

Jury says unable to agree on Scrushy verdict

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(Recasts with mistrial possibility, adds Scrushy comment and jury adjournment)

By Paul Simao

BIRMINGHAM, Ala., May 24 (Reuters) - An Alabama jury said on Tuesday it could not agree on a verdict in the corporate fraud trial of former HealthSouth Corp. <HLSH.PK> Chief Executive Richard Scrushy, raising the possibility of a mistrial after nearly four months of testimony.

In its fourth day of deliberations, jurors passed a note to U.S. District Judge Karon Bowdre asking for help with the charges against Scrushy, who stands accused by the U.S. government of orchestrating a \$2.7 billion accounting fraud at the medical rehabilitation firm.

"We can not unanimously agree on a verdict. We need an explanation in layman terms," the note read. Bowdre, who is presiding over the federal trial in Birmingham, then allowed the jury to adjourn for the day.

The judge has agreed to meet with jurors and lawyers from both sides in an open court hearing Wednesday morning, according to a court official. It was not clear whether deliberations would resume after that meeting.

Bowdre could declare a mistrial in the case if she believes that the jury is hopelessly deadlocked or instruct jurors to continue deliberating.

Even if jurors are ordered to continue working on the case, their apparent division likely spells bad news for prosecutors, according to Randy Mastro, a former U.S. prosecutor who works at Gibson Dunn and Crutcher in New York.

"They wouldn't be asking (that) question if they had a clear sense that a crime had been committed ... so in that sense from a prosecution standpoint you'd rather not see them asking that question," Mastro said.

Scrushy, 52, is charged with conspiracy, mail and wire fraud, money laundering and other wrongdoing in connection with a sweeping scheme to inflate HealthSouth's earnings between 1996 and 2002.

If convicted, the flamboyant Alabama native could be sentenced to hundreds of years in prison and would join the list of U.S. executives who have been convicted of financial wrongdoing in the wake of recent accounting scandals.

"I feel very good," Scrushy said after his lawyers and U.S. prosecutors met with Bowdre to discuss the note. Several Scrushy supporters huddled nearby, reading passages from bibles and praying, as he spoke.

Prosecutors say Scrushy, a multimillionaire who hosts a television show in Birmingham and regularly preaches in local Christian churches, directed the fraud in order to inflate the value of his stock options and fund an extravagant lifestyle.

He sold \$201 million worth of stock and spent \$203 million on mansions, artwork, boats and other luxury goods during the period in which the fraud occurred, according to testimony in the trial.

His defense team tried to counter the government's case by portraying their client as an unknowing victim of a fraud conceived by other HealthSouth executives who had cut deals to avoid harsh prison terms.

Scrushy's fate could hang on how the jury of seven men and five women interpret secretly recorded conversations between him and William Owens, a former HealthSouth chief financial officer and a onetime lieutenant to Scrushy.

The jury's note on Tuesday did not mention the tapes, which were recorded by Owens in 2003 at the behest of federal officials.

Owens is among 15 former HealthSouth executives who pleaded guilty to various charges in connection with the fraud. He, along with four other former HealthSouth chief financial officers, have testified on behalf of the prosecution.


Prosecutors claimed the tapes show Scrushy knew about the fraud and helped carry it out, but his defense team has argued that the tapes were carefully edited by the government before being presented as evidence.

Scrushy, who has appeared on the CBS television news show "60 Minutes" to defend himself, did not testify during the trial, the latest in a series of high-profile

accounting fraud cases in the United States.

His trial, however, has attracted special attention because he is the first person to be tried for violating the Sarbanes-Oxley Act's requirement that chief executives certify the accuracy of their companies' financial statements.

Scrushy did so before stepping down in 2002 as chief executive of HealthSouth, a U.S. chain of rehabilitation and outpatient surgery clinics. He was ousted as the company's chairman the following year. (Additional reporting by Peggy Gargis and Verna Gates in Birmingham and Gina Keating in Los Angeles)

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