IN THE DISTRICT COURT
AT AUCKLAND

CRI-2016-004-012938
[2017] NZDC 18611

FINANCIAL MARKETS AUTHORITY
Prosecutor

v

ANTHONY NORMAN WILSON
Defendant

Hearing: 12 July 2017

Appearances: O Klaassen for the Prosecutor
M Cross for the Defendant

Judgment: 12 July 2017

NOTES OF JUDGE T M BLACK ON SENTENCING

---

[1] Mr Wilson you appear for sentence on four dishonesty charges; three of forgery and one of using a document. The offending occurred between July and September of 2013. You pleaded guilty to those charges.

[2] You were a registered financial advisor running your own business and this offending arises out of applications for life insurance to an insurance company, PLL. In each case you have initialled a medical disclosure page in effect to sign off on the prospective insured having no pre-existing medical conditions. In one case you have removed a page where some disclosure had been made, replaced it with a blank page and initialled it.

[3] The effect of your offending has been twofold. Firstly the advantage to you has been commission which has been paid to you earlier than may otherwise have been the case. It is impossible to know whether, for example, [redacted] would have

been insured or on what terms had the disclosure been made available to the insurer. The second and more profound impact of your offending, at least as far as [redacted] are concerned, is that when they did make an attempt to claim on the policy of insurance, it was declined on the basis of the non-disclosure and their policies were voided from inception, as the insurer is entitled to do in cases of non-disclosure. They have had significant stress and inconvenience as a result of (a) getting reinsured and (b) having to deal with a medical condition which they thought they were covered for. It is somewhat ironic that the insurer was able to void the policy on the basis of the asserted breach by [redacted] of the duty of utmost good faith, when that breach has occurred because of your breach of your duty of good faith towards them.

[4] I have victim impact statements from [redacted] and they do disclose significant distress and hardship for them.

[5] You come before the Court as a first offender; you have no history at all. I have a number of testimonials that have been provided by various people including former clients, although none of those documents have been written expressly in the knowledge of your offending, but I accept that you come before this Court as a person of previous good character and you have led a blameless and productive life up until this offending.

[6] You pleaded guilty at an appropriate time, you co-operated with the FMA investigation and you are entitled to credit for that. I have written submissions from both the prosecution and from your counsel. Ms Klaassen submits that a start point in the range of 15 to 20 months is appropriate and total discounts for plea and other matters relating to you, not exceeding 25 percent, and acknowledging that a community-based endpoint might be appropriate. Ms Klaassen emphasises the harm to the victims and the breach of trust involved in this offending. Ms Cross submits that a lower start point is justified and that discounts of 15 percent for your personal circumstances and 25 percent for your pleas and remorse might be justified.

[7] Having regard to the discussions which have taken place today, it seems to me that really, when we come down to it, there is not any disagreement about the

endpoint of the sentencing exercise. I regard the relevant purposes of the sentencing exercise are accountability, promotion of responsibility, the interests of the victims, reparation, denunciation and deterrence. In terms of the statutory principles of sentencing I have regard to the gravity of the offending and comparative seriousness of it (the forgery charges carry a maximum penalty of 10 years' imprisonment); consistency with appropriate sentencing levels, although I acknowledge that that is somewhat fraught in the area of fraud generally, where sentences tend to be very case specific, and the effect of the offending upon the victims. I am required to impose the least restrictive outcome that is appropriate in the circumstances.

[8] In terms of the statutory aggravating features, there are two, one is abuse of trust and the other is premeditation. While I accept that the offending may have come about during a period of pressure; it is clearly premeditated to the extent that it required planning and follow-through and it occurred on more than one occasion.

[9] In terms of the breach of trust aspect, I have already touched on that but the reality is that, as a financial advisor, your clients were entitled to trust you and the insurer was entitled to trust you. Indeed the whole industry operates on a model of trust between brokers and insurers, and advisors and insured persons; the whole system relies on the integrity of its participants.

[10] In terms of the statutory mitigating factors; I accept that you are entitled to credit for your remorse, I accept that you are genuinely remorseful for what has happened and you are entitled to credit for your pleas of guilty which have been made at an appropriate time.

[11] In terms of appropriate sentence start points, some cases have been referred to by both counsel; there is no tariff for the offending and it is clear, from cases like *R v Finlay*, that I am required to stand back and make an overall assessment of your culpability in relation to this offending.

[12] Having regard to the persistent nature of the offending (albeit over a short period of time), the elements of premeditation and the breach of trust and effect on the victims; my view is that the start point advocated for by the

Financial Markets Authority is appropriate and I would fix the start point at 18 months' imprisonment.

[13] That start point does involve an overall assessment of culpability, so there is no further uplift required for the aggravating factors that I have identified. In my view, you would be entitled to 10 percent credit for remorse and 20 percent for the pleas of guilty, which would take six months off that start point to get to an adjusted sentence point of 12 months' imprisonment.

[14] The question is can I convert that to an electronically monitored sentence and home detention would be the obvious sentence. In my view I can, particularly having regard to the principle of least restrictive outcome and having regard to your previous good character and your remorse.

[15] The difficulty with home detention, from my perspective, is that it would in my view unduly restrict your ability to work and you being able to work is important both for you, although I am not so much concerned about that, but is in the interests of the victims because if you cannot work then you cannot pay the reparation.

[16] On balance, I have decided to impose community work and community detention and a modified form of community detention as discussed during the course of the hearing today.

[17] I deal with you on the following basis. On each of the charges, you are sentenced to 150 hours' community work, they are all concurrent; the total community work is 150 hours. The same goes for the community detention; you are sentenced to six months' community detention.

[18] The detention address is [redacted]

[19] The curfew commences this Friday 14 July. The curfew period is Saturday to Thursday from 8.00 pm to 6.00 am and from Friday 8.00 pm to Sunday 6.00 am. If my maths is good, then that is exactly 84 hours which is the maximum period of detention permitted under the Act.

[20] In terms of reparation, while I acknowledge that there might be some doubt about the [redacted] reparation in the sense that the policy may not have responded to the claim made and even if it had not been voided by the insurer; you do not object to an order of reparation being made and I make a reparation order of $1678 in favour of [redacted]

[21] In relation to PLL, I make an order of reparation of $14,783.24.

_____
Judge TM Black
Family Court Judge
23/08/2017 4:21 pm