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Jury weighs fraud charges against former Enterasys executives

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CONCORD, N.H. --A federal jury was deliberating fraud charges against five former Enterasys Networks executives accused of scheming to inflate company revenues.

The charges relate to sales contracts, investments and revenue the computer networking company reported in 2001 during and immediately after the company's spinoff from Cabletron System Inc., co-founded by former Gov. Craig Benson.

On trial in U.S. District Court are former chief financial officer Robert Gagalis, 49, of Rye; former vice president Bruce Kay, 53, of Yarmouth, Maine; former chief operating officer Jerry Shanahan, an Irish national; former accountant Robert Barber, 53, of Durham; and David Boey, 51, of Atlanta; who worked in the company's Singapore office. Each faces four counts of securities fraud, each punishable by up to 10 years in prison, and one conspiracy charge, punishable by five years in prison and a \$250,000 fine.

All but Barber also face one or more counts of wire fraud.

Benson, a one-term governor defeated in 2004, is a former member of the audit committee of the Enterasys board. He faced no charges.

Prosecutors allege the five backdated and altered documents and hid terms of agreements in side letters to inflate revenues to reach the \$238 million to \$240 goal the company had touted to Wall Street analysts in July 2001. Enterasys later restated its revenue for the quarter ending Sept. 1, 2001, from \$240.2 million to \$156.9 million, a drop of 53 percent.

Then publicly traded and based in Rochester, N.H., Enterasys makes routers and switches for corporate networks. The company has since moved to Andover, Mass., and went private in March.

The jury deliberated for four hours on Monday before resuming Tuesday.

During the four-week trial, prosecutor Colleen Conry displayed a Nov. 21, 2001, e-mail in which Gagalis wrote: "I will be crucified by the Street if an analyst gets wind of this and our stock price would crater much more than if we miss our numbers by a few million."

Defense attorneys accused prosecutors of using facts selectively and omitting contradictory evidence. Bruce Singal, Kay's lawyer, said his client was applying the brakes by questioning terms of deals and increasing Enterasys' reserves to cover uncertainties.

"He was the man who said 'no' many times," Singal said.

On the Net:

<http://www.enterasys.com>

Information from: New Hampshire Union Leader, <http://www.unionleader.com> ■

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