UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	Civil Action No.
DANIEL L. GORDON,	§	**COMPLAINT**
Defendant.	§	JURY DEMANDED

Plaintiff Securities and Exchange Commission (the "Commission") for its Complaint alleges as follows:

SUMMARY

1. Daniel L. Gordon, a former executive of Merrill Lynch & Co., Inc., violated the federal securities laws by (a) aiding and abetting securities fraud by Enron by engaging in a risk-free energy trade designed to overstate Enron's reported 1999 income; (b) selling to Merrill Lynch a bogus electricity call option and pocketing for himself $43 million in sale proceeds; and (c) falsifying books, records, and accounts of Merrill Lynch in connection with the sale of Merrill Lynch's energy trading business to Allegheny Energy, Inc.

2. The Commission requests that this Court enjoin Gordon from violating the federal securities laws cited herein, and prohibit him from acting as an officer or director of any issuer of securities that has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934 ("Exchange Act").

JURISDICTION AND VENUE

3. The Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and (e) and 78aa].

4. Venue lies in this District pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain acts or transactions constituting the violations occurred in this District.

5. In connection with the acts, practices, and courses of business alleged herein, Gordon, directly or indirectly, made use of the means and instruments of transportation and communication in interstate commerce, and of the mails and of the facilities of a national securities exchange.

6. Gordon, unless restrained and enjoined by this Court, will continue to engage in transactions, acts, practices, and courses of business as set forth in this Complaint or in similar illegal acts and practices.

DEFENDANT

7. Daniel L. Gordon, 27, was the head of Merrill Lynch's Global Energy Markets Group ("GEM") from 1998 until 2001, when Merrill Lynch sold the business to Allegheny Energy, Inc. Gordon continued as head of the business at Allegheny until September 2002, when Allegheny fired Gordon for engaging in certain self-dealing transactions.

ENTITIES INVOLVED

8. Enron Corp. is an Oregon corporation with its principal place of business in Houston, Texas. During the relevant time period, the common stock of Enron was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange. During the time that Gordon and others engaged in the fraudulent conduct

alleged herein, Enron raised millions in the public debt and equity markets. Among other operations, Enron was the nation's largest natural gas and electric marketer with reported annual revenue of more than $150 billion. Enron rose to number seven on the *Fortune 500* list of companies. By December 2, 2001, when it filed for bankruptcy, Enron's stock price had dropped in less than a year from more than $80 per share to less than $1.

FACTUAL ALLEGATIONS

Gordon Aided And Abetted Enron's Fraud

The Energy Trade Transaction

9. Gordon and others aided and abetted Enron in carrying out a fraudulent year-end transaction in December 1999. In this transaction, Enron agreed to pay Merrill Lynch a $17 million fee to enter into a virtually offsetting energy trade. Gordon and others knew, among other things, that the transaction: (a) was essentially risk free to Merrill Lynch, and (b) had the purpose and effect of inflating Enron's reported income by approximately $50 million in 1999, and that such earnings were necessary for Enron to meet earnings targets and award bonuses to senior management. Accordingly, to accommodate an important client, Gordon and others knowingly rendered substantial assistance to Enron in carrying out the fraudulent transaction. After the transaction was completed and Enron reported its inflated earnings, Enron and Merrill Lynch unwound the transaction on June 30, 2000, and Enron received $8.5 million, half of its original fee. The energy trade transaction is the subject of the SEC's Complaint against former Merrill Lynch executives Robert S. Furst and Schuyler M. Tilney pending in this district, SEC v. Merrill Lynch & Co., Inc., Case No. 03-CV-0946 (Hoyt).

Enron Approaches Merrill Lynch With Proposed Energy Trade

10. In December 1999, the CEO of Enron North America contacted certain Merrill Lynch investment bankers to discuss a proposed electricity option transaction that Enron wanted to complete by year end. Furst and Tilney wanted to do the transaction to help Enron and sought approval within Merrill Lynch, a process which included an approach to Gordon. Initially, Gordon told Furst and Tilney that Merrill Lynch was unlikely to approve the deal because such transactions normally took weeks or months to analyze and complete. However, with Gordon's assistance, Merrill Lynch explored whether it could complete the transaction in the tight time frame based on Enron's importance as a client and the urgency of its request.

11. Enron supplied Merrill Lynch with summary documents for the proposed transaction. Gordon and others reviewed the documents. Enron designed a transaction structure using two "back to back" call options. Enron proposed to sell Merrill Lynch a physically settled call option. Simultaneously, Merrill Lynch would sell to Enron an offsetting financially-settled call option. The terms of the options were nearly identical.

12. Gordon participated in the preparation of a summary memorandum dated on or about December 29, 1999, describing the terms of the transaction. The memorandum stated that the transaction was one of Enron's highest priorities and would enable Enron to achieve "off-balance sheet" treatment for certain assets. The memorandum discussed the options to be sold by each party to the other, stating, "[t]he quantities, pricing points, market locations and term are 'mirror image.'" In a portion addressing "risk," the memorandum stated, "[t]he proposed transaction is 'back-to-back' and is therefore 'delta-neutral.'" The memorandum also stated that Enron would pay a fee of $17 million based in part on "the benefits enjoyed by Enron as a result

of the transaction," and the fee would be built into the option premiums paid by Enron. The memorandum closed with a recommendation to approve the transaction based on Enron's importance as a client, the millions in fees paid by Enron on other transactions, and the financial benefits to Merrill Lynch and Enron.

13. Gordon and others knew they could request a substantial fee from Enron because Enron was anxious to complete the transaction. Enron was initially surprised regarding the size of the fee because the transaction posed little risk to Merrill Lynch, but ultimately agreed to pay a $17 million fee given the importance of the transaction to its year-end earnings.

Merrill Lynch Reviews And Approves Energy Trade

14. On or about December 30, 1999, Merrill Lynch's Special Transactions Review Committee (STRC) met to review the transaction. Prior to the meeting, the STRC received the summary memorandum (see ¶ 12) prepared by Gordon and others. Gordon participated in the meeting by phone, in a conference call, and discussed the details of the transaction as described in the summary memorandum. Gordon informed the STRC that the transaction was "back to back" and that the options offset each other. The STRC questioned, among other things, how Enron could use the transaction to achieve off balance sheet treatment for certain assets. The meeting adjourned so that more information could be obtained on that point.

15. While the STRC meeting was adjourned, Gordon had conversations with others at Merrill Lynch about questions raised at the meeting. Furst and Tilney then revealed to Gordon and others at Merrill Lynch, for the first time, that Enron's purpose for the transaction was to achieve year-end earnings, not off-balance sheet treatment of assets. At least one Merrill Lynch executive was angry and embarrassed at this revelation because different information had been

supplied to the STRC. Once Enron's true purpose was known, another Merrill Lynch employee expressed reservations about the transaction because it appeared to him to be a ploy by Enron to manipulate its earnings. In response, another high level Merrill Lynch executive stated that Merrill Lynch had "17 million reasons" for getting the transaction approved.

16. When the STRC reconvened later that day, Furst and Tilney joined the meeting by telephone. The STRC was told that Enron's true purpose for the transaction was to achieve year-end earnings. Merrill Lynch also knew that Enron was accounting for the transaction in a different manner than Merrill Lynch was planning. Merrill Lynch viewed the transactions as offsetting with the only gain being the $17 million fee owed to Merrill Lynch. The STRC discussed how it could be that Enron intended to record a gain on the transaction. Concerned, Merrill Lynch attempted to create a record that it thought would shield it from liability or exposure. The STRC expressed a desire to speak directly to Enron and its auditors, purportedly to confirm that Enron's accounting for the sham transaction had been approved.

17. After discussions with Gordon, Furst and Tilney contacted Enron's chief accounting officer (CAO) and asked him to speak to the STRC. Enron's CAO agreed and joined the STRC meeting by phone. Enron's CAO told Merrill Lynch that he was aware of the transaction, that Enron intended to take $50-60 million in earnings on it, that this was a material amount for Enron, and that it would affect bonuses of senior management at Enron. Enron's CAO also claimed that Arthur Andersen, Enron's auditors, had been consulted and had approved Enron's accounting for the transaction. Merrill Lynch requested that Enron provide a "warranty letter" stating that Andersen had approved the transaction, that Merrill Lynch had provided no accounting advice to Enron, and that Enron had not relied on Merrill Lynch to determine the

market value of the transactions. Merrill Lynch prepared the letter and Enron's CAO faxed the signed letter back to Merrill Lynch on December 31, 1999.

18. Gordon never talked to Andersen nor did he have an engagement or retainer with Andersen. Andersen provided no analysis or anything else about the transaction orally or in writing to Gordon. Gordon did not know whether Enron had fully disclosed to Andersen all facts about the transaction. Gordon fully knew, regardless of the purported "warranty letter," that the transaction was intended to create year-end earnings for Enron.

19. After Merrill Lynch received the purported "warranty letter" from Enron, the transaction closed. Enron recognized nearly $50 million in earnings for the year end 1999.

The Parties Unwind The Energy Trade

20. In February 2000, less than two months after the transaction was agreed upon, Enron sought to unwind the transaction early. Furst sought guidance within Merrill Lynch on a fee for the early unwind (because the original fee of $17 million was not paid up-front but would be paid in the form of option premiums, beginning months later, in September 2000).

21. In May 2000, an Enron executive again asked Merrill Lynch to unwind the transaction, with no payment of the $17 million fee to Merrill Lynch. However, Gordon and others believed that Merrill Lynch should be compensated for the early unwind. An e-mail dated May 2000 written by Tilney and sent to Furst and Gordon confirmed that the parties contemplated the unwind at the inception of the transaction, and that the purpose of the transaction was to help Enron make earnings:

> This is not a great surprise as [the ENA CEO] had indicated to Rob [Furst] and me at year-end when we did this trade that [Enron] thought they would want to unwind at some point. As you know, [the ENA CEO] has now moved on to a

> new position at Enron, and I for one am less concerned about the relationship issues as they knew what we were making at the time and we were clearly helping them make earnings for the quarter and year (which had great value in their stock price, not to mention personal compensation). What would you think was a fair number in the absence of relationship issues?

22. Furst and Tilney had conversations with Gordon, who wanted the full original $17 million fee to unwind the transaction. Gordon, Furst, and Tilney met with Daniel H. Bayly, a Merrill Lynch executive, on the issue. Bayly inquired about the status of the transaction and asked Gordon if the transaction could be unwound because Merrill Lynch wanted to "tie up some loose ends." Bayly told Gordon, Furst, and Tilney that they should "work it out" – that is, unwind the transaction early. Bayly believed Enron was an important client and there were wider relationship considerations. Gordon and others subsequently negotiated with Enron to unwind the transaction.

23. On June 30, 2000, the energy trade was unwound. Merrill Lynch received $8.5 million for the unwind, half of its original fee for the transaction.

Gordon Defrauds Merrill Lynch Of $43 Million

24. In or about the summer of 2000, Gordon became aware that Merrill Lynch management was interested in finding insurance to hedge the energy obligations Merrill Lynch had assumed under a long-term $500 million energy call agreement it had entered into with Williams Energy Marketing and Trading Company ("the Williams trade").

25. Gordon devised a scheme to obtain money from Merrill Lynch by falsifying an energy supply insurance contract pursuant to which Merrill Lynch would pay a $43 million premium in exchange for an electricity call option, i.e., the right to purchase energy upon the occurrence of specified market conditions. In truth and in fact, the purported insurance company

involved in the contract was an offshore entity under Gordon's control which he had created to carry out the scheme.

26. Using the services of a Canadian company in the business of establishing off-shore entities, Gordon caused Falcon Energy Holdings, S.A. ("Falcon") to be incorporated in Anguilla, British Virgin Islands. To conceal the true ownership of Falcon, Gordon arranged for a non-United States citizen ("the Falcon nominee") to pose as the putative principal of Falcon.

27. Gordon caused a bank account to be opened in Switzerland under the name of Falcon with the Falcon nominee as one of the signatories.

28. To carry out the scheme, Gordon falsely represented to Merrill Lynch that Falcon was affiliated with a large, French energy conglomerate that was willing and able to provide energy insurance to Merrill Lynch. Gordon claimed to have negotiated the terms of insurance with the principal of Falcon and also claimed to have reached an agreement pursuant to which Falcon would provide energy insurance to GEM for an eleven year period in exchange for an up-front, single premium payment of $43,000,000 to be made upon execution of the contract. Gordon drafted the Falcon contract to reflect these terms and caused it to be signed by the appropriate contract officer at Merrill Lynch. Gordon further caused other supporting documents and agreements to be prepared by Merrill Lynch employees.

29. Gordon arranged to have the Falcon contract and other documents executed, in some instances by the Falcon nominee and in other instances by forging the Falcon nominee's signature. To facilitate the transaction, Gordon purchased an internet-based fax number which he inserted on various documents as the purported contact number for Falcon.

30. On or about August 25, 2000, Gordon caused Merrill Lynch to wire transfer

approximately $43,000,000 to Falcon's account at AIG Private Bank, Zurich, Switzerland. Thereafter, Gordon caused additional wire transfers from Falcon's account to other accounts under his control for his benefit.

Gordon Falsified Merrill Lynch's Books And Records

31. From in or about September 2000, up to and including in or about January 2001, Gordon and others falsified and caused to be falsified books, records, and accounts subject to Section 13(b)(2) of the Exchange Act, namely, books, records, and accounts of Merrill Lynch, an issuer with a class of securities registered pursuant to the Act, which Merrill Lynch was required to make and keep in reasonable detail, accurately and fairly reflecting the transactions and dispositions of the assets of Merrill Lynch, to wit the Global Energy Markets division of Merrill Lynch.

32. In or about September 2000, Gordon and others at Merrill Lynch began having discussions concerning the sale of GEM to Allegheny. In connection with the discussions, Gordon and others prepared a memorandum ("Summary Memorandum") to present to Allegheny containing, among other things, representations concerning GEM's financial information, personnel, and an overview of the energy trading market in which GEM operated.

33. GEM had been established in the summer of 1998 and thus had a short trading history and relatively limited financial history. In order to make the GEM division more attractive to Allegheny, Gordon and others falsified GEM's financial information in the Summary Memorandum by, among other things, removing reserves and recognizing income for the year 2000 attributable to the Williams Trade. Gordon was also aware that others falsified GEM's financial information in the Summary Memorandum by (a) removing expenses that

Merrill Lynch's Finance Department had allocated to GEM in 1999; and (b) arbitrarily increasing GEM's revenue for 1999 by millions of dollars.

34. To bolster the false and misleading financial information in the Summary Memorandum given to Allegheny, Gordon and others agreed that Gordon would prepare an internal memorandum providing a false justification for releasing approximately $40 million in reserves and recognizing it as income in 2000 for the Williams Trade. Gordon and others wanted to recognize income in order to artificially inflate GEM's financials in the eyes of prospective purchasers. Gordon and others further knew that the justifications contained in the memorandum arguing for recognizing income on the Williams Trade were bogus. Ultimately, Gordon and others convinced Merrill Lynch management to approve the recognition of approximately $40 million of income from the Williams Trade in 2000.

35. Allegheny agreed to purchase the assets of GEM. At the closing on the acquisition, questions arose concerning discrepancies between the Summary Memorandum and other financial statements provided to Allegheny during the due diligence process. Gordon and others offered false and misleading explanations for the discrepancies, designed to cause Allegheny to believe in the truth and accuracy of the Summary Memorandum. At the closing, on or about January 7, 2001, Gordon and others failed to disclose that the Summary Memorandum contained false statements and misrepresentations which could not be reconciled with the Merrill Lynch Finance Department's statements.

CLAIMS FOR RELIEF

FIRST CLAIM

Aiding and Abetting Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5] (The Enron Trade Transaction)

36. Paragraphs 1 through 35 are realleged and incorporated by reference herein.

37. As set forth more fully above, Enron, directly or indirectly, by use of the means or instrumentalities of interstate commerce, or by the use of the mails and of the facilities of a national securities exchange, in connection with the purchase or sale of securities: has employed devices, schemes, or artifices to defraud, has made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or has engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon any person.

38. By reason of the foregoing, Gordon aided and abetted violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM

Aiding and Abetting Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1, & 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13] (The Enron Trade Transaction)

39. Paragraphs 1 through 38 are realleged and incorporated by reference herein.

40. By engaging in the conduct described above, Enron knowingly filed materially false and misleading annual reports on Form 10-K and materially false and misleading quarterly reports on Form 10-Q with the Commission.

41. By reason of the foregoing, Gordon aided and abetted violations by Enron of

Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

THIRD CLAIM

Aiding and Abetting Violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(2)(B)] (The Enron Trade Transaction)

42. Paragraphs 1 through 41 are realleged and incorporated by reference herein.

43. By engaging in the conduct described above, Gordon aided and abetted Enron's failures to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflected Enron's transactions and dispositions of its assets, in violation of Section 13(b)(2)(A) of the Exchange Act, and further aided and abetted failures to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that Enron's corporate transactions were executed in accordance with management's authorization and in a manner to permit the preparation of financial statements in conformity with generally accepted accounting principles in violation of Section 13(b)(2)(B) of the Exchange Act.

FOURTH CLAIM

Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1] (Energy Call Option Transaction & Allegheny Sale)

44. Paragraphs 1 through 43 are realleged and incorporated by reference herein.

45. By engaging in the conduct described above, Gordon knowingly falsified or caused to be falsified books, records, or accounts of Merrill Lynch and knowingly circumvented or knowingly failed to implement a system of internal financial controls at Merrill Lynch.

46. By reason of the foregoing, defendant Gordon violated and aided and abetted violations of Section 13(b)(5) of the Exchange Act and Exchange Act Rule 13b2-1.

JURY DEMAND

47. The Commission demands a jury in this matter.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

A. Grant a Permanent Injunction restraining and enjoining Gordon from violating the statutory provisions set forth herein; and prohibiting him from acting as an officer or director of any issuer of securities that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of such Act; and

B. Grant such other and additional relief as this Court may deem just and proper.

Dated: December ___, 2003

Respectfully submitted,

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