch, *Citi Faces ‘Finders Keepers’ Law in Fighting \$500 Million Ruling*, BLOOMBERG (Feb. 17, 2021, 6:18 AM), <https://www.bloomberquint.com/business/citi-faces-finders-keepers-law-in-fighting-500-million-ruling> [hereinafter *Citi Faces ‘Finders Keepers’ Law*].

<sup>3</sup> *Id.*

<sup>4</sup> *Citi Faces ‘Finders Keepers’ Law*, *supra* note 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Woman arrested after refusing to return \$1.2 million mistakenly put into her account*, EMINETRA (Apr. 11, 2021, 11:09 AM), <https://eminetra.com/woman-arrested-after-refusing-to-return-1-2-million-mistakenly-put-into-her-account-cleveland-ohio/483122/>.

<sup>7</sup> *Id.*

When the firm attempted to get the money back, it was unsuccessful as Spadni transferred the money into another account and used some of the funds to purchase a new house or car.<sup>8</sup> Charles Schwab argued that Spadni had no legal claim to the money and that an account agreement in place stated that in the event a customer receives an overpayment of funds, the customer must return the full amount.<sup>9</sup> Spadni is currently being held in a corrections facility on a \$50,000 bond for theft, bank fraud, and illegal remittance of monetary funds of more than \$25,000 that has yet to be returned to the firm.<sup>10</sup>

From these two instances, it seems as though banks and brokerage firms may be vulnerable to human banking errors unless they protect themselves with account or trade agreements. This begs the question; what about cryptocurrency? The current regulation of cryptocurrency depends on whether the particular cryptocurrency acts more as a security, in which it is regulated by the Securities Exchange Commission and the Commodity Futures Trading Commission, or as currency, in which it is regulated by the Federal Reserve and the U.S. Treasury Department.<sup>11</sup> At present, the regulation remains flexible and undetermined.<sup>12</sup> Due to the fluidity of cryptocurrency regulation, we may see similar claims of human banking error in the cryptocurrency sector arise. Until the regulation is clear, banks and brokerage firms should protect themselves from human banking error losses with trade and account agreements.

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Ephrat Livni, *What's Next for Crypto Regulation*, N.Y. TIMES (Jan. 30, 2021), <https://www.nytimes.com/2021/01/30/business/dealbook/crypto-regulation-blockchain.html?searchResultPosition=3> [hereinafter *What's Next for Crypto Regulation*]; Chris Matthews, *U.S. is 'behind the curve' on crypto regulations, says SEC Commissioner Peirce*, MARKETWATCH (Apr. 7, 2021, 3:35 PM), <https://www.marketwatch.com/story/u-s-is-behind-the-curve-on-crypto-regulations-says-sec-commissioner-peirce-11617824160#:~:text=Cryptocurrencies%20and%20blockchain%2Drelated%20financial,complained%20that%20this%20complicated%20structure>.

<sup>12</sup> *What's Next for Crypto Regulation*, *supra* note 12.