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Sunday, October 5

## Ex-Tyco execs' 'extravagances' going on trial

By Stephen Pounds, Palm Beach Post Staff Writer

Sunday, September 28, 2003

WorldCom may hold the record for corporate fraud. Enron may have the market on investor contempt.

But for sheer *chutzpah* in lining their pockets, Tyco International Ltd.'s Dennis Kozlowski and Mark Swartz may epitomize the corporate greed that has dogged Wall Street during the past two years.

On Monday, Kozlowski and Swartz -- they are Tyco's former chief executive and chief financial officer, respectively -- go on trial in Manhattan, charged with a combined 60 counts of conspiracy, grand larceny, falsifying business records and enterprise corruption.

In a 94-page indictment, a New York grand jury portrays the balding and burly Kozlowski as little more than a criminal kingpin who, with Swartz, looted his former company of \$600 million through loans and stock manipulation.

And that, prosecutors say, allowed Kozlowski to spend lavishly.

High-priced paintings by Monet, Renoir and others hung from the walls of his Manhattan apartment. Five pricey parcels in Boca Raton were assembled for a waterfront compound. And a historic yacht, the Endeavour, made him an instant celebrity in sailing circles.

To some, Kozlowski's extravagant spending seemed perfectly natural for the head of a \$36 billion conglomerate. But prosecutors say the money wasn't his to spend.

Indeed, in a trial that could last three months, prosecutors will argue that Kozlowski and Swartz used Tyco's corporate staff in Boca Raton -- headquarters for its Fire & Security division, which includes the ADT alarm business -- as an in-house fraud ring for their personal gain and



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then hogtied them legally to keep quiet. If convicted, the two each face up to 30 years in prison.

"A lot of money movements will be documented," says Marcel Kahan, a New York University law professor. "The question will hinge on authority. Did they take that money rightfully, or not?"

Lawyers for Kozlowski and Swartz will say they did. In fact, Kozlowski has said he had approval from former company director Phil Hampton, who died in 2001.

"The board members are going to say they didn't know anything about this," an attorney involved in the case said on condition of anonymity. "Dennis and Mark are going to come in with papers and anecdotes that say they did know."

Their argument got a boost last week from a key pretrial ruling. New York Supreme Court Justice Michael Obus rejected prosecutors' attempt to block Kozlowski and Swartz from arguing there was no criminal intent on their part because the millions each received in company loans and bonuses were approved by Tyco's board and disclosed to outside auditors.

The legal defense team for Kozlowski and Swartz could not be reached for comment. However, it gave a glimpse of its trial strategy in a January court filing, arguing that prosecutors are bending a racketeering law "to tar the defendants with the unfair label of thief," when this is really a matter for the corporation to resolve.

"The prosecution simply cannot convert a civil dispute over the extent of corporate authority into criminal law violations," the defense team said in court papers.

The highly publicized case will be tried in a New York state court by prosecutors who have experience with complex white-collar fraud cases. Assistant District Attorney John Moscow, who is lead prosecutor, also unraveled the money laundering and fraud at the Bank of Credit and Commerce International, or BCCI, in 1991.

The prosecution's case centers on the two men's alleged misuse of Tyco's "key employee" and corporate relocation loan programs from 1995 to 2002.

Under the key employee program, executives borrowed money to pay taxes when they bought Tyco stock. The relocation program assisted execs and other employees with no-interest real estate mortgages for transfers.

Prosecutors say both programs became slush funds that Kozlowski and

Swartz used to pay for finely appointed homes and lavish lifestyles.

"You're going to see some of the extravagances of these guys. That's going to be the sensational part of this trial," said Steven Brounstein, a New York defense attorney who is representing boxer Mike Tyson in a New York assault case. "But the most important part is going to be the forensic accounting."

### **Belt-tightening in order**

Since their indictments, Kozlowski and Swartz have been forced to tighten their belts. A New York judge froze their assets and has limited each to a mere \$500,000 a month in living expenses. Awaiting trial, Kozlowski has been free on \$100 million bail; Swartz, on \$50 million bail.

In March, Kozlowski paid 24 New Yorkers \$350 each to take part in a mock trial, only to find himself guilty in the eyes of eight of 10 of the jurors, according to *The New York Post*.

Last week, Kozlowski picked up the \$200,000 tab for the wedding of his daughter, Sandra, 24, in Nantucket. It started with a gourmet clam bake and ended with the ceremony on the Endeavour, which Kozlowski has been renting out for weddings, according to a story in *The New York Post*. Prosecutors will outline the dipping into Tyco's cash for personal use that began in 1996, when Kozlowski took \$61.7 million from a loan program intended to help employees move to New York from the company's operations headquarters in Exeter, N.H.

In 1997, Kozlowski created a similar loan program for employees moving to Boca Raton from Exeter. Kozlowski himself took a \$29.7 million interest-free loan to assemble five lots and build a massive waterfront home in The Sanctuary enclave of Boca Raton.

For his part, Swartz borrowed \$7.6 million for a New Hampshire home and an apartment in the Trump International Hotel and Tower condominium in New York in 1996, and \$21 million from 1997 to 2000 for a waterfront home in The Sanctuary, according to company documents. Swartz has since sold that home and bought one on Lake Boca Raton valued at \$14.5 million.

"A relocation, they may get away with," Brounstein said. But "the more personal the expense, the harder it will be to argue that it was approved by a board member."

### **\$6,000 shower curtain**

Some of Kozlowski's biggest spending came in 2001. He bought an apartment on New York's Fifth Avenue for \$16.8 million and furnished

it with things that might make even a Palm Beacher blush, including a \$6,000 shower curtain and a \$15,000 dog-shaped umbrella stand.

Where he ran afoul of New York law, however, was in taking \$11 million from Tyco to buy impressionist artwork for which he didn't pay New York's 8.25 percent sales tax, prosecutors say.

Much of that artwork was bought with the help of brokers such as Christine Berry, whose art-collection consulting firm, then in West Palm Beach, is one of five unindicted co-conspirators in Kozlowski's tax-evasion case. According to court documents, Berry helped create false documents and arrange shipments to avoid the New York taxes. She is not, however, a target of prosecutors, and her company has since moved to New York.

Starting in 1998, Kozlowski tapped a company loan program aimed at helping Tyco officers pay taxes on restricted stock. From it, he gave then-girlfriend Karen Mayo almost \$1 million in 1999 before she opened Zemi, a trendy, upscale restaurant near the Town Center mall outside Boca Raton.

Two years ago, for Mayo's 40th birthday, Kozlowski charged \$1 million to Tyco for a Roman-themed party for his new wife on the Italian island of Sardinia. The celebration was complete with gladiators as guards and an ice sculpture of Michelangelo's *David* with vodka flowing from it.

Kozlowski and Swartz's legal team are trying to keep a video recorded at the party under seal and away from the jury.

"The video footage could potentially enrage jurors," said David Chase, a former securities prosecutor now a lawyer in private practice in Broward County. If the juror "is a blue-collar guy living from paycheck to paycheck and he sees an executive living a lavish lifestyle... it would enrage him."

Although some observers think former Tyco board members will offer crucial prosecution testimony, others say the star witness must be someone closely associated with the company's accounting or record-keeping.

Among those who might fill the bill are Tyco's independent auditor, Richard Scalzo of PricewaterhouseCoopers, who has been barred by the U.S. Securities and Exchange Commission from working with public companies, or Patricia Prue, Tyco's former head of human resources.

"You need someone to put personality behind all the paper," said attorney Philip Hilder, who represented whistle-blower Sherron Watkins in the Enron scandal.

The SEC says Scalzo failed to investigate loans to Kozlowski with questionable bookkeeping entries such as "wine cellar" and "Waldorf rent." But he was Tyco's main outside auditor from 1997 to 2001 when many of the loans were made.

Prue was one of a handful of Tyco employees given relocation loans in 1998 to move to Boca Raton, and then Kozlowski forgave the loan. She reportedly knows details of unapproved compensation and questionable plans to forgive loans. She also sat in on compensation committee meetings.

But even with an insider turned state's witness, the case could bog down because of the paper trail prosecutors must lay out to show how Kozlowski and Swartz funneled money to themselves from company accounts. Registered in Bermuda, Tyco had U.S. headquarters in New Hampshire and Florida, which this year have been consolidated near Princeton, N.J. The firm's many businesses make everything from coat hangers to sophisticated medical devices to electronic equipment.

"You risk losing the jury," former prosecutor Chase said. "This is a case about lies, deceit, trickery and taking advantage.... You need to keep things simple."

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