

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CRI-2010-004-10228
[2013] NZHC 2096**

THE QUEEN

v

**RICHARD GILBERT BETTLE
VANCE ERIC ARKINSTALL
PAUL WINSTONE FORSYTH**

Hearing: 16 August 2013

Appearances: S Symon and J Harley for Crown
TJ Castle, SWB Foote and TA Castle for Messrs Bettle and
Arkinstall
P W Forsyth in person
S Mount as Amicus Curiae

Sentencing: 16 August 2013

SENTENCING NOTES OF KATZ J

Solicitors:
Meredith Connell, Office of the Crown Solicitor, Auckland
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S Mount, Barrister, Auckland

Copy to:
PW Forsyth, Auckland

Introduction

[1] Mr Arkinstall and Mr Bettle, you appear for sentence today on five charges under s 58 of the Securities Act 1978 (“Act”). Mr Forsyth, you appear for sentence on seven charges under s 58 of the Act. A charge under s 58 carries a maximum penalty of five years’ imprisonment, or a fine not exceeding \$300,000.

[2] All three of you were directors of Dominion Finance Group Ltd (“Dominion Finance”) and North South Finance Ltd (“North South”). Dominion Finance and North South were both finance companies that were primarily funded by the issue of secured debenture stock, pursuant to registered prospectuses. Both companies appear to have mainly lent to property developers. The companies struck serious trouble in mid-2008 and were subsequently unable to meet their ongoing obligations to debenture holders.

[3] Dominion Finance was placed in receivership on 9 September 2008. At the time it had approximately \$176.9 million of debenture stock on issue to 5,937 debenture stock holders. The company subsequently went into liquidation on 15 May 2009. The latest report from the receivers indicates that 12 cents in every dollar of principal owed to investors has been paid.

[4] North South was placed into receivership on 8 July 2010. At the time it had 6,925 investors, with investments totalling \$31 million. On 17 December 2010 North South went into liquidation. The latest report from the receivers indicates that 65 cents in every dollar of principal owed to investors has been paid.

Facts

[5] I will briefly outline the key facts on which the charges are based, before turning to consider your individual culpability. I note at the outset that the Crown has accepted that each of you acted honestly at all times and believed the contents of the relevant documents to be true. However, that is not sufficient. The offences under the Act are offences of strict liability. Your honest belief in the truth of the documents was also required to have been reasonable in all of the relevant circumstances. Those circumstances included all the information that was available

to you during the relevant period, as well as your non-delegable duties as directors of both companies. You had ultimate responsibility for the proper governance and management of Dominion Finance and North South. By your guilty pleas you have accepted that your belief in the truth of the offer documents, while honest, was not reasonable during the relevant periods.

Dominion Finance prospectus and investment statement dated 13 September 2007 and extension certificate dated 20 December 2007.

[6] Dominion Finance issued a prospectus and investment statement, both dated 13 September 2007. That prospectus was signed by each of you. The documents were registered with the Companies Office on 5 October 2007. The prospectus was extended on 20 December 2007, for a further period of nine months. The documents were distributed in the market between 5 October 2007 and 17 June 2008.

[7] The prospectus contained a number of statements that were untrue, either directly or by omission. Some of the statements in the prospectus became untrue while the document was in the market, due to changing circumstances. The general effect of the untrue statements was to misrepresent the risks of investing in Dominion Finance. For example, the prospectus did not refer to a number of related party transactions. The total value of the related party transactions that were not disclosed was, by the time the prospectus was withdrawn from the market, approximately \$25.7 million.

[8] The prospectus also failed to disclose the material deterioration in Dominion Finance's overall loan quality, financial position, solvency and liquidity during the relevant period. Further, the prospectus failed to disclose a number of security sharing arrangements made in April and May 2008 by which, in effect, North South propped up Dominion Finance.

[9] In addition, a series of shareholder advances were made to Dominion Finance in December 2007 and May 2008 which were triggered by cash shortfalls that would otherwise have caused defaults on payments to investors. Those advances were not disclosed.

The Dominion Finance newsletter

[10] Between March and May 2008, Dominion Finance distributed a newsletter to investors. It also contained untrue statements, including that Dominion Finance had no related party lending.

The North South investment statement and prospectus dated 11 September 2007 and extension certificate dated 21 December 2007

[11] North South issued a combined investment statement and prospectus dated 11 September 2007. The prospectus was signed by each director of North South and registered at the Companies Office on 5 October 2007. It was distributed between 5 October 2007 and 17 June 2008.

[12] The North South prospectus was extended by the directors for a further nine months on 21 December 2007. The investment statement and prospectus were untrue, or became untrue, because they failed to disclose related party lending and also failed to disclose the material deterioration in North South's financial position.

Offer letter to investors for sale of first ranking secured debenture stock

[13] Finally, on or about 23 May 2008, a letter was sent to investors offering investments in debenture stock issued by Dominion Finance and North South. The letter attached a copy of an NZX and media release. Those documents included a number of untrue or misleading statements relating to Dominion Finance's liquidity position.

[14] For ease of reference I will refer to these various documents as "the offer documents."

Sentencing principles

[15] The Sentencing Act 2002 sets out a number of purposes and principles of sentencing that I am required to take into account.¹ Of particular relevance in this case is the need to hold each of you accountable for the harm you have done to

¹ Sentencing Act 2002, ss 7 and 8.

investors and the community generally. I must also publicly denounce your conduct. An important aim of sentencing in these types of cases is also deterrence, namely deterring others from offending in a similar way in the future. I must also consider the interests of victims and take into account any offer of reparation you have made. The sentences I impose must reflect the gravity of your offending. I am also required to impose the least restrictive sentence that is appropriate in all the circumstances of your case.

[16] In addition I am required by the Sentencing Act to ensure consistency in sentencing between co-offenders. As you are aware, your former co-directors, Mrs Butler and Mr Whale, were recently sentenced by Dobson J on charges relating to the same untrue statements in the offer documents.² Accordingly, parity of sentencing between all five former directors is an essential consideration in this case.

Starting Point

[17] In determining an appropriate sentence I must first establish a starting point that takes into account the relative seriousness of your offending under s 58 of the Act. I will then adjust that starting point to reflect factors that are personal to you, such as remorse and good character. Finally, your sentence will be reduced to reflect the fact that you pleaded guilty prior to trial.

General nature of the offending

[18] Section 58 of the Act is an offence of strict liability. A defence will, however, be available where a director honestly believes in the truth of offer documents or advertisements and they have reasonable grounds for such a belief. As I have already noted, by pleading guilty to the various charges each of you has accepted that, while your belief in the truth of the various documents was honest, you did not have reasonable grounds for such a belief during the periods the respective charges relate to.

² *R v Butler* [2013] NZHC 1436.

[19] New Zealand has had statutory provisions aimed at ensuring that investors are provided with adequate, accurate, and timely disclosure of relevant information for over 30 years now. It is critically important that statements made in offer documents are true and not misleading, because investors must rely on such documents in making their investment decisions. The Act therefore imposes an onerous obligation on directors to ensure the truth of such information. Directors must be proactive in this task and cannot rely on others to discharge this responsibility for them.

[20] As Dobson J noted when sentencing Mrs Butler and Mr Whale, undisclosed related party transactions are of fundamental importance in misleading the market. Such lending is often not truly at arms length and the objectivity of both lender and borrower is often questionable. Related party lending has been a key feature of many finance company failures.

[21] The Crown has provided a table which sets out the total loss in respect of the investments made while the offending offer documents were in the market. For you Mr Forsyth, that loss is calculated at \$21.37 million, and for you, Mr Arkinstall and Mr Bettle, \$14.98 million. When comparing that to other finance company cases, that appears to place you roughly in the middle to lower end of the range of relative seriousness. At one extreme end, in the case of Bridgecorp, the loss was measured at approximately \$118 million. On the other end, in the case of Lombard, the loss was measured at \$10.45 million.

[22] It is also relevant in any assessment of the seriousness of the offending that the misleading offer documents were in the market for a reasonably significant period of time, being nine months. I do note, however, that Mr Arkinstall and Mr Bettle's liability only relates to six months of that period.

[23] Five victim impact statements have been provided to the court, representing a cross-section of typical investors, largely of retirement age. As you would expect, those statements make for heartbreaking reading. The relevant investors have all had to significantly cut back on their day to day living expenses. Some of them have had to return to employment. Investors placed huge faith in the directors of finance

companies, including Dominion Finance and North South, to ensure that their investments, which often constituted their life savings, were managed prudently. Such investors have been sadly let down.

[24] The failure of finance company directors, such as yourselves, to perform their roles with the diligence and care the public was entitled to expect has had a wide impact not only on individual investors but also on investor confidence generally. The repercussions have been far-reaching.

[25] For each of you, your culpability primarily relates to your failure to undertake the appropriate level of diligent investigation and inquiry to be expected of finance company directors in the challenging market conditions that prevailed at the time. Dominion Finance in particular was in a perilous liquidity position during the relevant period, which should have put all of the directors on heightened alert. However, you failed to undertake the necessary inquiries and investigations in order to ensure that you were fully apprised of the true position of both companies.

[26] I accept that each of you relied on others you believed you could trust, and that senior management let you down. They were evasive on some important matters and, in relation to related party lending at least, they were positively misleading. You were also misled by fellow directors. The Crown does not dispute that. Nevertheless, in the market conditions that existed each of you were simply too “hands off” in your roles as directors. As the Court of Appeal observed in the Lombard case, the ultimate responsibility to govern and manage the company falls on the directors. It is a non-delegable responsibility.

[27] When sentencing Mr Whale and Mrs Butler, Dobson J concluded that, while there had been no dishonesty, their omissions were at the point of “gross negligence” (akin to recklessness). In my view your culpability is broadly comparable to that of your fellow directors and accordingly also falls within this category.

Mrs Butler and Mr Whale

[28] Given the requirements of parity in sentencing, I will first briefly consider the starting points determined by Dobson J in relation to Mrs Butler and Mr Whale. I will also refer to several sentencing factors that Dobson J referred to that are relevant for comparison purposes.

[29] Dobson J noted that Mrs Butler was, with respect, not a “leading light” on the board. In his view it was fair to treat her inclusion on the board as having somewhat less cachet in promoting Dominion Finance and North South to potential investors than would be the case for non-executive directors who were added to boards for their good standing and existing reputation in other areas. At the other end of the scale was Mr Whale, an experienced commercial lawyer. Dobson J concluded that investors were entitled to treat him as being on the board because he would have had the expertise to understand the requirements of the Securities Act when raising money from the public.

[30] A further relevant matter in relation to Mrs Butler was that for parts of May and June 2008, when the situation was starting to become critical, she was absent from New Zealand. This made it more difficult for her to perform a “hands on” oversight role, even as a non-executive director. Dobson J noted that in those circumstances, a high degree of vigilance would have been required for Mrs Butler to ascertain the true extent of related party transactions.

[31] Conversely, Dobson J noted that Mr Whale had a far greater involvement with matters bearing on the untrue statements in the offer documents. He had documented virtually all aspects of the related party transactions and so had intimate knowledge of them and of all the circumstances in which they were undertaken. That close involvement made the gross negligence on behalf of Mr Whale “materially more serious” than Mrs Butler.

[32] Ultimately his Honour concluded that a starting point for Mrs Butler of 2 years 9 months' imprisonment was appropriate. A starting point of 3 years 2 months' imprisonment was adopted for Mr Whale.

[33] I now turn to consider the position of each of you relative to Mrs Butler and Mr Whale.

Mr Arkinstall and Mr Bettle

[34] Turning firstly to Mr Arkinstall and Mr Bettle.

[35] Mr Bettle, you were the Chairman of both companies. Mr Arkinstall, you were the chairman of the Audit and Risk Committee. You were both non-executive directors.

[36] Mr Castle submitted on your behalf that your culpability sits well below that of Mrs Butler. He noted that you were both deceived by senior management as to the related party lending in particular. The same is true, however, of Mrs Butler and indeed also of Mr Forsyth.

[37] The key differentiating factor relied on by Mr Castle was that Mrs Butler was said to have "walked away" from her responsibilities as a director. To some extent, however, all of the directors abdicated the proper discharge of their duties which is why you are before the Court today. Dobson J did not sentence Mrs Butler on the basis that, because she was not a "leading light" on the Board or was absent during a critical period she was more culpable than Mr Whale, who was present during the key period. Her absence overseas did not excuse her failure to discharge her duties, but nevertheless his Honour took into account that she had fewer opportunities to find out the true situation in the companies than those who had a more hands on role.

[38] The fact that Mrs Butler may have to some extent abdicated her responsibilities to a greater extent than either of you is one relevant factor to be assessed in the overall mix. It does not, however, in my view, carry the weight that Mr Castle seeks to place on it. Indeed there is some force in Mr Mount's submission that the failures of governance in this case do not depend on physical location or

presence, but reflect systemic failures within this Board. Such failures resulted in a failure to put in place and implement systems that might have identified the perilous situation of Dominion and North South during the relevant period. Those are failures for which all of the directors are responsible.

[39] Mr Castle also observed that none of the untrue statements were drafted by either of you. That also applies to Mrs Butler and Mr Forsyth, however, and does not differentiate your position from either of them. All of the directors had an obligation to ensure the accuracy of what others had prepared, and to monitor the accuracy of the information in the offer documents on an ongoing basis.

[40] Mr Castle also submitted that your culpability only crystallised in a meaningful way from late April 2008 onwards. He relied on Mr Simpson's witness statement in support of this submission. The relevant passages in Mr Simpson's statement appear to be taken somewhat out of context. Mr Simpson, in the key passage referred to, was not referring to all of the untrue statements in the relevant offer documents. He was focusing on the deterioration in North South's liquidity, which he said crystallised in late April 2008. The remainder of Mr Simpson's evidence indicates that the cash flow problems would have been clear to the directors much earlier, although possibly had only reached the stage requiring disclosure by April 2008. Further, Mr Simpson's evidence was that the statements regarding related party transactions in the Dominion Finance prospectus were untrue from inception. I therefore do not accept that your culpability only crystallised in any meaningful way from April 2008 onward. Further, if it did, the same position would apply to Mrs Butler. This submission does not differentiate your position from hers.

[41] Ultimately, however, such a finding would, in any event, be inconsistent with your guilty pleas, by which you accepted liability for untrue statements in the offer documents from December 2007 onwards, based on an agreed summary of facts. Admittedly this is a six month period in relation to both of you, which is three months shorter than the period in respect of which the other directors were liable. It however, is still significantly longer than the six week period referred to by Mr Castle in his submissions.

[42] In my view both of you fall within the category Dobson J described as “non-executive directors who were added to boards for their good standing and existing reputations in other areas”. In that respect, I accept the Crown’s position that you must be treated as closer to Mr Whale than Mrs Butler in respect of how much weight the public would place on your descriptions in the offer documents. This is even more so for you Mr Bettle, given that you were held out as the Chairman of the board of both companies. In my view taking all of these factors into account I do not accept that your culpability is less than that of Mrs Butler. It is however, less than that of Mr Whale who is clearly the most culpable of all the directors.

[43] Taking all of these factors into account I take a starting point of 2 years 10 months’ imprisonment in respect of both of you. That is slightly more than Mrs Butler’s starting point, but less than Mr Whale’s.

Mr Forsyth

[44] Mr Forsyth, you were the Chairman of the Credit Committee which dealt with loan proposals from both Dominion Finance and North South. During the relevant period, you would work in the Dominion Finance offices for approximately half a day, up to four days per week. Your offending extended over a nine month period, being the period from the registration of the prospectuses to the date that the cheques to investors were stopped.

[45] As amicus curiae, Mr Mount has assisted the Court in providing submissions in relation to your position. Mr Mount has suggested that your culpability is equivalent to that of Mrs Butler. He submitted that the starting point is that all directors are equally culpable in respect of the misleading statements and that Mrs Butler’s and your expertise were emphasised to a lesser extent than the other non-executive directors in the offer documents. While your background as a chartered accountant was emphasised, Mrs Butler’s former role as Chief Financial Officer and her experience as a senior executive was also emphasised. Further, the fact that you were involved in the Credit Committee and spent time in the Dominion Finance offices is said by Mr Mount to be of limited relevance because there was no allegation of actual knowledge on your part.

[46] I have concluded, however, that your culpability is somewhat higher than that of Mrs Butler, but less than that of Mr Whale. You are also slightly more culpable than Mr Bettle and Mr Arkinstall, given that you worked for up to 16 to 20 hours a week at Dominion Finance's offices. This, combined with your role on the Credit Committee, meant that you had a closer involvement in the companies' day to day affairs. A lower level of vigilance would have been required for you to have ascertained the true state of the companies' affairs, including the related party lending, particularly given your accountancy background and expertise. In addition I note that your culpability extends over a nine month period whereas Mr Arkinstall and Mr Bettle's liability only extends over a period of six months.

[47] Taking all of these matters into account, I set your starting point at 3 years' imprisonment, which is higher than Mrs Butler's starting point, but lower than that of Mr Whale.

[48] In my view the starting points I have adopted for each of you are not only consistent with the sentencing starting points of Mrs Butler and Mr Whale, but are also broadly consistent with the starting points adopted in other finance company director cases. The most relevant comparable cases appear to be the Bridgecorp decisions concerning Messrs Davidson,³ Urwin,⁴ and Steigrad;⁵ the Capital & Merchant decision for Messrs Ryan and Sutherland;⁶ the Five Star Consumer Finance decision involving Mr Bowden;⁷ and the Nathans decision involving Messrs Moses, Doolan, and Young.⁸

Personal mitigating factors

[49] There are no aggravating factors relevant to any of you personally that would justify any uplift in the sentence. I therefore now turn to consider the extent to which your personal circumstances might justify a reduction in your sentence.

³ *R v Davidson* HC Auckland CRI-2008-004-29179, 7 October 2011.

⁴ *R v Urwin* [2012] NZHC 715.

⁵ *R v Roest and Steigrad* [2012] NZHC 1086.

⁶ *R v Ryan* [2013] NZHC 501.

⁷ *R v Bowden* DC Auckland CRI-2009-004-24026, 21 December 2010.

⁸ *R v Moses* HC Auckland CRI-2009-004-1388, 2 September 2011.

Mr Bettle

[50] Mr Bettle, you are 66 years old, and as one of your character referees has stated, today marks the sad end to an illustrious management and governance career. Mr Castle observed in relation to both you and Mr Arkinstall, that today represents a very painful and public fall from grace for both of you.

[51] It is apparent from your pre-sentence report that you are deeply remorseful regarding the investors' losses and your role in that. You note that you had the wool pulled over your eyes by senior management within the Dominion Group, a fact which is not in dispute.

[52] You have acknowledged that, with the benefit of hindsight, you were insufficiently experienced in finance companies to adequately fulfil your role as a directors of such companies, with the unique challenges that involved. This led you to rely too heavily on others including management, the trustees, the auditors, and other directors. That is not to detract from the skill you have exemplified in many years as a professional director. Your character references all speak highly of the level of integrity and honesty you have demonstrated over the years in both professional and personal dealings with others.

[53] You have made a career for yourself in management and, most recently, as a professional director. That enabled you to enjoy a comfortable income, most of which has now disappeared. However, you have offered to make reparation of all of the remuneration you earned as chairman of Dominion Finance, together with an additional sum if appropriate.

Mr Arkinstall

[54] Mr Arkinstall, you are 68 years old. You have had a distinguished career at the forefront of the insurance industry. I have received many references in support of your character, on both a personal and professional level. You have also held several directorships.

[55] You are now retired, and it would seem that your involvement with the Dominion Finance Group has cost you significantly, both financially and emotionally. I have had the benefit of reading your pre-sentence report and your own evidence which speaks of how devastated you feel for the investors' losses. Although you yourself were misled by senior management, you regret the role that you have played in the investors' losses. I also note that you yourself were an investor and you have suffered losses in the collapse of the Dominion Finance Group. Such losses amount to over \$150,000, and that does not take account your now worthless Dominion shares.

[56] You have provided evidence of your financial situation, which is not strong. You are retired and now reliant upon superannuation. You do not have the financial means to be able to pay reparation. Mr Castle submitted that, given your personal circumstances, your failure to offer reparation does not reflect any lack of remorse on your part. You are simply not in a position to make an offer of reparation as a tangible demonstration of your remorse. He therefore submitted that I should treat you the same as Mr Bettle in terms of discounts for personal factors.

Mr Forsyth

[57] Mr Forsyth, you are 65 years old, and have had a successful career as a chartered accountant. Your pre-sentence report mirrors your affidavit, stating that you are deeply remorseful for the loss that your actions have caused to the investors. As an accountant, your entire career has focussed on helping clients financially, and to see the loss caused to the Dominion Finance investors runs contrary to your beliefs and professional training.

[58] The numerous character references provided to the court in your support speak volumes of the type of person you are and have been over the course of your life. You have been an asset to the community, both personally and professionally. You and your family have also suffered investment losses in the collapse of the Dominion Finance Group, in the sum of approximately \$300,000.

[59] You have offered to make a payment by way of reparation. The sum you have offered represents a substantial amount of your current net worth and indeed quite possibly most of it and will place a significant strain on your personal finances.

Assessing the discounts

[60] I now come to assessing the appropriate level of discount for personal factors.

[61] You are each entitled to a discount for good character. As the Crown submitted, the Court of Appeal's decision in the Lombard case⁹ recognised that any good character discount may need to be reduced to some extent in finance company director cases if the director's previous good character has been relied on to raise funds from the public. In the Lombard case a 10% discount was nevertheless held to be appropriate. In my view a higher discount is justified in this case. In the Lombard case two of the appellants were former Cabinet Ministers, a factor that was likely to significantly influence investors in their investment decisions. While each of your professional backgrounds and experience would likely also engender trust in investors, I expect it would not be to the same extent as the Lombard directors.

[62] You are also each entitled to a discount for remorse, in accordance with the principles set out by the Supreme Court in *Hessell v R*.¹⁰ This may, as it does in this case, involve a consideration of reparation as material evidence of remorse. In the Lombard case the Court of Appeal held that the discount for remorse and reparation should not have exceeded 15% for Sir Douglas Graham and Mr Bryant, which was assisted by a reparation payment of \$100,000.

[63] Assistance to authorities is also a relevant factor. Each of you voluntarily assisted the Crown in the Serious Fraud Office proceedings against the other Dominion Finance directors or senior managers, including giving evidence for the Crown when required.

⁹ *Jeffries v R* [2013] NZCA 188.

¹⁰ *Hessell v R* [2011] 1 NZLR 607 (SC).

[64] Significant discounts for personal mitigating factors were afforded by Dobson J in sentencing Mrs Butler and Mr Whale. Mrs Butler, who made a reparation payment of \$300,000, was afforded a 15% discount on account of remorse and events following the offending. A further 15% discount was allowed for her personal circumstances and previous good character. In respect of Mr Whale, a global discount of 20% was afforded for remorse (which included a payment of \$75,000 in reparation) and his good character.

[65] In sentencing Mr Davidson in the Bridgecorp case, Andrews J gave a global 35% discount for good character, remorse (which included reparation of \$75,000) and voluntary assistance to the receivers and relevant authorities. A 12 month global discount (which equated to just over 30%) was again taken by Andrews J in the case of Mr Urwin for good character, remorse, and assistance to the Financial Markets Authority (which did not extend in that case to providing an evidential statement).

[66] Taking all of these matters into account, I have concluded that a global 30% discount should be afforded to each of you on account of personal mitigating factors. This includes a discount for remorse (including the offers made of reparation) good character and your assistance to the authorities.

[67] Mr Arkinstall and Mr Bettle, this brings your sentence down to 2 years' imprisonment (as it involves a 10 month discount). Mr Forsyth this brings your sentence down to 2 years 1 month imprisonment (as it involves an 11 month discount).

Guilty plea

[68] The final factor I must consider is your guilty pleas. Those pleas came at a relatively late stage in proceedings, being a week before trial. Nevertheless your somewhat belated guilty pleas did ultimately save the costs of a 4-6 week trial and spared witnesses inconvenience.

[69] Mr Castle submitted various reasons for the late pleas, including that the outcome of the pre-trial s 347 application led to a number of concessions from the Crown in relation to the original indictment. This resulted in a narrowing of the

charges. Further, he noted that the Crown conceded, following the s 347 application that you, Mr Arkinstall and Mr Bettle, had a defence of reasonable belief in the truth of the offer documents up until December 2007.

[70] Further, I note that the hearing of these proceedings was deferred to enable the Serious Fraud Office proceedings to proceed to trial first. It was submitted that each of you was entitled to await the outcome of the Serious Fraud Office proceeding in order to fully understand the case against you and the evidence that came out of that case. On that basis it was submitted that you should not be penalised for the delay up to that point in time at least.

[71] For you Mr Forsyth, Mr Mount submitted in addition that you have faced difficulties in funding legal advice, which has placed further constraints around your ability to fully assess your legal position.

[72] Taking all of these matters into account I consider that a discount of 15% should be afforded to each of you to recognise your guilty pleas. That represents a discount of 3½ months for you, Mr Arkinstall and Mr Bettle, reducing your sentence to 1 year 8½ months. For you, Mr Forsyth, that is a discount of 4 months, reducing your sentence to 1 year 9 months imprisonment.

Home detention

[73] Your end sentences are accordingly within the range where home detention is available if, in my view, that is the least restrictive sentencing outcome appropriate. Mr Symon for the Crown properly conceded this morning that if your end sentences were less than two years' imprisonment, the Crown could not properly submit that you should be treated in any different way to Mrs Butler or Mr Whale. They were both ultimately given sentences of home detention (combined with community work). As I have already noted, I assess your culpability as falling between those two.

Sentences

Mr Arkinstall

[74] Mr Arkinstall, please stand. I sentence you to a term of 10 months' home detention and 200 hours' community work, to be served concurrently, in respect of each of the 5 charges you have been convicted of under the Securities Act.

[75] Given that you reside in Lower Hutt I will defer the commencement of your sentence of home detention to Monday 19 August 2013. On that date you are to remain at the home detention address specified in the pre-sentence report prepared by the Department of Corrections dated 5 August 2013. You are to await the arrival of a probation officer and security officer at that address, for the commencement of your sentence. You are to reside at that address for the duration of your home detention sentence and are not to leave without the prior authorisation of your probation officer. The standard conditions for home detention under s 80C(2) of the Sentencing Act apply. You may be seated.

Mr Bettle

[76] Mr Bettle, please stand. I sentence you to a term of 10 months' home detention and 200 hours' community work to be served concurrently in respect of each of the 5 charges you have been convicted of under the Securities Act. In addition I order you to pay the sum of \$90,000 in reparation.

[77] Given that you reside in Stoke, Nelson I will defer the commencement of your sentence of home detention to Monday 19 August 2013. On that date you are to remain at the home detention address specified in the pre-sentence report prepared by the Department of Corrections dated 31 July 2013. You are to await the arrival of a probation officer and security officer at that address, for the commencement of your sentence. You are to reside at that address for the duration of your home detention sentence and are not to leave without the prior authorisation of your probation officer. The standard conditions for home detention under s 80C(2) of the Sentencing Act apply. You may also now be seated.

Mr Forsyth

[78] Mr Forsyth, please stand. I sentence you to a term of 11 months' home detention and 200 hours' community work to be served concurrently in respect of each of the 7 charges you have been convicted of under the Securities Act. In addition, I order you pay \$50,000 in reparation.

[79] Give the time of day I will also defer the commencement of your sentence of home detention to Monday, 19 August 2013. On that date you are to remain at the home detention address specified in the pre-sentence report prepared by the Department of Corrections dated 7 August 2013. You are to await the arrival of a probation officer and security officer at that address, for the commencement of your sentence. You are to reside at that address for the duration of your home detention sentence and are not to leave without the prior authorisation of your probation officer. The standard conditions for home detention under s 80C(2) of the Sentencing Act apply.

[80] You may stand down.

Katz J