

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA § Cr.No. H-03-
§
v. §
§
LEA W. FASTOW § Violations: 18 U.S.C. §§ 371 (Conspiracy to
Commit Wire Fraud and Defraud the United
States); 1956(h) (Money Laundering
Conspiracy); 2 (Aiding and Abetting); 26
U.S.C. § 7206(1) (False Tax Returns)

INDICTMENT

The Grand Jury charges:

I. ENRON

1. At all times relevant to this Indictment, Enron Corp. ("Enron") was an Oregon corporation with its headquarters in Houston, Texas. Among other businesses, Enron was engaged in the purchase and sale of natural gas, construction and ownership of pipelines and power facilities, provision of telecommunication services, and trading in contracts to buy and sell various commodities. Before it filed for bankruptcy on December 2, 2001, Enron was the seventh largest corporation in the United States.

II. THE PRINCIPAL CONSPIRATORS

2. The defendant LEA W. FASTOW, a resident of Houston, Texas, was an Enron employee between May 1991 and May 1997. She held various positions at Enron, including Director and Assistant Treasurer of Corporate Finance. LEA W. FASTOW earned a Masters Degree in Business Administration in Finance in August 1987.

3. Coconspirator Andrew S. Fastow ("Fastow"), also a resident of Houston, Texas, was Enron's Chief Financial Officer ("CFO") from March 1998 to October 24, 2001. Prior to serving as CFO, Fastow served as a Managing Director at Enron. As CFO, Fastow had oversight over many of Enron's financial activities. Fastow reported directly to Enron's Chief Executive Officer. During the time that he served as Enron's CFO, Fastow also served as the general partner and otherwise was in control of certain special purpose entities ("SPEs") with which Enron did business. Fastow was married to defendant LEA W. FASTOW.

4. Coconspirator Michael Kopper held various positions at Enron from approximately 1994 through July 2001. For much of that time, Kopper reported to Fastow. Between January 2000 and July 2001, Kopper assisted Fastow in running certain SPEs that did business with Enron.

5. As Enron employees, LEA W. FASTOW, Andrew Fastow and Michael Kopper owed a duty to the company and its shareholders to provide the company with their honest services.

III. **THE SCHEME To DEFRAUD**

6. Between at least 1996 and October 24, 2001, defendant LEA W. FASTOW, Fastow, Kopper, and others devised a scheme to obtain money through materially false and fraudulent pretenses and representations and to defraud Enron and its shareholders, the United States, and others. The goals of the scheme included:

- a. Personal enrichment of LEA W. FASTOW, Fastow, and Kopper;
- b. Enrichment of the family and friends of LEA W. FASTOW, Fastow, and Kopper; and

- c. Concealment from the United States of income received directly and indirectly by LEA W. FASTOW and Fastow from the scheme.

RADR

7. Enron owned interests in certain California wind farms (the "farms") which qualified for government financial benefits conferred on alternative energy sources. Such energy facilities were known as "qualifying facilities" or "QFs." Under applicable federal regulations, wind farms that were more than fifty percent owned by an electric utility holding company were ineligible for QF status, and accordingly were not entitled to the associated financial benefits. By at least late 1996, Fastow knew that the farms would lose their QF status because Enron was in the process of acquiring Portland General Electric, and as a consequence Enron would become an electric utility holding company.

8. In early 1997, Fastow, LEA W. FASTOW, and others implemented a scheme to reap the proceeds from the farms for themselves, without the farms losing their valuable QF status. As part of the scheme, Enron appeared to divest itself partially of its interest in the farms through a sale to an SPE known as RADR. In reality, Enron retained an illegal and secret interest in the farms; Fastow and LEA W. FASTOW funded the, purported independent 3% equity in RADR and Fastow, LEA W. FASTOW, and Michael Kopper controlled the distribution of RADR proceeds, which they directed to themselves, their friends, and families.

9. On approximately May 31, 1997, RADR purchased part of Enron's interest in the farms for \$17 million.¹ Enron funded 97% of the purchase price with a \$16.49 million loan to RADR. Nominees chosen by FASTOW and Kopper contributed the vast majority of the \$510,000 that was supposed to constitute the independent 3% equity in RADR. FASTOW and his wife contributed \$419,000 of that sum through concealed loans.

10. By secretly using nominees, the conspirators were able to mask their participation and financial interest in the RADR transaction. Rather than providing the investment money directly to the nominees, the conspirators undertook a series of transactions to insulate themselves from detection. Fastow and the defendant LEA W. FASTOW built in a first layer of protection by providing \$419,000 to Kopper, who in turn provided the money to the nominees. To further distance Fastow from the transaction, Fastow and the defendant LEA W. FASTOW built in a second layer of protection by arranging for the documentation of the \$419,000 loan to reflect that it was made to Kopper by defendant LEA W. FASTOW.

11. Once the nominees' "investment" was in place, the conspirators controlled and directed the distribution of RADR proceeds, even though they did not appear on partnership documents as partners or investors in RADR.

12. Between approximately August 1997 and March 2000, the defendant LEA W. FASTOW and Fastow received tens of thousands of dollars of income from RADR proceeds. For instance, in or about July 1997, less than two months after the nominees "invested" the FASTOWS' money in RADR, RADR began making distributions to the nominees. Fastow and the

¹ Numbers referred to herein are approximate.

defendant LEA W. FASTOW received, through the nominees and Kopper, an initial \$481,850 in RADR proceeds, which included a \$62,850 profit. Although the loan agreement provided for a yearly interest rate of 15%, the amount paid to the FASTOWS in August 1997 represented an effective annual rate exceeding 50% on the money they fronted the nominees.

13. In order further to conceal the scheme and avoid reporting to the IRS that they participated in and received income from RADR, the FASTOWS disguised their RADR income as either interest from an unspecified loan to Kopper or as "gifts" which would not require reporting to the Internal Revenue Service ("IRS"). In order to make the RADR proceeds appear truly to be gifts, the proceeds were divided into smaller amounts and doled out in checks made payable to the defendant LEA W. FASTOW, Fastow, and their children. To maintain further the pretense that the checks were gifts, and not RADR income from their investment, Fastow instructed that one nominee not write checks directly to the FASTOWS because — unlike Kopper and the second nominee who were friends of the FASTOWS — there was no plausible cover story for why that nominee would be writing checks to the FASTOWS. Instead, to foster the illusion that the RADR income were gifts from friends, that nominee gave money to Kopper who then gave it to the FASTOWS.

14. In order further to conceal the FASTOWS' illegal interest in RADR, the defendant LEA W. FASTOW caused her father to file a false tax return that disguised the fact that the FASTOWS had attempted to use him as an equity investor in an Enron SPE such as RADR. The defendant LEA W. FASTOW's father had received a "break up" fee from Enron ~when his potential investment in an SPE was cancelled after Enron's counsel advised that neither Fastow nor his family could participate. In order to hide her father's planned participation in the investment

and his receipt from Enron of a "break up" fee, the defendant LEA W. FASTOW falsely informed her father's tax accountants that the fee amount was interest income from a loan her father had made to Kopper. However, as the defendant LEA W. FASTOW then and there well knew and believed, (a) the break up fee was not interest income from a loan between Kopper and her father, and (b) there had never even been such a loan.

CHEWCO

15. In approximately the summer of 1997, Fastow proposed the creation of an SPE known as Chewco to buy out the, interest of Enron's partner in an investment entity known as JEDI. As with RADR, Fastow at first planned to serve as Chewco's outside equity investor and general partner, but Kopper was substituted when Fastow learned that his own involvement would trigger financial disclosure obligations for Enron.

16. Although Fastow was precluded from participating in Chewco, as with RADR, he nevertheless directed that he receive a portion of Chewco's proceeds from Kopper, in violation of his duty to provide honest services to Enron and its shareholders. In December 1998, Fastow improperly authorized Enron to pay a \$400,000 "nuisance/arrangement fee" to Chewco to obtain its consent to amend the JEDI partnership agreement, even though the amendment was for the benefit of Chewco, not Enron. In December 1998 and January 1999, LEA W. FASTOW and Fastow received kickbacks from that payment totaling \$67,224, in the form of checks from Kopper to the defendant LEA W. FASTOW, Fastow, and their children. As with the RADR checks, the defendant LEA W. FASTOW endorsed the checks payable to her and to her children.

17. LEA W. FASTOW and Fastow did not reveal their receipt of the \$67,224 to their accountants who prepared their income tax returns, nor did they report this income on their federal income tax returns.

COUNT ONE

(Conspiracy to Commit Wire Fraud and Defraud the United States)

18. The allegations of paragraphs 1 through 17 are realleged as if fully set forth here.

19. In or about and between at least late 1996 and October 2001, both dates being approximate and inclusive, within the Southern District of Texas and elsewhere, the defendant LEA W. FASTOW and others knowingly and intentionally conspired: (a) to devise a scheme and artifice to defraud, including to deprive Enron and its shareholders of the intangible right of honest services of its employees, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice would transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce writings, signs, signals, pictures and sounds, all in violation of Title 18, United States Code, Section 1343; and (b) to defraud the United States for the purpose of impeding, impairing, obstructing, and defeating the lawful government functions of the IRS in the accurate ascertainment, computation, assessment, and collection of the revenue, to wit, federal income taxes.

OVERT ACTS

20. In furtherance of the conspiracy and to effect the objects thereof, within the Southern District of Texas and elsewhere, the defendant LEA W. FASTOW and her conspirators did commit and cause to be committed the following overt acts, among others:

- a. In or about May 1997, the defendant LEA W. FAS TOW and Fastow transferred \$419,000 by wire to Kopper.
- b. In or about August 1997, the defendant LEA W. FASTOW and Fastow received \$481,850 by wire-transfer from Kopper.
- c. Between December 1997 and March 2000, the defendant LEA W. FASTOW and Fastow received, endorsed, and deposited checks payable in their names and the names of their children representing RADR and Chewco proceeds.
- d. On or about April 11, 1998, the defendant LEA W. FASTOW and Fastow caused to be filed a false 1997 Individual Income Tax Return in their names.
- e. On or about April 15, 1998, the defendant LEA W. FASTOW caused to be filed a false 1997 Individual Income Tax Return in the name of her father.
- f. On or about April 8, 1999, the defendant LEA W. FASTOW and Fastow caused to be filed a false 1998 Individual Income Tax Return in their names.
- g. On or about September 8, 2000, the defendant LEA W. FASTOW and Fastow caused to be filed a false 1999 Individual Income Tax Return in their names.
- h. On or about September 19, 2001, the defendant LEA W. FASTOW and Fastow caused to be filed a false 2000 Individual Income Tax Return in their names.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNT TWO
(Money Laundering Conspiracy)

21. The allegations in paragraphs 1 - 17 above are realleged as if set forth in full here.

22. In or about and between at least the fall of 1996 and October 2001, both dates being approximate and inclusive, within the Southern District of Texas and elsewhere, the defendant LEA W. FASTOW and others did knowingly and intentionally conspire to conduct and attempt to conduct financial transactions affecting interstate commerce, which transactions would and did involve the proceeds of specified unlawful activity, that is, wire fraud, in violation of Title 18, United States Code, Section 1343, (a) with intent to engage in conduct constituting a violation of section 7206 of the Internal Revenue Code of 1986, and (b) knowing that the transactions were designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of specified unlawful activity, and that while conducting and attempting to conduct such financial transactions, knew that the property involved in the financial transactions would represent and represented the proceeds of some form of unlawful activity, all in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(ii) and 1956(a)(1)(B)(I).

OVERT ACTS

23. In furtherance of the conspiracy and to effect the objects thereof, within the Southern District of Texas and elsewhere, the defendant LEA W. FASTOW and her coconspirators did commit and cause to be committed the following overt acts, among others: the overt acts specified in paragraph 20(a)-(h), which are realleged as if set forth in full here.

(Title 18, United States Code, Sections 1956(h) and 3551 et seq.)

COUNT THREE

(False Income Tax Return — 1997)

24. The allegations in paragraphs 1 - 17 above are realleged as if set forth in full here.

25. On or about the 11th day of April 1998, within the Southern District of Texas and elsewhere, the defendant LEA W. FASTOW, a resident of Houston, Texas, did willfully make and subscribe a joint United States Individual Income Tax Return, Form 1040, for the calendar year 1997, which was verified by a written declaration that it was made under penalties of perjury and was filed with the IRS, which income tax return she did not believe to be true and correct as to every material matter, in that the return reported total income in the amount of \$1,287,543, whereas she then and there well knew and believed that she and her spouse received income in addition to the amount reported.

(Title 26, United States Code, Section 7206(1); Title 18, United States Code, Sections 2 and 3551 et seq.)

COUNT FOUR

(False Income Tax Return - 1998)

26. The allegations in paragraphs I - 17 above are realleged as if set forth in full here.

27. On or about the 8th day of April 1999, within the Southern District of Texas and elsewhere, the defendant LEA W. FASTOW, a resident of Houston, Texas, did willfully make and subscribe a joint United States Individual Income Tax Return, Form 1040, for the calendar year 1998, which was verified by a written declaration that it was made under penalties of perjury and was filed with the IRS, which income tax return she did not believe to be true and correct as to every material matter, in that the return reported total income in the amount of \$2,183,850, whereas she then and there well knew and believed that she and her spouse received income in addition to the amount reported..

(Title 26, United States Code, Section 7206(1); Title 18, United States Code, Sections 2 and 3551 et seq.)

COUNT FIVE

(False Income Tax Return — 1999)

28. The allegations in paragraphs 1 - 17 above, are realleged as if set forth in full here.

29. On or about the 8th day of September 2000, within the Southern District of Texas and elsewhere, the defendant LEA W. FASTOW, a resident of Houston, Texas, did willfully make and subscribe a joint United States Individual Income Tax Return, Form 1040, for the calendar year 1999, which was verified by a written declaration that it was made under penalties of perjury and was filed with the IRS, which income tax return she did not believe to be true and correct as to every material matter, in that the return reported total income in the amount of \$9,129,602, whereas she then and there well knew and believed that she and her spouse received income in addition to the amount reported.

(Title 26, United States Code, Section 7206(1); Title 18, United States Code, Sections 2 and 3551 et seq.)

COUNT SIX

(False Income Tax Return - 2000)

30. The allegations in paragraphs 1- 17 above are realleged as if set forth in full here.

31. On or about the 19th day of September 2001, within the Southern District of Texas and elsewhere, the defendant LEA W. FASTOW, a resident of Houston, Texas, did willfully make and subscribe a joint United States Individual Income Tax Return, Form 1040, for the calendar year 2000, which was verified by a written declaration that it was made under penalties of perjury

and was filed with the IRS, which income tax return she did not believe to be true and correct as to every material matter, in that the return reported total income in the amount of \$48,583,318, whereas she then and there well knew and believed that she and her spouse received income in addition to the amount reported.

(Title 26, United States Code, Section 7206(1); Title 18, United States Code, Sections 2 and 3551 et seq.)

Dated: Houston, Texas
April 30, 2003

A TRUE BILL

/s/
FOREPERSON

JOSHUA HOCHBERG
Acting United States Attorney, Southern District of Texas

LESLIE R. CALDWELL
Director, Enron Task Force

By: /s/
ANDREW WEISSMANN
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