Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Order and Rulings

3.1.1 Bennett Environmental Inc. et al.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
BENNETT ENVIRONMENTAL INC., JOHN BENNETT, RICHARD STERN,
ROBERT GRIFFITHS, AND ALLAN BULCKAERT

SETTLEMENT AGREEMENT WITH ALLAN BULCKAERT

Hearing:	June 20, 2006		
Panel:	Paul M. Moore, Q.C.	-	Vice-Chair (Chair of the Panel)
	David L. Knight	-	Commissioner
Counsel:	Judy Cotte Pamela Foy Scott Pilkey	- -	On behalf of Staff of the Ontario Securities Commission
	Thomas F. O`Neil III Erica Salmon Byrne Howard Rubinoff Grant V. Sawiak	-	For Allan Bulckaert

ORAL DECISION AND REASONS

The following text has been prepared for purposes of publication in the Ontario Securities Commission Bulletin and is based on excerpts of the transcript of the hearing. The excerpts have been edited and supplemented and the text has been approved by the chair of the panel for the purpose of providing a public record of the decision.

[1] THE CHAIR: We approve the settlement agreement between staff and Allan Bulckaert.

[2] The Commission has listened to submissions from counsel for staff and submissions from counsel for the company and the special committee, who is here acting as a friend or agent for Mr. Bulckaert. We have considered the evidence and we have approved the agreement as being in the public interest.

[3] The sanctions agreed to in the settlement agreement that will be ordered by us are: pursuant to clause 9 of subsection 127(1) of the Act, Bulckaert shall make a settlement payment of $64,165 to the Commission for allocation to or for the benefit of third parties under section 3.4 subsection 2 of the Act.

[4] This amount equals and does not exceed the loss avoided by Bulckaert's sale of 5,900 shares of the company between June 3 and June 7, 2004.

[5] It is usual in an insider trading case for the Commission to agree on a settlement to a payment equal to one and a half times the profit made or the loss avoided. So this particular settlement doesn't follow some of the precedents. It is important to note, however, that this rule of thumb of one and a half times is not etched in stone. The prime factor that governs us is to make sure that sanctions are appropriate to the facts of the case.

[6] Our jurisdiction is not to punish. The Supreme Court of Canada in the Asbestos case (see *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission*, [1999] O.J. No. 388) made it quite clear that

our jurisdiction is to prevent future harm to the public by removing, restricting or sanctioning people who trade in the capital markets and registrants who abuse the market by acting contrary to the public interest.

[7] The particular facts of this case strongly suggest to us that the sanctions agreed to are appropriate. The facts are set out in the settlement agreement which forms part of the public record. I am not going to repeat the particular facts of this case.

[8] I refer to the decision we rendered this morning in approving the settlement agreement with Bennett Environmental Inc. I would suggest that those reasons should be considered by anybody reading these reasons.

[9] The important facts are that Mr. Bulckaert joined the company as chief executive officer on February 18, 2004. He was not fully aware of the problems relating to the first contract. Indeed, he received piecemeal information about that first contract and assurances from those who are now former officers of the company that the contract would be fulfilled. He should have consulted counsel and should have ascertained the facts before he traded.

[10] Staff takes the position that the doubts and confusion in Mr. Bulckaert's mind amounted to knowledge of material facts that had not been disclosed and that his sale of shares of the company was an aberration of good judgment on his part. However, the motivation for his sale of the shares was to realize cash to pay the purchase price of a condominium that he had agreed to purchase in April of 2004. He sold shares of other companies at the same time. It appears from the evidence that the motivation for the sale was this external need for cash and not some devious attempt to trade on inside information.

[11] On June 9, which was two days after the last trade or agreement to sell the shares, Mr. Bulckaert received a copy of a key letter, the letter of September 4, 2003, from the Corps. of Engineers in the United States questioning the first contract. He made inquiries of the Corps. of Engineers but did not receive a response to his inquiry until July 15, and he actually saw it on July 16. He then went into action, worked over the weekend, put information together and presented it at a meeting of the board that had been scheduled for July 22nd or 21st. He raised this whole question of what the real facts were and from that the investigation proceeded in earnest and the securities regulatory authorities were brought into the picture.

[12] The company cooperated fully with the investigation by the regulators and saved staff time, money and effort. In addition, steps were put in place that were described in this morning's hearing, dealing with codes of conduct, procedures and other changes, and eventually a complete change of officers in the company.

[13] Mr. Bulckaert was brought in from the outside to be the new chief executive officer of a troubled company. He worked diligently to find out what the problems of the company were in many respects, not just with respect to the contract in question. He was misinformed by former officers as to the true situation. He was given false assurances and piecemeal information, but the light finally went on when he continued to dig. He then moved forward in quite an honourable and acceptable way.

[14] Counsel for the company and the special committee suggested that it is important in cases like this to walk a mile in the respondent's shoes. He admitted that this was perhaps an aberration of judgment or not the best conduct in hindsight and that Mr. Bulckaert should have consulted counsel. The company did not have a regular Canadian counsel at the time.

[15] The former chief executive officer, Mr. John Bennett, who was one of the former officers that gave Mr. Bulckaert misinformation, was in Vancouver. Mr. Bulckaert was acting as best he could to get the company on a solid footing, and under his leadership the company has retained new Canadian outside counsel.

[16] We accept that it is not appropriate to exact a monetary penalty of one and a half times the loss avoided. A payment equal to the loss avoided in this particular fact situation is quite appropriate.

[17] Mr. Bulckaert has had an admirable career prior to joining the company. He has acted admirably since being at the company. There was an aberration of judgment when he decided to sell shares, albeit it for a purpose not related to avoiding a loss. He did suffer an absolute loss according to the agreed statement of facts.

[18] MR. KNIGHT: Just on one point that I hesitated briefly over: the settlement payment of $64,000 and the amount being one times the loss avoided. But I concluded that that is acceptable given Mr. Bulckaert's conduct and given all of the circumstances: the difficult circumstances in which he found himself as the newly employed CEO at Bennett and in trying to deal with all the issues that were on his plate while at the same time trying to get to the bottom of this or get to the facts on these contracts.

[19] On that basis I can conclude that the settlement payment is acceptable, but I think the panel would not want that to be viewed as any sort of precedent.

Approved by the chair of the panel on June 30, 2006.

“Paul M. Moore”