

REGINA VS. KOTOWSKI (CENTRAL FUEL COMPANY LIMITED)

SYNOPSIS

Kotowski, president of Central Fuel Company Limited, defrauded a school board by charging it for fuel that had not, in fact, been delivered to a high school located in Fort Frances, Ontario.

For three years, Central Fuel Company submitted the lowest tender to the school board for the delivery of fuel oil to the school even though one of the tenderers was Gulf Oil Canada Limited, the company that supplied fuel oil to Central Fuel Company for its sale to the school. Since Central Fuel was offering the lowest price per gallon, 14.5 cents, the school board accepted their tender.

It was established, however, that the company was able to charge the low market price per gallon because it billed the school board for oil that had not, in fact, been supplied. The meter on the company's oil truck was rigged to continue running after the oil was shut off. The gallons of fuel oil ostensibly delivered were subsequently recorded on the sales invoice.

Before the documentary evidence could be collected, the premises of Central Fuel Company were destroyed by arson. Since the documents required to complete the fraud investigation were no longer available, investigation had to be expanded to gather documentation from various third parties.

The sales invoices submitted by Central Fuel Company were available from the school board's department of supply and services, as were their cancelled cheques and their agreement with Central Fuel Company. Documents concerning Central Fuel Company's supply of oil were obtained from Gulf Oil Canada Limited. Their invoices to Central Fuel and their statements of account, indicating the payments received from Central Fuel for the purchase of oil, were reviewed.

From this information, schedules were prepared to show the total number of gallons invoiced and the invoiced dollar amount of those gallons for each of the three school years.

This information, however, was useless without the evidence of an engineer who calculated what the school should have consumed. He analyzed the capacity of the school's heating system and the number of degree days during each of the school years, making the extremely conservative assumption that all the doors and windows of the school were open all winter. The number of gallons required by the school according to this analysis was much lower than the number of gallons invoiced by Central Fuel to the school for each of the three years.

Various graphs were prepared for each of the years with different colours denoting each of the years. These visual aids enabled the court to readily grasp the meaning of the voluminous data presented in evidence. The detailed accounting schedules on pages 34 and 35 were graphically presented as shown on page 37.

This case also illustrates an approach to be considered if available documentary evidence has been destroyed, as is often the case when arson occurs.

In order to further support the evidence of the engineer and the accountant, evidence was presented to show the number of gallons delivered in the year following Kotowski's dismissal.

COMMENTS

Open-ended contracts with suppliers can provide an opportunity for fraud. As well, an unreasonable situation, Kotowski under-bidding his supplier Gulf Oil, should not be quickly dismissed.