

CANADA  
PROVINCE OF NOVA SCOTIA  
COURT NO. 21934  
ESTATE NO. 079456

IN THE SUPREME COURT OF NOVA SCOTIA

IN BANKRUPTCY

IN THE MATTER OF THE BANKRUPTCY OF

**FETTERLY & ASSOCIATES INC.**

Cite as: Fetterly & Associates Inc. (Re), 2000 NSSC 310

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DECISION

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<b>HEARD BEFORE:</b>	Tim Hill, Registrar in Bankruptcy
<b>DATE HEARD:</b>	April 3, 2000
<b>ORAL DECISION:</b>	April 3, 2000
<b>WRITTEN REASONS:</b>	August 3, 2000
<b>COUNSEL:</b>	Paul G. Goodman, FCA, FCIP, representing the Trustee, Goodman Associates  Darrin Ulley, representing the Superintendent of Bankruptcy

This was an application for the taxation of the trustee's final statement of receipts and disbursements. The statement was taxed and allowed. I indicated that written reasons would follow.

On the taxation, the Superintendent of Bankruptcy appeared and argued that the Trustee should be sanctioned and his fees taxed down.

The final statement of receipts and disbursements was approved by the Inspectors of the estate.

The opposition of the Superintendent of Bankruptcy arises from a sale of certain assets of the bankrupt estate to an Inspector. The items purchased by the Inspector consisted of a work station, a chair, a fax machine, and a file cabinet. The Inspector made an offer of \$550.00 plus HST to the Trustee, which the Trustee accepted. The evidence indicates that the offer was a reasonable offer, and that the net realization to the Estate would have been less had a sale been made by other means.

Section 120 of the *Bankruptcy and Insolvency Act* states:

No inspector is, directly or indirectly, capable of purchasing or acquiring for himself or for another any of the property of the estate for which he is an inspector, except with the prior approval of the court.

Generally speaking, if a sale is made to an Inspector in these circumstances, that is, without Court approval, the sale is a nullity: *Ross v. Necker* (1948), 29 C.B.R. 1 (S.C.C.).

In my opinion, it is possible for the Court to give approval for such a sale *nunc pro tunc*:

*Re Canamera Investments Limited* (1984), 52 C.B.R.(N.S.) 95 (S.C.). However, it strikes me that this should only be done where it is clear that the Inspector in question did not participate in the decision to sell, and there would be no practical benefit to the estate in finding the sale to be a nullity and requiring a resale.

In this case, I am certainly satisfied that there would be no practical benefit to the estate in selling these assets other than to the Inspector in question.

I am also satisfied that the Inspector in question did not participate in the decision to sell. Indeed, there were two other Inspectors who both approved the sale.

In all the circumstance, this does not seem an appropriate case in which to penalize the Trustee in respect to the method adopted.

For the reasons given, the Trustee's fees were taxed and allowed.

Dated at Halifax, Nova Scotia this                      day of August, 2000.

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Registrar in Bankruptcy