

Gordon C. Eckstein: Summary, as Published in *CheckMark*

Gordon C. Eckstein, of Scarborough, was found guilty of two charges under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest, and one charge under Rule 205 of signing or associating himself with statements which he knew were false and misleading. While senior vice-president finance and administration of Livent Inc., Mr. Eckstein, as instructed by senior management, directed and participated in ongoing and material accounting irregularities at the company, including the fraudulent manipulation of the company's books and records. He directed staff to make changes to the company's financial statements which he knew would result in material misstatements, and did nothing to assist the company's auditors in finding the misstatements. While involved in Livent's initial prospectus offering in the United States, Mr. Eckstein and others put into effect an unlawful scheme to manipulate the company's financial statements by overstating earnings before interest, taxes, depreciation and amortization, and net income and assets, which had the effect of defrauding purchasers of Livent securities. Mr. Eckstein then failed to advise representatives who were carrying out a due diligence review on behalf of investors of the company's fraudulent books and records.

Mr. Eckstein did enter a plea of guilty. But, he submitted the fine should be substantially less than was ordered because he had accepted the position of senior management that they, and not he, were responsible for the financial statements. The discipline committee rejected this submission. He was fined \$25,000 and expelled from the Institute.

CHARGE(S) LAID re Gordon C. Eckstein

The Professional Conduct Committee hereby makes the following charges against Gordon C. Eckstein, CA, a member of the Institute:

1. THAT, the said Gordon C. Eckstein, in or about November 1997, while Senior Vice President Finance and Administration of Livent Inc., participated in the preparation of financial statements which he knew would be attached to a registration statement and filed with the United States Securities and Exchange Commission in support of a Livent Inc. public promissory note offering to raise approximately U.S.\$125,000,000.00 knowing that the financial statements attached to the registration statement were false and misleading in a material respect, contrary to Rule 205 of the Rules of Professional Conduct.
2. THAT, the said Gordon C. Eckstein, in or about the period January 1, 1992 through July 8, 1998, while Senior Vice President Finance and Administration of Livent Inc., failed to conduct himself in a manner that would maintain the good reputation of the profession and its ability to serve the public interest, in that, he directed and participated in ongoing and material accounting irregularities at Livent Inc. including the fraudulent manipulation of the books and records of the company, contrary to Rule 201.1 of the Rules of Professional Conduct.
3. THAT, the said Gordon C. Eckstein, in or about the period January 1, 1995 through July 8, 1998 engaged in conduct particularized in the United States District Court Southern District of New York information #98 Cr. 1502 "United States of America v. Gordon Eckstein" attached as Schedule "A", and thereby failed to maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the Rules of Professional Conduct.

Dated at Niagara-on-the-Lake this 19th day of 2000.

DOUGLAS BOUFFORD, CA - CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Gordon C. Eckstein

DECISION AND ORDER IN THE MATTER OF: Charges against **GORDON C. ECKSTEIN, CA**, a member of the Institute, under **Rules 201.1 and 205**, of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE JUNE 1, 2000

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charges Nos. 1, 2 and 3, the Discipline Committee finds Gordon C. Eckstein guilty of charges Nos. 1, 2 and 3.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Eckstein be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Eckstein be and he is hereby fined the sum of \$25,000, to be remitted to the Institute within two (2) years from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Eckstein be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Eckstein's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants;
 - (c) by publication in *CheckMark*; and
 - (d) by publication in *The Globe and Mail*, the *National Post* and *The Toronto Star*.
5. THAT Mr. Eckstein surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

DATED AT TORONTO THIS 6TH DAY OF JUNE, 2000
BY ORDER OF THE DISCIPLINE COMMITTEE

BRYAN W. STEPHENSON, BA, LLB
SECRETARY - DISCIPLINE COMMITTEE

DISCIPLINE COMMITTEE re Gordon C. Eckstein

REASONS FOR DECISION AND ORDER IN THE MATTER OF: Charges against **GORDON C. ECKSTEIN, CA**, a member of the Institute, under **Rules 201.1 and 205**, of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE JUNE 1, 2000

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on June 1, 2000 to hear evidence concerning charges brought by the professional conduct committee against Gordon C. Eckstein.

Mr. Paul Farley represented the professional conduct committee. Mr. Eckstein was present and represented by his counsel Ms. Cynthia Amsterdam.

The hearing concluded on June 1, 2000 and the panel's decision and order was issued on June 6, 2000. These reasons, issued in writing pursuant to Bylaw 574, contain the panel's decision and order, and the charges laid by the professional conduct committee, as well as the reasons of the panel.

DECISION ON THE CHARGES

The charges laid against Mr. Eckstein by the professional conduct committee were marked as an exhibit at the hearing, and read as follows:

1. *That, the said Gordon C. Eckstein, in or about November 1997, while Senior Vice President Finance and Administration of Livent Inc., participated in the preparation of the financial statements which he knew would be attached to a registration statement and filed with the United States Securities and Exchange Commission in support of a Livent Inc. public promissory note offering to raise approximately U.S.\$125,000,000.00 knowing that the financial statements attached to the registration statement were false and misleading in a material respect, contrary to Rule 205 of the Rules of Professional Conduct.*
2. *That, the said Gordon C. Eckstein, in or about the period January 1, 1992 through July 8, 1998, while Senior Vice President Finance and Administration of Livent Inc., failed to conduct himself in a manner that would maintain the good reputation of the profession and its ability to serve the public interest, in that, he directed and participated in ongoing and material accounting irregularities at Livent Inc. including the fraudulent manipulation of the books and records of the company, contrary to Rule 201.1 of the Rules of Professional Conduct.*
3. *That, the said Gordon C. Eckstein, in or about the period January 1, 1995 through July 8, 1998 engaged in conduct particularized in the United States District Court Southern District of New York information #98 Cr. 1502 "United States of America v. Gordon Eckstein" attached as Schedule "A", and thereby failed to maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the Rules of Professional Conduct.*

Mr. Eckstein entered a plea of guilty to the charges, and confirmed that he understood that, on the basis of his plea of guilty, and on that basis alone, he could be found guilty of the charges.

Mr. Farley indicated that as a result of the plea of guilty, the case for the professional conduct committee would be somewhat truncated, and that no oral evidence would be called with respect to the issue of guilt or innocence on the charges. He also indicated that Ms. Amsterdam would call evidence with respect to the issue of sanction should the hearing proceed to that stage.

An agreed statement of facts, and a document brief containing the 1997 Livent Inc. annual report, and the restated consolidated financial statements of Livent for December 31, 1997 and 1996, were filed as exhibits.

Mr. Farley drew the panel's attention to a number of the facts set out in the agreed statement, and also referred to the document brief.

Ms. Amsterdam made very brief submissions, pointing out that Mr. Eckstein did not exercise his options on 8,800 shares of the capital stock of Livent, because to do so would have constituted insider trading, and that he attempted to resign from Livent, albeit unsuccessfully, in October 1997.

Before concluding its deliberations, the panel carefully reviewed the agreed statements of facts, the essential points of which are set out below.

After 1992, Mr. Eckstein knew that the accounting at Livent was fraudulent, and by fiscal 1996 he knew that the financial statements were false and misleading and were not presented fairly. He knew that the changes he directed staff to make resulted in material misstatements in the financial statements of Livent Inc. for the years ended 1996, 1997 and the first quarter of 1998.

In addition to a number of balance sheet adjustments, the restatement of the consolidated financial statements reflected a reduction in retained earnings as at January 1, 1996 of \$13.1 million, representing the cumulative effect of the accounting irregularities to December 31, 1995, and reductions in the previously reported results for 1996 and 1997 of \$29.1 million and \$54.5 million, respectively, for a cumulative total restatement for accounting irregularities of \$96.7 million.

In May 1995, Mr. Eckstein was involved in Livent's initial prospectus offering in the United States. From that time on, in virtually every fiscal quarter through to the first quarter of 1998, he and others put into effect an unlawful scheme to manipulate Livent's financial statements, by overstating earnings before interest, taxes, depreciation and amortization, and net income and assets, which had the effect of defrauding purchasers of Livent securities.

During this period, Mr. Eckstein did nothing to assist the auditors in finding the misstatements. He signed a management representation letter relating to the 1995 audit which he knew to be false, and he did not advise representatives who were carrying out a due diligence review on behalf of investors of the fraudulent set of books and records.

The point is made clear in the agreed statement of facts that Mr. Eckstein was not the controlling mind of Livent, but rather it was senior management, who virtually created the financial statements they wanted. Mr. Eckstein's explanation that he accepted the position stated by members of senior management that they, and not he, were responsible, and that he was simply carrying out their directions, is simply not tenable.

The panel concluded that charges Nos. 1, 2, and 3 had been proven, and that the departures from the rules of professional conduct were substantial. The decision of the panel, therefore, was as follows:

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charges Nos. 1, 2 and 3, the Discipline Committee finds Gordon C. Eckstein guilty of charges Nos. 1, 2 and 3.

ORDER AS TO SANCTION

The hearing then proceeded to determine the appropriate sanction. Ms. Amsterdam filed a document brief containing evidence as to Mr. Eckstein's cooperation with various parties investigating or involved with Livent matters, and as to Mr. Eckstein's personal financial affairs. Mr. Eckstein was called upon to give evidence in this regard. Both parties filed case briefs.

Mr. Farley, on behalf of the professional conduct committee, requested a written reprimand, a fine in the range of \$25,000 to \$30,000, expulsion of the member, and notice, disclosing Mr. Eckstein's name, to the Public Accountants Council and the Canadian Institute of Chartered Accountants, and by publication in *CheckMark*, *The Globe and Mail*, the *National Post* and *The Toronto Star*.

Mr. Farley submitted that the mitigating circumstances of Mr. Eckstein's cooperation during the various investigations, and his personal financial situation, were far outweighed by the significant aggravating circumstances of this case. The enormity of the misstatement of almost \$100 million, the seniority of Mr. Eckstein's position at Livent, and the facts that the misstatements took place over six years, that Mr. Eckstein misled the auditors, that Livent was a public company which had made numerous false filings, and that the public had been defrauded, were all noted as aggravating circumstances. Mr. Farley argued that the fine must be high in recognition of these aggravating factors, and the need to deter other like-minded members. In addition, he noted that while Mr. Eckstein did not gain financially in any other material way, he did maintain his employment and receive a high salary and bonus throughout the period of the misstatements.

Ms. Amsterdam did not take issue with the sanctions requested by Mr. Farley other than with respect to the quantum of the fine. She submitted that Mr. Eckstein's full cooperation and personal situation, including his limited financial assets, made it clear that in the event of an expulsion, any fine levied should be substantially less than Mr. Farley requested, as there was a need to balance the sanction as between expulsion and fine. She also pointed out that in a number of instances a member's inability to pay had been a factor in determining the amount of the fine.

After deliberation, the panel made the following order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Eckstein be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Eckstein be and he is hereby fined the sum of \$25,000, to be remitted to the Institute within two (2) years from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Eckstein be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Eckstein's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants;
 - (c) by publication in *CheckMark*; and
 - (d) by publication in *The Globe and Mail*, the *National Post* and *The Toronto Star*.
5. THAT Mr. Eckstein surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

Reprimand

In keeping with past cases, the panel ordered that the member be reprimanded in writing by the chair of the hearing, to stress to him the serious nature of the offence and the unacceptability of his conduct.

Fine and Expulsion

Livent Inc., a high profile public company, was significantly involved in both debt and stock markets. Chartered accountants are involved in all aspects of these public securities markets, and it is essential that their credibility be maintained. In this case, because of the actions of Mr. Eckstein and others, it was the panel's view that public confidence in chartered accountants had been damaged. The length of time over which the fraudulent misstatements and misrepresentations occurred, and the magnitude of the misstatements, were clearly aggravating circumstances. The panel also found it unacceptable for a member to direct some of his peers to mislead or be involved in misleading fellow chartered accountants who were relying on them. In all respects, the aggravating circumstances in this case were very significant in relation to other cases that have come before the discipline committee. The panel therefore felt that the sanctions imposed had to be sufficient to send a clear message that conduct such as this is completely unacceptable. For these reasons the panel ordered Mr. Eckstein's expulsion from membership in the Institute.

In establishing the amount of the fine, the panel considered the submissions of both counsel. Mr. Farley pointed out that Mr. Eckstein had made substantial money in the past, and suggested that he might do so again. Ms. Amsterdam pointed to Mr. Eckstein's present financial position, and submitted that it was unlikely he would be able to pay a substantial fine, in turn making it unlikely that he would be able to apply for readmission to the Institute. Though in the absence of the mitigating factors referred to by Ms. Amsterdam, the fine in this case would likely have been higher, the panel was not persuaded that these factors were strong enough to overcome the need to impose a substantial fine, as both a specific deterrent to this member and a general deterrent to other members, and set the fine at \$25,000.

Notice

In the opinion of the panel, the giving of notice, including publication, of the decision and order, disclosing Mr. Eckstein's name, is essential as a general deterrent. In order to ensure public confidence is maintained, it is important to demonstrate that the Institute, through its disciplinary process, is regulating its members in the public interest.

Certificate

As is usual in cases involving expulsion, the panel ordered Mr. Eckstein to surrender his certificate of membership, to which he is no longer entitled.

DATED AT TORONTO THIS 15TH DAY OF AUGUST, 2000
BY ORDER OF THE DISCIPLINE COMMITTEE

B. L. STEPHENS, CA – PANEL CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:
N. A. MACDONALD EXEL, CA
M. L. MACKAY, FCA
G. R. PEALL, CA
S. W. SALTER, CA
J. T. ANDERS (Public representative)