IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE

INDICTMENT NO: 0056 & 56A/2012

THE QUEEN

V

JUDITH FRANCIA DOUGLAS
&
MARCIA ANGELLA HAMILTON

Appearances:	**Ms. Toyin Salako for the Crown**
	Mr. Guy Dilliway-Parry of Priestleys for Defendant Judith Douglas
	Ms. Margeta Facey Clarke for the Defendant Marcia Hamilton
Before:	**The Hon. Mr. Justice Charles Quin Q.C.**
Sentence Hearing:	**25th February, 8th March, 7th and 26th April 2016**
Written Submissions & Affidavit:	**3rd March, 1st and 24th April 2016**

SENTENCE JUDGMENT

INTRODUCTION

1. On the 21st August 2012 the DPP laid a 38-count Indictment against the Defendants Judith Douglas and Marcia Hamilton.

2. Thirty-six (36) counts (counts 2 - 36 and count 38) charged both Judith Douglas and Marcia Hamilton, together with Kathleen Davis, with Obtaining Property by Deception pursuant to s.247 of the Penal Code (2007 Revision). These 36 counts covered a period of time from September 2009 to April 2010.

3. There was one count (Count 1) for Arrangement for the Use or Control of Criminal Property contrary to s.134(1) of the Proceeds of Crime Law against Judith Douglas and Marcia Hamilton together with Kathleen Davis.

4. Count 37 was one charge of Obstructing Justice pursuant to s.107(1)(d) of the Penal Code (2007 Revision) against Judith Douglas.

5. On the 24th August 2012 the Defendants Marcia Hamilton and Judith Douglas pleaded Not Guilty to all 38 counts on the Indictment.

6. There were four trial dates which were adjourned as a result of applications from the Defendants. Also, in October 2014 Judith Douglas' then attorneys applied for an adjournment due to difficulties with listing this trial in the Court's diary because her attorneys were involved in the re-trial of the "CNB Robbery" case (listed for re-trial on an order from the Cayman Islands Court of Appeal (CICA)). Therefore, another trial date of the 8th June 2015 was set.

JUDITH DOUGLAS

7. In May 2015 Judith Douglas instructed new attorneys, namely Priestleys, and Mr. Dilliway Parry assumed conduct of Judith Douglas' defence and in June 2015 the defendant Judith Douglas, through her new attorney Mr. Dilliway-Parry, indicated that she was prepared to plead guilty to certain charges.

8. On the 4th September 2015 Judith Douglas asked to be re-arraigned on the 38-count Indictment 0056/2012 and she entered guilty pleas to 9 Counts, being Counts 2, 3, 9, 10, 11, 12, 16, 33 and 38 – which all charge the Defendant with Obtaining Property by Deception pursuant to s.247 of the Penal Code (2007 Revision) with Marcia Hamilton and Kathleen Davis – running from the 2nd September 2009 up to the 21st June 2010. The Particulars of the 9 counts read as follows:

i. <u>*Count 2*</u>: Judith Francia Douglas and Marcia Angella Hamilton, together with Kathleen Rosetta Davis, on or about the 9th day of September 2009, in the Cayman Islands, dishonestly obtained cash in the amount of US$3,000.00 being property belonging to Avril Johnson, with the intention of permanently depriving Avril Johnson thereof, by deception, namely by falsely representing that the cash was required for the purposes of submitting a legitimate application for Permanent Residency [PR] to the Cayman Islands Government.

ii. *Count 3*: Judith Francia Douglas and Marcia Angella Hamilton, together with Kathleen Rosetta Davis, on or about the 17th day of September 2009, in the Cayman Islands, dishonestly obtained cash in the amount of CI$2,500.00 being property belonging to Vincent Hall, with the intention of permanently depriving Vincent Hall thereof, by deception, namely by falsely representing that the cash was required for the purposes of submitting a legitimate application for Permanent Residency [PR] to the Cayman Islands Government.

iii. *Count 9*: Judith Francia Douglas and Marcia Angella Hamilton, together with Kathleen Rosetta Davis, on or about the 2nd day of November 2009, in the Cayman Islands, dishonestly obtained cash in the amount of CI$2,500.00 being property belonging to Judith Turner, with the intention of permanently depriving Judith Turner thereof, by deception, namely by falsely representing that the cash was required for the purposes of submitting a legitimate application for Permanent Residency [PR] to the Cayman Islands Government.

iv. *Count 10*: Judith Francia Douglas and Marcia Angella Hamilton, together with Kathleen Rosetta Davis, between the 1st day January 2010 and the 31st day of January 2010 in the Cayman Islands, dishonestly obtained cash in the amount of CI$2,500.00 being property belonging to Maxwell Reid, with the intention of permanently depriving Maxwell Reid thereof, by deception, namely by falsely representing that the cash was required for the purposes of submitting a legitimate application for Permanent Residency [PR] to the Cayman Islands Government.

v. *Count 11*: Judith Francia Douglas and Marcia Angella Hamilton, together with Kathleen Rosetta Davis, between the 1st day of January 2010 and the 31st day of January 2010 in the Cayman Islands, dishonestly obtained cash in the amount of CI$2,500.00 being property belonging to Marva Johnson, with the intention of permanently depriving Marva Johnson thereof, by deception, namely by falsely representing that the cash was required for the purposes of submitting a legitimate application for Permanent Residency [PR] to the Cayman Islands Government.

vi. *Count 12*: Judith Francia Douglas and Marcia Angella Hamilton, together with Kathleen Rosetta Davis between the 1st day of January 2010 and the 31st day of January 2010, in the Cayman Islands, dishonestly obtained cash in the amount of CI$2,500.00 being property belonging to Caroll Walters, with the intention of permanently depriving Caroll Walters thereof, by deception, namely by falsely representing that the cash was required for the purposes of submitting a legitimate application for Permanent Residency (PR) to the Cayman Islands Government.

vii. *Count 16*: Judith Francia Douglas and Marcia Angella Hamilton, together with Kathleen Rosetta Davis on or about the 17th day of January 2010, in the Cayman Islands, dishonestly obtained cash in the amount of CI$2,500.00 being property belonging to Glaspole Scott, with the intention of permanently depriving Glaspole Scott thereof, by deception, namely by falsely representing that the cash was required for the purposes of submitting a legitimate application for Permanent Residency [PR] to the Cayman Islands Government.

viii. *Count 33*: Judith Francia Douglas and Marcia Angella Hamilton, together with Kathleen Rosetta Davis, on or about the 29th day of March 2010 in the Cayman Islands, dishonestly obtained cash in the amount of CI$2,550.00 being property belonging to Boyd Robinson, with the intention of permanently depriving Boyd Robinson thereof, by deception, namely by falsely representing that the cash was required for the purposes of submitting a legitimate application for Permanent Residency [PR] to the Cayman Islands Government.

ix. *Count 38*: Judith Francia Douglas and Marcia Angella Hamilton, together with Kathleen Rosetta Davis, on or about the 21st day of June 2010 in the Cayman Islands, dishonestly obtained cash in the amount of CI$2,500.00 being property belonging to Boncho Stoyanov, with the intention of permanently depriving Boncho Stoyanov thereof, by deception, namely by falsely representing that the cash was required for the purposes of submitting a legitimate application for Permanent Residency [PR] to the Cayman Islands Government.

9. The total sum of money dishonestly obtained for the nine (9) charges was CI$20,500.00 and pleas to these counts were accepted by the Crown. The Crown asked that Judith Douglas be sentenced at the conclusion of the trial of her co-defendant Marcia Hamilton – which trial was set to commence on the 15th October 2015.

MARCIA HAMILTON

10. On the 15th October 2015 a new 8-count Indictment was laid against Marcia Hamilton who pleaded not guilty to all 8 counts. These 8 charges all accuse Marcia Hamilton with Judith Douglas with Obtaining Property by Deception pursuant to s.247 of the Penal Code (2007 Revision) and the Particulars read as follows:

    i. *Count 1*: Marcia Angella Hamilton, together with Judith Francia Douglas, on or about the 9th day of September 2009, within the jurisdiction of the Cayman Islands, dishonestly obtained cash in the amount of US$3,000.00 being property belonging to Avril Johnson, with the intention of permanently depriving Avril Johnson thereof, by deception, namely by falsely representing that the cash was required for the purposes of submitting a legitimate application for Permanent Residency (PR) to the Cayman Islands Government.

    ii. *Count 2*: Marcia Angella Hamilton, together with Judith Francia Douglas, on or about the 16th day of September 2009, within the jurisdiction of the Cayman Islands, dishonestly obtained cash in the amount of KY$2,500.00 being property belonging to Maylin Aguila, with the intention of permanently depriving Maylin Aguila thereof, by deception, namely by falsely representing that the cash was required for the purposes of submitting a legitimate application for Permanent Residency (PR) to the Cayman Islands Government.

iii. *Count 3*: Marcia Angella Hamilton, together with Judith Francia Douglas, on or about the 18th day of September 2009, within the jurisdiction of the Cayman Islands, dishonestly obtained cash in the amount of KY$2,500.00 being property belonging to Vincent Hall, with the intention of permanently depriving Vincent Hall thereof, by deception, namely by falsely representing that the cash was required for the purposes of submitting a legitimate application for Permanent Residency (PR) to the Cayman Islands Government.

iv. *Count 4*: Marcia Angella Hamilton, together with Kathleen Rosetta Davis and Judith Francia Douglas, on or about the 30th day of October 2009, within the jurisdiction of the Cayman Islands, dishonestly obtained cash in the amount of KY$5,000.00 being property belonging to Angela Brooks (KY$2,500.00 held on behalf of Gregory Bonner), with the intention of permanently depriving Angela Brooks thereof, by deception, namely by falsely representing that the cash was required for the purposes of submitting a legitimate application for Permanent Residency (PR) to the Cayman Islands Government.

v. *Count 5*: Marcia Angella Hamilton, together with Kathleen Rosetta Davis and Judith Francia Douglas, on or about the 2nd day of November 2009, within the jurisdiction of the Cayman Islands, dishonestly obtained cash in the amount of KY$2,500.00 being property belonging to Otis Whilby, with the intention of permanently depriving Otis Whilby thereof, by deception, namely by falsely representing that the cash was required for the purposes of submitting a legitimate application for Permanent Residency (PR) to the Cayman Islands Government.

vi. *Count 6*: Marcia Angella Hamilton, together with Kathleen Rosetta Davis and Judith Francia Douglas, on or about the 2nd day of November 2009, within the jurisdiction of the Cayman Islands, dishonestly obtained cash in the amount of KY$2,500.00 being property belonging to Judith Turner, with the intention of permanently depriving Judith Turner thereof, by deception, namely by falsely representing that the cash was required for the purposes of submitting a legitimate application for Permanent Residency (PR) to the Cayman Islands Government.

vii. *Count 7*: Marcia Angella Hamilton, together with Kathleen Rosetta Davis and Judith Francia Douglas, between the 1st day of January 2010 and the 31st day of January 2010, within the jurisdiction of the Cayman Islands, dishonestly obtained cash in the amount of KY$2,500.00 being property belonging to Angela Brooks (held on behalf of Isolyn Randyke), with the intention of permanently depriving Angela Brooks thereof, by deception, namely by falsely representing that the cash was required for the purposes of submitting a legitimate application for Permanent Residency [PR] to the Cayman Islands Government.

viii. *Count 8*: Marcia Angella Hamilton, together with Kathleen Rosetta Davis and Judith Francia Douglas, between the 1st day of March 2010 and the 16th day of April 2010, within the jurisdiction of the Cayman Islands, dishonestly obtained cash in the amount of KY$7,650.00 being property belonging to Angela Brooks (held on behalf of Clyde Coley, Rona Henry and Mr. Henry), with the intention of permanently depriving Angela Brooks thereof, by deception, namely by falsely representing that the cash was required for the purposes of submitting a legitimate application for Permanent Residency [PR] to the Cayman Islands Government.

11. Marcia Hamilton elected trial by Judge Alone and the trial took place over 14 days – on the 15th, 19th, 20th, 21st, 22nd, 23rd, 26th, 27th, 28th, 29th, 30th October; 2nd, 3rd November 2015.

12. On the 22nd December 2015 the Court delivered its verdict and the Defendant Marcia Hamilton was found guilty of the first 6 counts on the Indictment and Not Guilty on Counts 7 and 8.

13. Counts 1 to 6 ran from the 9th September 2015 to the 2nd November 2015 and the total sum dishonestly obtained was **CI$17,500.00.**

14. The third defendant, Kathleen Davis, fled from the Cayman Islands and is believed to be in Jamaica. She is currently a fugitive from justice.

SUMMARY OF FACTS

15. On the 28th October 2009 the Cayman Islands Immigration Department received information that a lady, namely Marcia Hamilton, had been collecting money in amounts of CI$2,500.00 from unsuspecting members of the public and promising Permanent Residency (PR) in return. This initiated the investigation.

16. The investigation revealed that a number of members of the public all on work permits, had handed over cash to Marcia Hamilton, and sometimes to Judith Douglas, as part of a scam to take money in return for a promise of PR.

17. In 2009 and 2010 neither Marcia Hamilton nor Judith Douglas was employed by the Cayman Islands Immigration Department or by the Office of the Premier. Neither Marcia Hamilton nor Judith Douglas was authorized to accept any form or application for PR, nor were they authorized to accept money on behalf of the Cayman Islands Government. Finally neither Marcia Hamilton nor Judith Douglas was authorized to issue receipts on behalf of the Government.

18. In relation to Marcia Hamilton and Judith Douglas, Maylin Aguila, a co-worker of Marcia Hamilton, asked to have back her money. Marcia Hamilton collected the $2,500 from Judith Douglas and returned it to Maylin Aguila; this is Count 5 of Indictment 56/2012 (the 38-count Indictment) and Count 2 on Indictment 56A/12 (the, latter 8-count Indictment.

19. In addition, Judith Turner, the Complainant in Count 9 on Indictment 56/2012 (the 38-count Indictment) and in Count 6 on Indictment 56A/2012 (the 8-count Indictment) received back $850.00 from Judith Douglas when she requested the return of her money. Avril Johnson the Complainant in Count 11 on the 38-count Indictment (Ind.56/12) and in Count 1 of the 8-count Indictment (Ind. 56A/2012) received back the sum of $500.00 on two tranches of $200 and $300.00 each. Finally, in relation to refunds, Boyd Robinson, the Complainant in Count #33 of Indictment 56/2012 (the 38-count Indictment) had $300.00 returned to him.

20. Despite making considerable efforts to ask Judith Douglas and Marcia Hamilton to return the money they had handed over to them in exchange for PR none of the other victims received any refund of the sums of money they handed over to the Defendants. The evidence is that both Judith Douglas and Marcia Hamilton became increasingly hard to contact – with many victims discovering that their telephone numbers were no longer in use.

21. The Defendant Marcia Hamilton used information relating to the grant of Status[1] programme in the year 2003[2] to inveigle the victims into thinking that this (2009-2010 programme) was the same as the 2003 programme. Marcia Hamilton had explained to a number of victims that in order to obtain her 2003 Grant of "Status" all she just had to sign her name on a piece of paper and her status was granted.

22. The Defendant Marcia Hamilton explained to many of the victims that this 2009-2010 PR programme was similar to the informal status grants procedure of 2003.

[1] The Caymanian Status and Permanent Residency Board may, upon application, grant the right to be Caymanian – commonly termed "a Status grant" – to persons meeting certain requirements

[2] This programme in the year 2003 is one that became known as the "3000 status grants" and was described as the "wholesale" grant of status/right to be Caymanian to some 3000 persons by the then Leader of Government Business in a process that reportedly deviated from the norm

23. The Defendant Judith Douglas along with Kathleen Davis told the victims that Marcia Hamilton "knew someone in the "Glasshouse[3]" or in the Cayman Islands Immigration Department and that the PR "would come within a few weeks." The unwitting victims relied on these representations.

24. At times the Defendants – Marcia Hamilton and Judith Douglas – told the victims that the date for applications was "closing:" and this encouraged their victims to find the required $2,500.00 and pay it to Marcia Hamilton and sometimes to Judith Douglas.

25. Crown counsel submits that there was nothing to distinguish the roles of Judith Douglas and Marcia Hamilton. They both applied pressure on their victims to part with their money.

26. Crown counsel also submits that Marcia Hamilton and Judith Douglas targeted vulnerable victims with relatively low incomes. The opportunity to obtain PR was particularly attractive to persons on work permits who would become subject to the Cayman Islands Government "Rollover[4]" policy.

27. In fact Crown counsel explained that there was even a "fast-track scheme" in which some victims were encouraged to pay extra funds in order to accelerate the process of obtaining PR.

28. At various times the evidence given by the victims disclosed that the Defendants used the name of the then Premier in order to provide the scam with an aura of respectability and authenticity.

[3] The then Cayman Islands Government Administration building
[4] Term Limit for residency on the island.

29. The outcome was that no PR was granted to any of the victims. Most of them received no refund and they all experienced significant loss of hard-earned income and consequential hardship.

SUBMISSIONS ON BEHALF OF MARCIA HAMILTON

30. Counsel on behalf of Marcia Hamilton submits that the sum of $17,500.00 dishonestly obtained can be reduced to $14,150.00 to take into account the refunds to Maylin Aguila and Judith Turner.

31. Defence counsel submits that Marcia Hamilton was only doing favours for Judith Douglas and Kathleen Davis. Marcia Hamilton maintains that she collected the money because Judith Douglas and Kathleen Davis asked her to collect the money from the victims. In addition, Marcia Hamilton says she was merely "helping family and friends."

32. Defence counsel submits that Marcia Hamilton has suffered great shame and embarrassment and has found it difficult to obtain employment since these charges have been laid against her. Defence counsel adds that "*Marcia Hamilton believes everyone looks at her as a thief.*"

33. Defence counsel states further that although Marcia Hamilton continues to take care of her sick child (along with the father of the child), these charges have put a great strain on Marcia Hamilton and her resources.

34. Defence counsel further submits that Marcia Hamilton is herself a victim and that "she was innocently drawn into a scheme." Defence counsel states that when Marcia Hamilton recognized the full impact of the scam she tried to help others get money back.

35. Defence counsel submits that Marcia Hamilton was only involved from September to November 2009 and also submits that the Defendant Hamilton is willing to try to repay the money.

SUBMISSIONS ON BEHALF OF JUDITH DOUGLAS

36. Judith Douglas pleaded guilty on the 4th September 2015.

37. Mr. Dilliway-Parry was only instructed in May 2015 and after reviewing the case with his client she indicated as early as June 2015 that she would be pleading guilty. Accordingly, defence counsel submits that in these circumstances the Court should consider giving full credit for her guilty pleas. Defence counsel points to the fact that Judith Douglas has saved the time and expense of a long trial with some 22 witnesses. In addition, Defence counsel submits that the witnesses have all been spared the anxiety of coming to court to give their evidence.

38. Defence counsel submits that Judith Douglas is absolutely ashamed of her actions in this scam.

39. Defence counsel asks the Court to take the view that the scam with his client, Marcia Hamilton and Kathleen Davis started as a small-scale scheme that spiralled out of control. Once the ladies persuaded one or two persons to part with $2,500.00, the rumour spread and numerous unwitting third parties approached the ladies.

40. Defence counsel is quick to submit that it is not any defence but the third-party victims were enthusiastic volunteers and Judith Douglas never intended for the scam to go as far as it did.

41. Moreover, Mr. Dilliway-Parry submits that the scam was a "*hopeless and doomed deception from the outset,*" there was no prospect of the scam going undetected and it was only a matter of time before the authorities would have come to arrest the three ladies. Kathleen Davis "cut and run". Marcia Hamilton maintains that she is not guilty. However, defence counsel for Judith Douglas submits that his client is the only one of the three to accept full responsibility for her actions in this scam.

42. Defence counsel submits that Judith Douglas is a person of good character. She is a "good neighbour". She makes a modest living importing and selling clothing and, she says that the last five years have been the worst five years of her life.

43. On the 6th April 2016 the Court was provided with a letter signed by 12 residents of the Diaz Lane community in George Town, Grand Cayman. They state that Judith Douglas has kept the Diaz Lane Road clean on a weekly basis without ever asking for any contributions. Consequently since her incarceration on the 25th February 2016 she has been greatly missed by the residents of Diaz Lane. These residents also attest to Judith Douglas being an outstanding citizen and ask the Court for leniency in relation to the sentence that must be imposed.

THE LAW

THE INDICTMENT

44. On all counts the Defendants are charged with Obtaining Property by Deception pursuant to s.247 of the Penal Code (2007 Revision) which reads:

> *"247.(1) A person who by any deception dishonestly obtains property belonging to another, with intention of permanently depriving the other of it commits an offence and is liable to imprisonment for ten years.*
>
> *(2) For purposes of this section a person is to be treated as obtaining property if he obtains ownership, possession or control of it, and "obtain" includes obtaining for another or enabling another to obtain or retain.*
>
> *(3) Section 240 shall apply for this section, with the necessary adaptation of the reference to appropriating, as it applies for section 235.*
>
> *(4) For purposes of this section "deception" means any deception (whether reckless or deliberate) by words or conduct as to fact or as to law, including a deception as to the present intentions of the person using the deception or any other person."*

45. All counsel have referred to ***The Chief Justice's Statement on Tariffs and Guidelines for Sentencing of Certain Offences*** dated 16th January 2002 (the Chief Justice's Sentencing Guidelines) which states:

> *"For offences of THEFT or related offences, depending on the value of the property stolen and any other aggravating factors, particularly where there is a breach of trust in the context of a relationship of employment, an immediate term of imprisonment ranging from 1 to 4 years for a first offence, and an order for repayment, will likely be imposed."*

The learned Chief Justice went on to state:

> *"The tariff could be higher still depending on the seriousness of the offence."*

46. Counsel have referred to the classic English cases of ***R v. Barrick***[5] and ***R v. Clark***[6] which set guidelines on the proper sentences for breach-of-trust cases. The principles and guidelines derived from those two cases have been reviewed and incorporated into the UK ***Sentencing Council Definitive Guideline on Fraud, Bribery and Money Laundering Offences*** (dated the 1st October 2014). These new UK Guidelines specifically set out starting points and ranges of sentences depending on the amounts involved – ranging from less than £5000 to £500,000 or more[7].

47. The table is based on the losses incurred and the amount of loss arising from the offence. The amounts dictate whether the sentence should be adjusted upwards or downwards from the recommended starting point.

48. It is my view that the amounts stolen are not so relevant in this case. The victims were all asked for the same amount of $2,500 for PR applications and the scam continued from September 2009 until mid-2010 when Judith Douglas and Marcia Hamilton were arrested.

49. When one addresses the question of culpability the Guidelines state:

> "The level of culpability is determined by weighing up all the factors of the case to determine the offenders' roles and the extent to which the offending was planned and the sophistication with which it was carried out."

[5] ***R v. Barrick*** [1985] 81 Cr. App. R. 78
[6] ***R v. Clark*** [1998] 2 Cr. App. R. 137
[7] See page 8

50. The only Cayman cases cited before me for similar offences and with similar facts are the cases which include Paul Ebanks. In ***R v. Paul Anthony Ebanks***[8], Acting Judge of the Grand Court, McCalla J, convicted that Defendant of 13 counts which charged him with obtaining money on a promise of providing Status/the Right to be Caymanian or Work Permits. This Defendant had 42 previous convictions of a similar nature. At the time, in 2006, McCalla J (Actg.) stated: "*This type of offence is not very prevalent in this jurisdiction*[9]. Regrettably this is no longer the case today. McCalla J (Actg.) imposed a sentence of six (6) years' imprisonment on each count to run concurrent.

51. The Defendant Paul Ebanks appealed against conviction and on the 7th August 2008 the Cayman Islands Court of Appeal (CICA) dismissed the appeal. Although there was no separate appeal against sentence, on the 10th December 2008 the CICA affirmed the convictions and sentence of 6 years imposed by McCalla J (Actg.).

52. On the 25th August 2008 Paul Anthony Ebanks was again found guilty of two similar offences of accepting money on the promise of obtaining Work Permits. The Court noted that the Defendant was serving a 6-year sentence for similar offences and, on the 4th September 2008 imposed two concurrent 12-month sentences to run consecutive to the original sentence of 6 years.

53. On the 4th August 2009 the Grand Court imposed a sentence of 4 years' imprisonment against Paul Anthony Ebanks – again found guilty of one count of deception – that is, of obtaining money by deception in the sum of five hundred ($500.00) dollars on a promise to the victim that he would receive Caymanian Status for the that sum. The Ruling of the Grand Court dated the 4th August 2009 sets out the full history of Paul Ebanks' offences and the sentences imposed in relation to Indictment #0092/2008.

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[8] Ind. 0024/2005

[9] Page 2 line 24 and 25 and page 3 line 1 and 2.

COMPENSATION

54. The money was dishonestly obtained in 2009 and 2010. The power to order compensation is found in s.33 of the Penal Code which reads: "

> *"33. Any person who is convicted of an offence may be adjudged to make compensation to any person injured by his offence or by any other similar offences committed by him which are taken into consideration by the court in determining sentence. Any such compensation may be in addition to or in substitution for any other punishment."*

55. The Chief Justice in ***York, Tater and Dubash v. Attorney General***[10] stated:

> *"It is wrong in principle to make an order for compensation when the offender lacks the means to meet it, since such an order is intended to compel an offender to restore the proceeds of his offence. It is not its purpose to operate inevitably as an additional term of imprisonment which would follow in the event of non-payment."*

56. In ***R v. Randall***[11]the Privy Council considered the issue of compensation and imprisonment and said:

> *"Where the consecutive sentence is imposed in default of payment it is intrinsically unfair to make an order which may result in the imprisonment of the offender when he lacks the means to avoid that consequence."*

57. Both these cases were considered by Henderson J. in ***R v. Ebanks***[12] and at paragraph 26 of his unreported judgment he reached the following conclusion:

[10] ***York, Tater and Dubash v. Attorney General*** [1994-95] CILR Note 19.
[11] ***R v. Randall*** [2002] CILR 254-7
[12] (2013) (1) CILR 2

"In summary a compensation Order must be considered as an integral part of this process of punishment, that is the process of sentencing. It follows that a compensation order should only be made where there is reason to be believe that the funds are immediately available to satisfy the Order. If there is any realistic prospect of the default position being served consecutively, the authorities suggest that no compensation order should be made at all. Finally, it seems to me that the civil process (which has a wide variety of enforcement mechanisms available) is better attuned to the task of collecting a debt from someone who cannot make immediate payment."

58. I have read the helpful Social Inquiry Reports (SIRs) and take into account the submissions of both counsel. I note in passing the sentencing of both defendants has been delayed because of the disparity in income of the amounts Ms. Hamilton first provided to her Probation Officer, Mr. Tomlinson, and then to her counsel, Ms. Facey-Clarke. This has now been clarified, largely due to the helpful supplementary SIR provided by Mr. Tomlinson on the 31st March 2016.

59. I have also been provided with helpful written submissions from Crown Counsel, Ms. Salako and from Counsel on behalf of Judith Douglas, Mr. Dilliway-Parry.

60. On the information before the Court it is apparent that funds are not immediately available to compensate the victims. In accordance with the principles relating to compensation derived from the cases above I am satisfied that compensation orders are not viable in the circumstances of this case.

Analysis & Conclusion

61. The UK ***Sentencing Council Definitive Guideline on Fraud, Bribery and Money Laundering Offences*** (dated the 1st October 2014) suggest there would be high culpability where the leading roles are part of a group. In this case we have all three ladies playing very significant roles in persuading the victims to part with their money, collecting the money and passing off bogus receipts for monies paid with a promise of receiving PR.

62. The three ladies exercised influence on their victims by telling them that if they did not pay over the money quickly there were cutoff dates and, consequently, the opportunity for the purported grant of PR would be lost.

63. The Court notes that the fraudulent activity of Marcia Hamilton and Judith Douglas was over a sustained period of time and involved a significant number of unwitting victims.

64. The victims tended to be in low-income jobs and subject to Work Permits and the Cayman Islands Immigration Law Term Limit "Rollover" Policy – making them vulnerable to the representations of Marcia Hamilton, Judith Douglas and Kathleen Davis.

65. This was not a classic breach of trust fraud or scam where an employee steals from an employer. These victims relied on the representations made by Marcia Hamilton and Judith Douglas that by paying money to them they would obtain PR.

66. What is particularly egregious is that the two Defendants and Kathleen Davis knew that they were promising the victims PR and this valuable PR was something they knew their victims would never receive.

67. This is a small jurisdiction. These dishonest offences attack the integrity of our immigration laws and immigration procedure. These offences tarnish the reputation of the Cayman Islands. The victims were all on work permits and subject to the Rollover. It is not surprising that they fell for this most cynical of scams as they sought and paid for the security they mistakenly thought the purported PR would provide for them.

68. The Court must impose a punishment to reflect the gravity of the offence and act as serious deterrent to others who may be contemplating such dishonest conduct.

69. The offences are different from the classic breach of trust-theft cases dealt with in ***R v. Barrick***[13] and ***R v. Clark***[14] and the UK ***Sentencing Council Definitive Guideline on Fraud, Bribery and Money Laundering Offences*** (dated the 1st October 2014). Accordingly, I look to the Chief Justice's Guidelines and the sentences imposed in the cases involving ***Paul Ebanks***. In my view, the starting point for these scam immigration offences, regardless of the plea, should be four years – with a range of sentence from 18 months to 7 years, depending on the aggravating and mitigating factors.

[13] ***R v. Barrick*** [1985] 81 Cr. App. R. 78
[14] ***R v. Clark*** [1998] 2 Cr. App. R. 137

Marcia Hamilton

70. Marcia Hamilton maintains that she tried to recover back monies for the victims. There is no evidence from any of the victims or from any other source to support that contention. Judith Turner got her $850.00 back from Judith Douglas and Maylin Aguila received her money back from Judith Douglas who gave it to Marcia Hamilton. Others were left with no refund and there is no evidence that Marcia Hamilton succeeded in returning any portions of monies paid in this scam by these victims.

71. Marcia Hamilton has never properly explained why the Immigration authorities found so much paperwork in relation to the scam when she was arrested on the 22nd April 2010.

72. The Exhibits set out in the Table below contain the names of victims and sums of money paid to the Defendants by them, together with receipts and associated scam documents. On the 22nd April 2010, the day of Marcia Hamilton's arrest, many of these Exhibits were found in the drawer of Marcia Hamilton's bedside table, in her handbag and in her motor vehicle. The evidence shows that Marcia Hamilton used her car to conduct her business and to collect money. Marcia Hamilton effectively operated a mobile scam PR facility – collecting money from her victims at their places of work and at various locations in and around George Town.

Exhibit #	Name	Date	Amount	Complainant
#1	Receipt #465177	2/11/09	KY$$2,500	Judith Turner
#2	Receipt #465166	30/10/09	KY$2,500	Angella Brooks
#3	Receipt #465169	30/10/09	KY$2,500	Gregory Bonner
#4	Receipt #20312	29/1/10	KY$2,500	Isolyn Roy
#5a	Receipt #465125	18/9/09	KY$2,500	Vincent Hall
#5b	Paper with # 3277542	18/9/09	KY$2,500	"Marcia"
#6	Receipt #465121	16/09/09	KY$2,500	Maylin Aguila
#7	Receipt #465122		KY$2,500	Guillermo Nunez
#8	Receipt #239759		KY$2,500	Avril Wallace Johnson
#9	Receipt #465198	2/11/09	KY$2,500	Otis Whilby
#10	Notepaper with names, dates of birth & contact details			
#11a – #11i	Documents – names & contact numbers			
#12	Cabinet Grant List/Copy of Gazette 33/2003 dated 31/12/03			
#13	Record of Interview (Marcia Hamilton)			
#14	Work Permit of Anita Powell			
#15	Names + contact numbers			
#16	Police cert., application + photos			
#17	Construction company Minutes			
#18	Triquest letter & contract			
#19	Judith Douglas' Police Clearance Certificate			

73. The compelling inference from all the paperwork found in Marcia Hamilton's possession in April 2010 relating to the scam is that she was deeply involved in the scam for a long period of time.

74. What is particularly egregious is that, on her own evidence, even after Marcia Hamilton and Leonard Wright had queried the scheme and asked back for her money, she was collecting money from other third parties in consideration for the bogus PR grant. Marcia Hamilton was, as Crown counsel described, the "*cash lady*." In addition Marcia Hamilton was the person who the victims were told had the "*connections in the Glass House*" and the Immigration Department.

75. Marcia Hamilton and Judith Douglas took the hard-earned cash of domestic workers and carers for the elderly, knowing that the PR they promised would never materialize. For many of the victims $2,500 was the equivalent of 2 or 3 months' salary and was money they could ill afford.

76. The three ladies knew that they were promising the victims PR and this was something the victims would never receive. These are all very serious offences which the three ladies perpetrated over a period of several months.

77. This deception is the most cynical exploitation of vulnerable and unsuspecting victims.

78. Marcia Hamilton has shown no remorse and still blames Kathleen Davis and Judith Douglas. As has been set out above, there are serious aggravating factors. The only mitigating factor is that Marcia Hamilton has no previous convictions.

79. When I take all the circumstances into account I find that the appropriate sentence on each count is four years' and 6 months' to run concurrent, with time spent in custody to be deducted.

SENTENCES

JUDITH DOUGLAS

80. I bear in mind the following from the CPS[15] on Reduction in Sentence for a Guilty Plea:

> *"As a general principle (rather than a matter of law) an offender who pleads guilty may expect some credit in the form of a discount in sentence. Section 144 CJA 2003 does not confer a statutory right to a discount which remains a matter for the court's discretion.*
> ***Where a judge takes a plea of guilty into account, it is important that he says he has done so*** *(**R v Fearon** [1996] 2 Cr. App. R (S) 25 CA). In **R v Buffrey** 14 Cr. App. R (S) 511 the Court of Appeal indicated that while there was no absolute rule as to what the discount should be, as general guidance the Court believed that something of the order of one-third would be an appropriate discount. This coincides with the guidance of the Sentencing Guidelines Council (SGC) issued in 2007 which recommends:*
> - *one-third discount for a Guilty plea at the first opportunity;*
> - *one-quarter discount for a Guilty plea after the trial date is set;*
> - *one-tenth discount for a Guilty plea at the door of court/after trial begun."*

81. I do recognize that Judith Douglas' guilty plea was entered over three years after the DPP laid the Indictment against her and her co-defendants. However, Judith Douglas pleaded guilty when one of her co-defendants absconded and is still a fugitive from justice. The other co-defendant, Marcia Hamilton – even when faced with the guilty pleas entered by Judith Douglas, chose to stand trial – a trial that was lengthy and added to the delay in bringing this matter to a close for the victims and for Judith Douglas. In light of these circumstances I am prepared to apply the discount of 25%.

[15] Crown Prosecution Service

82. In addition to her guilty plea Judith Douglas has expressed sincere remorse and regret. Her probation officer in the SIR, dated the 19th February 2016, states that Ms. Douglas said, "*I was stupid and trusted the people I got involved with.*" The Court also notes that Ms. Douglas apologises for wasting the Court's time.

83. In addition there is the written reference from her neighbours in Diaz Lane confirming that Ms. Douglas does much work in her immediate community.

84. The Defendant, Judith Douglas, comes before the Court as person of hitherto good character.

85. In light of the mitigating factors and taking into account her honesty with her probation officer and the Court I impose a sentence of 2 ½ years' imprisonment on each count to run concurrent, with time spent in custody to be deducted.

86. I close with my congratulations to the officers in the Royal Cayman Islands Police Service (RCIPS) and the Cayman Islands Department of Immigration for the intense and patient work which must have been required to investigate this case and bring these offenders to justice.

Dated this the 26th day of April 2016

Honourable Mr. Justice Charles Quin Q.C.
Judge of the Grand Court