

Business

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Barge case could sail again

Enron-Merrill retrial likely in 2008 unless there's a deal, attorneys say

By KRISTEN HAYS
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Three former Merrill Lynch & Co. executives whose Enron-related fraud and conspiracy convictions were overturned last year will be retried in January unless a plea deal or settlement can be worked out, attorneys said Wednesday.

"They have been ongoing," defense attorney Paul Coggins, who represents Robert Furst, said when asked about such talks.

"I would say the parties are pretty far apart now," Coggins added.

All three men — Daniel Bayly, former head of investment banking; James Brown, former head of Merrill's asset lease group; and Furst, the brokerage's former Enron liaison — served prison time after they were convicted in 2004.

Bayly and Furst served nearly a year of their prison terms of 2.5 years and three years and a month, respectively, when they were released last June pending the outcome of their appeal.

Brown had served a year of his three-year, 10-month term when he was released days after the reversal last August.

Federal prosecutor Arnold Spencer said the government was open to a plea deal but was otherwise committed to a second trial.

"I would say yes, and beyond that I can't answer," he said when asked if a retrial was worth the time and expense after the three men had served some prison time.

The defense teams favor a civil settlement, such as a deal with the Securities and Exchange Commission, instead of a guilty plea to a crime.

"That would be logical," Brown lawyer Sidney Powell said.

U.S. District Judge Ewing Werlein, who presided over the first trial, told attorneys Wednesday regarding talks to resolve the case without a trial, "I certainly encourage you on that."

Disguised loan?

The case involves a year-end 1999 deal in which the government contends Merrill Lynch pretended to buy three power plants mounted on barges from Enron so the energy company could book bogus profits. An unwritten promise from Enron to resell or buy back the barges by mid-2000 turned the sale into a disguised loan, prosecutors contend.

The defendants claimed the deal was proper.

In the first trial, Bayly, Furst, Brown, ex-Merrill executive William Fuhs and ex-Enron finance executive Dan Boyle were convicted of conspiracy and fraud. Brown also was convicted of perjury and obstruction of justice for lying about the deal to a grand jury, and Boyle was convicted of lying to congressional investigators about it. Ex-Enron accountant Sheila Kahanek was acquitted.

Last August, the 5th U.S. Circuit Court of Appeals threw out the fraud and conspiracy convictions against Bayly, Furst and Brown because prosecutors improperly presented jurors with a theory that their actions robbed Enron of their honest services. The panel threw out Fuhs' convictions for lack of evidence. Boyle did not appeal and is serving a three-year, 10-month prison term.


Streamlined version

For the retrial, Spencer on Wednesday asked Werlein to approve a streamlined version of the 2004 indictment that erases all references to honest services, Kahanek and Fuhs and most references to Boyle.

Werlein said he would allow the defense teams to have their say before he rules.

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