

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	Cr. No. H-02-0597
	§	Violations: 18 U.S.C. §§ 1343 and 2
DAVID BERMINGHAM,	§	(Wire Fraud, Aiding and Abetting)
GILES DARBY, and	§	
GARY MULGREW,	§	
	§	
Defendants.	§	

INDICTMENT

The Grand Jury charges:

COUNTS ONE - SEVEN (Wire Fraud)

Introduction

1. At all times relevant to this Indictment, Enron Corp. (“Enron”) was a publicly-traded 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. Prior to December 2001, Enron was the largest energy company and one of the largest corporations in the United States. On December 2, 2001, Enron filed for bankruptcy.

2. National Westminster Bank Plc (“NatWest”), now known as the Royal Bank of Scotland, was a financial institution headquartered in London, England, which also had an office in Houston. NatWest had a structured finance division called Greenwich NatWest (“GNW”) that had offices in London and Greenwich, Connecticut. Nat West and GNW had policies, compliance procedures, ethical standards, and conflict of interest rules restricting employees’ use of confidential corporate information and mandating that employees avoid conflicts between their personal interests and the interests of Nat West or GNW and its clients.

3. LJM Cayman, L.P. (“LJM Cayman”) was a Cayman Islands partnership whose operations were overseen by Enron’s Chief Financial Officer (“CFO”). Enron’s Managing Director for Global Finance, Michael Kopper, also served as a Managing Director at LJM. LJM Cayman’s limited partners were Cayman Islands investment entities established by GNW and Credit Suisse First Boston (“CSFB”), a New York-based investment bank. Those investment entities were known as Campsie, Ltd. (“Campsie”) and ERNB, Ltd. (“ERNB”) respectively. Each invested \$7.5 million in LJM Cayman.

4. In approximately June 1999, LJM Cayman created a subsidiary known as LJM Swap Sub, L.P. (“Swap Sub”), to conduct certain transactions with Enron. Campsie and ERNB invested in Swap Sub.

The Defendants

5. Defendant DAVID BERMINGHAM (“BERMINGHAM”) was employed by GNW in London and also was a member of Campsie’s Board of Directors.

6. Defendant GILES DARBY (“DARBY”) was a GNW Managing Director in London who specialized in energy industry transactions.

7. Defendant GARY MULGREW (“MULGREW”) was a GNW Managing Director in London, and headed GNW’s structured finance group.

8. Defendants MULGREW, DARBY and BERMINGHAM were the GNW employees principally responsible for representing GNW and Campsie in their dealings with LJM Cayman and Swap Sub.

9. As GNW employees, defendants BERMINGHAM, DARBY and MULGREW each owed a duty to provide GNW and Nat West with their honest services.

THE SCHEME TO DEFRAUD

10. Between approximately February 2000 and August 2000, defendants DAVID BERMINGHAM, GILES DARBY, and GARY MULGREW, and others, devised and executed a scheme to defraud Nat West and GNW and deprive them of money and their right to honest services by recommending to GNW that it sell its interest in Swap Sub for only \$1 million, when the defendants knew GNW’s interest was worth far more, and when the defendants were planning fraudulently to convert the balance of GNW’s interest to themselves and others.

Enron’s Rhythms Net Investment and LJM Cayman

11. From time to time, Enron invested in other companies, including start-up ventures. One such investment was in Rhythms NetConnections, Inc. (“Rhythms Net”), an internet company. In approximately April 1999, Rhythms Net conducted an initial public offering (an “IPO”) of a portion of its shares. At the time of the IPO, Enron owned approximately 5.4 million Rhythms Net shares. Following the IPO, Enron was at risk for market price fluctuations in Rhythms Net’s shares. Because Enron was restricted from selling its Rhythms Net shares until November 1999, it began considering strategies to reduce the impact

on Enron's reported financial results of a possible dramatic decline in the share price of Rhythms Net stock.

12. In or about June 1999, Enron decided to "hedge" Enron's investment in Rhythms Net shares by reducing the risk of financial loss to Enron in the event the Rhythms Net share price declined before the sale restriction was lifted. As part of this hedging effort, LJM Cayman created the Swap Sub subsidiary, which it funded with cash and Enron shares, and which thereafter entered into a series of transactions with Enron known as "derivatives." These derivatives transactions included a "put," which gave Enron the right to sell its Rhythms Net shares to Swap Sub for a set price on certain future dates even if the market value of the Rhythms Net shares was below the set price.

13. As noted, GNW, through Campsie, invested in Swap Sub. However, because of Swap Sub's potential liability on the Rhythms Net put, GNW internally valued its Swap Sub interest at zero.

The Scheme to Profit from Swap Sub at the Expense of GNW

14. In the fall of 1999, the Bank of Scotland launched a hostile takeover bid for NatWest, GNW's parent. Shortly thereafter, Royal Bank of Scotland launched a competing hostile bid for NatWest, which ultimately succeeded. Each bank indicated that it would sell all or part of GNW if its takeover effort was successful. At the same time, as part of its takeover defense, NatWest attempted to interest potential buyers in its GNW division.

15. By at least early 2000, defendants BERMINGHAM, DARBY and MULGREW realized that GNW was likely to be sold, affecting the security of their employment. Around the same time, the defendants also became aware that while GNW internally valued its Swap Sub

interest at zero, it actually had significant value. Thereafter, the defendants, together with Enron's CFO and Michael Kopper, and others, devised a scheme to convert most of GNW's interest to themselves.

16. It was part of the scheme that on February 22, 2000, having devised a plan to restructure Swap Sub for their own benefit, defendants BERMINGHAM, DARBY and MULGREW traveled to Houston, Texas to meet with Enron's CFO and others. During that meeting the defendants, purportedly representing GNW, made a slide show presentation outlining their ideas for the restructuring of Swap Sub.

17. Subsequently, the defendants, still purporting to represent GNW's interests, agreed with Enron's CFO and Michael Kopper on how to carry out the scheme. In furtherance of the scheme, Kopper prepared a letter in which he proposed that a company under his control purchase GNW's interest in Swap Sub for \$1 million. Defendants MULGREW and DARBY, in violation of their duty to provide honest services to NatWest, GNW and Campsie, recommended that GNW accept the \$1 million offer. Subsequently, in violation of his duties to NatWest, GNW and Campsie, defendant BERMINGHAM recommended to Campsie's Board of Directors that it accept the offer. Meanwhile, at the same time the defendants were encouraging GNW's acceptance of the \$1 million offer, they were making arrangements to skim for themselves the balance of GNW's Swap Sub interest.

18. In part to conceal the true structure of the Swap Sub transaction and the roles played by the defendants and others from GNW and Enron, Michael Kopper and others created several layers of partnerships that would buy Swap Sub. The partnership created to buy GNW's interest in Swap Sub was Southampton, L.P., in which Enron's CFO and Michael Kopper, and

certain other Enron and LJM employees had a financial interest. Southampton K Co. was a limited partner in and owned 50% of Southampton, L.P. Thus, after Southampton, L.P. purchased GNW's interest in Swap Sub, Southampton K Co. would own 50% of that interest.

19. To obtain their share of the scheme proceeds while concealing their participation in the scheme from GNW and others, defendants BERMINGHAM, DARBY and MULGREW received from Michael Kopper an option to buy Southampton K Co. for \$250,000. Upon exercising that option, the defendants would own 50% of GNW's interest in Swap Sub, an ownership interest that Enron was prepared to purchase for millions of dollars.

Completion of the Scheme and the Payouts

20. On or about March 22, 2000, Enron's CFO secured an agreement from Enron to pay Swap Sub \$30 million, which would enable Enron to sell its Rhythms Net shares and recover the Enron shares used to fund Swap Sub. To obtain Enron's agreement, Enron's CFO represented to Enron that CSFB would receive \$10 million, and falsely represented that GNW would receive \$20 million.

21. On or about April 21, 2000, defendants BERMINGHAM, DARBY, and MULGREW notified Michael Kopper that they would exercise their right under the option agreement to purchase Southampton K Co. Using in part funds provided by defendant MULGREW, defendant BERMINGHAM subsequently directed a wire transfer of \$251,993 from BERMINGHAM's account in England to an account in Houston as payment to Kopper. The defendants subsequently instructed Kopper to transfer all of the equity in Southampton K Co. to BERMINGHAM, who had left his job at GNW the day before.

22. On or about May 1, 2000, Michael Kopper caused a wire transfer of \$7,352,626 in

scheme proceeds from Houston to a Southampton K Co. account established by defendant BERMINGHAM at the Bank of Bermuda (Cayman) Limited. BERMINGHAM subsequently divided the proceeds, directed wire transfers of \$2.38 million to both MULGREW and DARBY, and kept the balance for himself. Meanwhile, Enron's CFO and Kopper, and others, received a total of approximately \$12.3 million through Southampton, L.P., representing their share of scheme proceeds.

Wire Transactions in Furtherance of the Scheme

23. On or about the dates set forth below, in the Southern District of Texas and elsewhere, the defendants DAVID BERMINGHAM, GILES DARBY, and GARY MULGREW, and others, having devised the above-described scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and to deprive NatWest and GNW of its intangible right to an employee's honest services, for the purpose of executing such scheme and artifice transmitted and caused to be transmitted by means of wire communication in interstate and foreign commerce writings, signs, signals, pictures and sounds, including the following:

Count	Date	From/To:	
1	3/6/00	Houston/London	Fax: offer to purchase Campsie's Swab Sub interest
2	3/10/00	London/Houston	Fax: Campsie to sell Swap Sub interest
3	3/16/00	London/Houston	Email: signature needed for Swap Sub sale documents
4	3/17/00	London/Houston	Email: final Swap Sub sale documents
5	4/21/00	London/Houston	Fax: signed notice of option exercise
6	4/26/00	England/Houston	Wire transfer of \$251,993 to exercise option

Count	Date	From/To:	Substance
7	5/1/00	Houston/Cayman Islands	Wire transfer of \$7,352,626

All in violation of United States Code, Sections 1343 and 1346, and 2.

A TRUE BILL

FOREPERSON

JOSHUA HOCHBERG
Acting United States Attorney

LESLIE R. CALDWELL
Director, Enron Task Force

By: _____
THOMAS A. HANUSIK
Trial Attorney, Enron Task Force