

IN THE UNITED STATES DISTRICT COURT **United States District Court**
FOR THE SOUTHERN DISTRICT OF TEXAS **Southern District of Texas**
HOUSTON DIVISION **Filed**

JUL 14 2005

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
CHRISTOPHER CALGER,)
)
Defendant.)
)

Michael N. Milby, Clerk

Cr. No. H-05-cr286

COOPERATION AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States Department of Justice by the Enron Task Force (“the Department”) and Christopher Calger (“Defendant”) agree to the following (the “Agreement”):

1. Defendant will waive indictment and plead guilty to an Information to be filed in this district charging a violation of 18 U.S.C. § 371, conspiracy to commit wire fraud. Defendant agrees that he is pleading guilty because he is guilty, and that the facts contained in Exhibit A (attached and incorporated herein) are true and supply a factual basis for his plea. The one-count Information carries the following statutory penalties:

- a. Maximum term of imprisonment: 5 years
(18 U.S.C. § 371)
- b. Minimum term of imprisonment: 0 years
(18 U.S.C. § 371)
- c. Maximum term of supervised release: 3 years, to follow any term of imprisonment; if a condition of release is violated, Defendant may be sentenced to up to two years without credit for pre-release imprisonment or time previously served on post-release supervision
(18 U.S.C. §§ 3583 (b) & (e))

- d. Maximum fine: \$250,000 or twice the gain/loss
(18 U.S.C. § 3571(b)(3))
- e. Restitution: As determined by the Court pursuant to statute
(18 U.S.C. §§ 3663 and 3663A)
- f. Special Assessment: \$100
(18 U.S.C. § 3013)

Sentencing Guidelines

2. The defendant understands that although imposition of a sentence in accordance with the United States Sentencing Guidelines (the “Guidelines”) is not mandatory, the Guidelines are advisory and the Court is required to consider any applicable Guidelines provisions as well as other factors enumerated in 18 U.S.C. § 3553(a) to arrive at an appropriate sentence in this case. Based on information known to it now, the Department will not oppose a downward adjustment of three levels for acceptance of responsibility under U.S.S.G. § 3E1.1, and agrees that the Defendant does not qualify for an aggravating role adjustment under U.S.S.G. § 3B1.1.

3. The Department will advise the Court and the Probation Office of all information relevant to sentencing, including criminal activity engaged in by Defendant, and all such information may be used by the Court in determining Defendant’s sentence.

Waiver of Rights

4. Defendant waives all defenses based on venue, speedy trial under the Constitution or Speedy Trial Act, or the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed in the event that (a) Defendant’s conviction is later vacated for any reason, (b) Defendant violates any provision of this Agreement, or (c) the Defendant’s plea is later withdrawn.

5. Defendant understands that by pleading guilty he is waiving important rights including: (a) the right to plead not guilty; (b) the right to a jury trial; (c) the right to be represented by counsel - and if necessary to have the court appoint counsel to represent him - at trial and at every other stage of the proceedings; (d) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses; and (e) the right to discovery and disclosures from the Department. The Defendant waives any right to discovery or other disclosure from the government in connection with the guilty plea.

Defendant's Obligations

6. Defendant will provide truthful, complete, and accurate information to and will cooperate fully with the Department, both before and after he is sentenced. This cooperation will include, but is not limited to, the following:

- a. Defendant agrees to make himself available at all meetings with the Department and to respond truthfully and completely to any and all questions put to him, whether in interviews, before a grand jury, or at any trial or other proceeding.
- b. With the exception of communications with counsel after December 2, 2001, defendant waives all claims of attorney-client privilege and agrees to furnish to the Department all documents and other material that may be relevant to the investigation and that are in Defendant's possession or control.
- c. Defendant agrees not to reveal any information derived from his cooperation to any third party without prior consent of the Department, and to instruct his attorneys to do the same. Defendant agrees to inform the Department of any attempt by any third party to interview, depose, or communicate in any way with him regarding this case, his cooperation, or any other information related to Enron or transactions involving Enron.
- d. Defendant agrees to testify truthfully at any grand jury, court, or other

proceeding as directed by the Department.

- e. Defendant consents to adjournments of his sentencing hearing as requested by Department and agrees that his obligations under this Agreement continue until the Department informs him in writing that his cooperation is concluded.

7. The Department and Defendant further agree that Defendant's counsel may be present at any meetings or debriefings between Defendant and the Department, and the Department will endeavor to provide reasonable notice of such meetings or debriefings, but counsel's presence is not required and Defendant agrees to be present and cooperate notwithstanding his counsel's unavailability.

8. Defendant agrees not to accept remuneration or compensation of any sort, directly or indirectly, for the dissemination through books, articles, speeches, interviews, or any other means, of information regarding his work at Enron Corporation, the transactions alleged in the Information, or the investigation or prosecution of any civil or criminal cases against him, including but not limited to books, articles, speeches, and interviews.

The Department's Obligations

9. The Department agrees that, except as provided in paragraphs 1, 3, and 13, no further criminal charges will be brought against Defendant for any heretofore disclosed act or offense in which he engaged in his capacity as an officer and/or employee of Enron or arising out of such employment.

10. The Department further agrees that no statements made by Defendant during the course of his cooperation will be used against him in any criminal proceedings instituted by the Department, except as provided in paragraphs 1, 3, 4, and 13.

11. If the Department determines that the defendant has cooperated fully, provided

substantial assistance to law enforcement authorities and otherwise complied with the terms of this agreement, the Department will file a motion pursuant to U.S.S.G. § 5K1.1 with the sentencing Court setting forth the nature and extent of his cooperation. Such a motion will allow the Court, in applying the advisory Guidelines, to consider a range below the Guidelines range that would otherwise apply. In this connection, it is understood that a good faith determination by the Department as to whether the defendant has cooperated fully and provided substantial assistance and has otherwise complied with the terms of this agreement, and the Department's good faith assessment of the value, truthfulness, completeness and accuracy of the cooperation, shall be binding upon him. The defendant agrees that, in making this determination, the Department may consider facts known to it both before and after signing of this Agreement. The Department will not recommend to the Court a specific sentence to be imposed. Further, the Department cannot and does not make a promise or representation as to what sentence will be imposed by the Court.

12. Defendant agrees to pay the special assessment of \$100 by check payable to the Clerk of the Court at or before sentencing. 18 U.S.C. § 3013(a)(2)(A); USSG §5E1.3.

Breach of Agreement

13. Defendant must at all times give complete, truthful, and accurate information and testimony, and must not commit, or attempt to commit, any further crimes, including but not limited to perjury and obstruction of justice. Should it be determined by the Department, in its sole and exclusive discretion, that Defendant has violated any provision of this Agreement, Defendant will not be released from his guilty plea but the Department will be released from all its obligations under this Agreement, including its promise not to prosecute Defendant for any

offenses arising from his employment at Enron or any related entity, and its promise not to use any statements made during his cooperation against him.

Hyde Amendment Waiver

14. Defendant agrees that with respect to all charges related to the Information, he is not a “prevailing party” within the meaning of the “Hyde Amendment,” Section 617, PL 105-119 (Nov. 26, 1997), and will not file any claim under that law.

Scope

15. This Agreement does not bind any federal, state, or local prosecuting authority other than the Department, and does not prohibit the Department or any other department, agency, or commission of the United States from initiating or prosecuting any civil or administrative proceedings directly or indirectly involving Defendant.

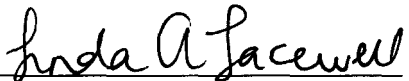
Complete Agreement

16. Apart from the written proffer agreement dated June 16, 2005, no promises, agreements or conditions have been entered into by the parties other than those set forth in this Agreement and none will be entered into unless memorialized in writing and signed by all parties. This Agreement supersedes all prior promises, agreements, or conditions between the parties,

including the written proffer agreement. To become effective, this Agreement must be signed by all signatories listed below.

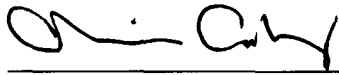
Dated: Houston, Texas
July 14, 2005

ANDREW WEISSMANN
Director, Enron Task Force

By: 
LINDA A. LACEWELL
Special Attorney, Enron Task Force

ADDENDUM FOR DEFENDANT CALGER

I have consulted with my attorneys and fully understand all my rights with respect to the Information to be filed against me. I have consulted with my attorneys and fully understand all my rights with respect to the provisions of the United States Sentencing Commission's Guidelines Manual which may apply in my case. I have read this Agreement and carefully reviewed every part of it with my attorneys. I understand this Agreement and I voluntarily agree to it.



Christopher Calger
Defendant

Date: July 14, 2005

ADDENDUM FOR DEFENSE COUNSEL

I have fully explained to Defendant Calger his rights with respect to the pending Information. I have reviewed the provisions of the United States Sentencing Commission's Guidelines Manual and I have fully explained to Defendant Calger the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this Agreement with Defendant Calger. To my knowledge, Defendant Calger's decision to enter into this Agreement is an informed and voluntary one.



Patricia Pileggi, Esq.
Attorney for Defendant Calger

Date: July 14, 2005

Appendix A – Factual Statement

During 2000 and 2001, I was the Vice President in charge of the West Power Origination group of Enron North America (“ENA”). In the spring of 2000, West Power Origination was negotiating the sale of an ENA project known as Coyote Springs II (“CS2”) to Avista Power, a subsidiary of Avista Corp. The CS2 project consisted of an equity interest in a power plant, a construction contract to build the plant, and a turbine to be placed in the plant. I and others engaged in a scheme to recognize earnings prematurely and improperly. Specifically, I learned from others that Enron’s auditors would not allow Enron to recognize immediate gain on the turbine sale unless that sale occurred at least two weeks before the equity sale in the plant (the “equity interest”) and the signing of the construction contract. The reason for the two-week separation was to demonstrate that the turbine sale was independent from the equity sale and the construction contract.

However, I knew from others at Enron that Avista understandably did not want to buy the turbine without also buying the equity interest in the plant where the turbine was intended to be placed. Avista was concerned that it would buy the turbine and then would not be able to buy the equity interest two weeks later. I knew that others at Enron arranged for LJM2, a company managed by Enron Chief Financial Officer Andrew Fastow, to provide a “put” option to Avista for the turbine. Under the put agreement, Avista would have the right to require LJM2 to buy the turbine if Enron did not sell the equity interest to Avista two weeks after the turbine sale from Enron to Avista. I, along with ENA’s legal and accounting departments, as well as others above me at Enron, approved this arrangement.

As I knew, ENA, and not Avista, paid for the put by reducing the purchase price of the turbine that Enron sold Avista by the amount of the purchase price of the “put,” meaning that Avista was not paying any more than it would have if the deal had been consummated without the put. Thus, ENA and not Avista was financing the put. As I also knew, LJM2 orally agreed to refund approximately \$3.1 million of the \$3.54 million put payment to ENA if, as expected, the put agreement expired unexercised at the end of the 14-day put period. As I also knew, ENA agreed that if Avista exercised the put, ENA would buy the turbine back from LJM2.

So as to avoid detection of the scheme, I knew that ENA was improperly hiding LJM2’s participation in this transaction, and the oral agreements referenced above, from Enron’s outside auditor. I also knew that LJM2’s participation in CS2 was improperly omitted from Enron’s internal Deal Approval Sheet (“DASH”), which was available to the auditors.

Before the turbine sale closed, I received a draft Legal Risk Memorandum for the CS2 project, prepared by an internal Enron lawyer assigned to the deal. The Legal Risk Memorandum spelled out LJM2’s participation in the transaction, including the understanding that LJM2 would refund most of the put payment to ENA through other deals on a later date. The Legal Risk Memorandum also stated in substance that this understanding between ENA and LJM2 could not be documented due to accounting concerns and was not reflected in the DASH for the turbine sale. Despite keeping this information from outside review, as I knew, Enron’s internal lawyers and accountants agreed that the sale would go forward.

I signed the DASH for the turbine sale knowing it was false and materially misleading because it did not disclose LJM2's participation in the transaction.

The put agreement between LJM2 and Avista expired unexercised and therefore, pursuant to the oral understanding, LJM2 owed \$3.1 million to ENA for the put refund. As I knew, Enron's Chief Accounting Officer agreed to "credit" ENA for this figure, since LJM2 had promised to make it up to Enron in future transactions.

I knew that the wires were being used in furtherance of the scheme in that Avista was wiring money to Enron and LJM2 in connection with this transaction.

In doing all of this, I violated my duty of honesty and loyalty toward Enron and its shareholders, and I knew that what I was doing was wrong at the time.