

Genesis mistrial declared

Prosecutor plans to retry case after jury fails to reach unanimous verdict.

By Pablo Lopez and John Ellis / The Fresno Bee

06/18/08

A 71-year-old juror saved two sisters from a potential prison term in the Genesis child agency embezzlement trial.

A mistrial was declared Monday after only 11 of 12 jurors voted to convict Genesis CEO Elaine Bernard and Carol Dela Torre, the nonprofit's clinical director of a 16-count felony indictment. To reach a verdict, jurors must vote unanimously.

Soon afterward, District Attorney Elizabeth Egan announced plans to retry Bernard, 47, and Dela Torre, 46, for the alleged embezzlement of hundreds of thousands of dollars. A new trial date will be set at a June 21 hearing.

Bernard, in response, said: "What? This sounds like a personal vendetta. Haven't I suffered enough?"

It was an anti-climactic finish to a trial that included 13 weeks of testimony in Fresno County Superior Court, hundreds of court exhibits, emotional court battles between lawyers and a judge's harsh words about the prosecution's case.

The sisters were charged with embezzling from the nonprofit they created in 1987 and turned into an multimillion-dollar enterprise to help neglected, abandoned and abused children in Fresno, Madera and Tulare counties.

Prosecutors contended the sisters used Genesis business checks and credit cards to skim money from the nonprofit between 1996 and 2001 and then squandered the money on vacations and shopping sprees.

The lone holdout juror spared the sisters a potential prison sentence and the loss of their state license to work with children. The man, a domestic violence therapist whose son is an FBI agent, said during jury selection that years ago he was introduced to the sisters and his friend, Dr. Benjamin Cuellar, is a former Genesis board member and a dean at Fresno State. Cuellar was a mentor to both Bernard and Dela Torre at Fresno State, where they received master's degrees in social work.

Outside the courthouse Monday afternoon, the juror said his friendship with Cuellar had nothing to do with his decision to acquit the sisters of wrongdoing. The evidence, he said, clearly showed the sisters intended to repay Genesis and the prosecution's own witnesses said the sisters are doing wonderful things to help disadvantaged children.

"I felt proud of the work they were doing," the lone holdout said.

Egan, who declined to comment on the mistrial apart from issuing a short written statement thanking jurors and promising a retrial, did not say why her prosecutors didn't try to remove the man during jury selection. She also has declined to reveal what the Genesis case has cost taxpayers.

The jurors deliberated about 50 hours over 11 days before announcing they were deadlocked. The panel voted 11-1 on every felony charge -- one count of theft and 15 counts of filing false income taxes and tax evasion, the jury foreman told Judge William Kent Hamlin.

The 11 panelists had voted that way since the second or third day of deliberation, the foreman said.

After the mistrial was declared, 10 jurors agreed to speak to reporters, although they asked not to be identified.

The majority of jurors said prosecutor Regina Leary did an excellent job of presenting the evidence. Some of them said they started the trial wanting to believe Bernard and Dela Torre.

"In the beginning we believed in their dream. We felt it," said one juror, a raisin grower.

Then the panel learned of Bernard's penchant for purchasing expensive clothing with the Genesis credit card. The panel also was mad at Dela Torre because she allowed her sister to keep track of her personal expenditures, when she should have done so herself.

"They never intended to repay," the juror who is a raisin grower said.

Another juror, a manager for a transportation firm, said, "They shouldn't get away with this, because they stole taxpayers' money."

But the lone holdout refused to participate in the deliberations, the majority of jurors said.

"He wouldn't look at the evidence, and there was plenty," said the raisin grower.

The holdout, however, said he was outnumbered by people who thought the sisters were guilty from the outset. "They never deliberated. They found them guilty on the first day," he said.

The holdout said the age gap between him and the other jurors may have played a role. He said his jury experience "was like being among children who caught a big fish."

Some of the jurors said they were offended by the courtroom behavior of the sisters' supporters, including Bernard's boyfriend, Ken Steitz, a former Fresno City Council member. Steitz giggled, and other supporters smirked or laughed at testimony against the sisters, the jurors said.

Ken Steitz, in turn, was critical of prosecutors: "I think five years and 2 1/2-million [dollars]-plus is enough harassment for anybody to endure. This is a colossal waste of money -- county money, taxpayer money."

After the mistrial was announced, the sisters smiled and said they would celebrate with friends. Once Bernard learned that she and her sister might be retried, she nearly cried in a telephone interview.

Bernard then said she must remain strong and vowed to go on a media campaign to clear her and her sister's name and that of Genesis. Bernard said she also might have to represent herself in the retrial because she has \$300,000 in legal fees; her sister's bill is slightly less. The sisters cashed out their retirement. Their mother, Frances Dela Torre, had to refinance her home to help her daughters, the family has said.

"We are going to get through this and survive," Bernard said.

Said Dela Torre: "We want to get back and focus on our mission."

Both sides agreed that the sisters used Genesis credit cards for personal purchases. The dispute was whether they intended to repay Genesis before the District Attorney's Office raided the nonprofit in January 2002.

Prosecutors Leary and Michael Elder relied on Genesis bank and credit card statements, store receipts, business checks and other documents, including Bernard's own notations in a ledger to make their case.

Throughout the lengthy trial, the sisters remained upbeat, smiling and greeting witnesses, including those testifying for the prosecution.

As the trial progressed, Judge Hamlin became a critic, calling the prosecution case confusing, silly and boring. A juror who was dismissed in the middle of the trial for hardship told the judge in a note that the prosecution "has wasted a huge amount of my time and taxpayer money."

Testimony revealed that Bernard coded the personal purchases for herself and her sister as business expenses. She never told the Genesis board of directors of the personal purchases.

Defense lawyers, however, said Bernard didn't fit the profile of an embezzler because she detailed the personal expenditures in a ledger and kept the store receipts, as well as the credit card statements and other documentation.

The Genesis board also concluded in February 2003 that Bernard and Dela Torre did not intend to steal or embezzle, testimony revealed. Though the sisters disputed the owed amount, Bernard repaid Genesis \$132,434.90 and Dela Torre returned \$48,533.36 for their personal purchases on Genesis credit cards.

Initially, Bernard's ex-husband, Rene Bernard, also faced felony charges connected to the case. Before the trial, Rene Bernard, a former Genesis handyman, pleaded guilty to misdemeanor theft and tax evasion for his role in the case.