

**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Plaintiffs

- and -

BUCKINGHAM SECURITIES CORPORATION

Defendants

**SEVENTH REPORT OF
BDO DUNWOODY LIMITED, IN ITS
CAPACITY AS RECEIVER AND MANAGER OF
BUCKINGHAM SECURITIES CORPORATION**

TO THE SUPERIOR COURT OF JUSTICE

A. PURPOSE OF THE REPORT

1. This report of BDO Dunwoody Limited, in its capacity as Court-Appointed Receiver and Manager (the “Receiver”) of the estate of Buckingham Securities Corporation (“Buckingham”), is filed to advise the Court of segregation obligations owed by Buckingham to its clients and securities held in accounts owned by clients who had executed the form of client account agreement attached as Exhibit “A” to this report.

B. BUCKINGHAM’S OBLIGATION TO SEGREGATE

2. As a “registrant” under the *Securities Act* (Ontario), Buckingham was subject, among other things, to Regulation 1015. Section 117 of Regulation 1015 states the following:

117(1) Securities held by a registrant for a client that are unencumbered and that are either fully paid for or are excess margin securities but that are not held pursuant to a written safekeeping agreement shall be,

(a) segregated and identified as being held in trust for the client, and

(b) described as being held in segregation on the registrant's security position record, client's ledger and statement of account.

(2) Segregated securities may be used by the registrant, by sale or loan, whenever a client becomes indebted to the registrant but only to the extent reasonably necessary to cover the indebtedness.

(3) Bulk segregation of securities described in subsection (1) is permissible.

3. It is the position of the Receiver in its consideration of the claim by Latimer to a security interest, that Buckingham was obliged to hold all "fully paid" or "excess margin" securities in trust for its clients and was not entitled to grant a security interest in such securities to Latimer. Further, it is the position of the Receiver that any attempt by Buckingham to grant security to Latimer (or any other person) in "fully paid" or "excess margin" securities was ineffective and unenforceable.

4. Accordingly, the Receiver has prepared this Seventh Report to assist the Court and the parties in determining which client securities held by Buckingham were "fully paid" or "excess margin" securities on the date the freeze order was issued by the Ontario Securities Commission on July 6, 2001 (the "Freeze Date"). Buckingham had a duty to segregate such securities and to hold such securities in trust for its clients.

5. As did Latimer, Buckingham used an accounting system provided by ISM (now IBM) (the "ISM System") to help it keep track of the securities held in its clients' accounts. In the ISM System, Buckingham recorded all of its client holdings and any margin indebtedness owing by Buckingham's clients.

6. The ISM System generates many reports to assist users in the conduct of their businesses. Important reports, which are available daily, are the "Segregation Reports" which indicate which securities the registrant is required to keep segregated and hold in trust for its clients. Because the Segregation Reports indicate which securities must be segregated, it permits the registrant to determine which securities it may pledge or otherwise utilize in its own financing activities.

7. The segregation requirements of registrants such as Buckingham and Latimer (with respect to its own clients) are constantly affected by the movement in the market value of any marginable securities held in the client accounts as well as by all transactions made on client instructions. For example, if the value of the securities in any Buckingham client's margin account were to go up, the number of "excess margin" securities in that client's account would

increase. Accordingly, the registrant (Buckingham in this case) would be required to segregate additional securities for that client. If Buckingham had previously pledged such securities as security for its own borrowings, Buckingham would be required to redeem excess margin shares and transfer them to a segregated account.

8. The daily Segregation Reports for Buckingham were not retained. Buckingham only retained its month end reports from the ISM System. In order to assist the Receiver in determining which securities Buckingham was not required to segregate on the Freeze Date, the Receiver has requested IBM to reproduce from its records the Segregation Report which would have been available to Buckingham on the Freeze Date. As of the date of this Report, IBM has not provided the requested Segregation Report.

9. In light of the pending trial concerning Latimer's claim to a security interest in the client securities, the Receiver has prepared its own "Segregation Report" working backwards from various reports from the ISM System provided to Buckingham as of July 11 and 31, 2001. The Receiver's determinations are set out in Schedule "1" to this report. Schedule "1" identifies the client securities Buckingham was not required to segregate and which therefore, were available to pledge to Latimer or any other lender.

10. The methodology adopted by the Receiver in the preparation of Schedule "1" is reflected in the list of assumptions attached to the schedule. The fifth assumption listed in the schedule requires some elaboration.

11. Some clients of Buckingham had a margin account and a cash account. The margin account agreement permitted Buckingham to pledge securities in the margin account to the extent permitted by the Regulation. Accordingly, Buckingham was required to segregate excess margin securities and was permitted to pledge the securities in the margin account which it was not required to segregate. If the securities held in a client's margin account were of insufficient value to support the margin loan, the Receiver assumed that securities held in the client's cash account were not required to be segregated to the extent necessary to cover the shortfall, because the client account agreement in respect of cash accounts included a pledge by the client of securities in the cash account to secure any indebtedness of the client to Buckingham.

C. THE CASH ACCOUNT AGREEMENT

12. Beginning in approximately 1999, Buckingham asked certain clients to execute an account agreement in the form of Exhibit "A" (the "Cash Account Agreement"). It is alleged by Latimer that the Cash Account Agreement granted Buckingham broader rights to pledge client securities than did the other form of client account agreement. The Receiver disagrees with this position.

13. The Receiver is currently in the process of manually reviewing each Buckingham client file to identify those clients who have signed the Cash Account Agreement as well as the

securities held in the accounts of those clients and whether the same are held in Buckingham's account at Latimer. That process is a lengthy one and the Receiver will be in a position to report its determination shortly.

ALL OF WHICH is respectfully submitted this 22nd day of March, 2002.

BDO DUNWOODY LIMITED

in its capacity as Receiver and Manager of
the assets, property and undertaking of
Buckingham Securities Corporation

Per: Martin Clarkson