

IN THE MATTER of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the “Act”);

AND IN THE MATTER of a Partial Wind-up Report submitted by Consumers Packaging Inc. To the Superintendent of Financial Services respecting the Consumers Packaging Inc. Pension Plan II, Registration Number 998682 (the “Pension Plan”);

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act;

AND IN THE MATTER of an Application for an Award of Costs, in connection with the Hearing Request, made by United Steelworkers of America, Local 203G;

BETWEEN:

CONSUMERS PACKAGING INC.
(“Consumers”)

Applicant

-and –

UNITED STEELWORKERS OF AMERICA,
LOCAL 203G
(“Local 203”)

Respondent

-and –

SUPERINTENDENT OF FINANCIAL SERVICES
OF ONTARIO (the “Superintendent”)

Respondent

BEFORE:

Ms. Kathryn M. Bush, Vice-Chair of the Tribunal and
Chair of the Panel
Mr. C.S. (Kit) Moore Member of the Tribunal and of the Panel
Ms. Joyce Stephenson, Member of the Tribunal and of the Panel

REPRESENTATIONS BY:

For United Steelworkers of America,
Local 203G
Mr. Michael Mazzuca

For the Superintendent
Ms. Deborah McPhail

For Consumers Packaging Inc.:
Ms. Mary Picard

**DATE OF
REPRESENTATIONS:**

On or before August 8, 2000

DECISION RELEASED:

December 11, 2000
Toronto, Ontario

REASONS FOR DECISION

This decision is in response to an application to the Tribunal by the United Steelworkers of America, Local 203G for an award of their costs in this proceeding in the amount of \$9,000 or in the alternative in an amount to be assessed on a solicitor and client basis, against Consumers Packaging Inc.

The proceeding to which the application relates arose out of a Notice of Proposal by the Superintendent dated April 30, 1999 related to the partial wind-up report filed by Consumers.

Consumers filed a hearing request with the Tribunal in respect of the Notice of Proposal on May 14, 1999. A Pre-Hearing Conference was convened by the Tribunal on August 19, 1999. At that Pre-Hearing Conference Local 203 was given party status in these proceedings. At the Pre-Hearing Conference all parties were represented and agreed to the issues in the proceeding. A Settlement Conference was also agreed to at the Pre-Hearing Conference and eventually took place on January 24, 2000. In addition, on agreement of the parties the hearing dates were scheduled for March 7, 8, and 9, 2000. At the Settlement Conference no settlement was reached and deadlines were set for an additional disclosure motion. In addition, deadlines were set for expert witness reports. By letter dated March 1, 2000, six days before the initial hearing date, counsel for Consumers advised the Tribunal that Consumers was withdrawing its Request for a Hearing. By letter dated March 6, 2000, counsel for Local 203 wrote to the Registrar of the Tribunal advising that Local 203 was not prepared to abandon any claim for costs until it had an opportunity to review any revised partial wind-up report filed by Consumers. A revised wind-up

report was filed with the Tribunal on May 19, 2000. On July 7, 2000 Local 203 indicated that it would seek costs in this matter. The Superintendent advised that she took no position with respect to the application for costs.

We have concluded an award of costs in favour of Local 203 is not justified in the circumstances of these proceedings.

Firstly, the “Financial Services Tribunal Practice Direction on Cost Awards” (the “Practice Direction”) makes it clear that the Tribunal need not follow the civil court practice where the usual rule is that the unsuccessful party pay the successful party’s costs. Rather the Tribunal is more likely to make a cost award against the party “if it has engaged in conduct which is clearly unreasonable, frivolous, or vexatious. The Tribunal is less likely to make a cost award against a party that has been reasonable, co-operative and helpful to the Tribunal”. In this matter, Consumers always appeared reasonable, co-operative and helpful to the Tribunal.

Secondly, in a matter which has settled before hearing, it is difficult to determine that the position of the party was frivolous, vexatious or manifestly unfounded as described in the Practice Direction. The fact that a matter may appear likely to be unsuccessful for a party may not by itself be sufficient under the Practice Direction to award costs against that party.

Thirdly, in order that parties are better able to assess their rights of having costs assessed against them, we believe a matter should fall clearly within the conduct described in the Practice Direction before costs are awarded. In the circumstances of this case, The Tribunal agrees that the change of position taken by Consumers created some delay in the proceedings, but the Tribunal is not convinced that this delay was unnecessary or unreasonable.

Dated this 8th day of December, 2000 at the City of Toronto, Province of Ontario.

“Kathryn M. Bush”
Kathryn M. Bush
Vice Chair of the Tribunal and
Chair of the Panel

“C.S. (Kit) Moore”
C.S. (Kit) Moore
Member of the Panel

“Joyce Stephenson”
Joyce Stephenson
Member of the Panel