

JERSEY / JUDGMENT

AG -v- Gaber [2013] JRC 151 (31 July 2013)

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JUDGMENT

THE BAILIFF: 1. Mrs Gaber, you gained the trust of the victim in this case by falsely stating that you were a member of a leading brewing family, that you were one of the wealthiest women in the country and that you had a title. You then offered to invest £100,000, on behalf of the victim, in the foreign exchange market, where you said that you also had investments. In fact you did not do that when he produced the £100,000. You spent some £36,000 on yourself, including staying at leading hotels in London. The balance was invested in foreign exchange. But it was all eventually lost. When the victim started asking for information and then asked for his money back, you initially prevaricated and then you lied about what you had done. This included the production of a false letter from another person, stating that the £36,000 had been invested with that person. This, as you knew, was untrue and you had asked him to produce the letter. Tragically, if you had told the truth in October 2010, which was about a year after the victim started asking about his money, some €56,000 would apparently have been recovered, so his loss would have been modest. But you did not do that; you continued your lies. 2. You have entered your plea of guilty on the basis that you recklessly made a false statement in that you said you would invest the £100,000 in foreign exchange dealing when you realised at the time that you might well spend some of the money on yourself. And that is, of course, what you did. You began spending money on yourself the day after the money was paid into your account. The money arrived on 21 st August, 2009, and you had spent the £36,000 on yourself by early December. Nevertheless, as the Crown has rightly said, it has accepted that your plea is entered on the basis that this was a reckless making of an untrue statement, and of course, we sentence you on that basis. 3. The effect on the victim, who was 62, has been devastating. This money apparently represented the entirety of his savings after the sale of his house, and it was his financial security for the future. He now lives in a single-room bedsit and is in debt for his legal fees to the extent of £18,000. Although he has obtained a civil judgment against you for his losses, nothing has been recovered. 4. We have had regard to the factors in the case of R-v-Barrick

[1985] 7 Cr. App. R. (S) 142 which have been listed for us by the Crown Advocate in his conclusions. This was a clear breach of the trust which you had gained by your lies about your wealth and status. 5. Nevertheless, there is mitigation which Advocate Heath has urged on your behalf. Firstly, there is your guilty plea and that stands you in good stead. We accept that it was an early guilty plea after the Crown indicated a willingness to accept a plea to recklessness rather than knowing dishonesty. We also take fully into account that

you have no previous convictions. We have read the many references which have been provided. We have also read your letter in which you express remorse, although we have to say that much of the letter seems to concentrate more on justifying your conduct. Most importantly, we have read the various reports, including that of Dr Harrison, which suggests that you have suffered from post-traumatic stress disorder as a result of the abusive behaviour of your late husband, and that you were suffering from this, together with severe depression and severe anxiety, at the time of the commission of the offence. Dr Harrison considers that the combination of these various factors would have had a significant effect on your thinking and behaviour at the time of the offence. The reports also suggest that you are at a material risk of self-harm or suicide if a prison sentence is imposed. So Advocate Heath has submitted that, for these reasons and for the other matters that she put forward, we should regard this as an exceptional case and impose a non-custodial sentence. 6. But the Court has repeatedly said that offences of this nature, involving a breach of trust, will attract a prison sentence, save in the most exceptional circumstances. As examples we have been referred to the cases of AG-v-Huchet

[2013] JRC 002 and AG-v-Renouf 2001/125 where much longer sentences were imposed, but we must emphasise that in those cases the false statements were made knowingly rather than, as in this case, recklessly. We have been referred to the case of AG-v-Christmas

[2013] JCA 078 where there was a reckless making of a statement and a sentence of 15 months was imposed following a trial. However, it is clear that the Court of Appeal felt that this sentence was, if anything, on the lenient side. 7. We have carefully considered what Advocate Heath has said but in our judgment, despite the mitigation put forward, this offence is too serious to be dealt with by way of a non-custodial sentence, and we also think that the Crown's conclusions take full account of all the mitigation. 8. The sentence of the Court is one of 14 months' imprisonment. Authorities Investors (Prevention of Fraud)(Jersey) Law 1967. R-v-Barrick [1985] 7 Cr. App. R. (S) 142. AG-v-Huchet

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