

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

LEA W. FASTOW,)

Defendant.)

Cr. No. H-03-150

PLEA 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 Lea W. Fastow (the "Defendant") agree to the following (the "Agreement"):

1. The Defendant will plead guilty to Count Six of the above-captioned Indictment, charging a violation of 26 U.S.C. § 7206(1), filing a false income tax return. Count Six carries the following statutory penalties:

- a. Maximum term of imprisonment: 3 years
(26 U.S.C. § 7206(1))
- b. Minimum term of imprisonment: 0 years
(26 U.S.C. § 7206(1))
- c. Maximum supervised release term: one year, to follow any term of imprisonment; if a condition of release is violated, the Defendant may be sentenced to up to one

year without credit for pre-release imprisonment or time previously served on post-release supervision (18 U.S.C. §§ 3583(b) & (c))

- d. Maximum fine: \$250,000 (18 U.S.C. § 3571(b)(3))
- e. Restitution: Not applicable (18 U.S.C. § 3556)
- f. Special Assessment: \$100 (18 U.S.C. § 3013)
- g. Other: costs of prosecution, discretionary (26 U.S.C. § 7206(1))

2. The Department and the Defendant agree that the Defendant falls within Criminal History Category I and that the following analysis applies under the 2000 edition of the Sentencing Guidelines manual, which applies to Count Six:

Base Offense Level (U.S.S.G. § 2T1.1(a)(2)) ¹	6
Income from Criminal Activity (U.S.S.G. § 2T1.1(b)(1))	+6
Sophisticated Means (U.S.S.G. § 2T1.1(b)(2))	+2
Acceptance of Responsibility (U.S.S.G. § 3E1.1(a))	<u>-2</u>
Final Offense Level:	12

This Level carries a guideline range of imprisonment of 10 - 16 months within Zone C of the Sentencing Table. Pursuant to U.S.S.G. § 5C1.1(d)(2), the Court

¹ The parties agree that there is no tax loss in this case.

has discretion to impose a "split" sentence of five months incarceration followed by a term of supervised release which includes a term of five months home confinement. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the Department and the Defendant agree that the following specific sentence is the appropriate disposition of this count: five months of imprisonment to be followed by one year of supervised release, with the condition that five months of the supervised release term shall be served on home confinement. In the event the agreed-upon sentence is below the adjusted offense level under the Sentencing Guidelines calculated by the Court, the Defendant and the Department consent to such a departure and the Department will inform the Court at the time of sentencing why the departure is justified. Pursuant to Rule 11(c)(5), if the Court rejects this Agreement, the Defendant shall be afforded the opportunity to withdraw the plea. The Defendant's sentence, other than the agreed-upon term of incarceration, is governed by the United States Sentencing Guidelines. The Department will advise the Court and the Probation Department of information relevant to sentencing, including criminal activity engaged in by the Defendant, and such information may be used by the Court in determining the Defendant's sentence. The Defendant agrees that she will not move for a downward departure on any grounds.

3. The Defendant will not file an appeal or otherwise challenge the conviction or sentence in the event that the Court imposes the term of imprisonment set forth in paragraph 2 or imposes a term below that set forth in paragraph 2. The Defendant waives all defenses based on venue (but reserves the right to move for a change of venue pursuant to Rule 21(a) of the Federal Rules of Criminal Procedure), speedy trial under the Constitution or Speedy Trial Act, and 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) the Defendant's conviction is later vacated for any reason, (b) the Defendant violates this agreement or (c) the Defendant's plea is later withdrawn. The Defendant waives any right to additional disclosure from the government in connection with the guilty plea. The Defendant agrees that with respect to all charges referred to in paragraphs 1 and 4 she is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law. The Defendant agrees to pay the special assessment by check payable to the Clerk of the Court at or before sentencing.

4. Except as provided in paragraphs 4 and 6, the Department agrees that no further criminal charges will be brought against the Defendant based on her failure to report \$208,444.34 as income on her federal income tax returns for 1997

through 2000, or for any act or offense arising from her employment with Enron Corporation or related to the allegations in the Indictment. The Department will move following entry of the Defendant's guilty plea to dismiss Counts One through Five of the Indictment, without prejudice. The Defendant agrees that, should the government re-charge her with the offenses alleged in Counts One through Five, she will not challenge the prosecution of any such charges based on any claim under the statute of limitations, and waives any claim she may have in that regard. The Department will move after the sentencing of Andrew Fastow to make the dismissal of Counts One through Five of the Indictment be with prejudice.

5. The Department agrees that, in the event that Defendant opts to withdraw her plea in accordance with paragraph 2 of this Agreement, the Department will not call Andrew Fastow as a witness in its case-in-chief at the Defendant's trial.

6. This Agreement is conditioned upon the following: (a) the defendant Andrew Fastow (the "covered defendant") entering a guilty plea in the case of United States v. Andrew Fastow, H-02-665, on or before January 15, 2004; and (b) acceptance of that plea by a United States District Court Judge at the time of the plea allocution. If the covered defendant does not satisfy conditions 6(a) and 6(b),

or subsequently seeks to withdraw his guilty plea, the Department, in its sole discretion, will be released from all its obligations under this Agreement, including its promise not to prosecute Defendant as set forth in paragraph 4. In addition, if the covered defendant breaches his plea agreement, the Department, in its sole and exclusive discretion, may void this Defendant's Agreement.

7. The Defendant understands that by pleading guilty she is waiving important rights including: (a) the right to persist in her previously entered plea of 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 her - at trial and at every other stage of the proceeding; (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 additional discovery and disclosures from the Department.

8. The Defendant is pleading guilty because she is in fact guilty of Count Six of the above-captioned Indictment. In pleading guilty to this count, the Defendant acknowledges that all of the facts stated in paragraph 9 are true, and were the case to go to trial, the Department would be able to prove all of those facts beyond a reasonable doubt.

9. The factual basis of the plea is as follows:

a. The Defendant Lea Fastow was an employee of Enron Corporation between May 1991 and May 1997. She held various positions, including Director and Assistant Treasurer of Corporate Finance. Her husband Andrew Fastow was Enron's Chief Financial Officer from March 1998 to October 24, 2001.

b. From December 1997 through 2000, the Defendant and other members of her family received checks from Michael J. Kopper and another individual. As the Defendant knew, the checks represented income to the Defendant and her husband from activity in connection with a partnership called RADR. The Defendant had previously been told that her husband was not allowed to invest in RADR. The approximate total amount of income from these checks was as follows:

Year	1997	1998	1999	2000
Total	\$18,742	\$34,308	\$40,368	\$47,800

c. Although the payments constituted income to the Defendant and her husband, the checks were disguised as "gifts" to the Defendant's family. To maintain the false pretense that the funds represented "gifts" to the Defendant's family, several checks were made payable to the Defendant's children. To avoid triggering the law's requirement that gifts in excess of \$10,000 to another person be reported to the Internal Revenue Service, most of these checks were made

payable in amounts of \$10,000 or less and in the names of different members of the Defendant's family.

d. The Defendant endorsed and deposited several of these checks into bank accounts she and her husband controlled. Although the Defendant knew that the payments represented income that should have been reported on her federal income tax returns, she concealed the income from her accountant and intentionally failed to report the income on her income tax returns for the years 1997 through 2000. The Defendant signed these income tax returns under penalty of perjury and caused them to be filed with the Internal Revenue Service.

10. The Defendant agrees to sign stipulations of settlement, waiving any right, title, and interest she may have in the properties identified as subject to forfeiture in the agreement between the Department and Andrew S. Fastow, her husband. In view of these stipulations, the Department agrees that it will not seek an additional financial penalty on the Defendant as part of her sentencing.

11. The Defendant agrees not to accept remuneration or compensation of any sort for the dissemination, directly or indirectly, by her of information concerning her work at Enron Corporation, or concerning the transactions alleged in the Indictment, including but not limited to books, articles, speeches, and interviews.

12. 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 the Defendant.

13. 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. To become effective, this Agreement must be signed by all signatories listed below and in the Addenda.

Dated: Houston, Texas
January 14, 2004

LESLIE R. CALDWELL
Director, Enron Task Force

By: _____

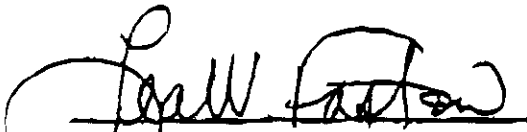
LINDA A. LACEWELL
Assistant United States Attorney

DAVID H. HENNESSY
Assistant United States Attorney

MICHAEL R. PAUZE
Trial Attorney

ADDENDUM FOR DEFENDANT LEA FASTOW

I have consulted with my attorney and fully understand all my rights with respect to the Indictment pending against me. I have consulted with my attorney 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 attorney. I understand this Agreement and I voluntarily agree to it.



Lea W. Fastow
Defendant

1/14/04
Date

ADDENDUM FOR DEFENSE COUNSEL

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

Mike DeGeurin, Esq.
Attorney for Defendant Lea Fastow

Date

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Cr. No. H-03-150

SENTENCE DATA SHEET

DEFENDANT: LEA W. FASTOW

CRIMINAL NO: H-03-150

GUILTY PLEA: Count Six (Filing a False Tax Return)

SUBSTANCE OF
AGREEMENT:

Pursuant to Fed. R. Crim. P. 11(c)(1)(C), Defendant will plead to Count Six of the Indictment (filing a false tax return). The parties have agreed that a sentence of five months of imprisonment and one year of supervised release, five months of which shall be served on home confinement, is appropriate.

COUNT SIX: Filing a false tax return (26 U.S.C. § 7206(1))

ELEMENTS:

- 1) The Defendant made and subscribed to the individual income tax return;
- 2) The return contained a written declaration that it was made under penalties of perjury;
- 3) The Defendant did not believe that the return was true as

- to every material matter; and
- 4) The Defendant acted willfully, that is, she intentionally violated a known legal duty.

PENALTY: Imprisonment not to exceed 3 years and a fine not to exceed \$250,000 or twice gain/loss. 26 U.S.C. § 7206(1) and 18 U.S.C. § 3571(b)(3). Supervised release after imprisonment of not more than 1 year. 18 U.S.C. §§ 3559(a)(5) and 3583(b)(3).

SENTENCING GUIDELINES: 2000 edition of Sentencing Guidelines is applicable.

SPECIAL ASSESSMENT: \$100. 18 U.S.C. § 3013(a)(2)(A).

ATTACHMENT: Plea Agreement

**DEFENDANT
WAIVED HER
RIGHT TO
APPEAL:** Yes