

CT - 2000/002

THE COMPETITION TRIBUNAL

IN THE MATTER OF the Competition Act, R.S. 1985, c. C-34, as amended;

IN THE MATTER OF an Application by the Commissioner of Competition under section 92 of the Competition Act;

AND IN THE MATTER OF the acquisition by Canadian Waste Services Inc. of certain assets of Browning-Ferris Industries Ltd., a company engaged in the solid waste business.

BETWEEN:

COMMISSIONER OF COMPETITION

FILED	COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE		PRODUIT
	JUN 19 2000		
	REGISTRAR - REGISTRAIRE		
OTTAWA, ONT.		15/61	

Applicant

- and -

CANADIAN WASTE SERVICES HOLDINGS INC., CANADIAN WASTE SERVICES INC. AND WASTE MANAGEMENT, INC.

Respondents

AFFIDAVIT OF GARTH FOWLES

The Commissioner of Competition

v.

Canadian Waste Services Holdings Inc., Canadian Waste Services Inc. And Waste Management, Inc.

- I, Garth Fowles, am a Regional Vice President - Eastern Canada for Canadian Waste Services Inc. ("CWS") and, as such, have knowledge of the facts deposed to herein, except where stated to be on information and belief, and where so stated I believe such facts to be true.

- 2 -

2. On March 31, 2000 CWS entered into a purchase agreement (the "Purchase Agreement") with Browning Ferris Industries Ltd. ("BFI") for the purchase of certain assets relating to the solid waste business owned by BFI and shares in certain BFI companies that owned assets relating to the solid waste business. Included in these assets was the Ridge landfill in Blenheim, Ontario (the "Ridge").
3. The Commissioner of Competition (the "Commissioner") consented to the acquisition of the Ridge by CWS, provided that the Ridge be held separately from CWS pending a determination by the Competition Tribunal (the "Tribunal") of whether the retention of the Ridge by CWS would result in a likely substantial lessening or prevention of competition in any relevant market.
4. Pursuant to the Purchase Agreement, CWS was required to make offers of employment to certain BFI employees at a salary or hourly wage at least equal to the salary or hourly wage of that each employee received from BFI.
5. Mr. Mark Thompson ("Thompson") and Mr. Luciano Bet ("Bet") were employed by BFI as sales representatives in the Toronto area, and were to receive offers of employment from CWS as set out in the Purchase Agreement.
6. Attached as Exhibits A and B to this my affidavit are true copies of letters dated April 7, 2000 to both Thompson and Bet welcoming them as members of the CWS sales team and advising them of their salary and guaranteed commissions.
7. Following the April 7, 2000 letters there were some further discussions correspondence with Thompson and Bet with respect to their employment. Thompson and Bet rejected the offer of employment from CWS by way of

letters dated April 16, 2000, true copies of which are attached as Exhibits C and D to this my affidavit.

- 8. Thompson and Bet have advanced claims against CWS in respect of their employment.
- 9. The employment issues raised by Thompson and Bet have no connection to the Ridge landfill in Blenheim, Ontario.

SWORN before me at the
 City of Mississauga, in the Province of
 Ontario, this
 19th day of June, 2000.

)
)
)
)
)

U. S. Fowles
 Garth Fowles

[Signature]
 A Commissioner etc.

JUN-19-00 16:50

FROM-

T-645 P. 64/70 F-585

14-19-00 15:05

CANADIAN WASTE

ID=4102131837

P. 60



CANADIAN WASTE
A WASTE MANAGEMENT COMPANY

170 Chateaufort Drive
Etobicoke, ON M9W 5Y3
(416) 213-3005
(416) 213-8032 Fax

7 April 2000

Lou Bel
908 Bosworth Cr.
Newmarket, ON
L3X 1Z1

Dear Lou:

Canadian Waste welcomes you as the newest member of our sales team. For the next several months you will continue to manage the BFI account base. In addition you will assist the transition of these accounts to Canadian Waste. These activities will include retaining the accounts, selling new services and re-signing them on new contracts.

Your salary of \$45650 per year and guaranteed commissions of \$1833 per month will continue during the transition period. There may be additional compensation based on your success; the details of this are still being finalized. Expenses of .30 per kilometre, cell phone to a maximum of \$150 per month and other normal selling expenses will be reimbursed. Your seniority with BFI will carry over to Canadian Waste.

After the BFI accounts have been integrated your pay and benefits will be adjusted to the Canadian Waste pay scale. However, before any adjustment, the general structure of the Canadian Waste sales compensation plan will be discussed with you and specific objectives for commissions will be agreed upon.

I look forward to working with you.

Sincerely,

Dave Richmond
Sales Manager

This is Exhibit B referred to in the
affidavit of GARTH FOWLES
sworn before me, this 19th
day of June 2000

A COMMISSIONER, ETC.

Mark Thompson

6558 Lansborough Ave
Mississauga, On
L5R 3W8

April 16, 2000

BY FAX and Hand Delivery

Canadian Waste Services Inc.
Mr Denis Goulet
Divisional Vice President
170 Claireville Drive
Etobicoke, ON M9W 5Y3

Dear Mr Goulet:

Re: Employment as Major Account Executive

In a letter from David Richmond dated April 7, 2000, and received on April 10, 2000, I was informed that my duties would be changed to retaining and re-contracting of existing customers during the transition period. I would not, therefore, be involved in new selling. While I was assured that the structure of my pay was to remain the same during the transition period (basic plus commissions), the change in duties outlined would result in a substantial decrease in pay because there would be no sales from which I could continue to receive commissions.

I wrote to Mr. Richmond asking for clarification on seven matters contained in his letter. Then, on Thursday, April 13, 2000 I received a letter from you, which was dated March 31, 2000, which indicated that I was to continue to perform the same duties at the same pay that I had been performing throughout the previous eight and one-half years. This letter served to reassure me that my job and pay was to remain the same.

However, on Friday April 14, 2000, I met with yourself, David Richmond and Don Cameron. At that meeting you stated that my job was indeed to be changed to retention and re-contracting, and no new selling. This would result in a fundamental change in my duties and a decrease in pay of approximately 20%.

You refused to put these changes in writing. I was then given the ultimatum that on Tuesday, April 18, 2000, I either accept the changes to my duties and pay or be dismissed. I cannot accept such fundamental changes in my duties and pay, and therefore must consider myself dismissed.

Sincerely,

Mark Thompson

Cc: David Richmond
Don Cameron

This is Exhibit C referred to in the
affidavit of GARTH FAWLES
sworn before me, this 19th
day of June 2000
D. Royal
A COMMISSIONER, ETC.

Lou Bet

808 Bowarth Court
Newmarket, On
L3X 1Z1

April 16, 2000

BY FAX and Hand Delivery

Canadian Waste Services Inc.
Mr. Denis Goulet
Divisional Vice President
170 Claireville Drive
Etobicoke, ON M9W 5Y3

Dear Mr. Goulet:

Re: Employment as Major Account Executive

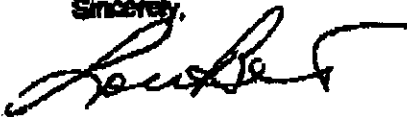
In a letter from David Richmond dated April 7, 2000, and received on April 10, 2000, I was informed that my duties would be changed to retaining and recontracting existing customers during the transition period. I would not, therefore, be involved in new selling. While I was assured that the structure of my pay was to remain the same during the transition period (basic plus commissions), the change in duties outlined would result in a substantial decrease in pay because there would be no sales from which I could continue to receive commissions.

I wrote to Mr. Richmond asking for clarification on four matters contained in his letter. Then, on Wednesday, April 12, 2000 I received a letter from you, which was dated March 31, 2000, which indicated that I was to continue to perform the same duties at the same pay that I had been performing throughout the previous seven years. This letter served to reassure me that my job and pay was to remain the same.

However, on Friday April 14, 2000, I met with yourself, David Richmond and Don Cameron. At that meeting, you stated that my job was indeed to be changed to retention and recontracting, and no new selling. This would result in a fundamental change in my duties and a decrease in pay of approximately 20%.

You refused to put these changes in writing. I was then given the ultimatum that on Tuesday, April 18, 2000, I either accept the changes to my duties and pay or be dismissed. I cannot accept such fundamental changes in my duties and pay, and therefore must consider myself dismissed.

Sincerely,



Lou Bet

c.c. David Richmond

Don Cameron

This is Exhibit D referred to in the
affidavit of GARTH FOWLES
sworn before me, this 19th
day of June 2000
D. Royal
A COMMISSIONER, ETC.

Court File No: 2000/02

JUN-19-00 16:51 FROM-

COMPETITION TRIBUNAL

**AFFIDAVIT OF GARTH FOWLES
(sworn June 19, 2000)**

**STIKEMAN ELLIOTT
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9**

Shawn C.D. Neylan
Tel: (416) 869-5545
Fax: (416) 947-0866

Solicitors for the Respondent

T-645 P. 67/70 F-585