

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

**B E T W E E N:**

**ONTARIO SECURITIES COMMISSION**

**Plaintiffs**

**- and -**

**BUCKINGHAM SECURITIES CORPORATION**

**Defendants**

**SIXTEENTH 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**

- (a) 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 in support of a motion by the Receiver for an Order authorizing and directing the Receiver to enter into a proposed agreement with Bear Stearns Corporation Inc. (“Bear Stearns”) for the purpose of liquidating the securities held in the account of Buckingham at Bear Stearns.

**B. BACKGROUND**

2. Buckingham was a securities dealer registered under Ontario securities law from March 17, 1997 to July 6, 2001, and provided investment services to its clients. Prior to its receivership in July, 2001, Buckingham had approximately 1,000 active client accounts.
3. By Order of the Honourable Madame Justice Swinton dated July 26, 2001 (the “Appointment Order”), the Receiver was appointed Receiver and Manager of all of the property, assets and undertaking of Buckingham, including assets held in the name of Buckingham, as principal or agent, beneficially or otherwise and all proceeds thereof (the “Property”). A true copy of the Appointment Order is attached hereto as **Exhibit “A”**.
4. Prior to the appointment of the Receiver, Buckingham’s registration had been suspended and its activities had been frozen pursuant to an Order of the Ontario Securities Commission (“OSC”) dated July 6, 2001 (the “Cease Trade Order”).

**C. DISPUTE RELATING TO BEAR STEARNS’ SECURITY**

5. As previously reported in various of the Receiver’s previous reports to the Court, Bear Stearns has claimed a lien and security interest over all of the securities held in Buckingham’s account at Bear Stearns, to secure Buckingham’s indebtedness to Bear Stearns. The Receiver has disputed Bear Stearns’ security interest in “fully paid” and “excess margin” securities held by Buckingham on behalf of its clients, on the basis that such securities were required to be segregated and held in trust by Buckingham for its clients under Ontario securities law, and that Bear Stearns ought to have known of Buckingham’s failure to segregate. Further, the written agreement in favour of Bear Stearns grants a security interest and lien only in property or securities in which Buckingham has an interest. Therefore, the Receiver has taken the position that Buckingham had no beneficial interest in its clients’ “fully paid” and “excess-margin” securities which Buckingham was required by law to hold in trust for its customers.

6. The Receiver obtained reports using an accounting system provided by ISM, which identify the “fully paid” and “excess margin” securities which ought to have been segregated by Buckingham as at July 6, 2001, the date of the Cease Trade Order (the “Disputed Securities”). Apart from the Disputed Shares, the Receiver does not dispute the validity of Bear Stearns’ security interest in the balance of the securities held in Buckingham’s account at Bear Stearns (the “Undisputed Securities”).
7. A similar, although distinguishable, dispute by the Receiver with respect to the validity of the security interest in “fully paid” and “excess margin” securities claimed by W.D Latimer & Co. Ltd. (“Latimer”) was the subject of a trial before the Honourable Mr. Justice Ground. Following the trial of the issues, the Honourable Mr. Justice Ground held that Buckingham breached its trust obligations to its clients by pledging their fully paid and excess-margin securities to secure Buckingham’s indebtedness . However, Justice Ground also held that the security interest of Latimer in the Disputed Securities was valid and enforceable, because Latimer did not have actual or constructive knowledge of the breach of trust, and awarded costs of the trial payable by the Receiver to Latimer on a partial indemnity scale. The Receiver appealed from that Judgment, and ultimately, with the approval of this Court, entered into a liquidation agreement with Latimer, which facilitated a settlement with Latimer, and the Receiver therefore abandoned its appeal.
8. Bear Stearns has informed the Receiver that as at April 30, 2004, the total amount outstanding on account of the indebtedness of Buckingham to Bear Stearns was U.S. \$260,302. As at April 30, 2004, the market value of the securities held in Buckingham’s account at Bear Stearns and the percentage of the portfolio comprised of Disputed Securities, liquid and illiquid securities, was as follows:

**BUCKINGHAM SECURITIES CORPORATION**  
**BEAR STEARNS PORTFOLIO MIX**  
**As at April 30, 2004**  
**(U.S. Dollars)**

<b>Total Holdings</b>		
<b>Undisputed Securities</b>	<b>Disputed Securities</b>	<b>Total</b>
\$133,016	\$436,953	\$569,969
23%	77%	100%

<b>Undisputed Securities</b>		
<b>Liquid</b>	<b>Illiquid</b>	<b>Sub Total</b>
\$115,564	\$17,452	\$133,016
87%	13%	<b>100%</b>
20%	3%	23%

<b>Disputed Securities</b>		
<b>Liquid</b>	<b>Illiquid</b>	<b>Sub Total</b>
\$276,498	\$160,455	\$436,953
63%	37%	<b>100%</b>
49%	28%	77%

9. Subject to the approval of this Honourable Court, the Receiver proposes to enter into an Agreement with Bear Stearns (the "Liquidation Agreement") with respect to the liquidation of the securities held in Buckingham's account at Bear Stearns, in the hope that the liquidation of the securities into cash will facilitate the Receiver's efforts to resolve the outstanding dispute concerning the validity of Bear Stearns' security interest and avoid the additional costs and delay associated with litigation in respect thereof.

10. In addition, the Receiver has been advised that Bear Stearns, as a securities broker in the United States with experience and expertise in dealing with securities of the kind held in Buckingham's account at Bear Stearns, is in the best position to maximize realization upon that portfolio.
11. Pursuant to the Liquidation Agreement, the securities to be sold by Bear Stearns will be divided into three categories, and the proceeds of realization upon the securities in each category are to be applied as follows:
  - (a) The Undisputed Securities consist of those shares which the Receiver acknowledges to be subject to the security interest claimed by Bear Stearns. The proceeds realized upon the sale of these securities are to be applied to reduce the indebtedness owing by Buckingham to Bear Stearns.
  - (b) The Disputed Liquid Securities comprise those shares having a market value of over U.S. \$1.50, which the Receiver disputes are subject to the security interest claimed by Bear Stearns. The proceeds, net of a sales commission of 1.5% of the proceeds to be paid to Bear Stearns, are to be paid to the Receiver, to be held in trust by the Receiver pending a determination or settlement of the dispute regarding the validity of Bear Stearns' security.
  - (c) The Disputed Illiquid Securities consist of those shares having a market price of under U.S. \$1.50, which the Receiver disputes are subject to the security interest claimed by Bear Stearns. Forty percent (40%) of the proceeds realized on the sale of the securities are to be paid to Bear Stearns in lieu of a commission, and applied to reduce the indebtedness owing to Bear Stearns by Buckingham. The balance of the proceeds, i.e. sixty percent (60%) are to be paid to the Receiver to be held in trust by the Receiver pending a determination or settlement of the dispute regarding the validity of Bear Stearns' security.
12. The Receiver is of the view that the proposed agreement with Bear Stearns as outlined above, is in the best interest of the estate as it will allow the portfolio to be liquidated at

this time, the non-disputed proceeds to be applied to reduce the indebtedness of Buckingham to Bear Stearns, and thereby reduce interest costs accruing on the outstanding balance. In addition, the Receiver believes that Bear Stearns is the securities broker in the best position to maximize realizations on the securities in this particular portfolio and that the proposed commission arrangement is reasonable for all parties. The Receiver therefore seeks approval of this Honourable Court to proceed with the realization of the securities on the terms outlined above.

**ALL OF WHICH** is respectfully submitted this •th day of July, 2004.

**BDO DUNWOODY LIMITED**

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

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Uwe Manski, FCA, FCIRP