

IN THE CAYMAN ISLANDS COURT OF APPEAL

**CACR021/2014
IND 70/12
#03190/2012**

BETWEEN:

Edlin McArthur Myles

APPELLANT

and

HER MAJESTY THE QUEEN

RESPONDENT

Before:

**The Hon John Martin, JA
The Hon. Sir Richard Field, J.A.
The Rt Hon Sir Alan Moses, JA**

Appearances:

Michael Duck QC and Clyde Allen (Chambers) for the Appellant
Patrick Moran Deputy DPP for the Director of Public Prosecution

Hearing and Judgment delivered: November 3, 2015
Oral transcript released: 4 February 2016

Oral Ruling by the Court:

FIELD, J.A.:

1. On the 19th of June 2014, following a trial by jury presided over by Justice Henderson in the Grand Court, the applicant, Edlin McArthur Myles, was convicted of four counts of obtaining a pecuniary advantage by deception and three counts of obtaining property by deception.
2. On the 26th of June 2014 the applicant was sentenced to six months' imprisonment on each count, those sentences to run concurrently. He was also ordered to pay compensation to the three victims of his deception.
3. The relevant background facts can be shortly stated. The applicant was aged 62 years at the date of sentencing. He was an insurance agent and had for many years worked from the offices of Derek Bogle Insurance. At the time the applicant committed the offences in question he was the Deputy Director of the Board of the National Housing Development Trust. He also sat on the Board's Loans Committee. Upon accepting the appointment to the NHDT Board, the applicant signed an agreement to abide by a code of conduct which included a provision that he would not seek to use his office for personal gain. He was entitled to be paid \$200 per meeting attended.
4. There were far more applicants for Government assistance to buy a home than the 12 houses available at the material time. The applicant obtained from an

NHDT employee the private contact details of several of the applicants for assistance. He used these details to telephone, amongst others, the three individuals to whom the counts on which he was convicted relate. He told them he was "calling from the Trust" and left them with the impression that they had to obtain life insurance immediately rather than waiting to see if their applications were successful. Relying on these representations, the three applicants purchased life insurance immediately, in respect of which the applicant stood to, and did in the first instance, receive a commission. The applicants paid a total of \$630 in premiums to Sagicor, the underwriter on the policies.

5. The Crown's case, accepted by the jury, was that the applicant had dishonestly and falsely represented that each of the three applicants needed to purchase life insurance right away before their applications for assistance had been determined.
6. When passing sentence, Justice Henderson observed that section 4 (c) (vii) of the Alternative Sentencing Law (2008 Revision) required him to consider whether in committing the offences in question the applicant had abused a position of trust or authority in relation to the victims. In the judge's view, although the applicant was not employed by the NHDT or the Government, he had obligations to the public which amounted to a public trust in that he was obligated to refrain from using his position to seek personal gain and was obliged to vote on each application for assistance fairly without creating any bias or the appearance of bias by his actions.
7. In the judge considered the applicant to have been in a position of authority in relation to the three applicants at the centre of the seven counts. Since the applicant's entitlement to commissions was dependent on the loan applicants being successful in obtaining approval, the applicant created a bias, or at least the appearance of a bias, and this was an egregious breach of the code of conduct and a definite conflict of interest. The judge also referred to the passage relating to theft or related offences in the Cayman Islands sentencing guidelines which recommend a term of imprisonment where there is a breach of trust in the employment context. He also noted that the sentencing guideline in the United Kingdom for theft in breach of trust where less than £2000 was involved ranged from a fine or community service up to six months' imprisonment with a higher limit of 12 months where there is a high breach of trust.
8. In the judge's view, a high degree of public trust was reposed in the applicant because of his position on the Board. The judge noted and took account of applicant's age and that he had been a man of good character, highly regarded on Grand Cayman. He went on however to say this:

"I have given anxious consideration to the request for a community-based sentence. Regrettably, I am convinced that the need for general deterrence is a paramount concern in this case. There are a great many Government committees, boards and tribunals in this country populated with members of the community who are called upon to make important decisions with significant impact on people's lives. Some of these persons are paid a stipend, as Mr. Myles was, and some are not. All must avoid

obvious conflicts of interest and obey any code of conduct applicable to their official position. A non-custodial sentence would not reflect the seriousness with which an abuse of the public trust such as this is viewed by this Court and by the public at large".

9. Mr. Duck, QC who appeared for the applicant accepted that the Grand Court had been entitled to take this case on the basis that it did indeed involve a breach of trust but he submitted that the judge had erred in imposing an immediate custodial sentence. In his submission, given: (a) the applicant's undoubted prior good character; (b) the small amount paid in premiums - \$630 ; (c) the fact that there was no gain because there was no commission because the policies had been cancelled; (c) the applicant had compensated the victims in full; (d) the fact that the applicant has lost his licence to practice in the insurance industry and had lost his reputation in the community, it was not necessary to impose an immediate custodial sentence and instead a community-based sentence or a suspended sentence should have been the sentence chosen by the judge. In short, Mr Duck submitted that this case was one of those exceptional cases recognised in the R v Barrick (1985) 81 Cr. App. R. 78 (which has been approved in this jurisdiction in R v Scott and Rv Fyne (2007) CILR 175.
10. We are unable to accept Mr. Duck's submissions, ably and persuasively presented as they were. In our judgment, Justice Henderson was entitled to sentence the applicant to an immediate, as opposed to a suspended, sentence of imprisonment. The applicant was in a serious breach of a public trust, rightly described by Justice Henderson as an "egregious breach".
11. In our view, this sentence was not wrong in principle nor was it manifestly excessive. For these reasons this application for leave to appeal is dismissed.

Martin JA

Field JA

Moses JA