

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

Ind. No. 70 of 2012

REGINA

v.

EDLIN MACARTHUR MYLES



**Appearances: Mr. Trevor Ward Q.C. and Ms. Laura Manson
of the Office of the Director of Public Prosecutions
for the Crown**

**Mr. Ben Tonner of Samson & McGrath
for the Defendant**

Before: Hon. Justice Alexander Henderson

Heard: June 27, 2014

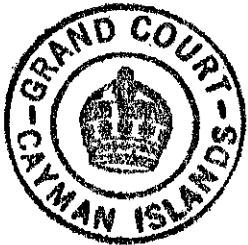


JUDGMENT

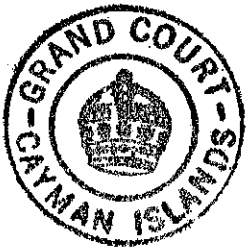
1. The Defendant Mr. Edlin Myles has been convicted by a jury of seven counts of obtaining pecuniary advantage by deception and of obtaining property by deception. These charges encompass three transactions.
2. Mr. Myles was a licensed insurance salesman at the material time. In each case he sold a policy of life insurance to a person who was an applicant for a government subsidized house under the Affordable Housing Initiative. The deception was that he represented to each client, in effect, that they needed to buy insurance immediately. In fact, they did not need to buy insurance until their applications had been approved by the National Housing Development Trust and until they had obtained a mortgage agreement from an institutional lender.
3. The total amount of money obtained through this deception was \$630.00 in the form of monthly premiums paid during the period when the insurance was actually unnecessary. Mr. Myles benefited from the deception because he was paid a commission which was a portion of the premium payments during the first year.
4. However, there is much more to the case than that. Mr. Myles was, at the material time, the deputy director of the Board of the National Housing Development Trust. He also sat on its loans committee. Upon accepting the appointment to the Board, Mr. Myles 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 paid \$200.00 per meeting for his services.

5. In his capacity with the Board he had access to confidential information regarding these applicants and others. He was also one of the persons who decided which applicants would receive government assistance and which would not. There were several hundred applicants but only twelve houses were available at the time of the offences.
6. Mr. Myles obtained from a Trust employee the private contact details for several applicants. He phoned the three victims and represented that he was calling "from the Trust". He was actually calling in his personal capacity to attempt to sell insurance. He said in his evidence that he was phoning to "congratulate" the applicants, although at the time they had not yet been approved by the Trust and had not obtained mortgages.
7. The jury found as a fact that he conveyed to each of the three victims the clear impression that the applicant had to obtain life insurance immediately rather than waiting until the approvals were granted. The three victims accepted this representation as truthful, purchased policies and paid premiums for a short period of time. None of the three applicants ended up with a house subsidized through the Trust. All were in difficult financial circumstances and could ill afford to buy life insurance and pay monthly premiums.



8. Mr. Myles is 62 years of age and has a high school education. He has been a life insurance agent for many years and has achieved considerable success selling policies. Mr. Myles has also been very active in a wide variety of charitable organizations and has sat on numerous government bodies. A large number of prominent members of the community have testified to his high reputation on Grand Cayman. He is a man of previous good character and has no criminal record. I view that as a mitigating factor.
9. My distinct impression from listening to his evidence is that Mr. Myles saw nothing wrong with his actions. He does not appear to have even considered a possible conflict of interest or the strictures of the Code of Conduct. He denied making the false representations but the jury did not believe his denial.
10. Mr. Tonner has asked, on behalf of Mr. Myles, for a community based sentence.
11. Section 4(c)(vii) of the *Alternative Sentencing Law* (2008 Revision) requires me to consider whether in committing these offences Mr. Myles "abused a position of trust or authority in relation to the victim." Mr. Myles was not employed by the Trust or by Government but he had obligations to the public which amount to a public trust. He was obligated to refrain from using his position to seek personal gain. He was also obliged to vote on each application for assistance fairly without creating any bias or appearance of bias by his actions. As Deputy Director of the Trust, he was in a position of authority in relation to these three victims.



12. Since his entitlement to receive commissions was dependent upon the applicants being successful in obtaining approval, he created a bias or at least the impression of a bias when he sold the policies to persons whose applications were pending. This was an egregious breach of the Code of Conduct and a definite conflict of interest. Mr. Myles, in the words of the *Alternative Sentencing Law*, "abused a position of trust". I view that as a significant aggravating factor. There is no evidence that Mr. Myles declared to the Board the fact that he stood to benefit personally from the applications of these three individuals and no evidence that he refrained from voting on their applications. Indeed, to do so might have signaled to the Board that he was in breach of the Code of Conduct.

13. Our Sentencing Guidelines include a passage on "Theft or Related Offences" which could have application here. They recommend a term of imprisonment where there is a breach of trust "in the context of a relationship of employment." The UK Guidelines include a section on "Theft in Breach of Trust". For an offence involving less than £2000, the recommendation is for a sentence ranging from a fine or community service to a high of imprisonment for six months. For an offence of less than £2000 involving what is termed a breach of a "high" degree of trust, the top end of the range is extended to imprisonment for 12 months. A high degree of public trust was reposed in Mr. Myles because of his position on the Board.

14. The cases which have been mentioned in argument include *Barrick* 1985, 7 CAR



(S) 142; *Connor and Bergeron* 2002 CILR 354 (Grand Court); *Brown* 1989 11 CAR (S) 418; *Mossup* 1985 7 CAR (S) 283; *Thomas*, September 2, 2013 (CA); *Schultz*, April 24, 2013; *Scott and Fyne*, April 23, 2007 (CA); *Martin*, April 28, 2009 (CA); and *Ebanks*, February 21, 2013 (Grand Court). In general terms these authorities tend to reflect the range of penalties suggested by the Guidelines.

15. I turn to the question of compensation. I order Mr. Myles to pay compensation to the following people in the following amounts: to Novelette Bodden, the sum of \$95.00; to Millicent Frederick, the sum of \$100.00; and to Lynroy McLaughlin, the sum of \$435.00. In default of payment, there will be imprisonment for 30 days.

15. 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 noncustodial 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.



16. Having regard particularly to the need for general deterrence, I have concluded that the necessary penalty is imprisonment for six months on each count, the terms to be concurrent with each other. I impose that sentence now.

Dated this 27th day of June, 2014

Henderson, J.

Henderson, J.
Judge of the Grand Court

