

Business

Kevin Howard, left, former CFO of Enron's broadband unit, leaves the federal courthouse downtown on Tuesday with lawyer Jim Lavine. The government has not decided whether to try him a third time.
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Prosecutors undecided on third trial for ex-CFO

Government may try appeal of ruling first

By **KRISTEN HAYS**
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The former finance chief of Enron's broadband unit whose 2006 jury convictions were thrown out last month must wait a little longer to learn whether he will be tried a third time.

A federal prosecutor told U.S. District Judge Vanessa Gilmore on Tuesday that the government is "seriously considering" whether to appeal her late January decision to toss out Kevin Howard's five convictions of conspiracy, wire fraud and falsifying books.

If the government appeals to the 5th U.S. Circuit Court of Appeals by its March 2 deadline, Howard will await that outcome. If no appeal is filed, Gilmore aims to set a trial date at another hearing on March 5 unless prosecutors decide to walk away from the case.

When Gilmore pressed prosecutor Jonathan Lopez on whether a trial would be in the works if the government does not appeal, he was noncommittal, saying only that she should go forward with a hearing.

Howard's lawyer, Jim Lavine, said prosecutors should consider cutting their losses.

"We strongly suggest that they wisely use the taxpayers' money, put this case behind them and let Kevin Howard go home and get on with his life," Lavine said.

Gilmore erased the convictions because the way prosecutors used a legal theory in a separate Enron case was deemed flawed by the appellate court.

The government had already conceded that the four conspiracy and wire fraud convictions should be erased because of that. But prosecutors argued that the falsifying books count wasn't tainted. Gilmore disagreed, saying a jury instruction proposed by prosecutors linked it to the tainted counts.

A jury found Howard guilty of the charges last year at the conclusion of his second trial stemming from a late 2000 deal to sell an interest in future profits of a video-on-demand venture that later flopped. Howard's co-defendant, former Enron broadband accountant Michael Krautz, was acquitted.

They were first tried in 2005 alongside three other former broadband executives in a three-month case that ended with a handful of acquittals and jurors unable to reach verdicts on dozens of other counts, including all against Howard and Krautz.

The other three defendants — former unit CEO Joe Hirko, software executive Rex Shelby and strategist Scott Yeager — are appealing to the 5th Circuit to wipe out the remaining cases against them. Their retrials are on hold pending that outcome.

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