



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE
ANTONIO GIOVANNI VELLA**

Sitting of the 30 th August, 2012

Number. 477/2009

**POLICE
INSPECTOR IAN J. ABDILLA
VS
DIMITRIOS DROSOS**

The Court;

After seeing the charges brought against:

Dimitrios Drosos, Greek national, 45 years, son of Nikolaos and Visiliki Psari, born at Patras Greece on the 21st October 1966, residing at Sol y Aire, 104, Antonio Schembri Street, Kappara, San Gwann and holder of Greek Identity card no AH 017631 issued on the 4th August 2008;

Accuse him, personally and in his capacity as Company Director and Legal Representative of Gold Victory Ltd (Registration Number C 40908) with having;

On the 15th May 2009 and the preceding months on these islands, by means of several acts, even if at different times, that constituted violations of the same provision of the law, and committed in pursuance of the same design;

1) misapplied, converted to his own benefit or to the benefit of any other person, the sum of over €2,329.27 which has been entrusted or delivered to him by several persons, under a title which implies an obligation to return such sum or to make use thereof for a specific purpose, which sum of money was entrusted or delivered to him by reason of his profession, trade, business, management, office or service or in consequence of a necessary deposit;

2) on the same dates, location and circumstances by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event made gain of more than the sum of over €2,329.27 to the prejudice of several people;

3) on the same dates, location and circumstance as the Key Official appointed by the company Gold Victory Ltd licensed by the Lottery and Gaming Authority of Malta, by continuous and repeated acts of commission or omission or any other behaviour in contravention of the Remote Gaming Regulations (Legal Notice 176 of 2004) therefore constituting an offence against the Lotteries and Other Games Act;

Considers:

The accused, in his personal capacity and as company director of Gold Victory Ltd., a Limited Liability Company duly registered in Malta, was arraigned before this Court

on the 16th of May 2009 and charged with the offences of fraud and misappropriation and with having breached the regulations of Chapter 438 of the Laws of Malta. The Lottery and Gaming Authority of Malta had, in the months prior to the commencement of this case, noted several complaints with regard to the commercial operation of this company, and had therefore started an investigation in February 2009. After having seen a number of complaints and other correspondence by various people who had availed themselves of the services of the company here above mentioned and after having seen that the company may have been acting in a fraudulent manner by not distributing money to its clients in accordance with the provisions of the Lotteries and other Games Act (Chapter 438 of the Laws of Malta), the matter was referred by the Authority to the Police for further investigation. Inspector Ivan Cilia was at the time instructed to carry out investigations, and the accused was taken to the Police Headquarters and a statement was taken on the 15th of May 2009. Subsequently the charges were filed against Mr. Drosos and the compilation of evidence against him was instituted before this Court.

The facts that led to this case were outlined in detail by the witnesses produced by the Prosecution. In particular, the Prosecution submitted three main witnesses as part of their evidence.

Bernard Zarb testified that he was the manager of investigations employed with the Lotteries and Gaming Authority. He had performed the clearance for Mr. Drosos Dimitrios in two thousand and seven (2007). In his testimony he exhibited the personal declaration form, a police clearance certificate, and the original birth certificate of Mr. Drosos, together with a copy of the passport of the accused.

Within this personal declaration form there is the authorization to release information for Mr. Dimitrios Drosos. The witness confirmed that the accused was the key official of the company that is he was totally responsible for the functioning of Gold Victory Limited. He

stated that recently, the Authority had encountered a series of short comings from the company. According to the remote gaming regulations the key official of the company had to be resident in Malta and although Mr. Dimitrios Drosos had given a Maltese address, for that past year, he had not been living in Malta. The Authority had also received a series of complaints from players and even though according to the remote gaming regulations the operator is bound to repay after five (5) days and after notification to the same company, these payments were not made.

The witness further declared that he was not involved in the actual investigation, but his colleagues Dr. Trevor De Giorgio from the post licensing and the CEO himself who were involved in the investigation.

Furthermore, the accused had never informed the Authority that he had a medical condition, and that he needed to go abroad for treatment. According to the law, the key official is the point of reference that the Authority has to communicate with the operator, so for the Authority it was fundamental to keep a standing relationship with Drosos. However, they were not informed about this. Mr. Drosos had all the faculty to inform the Authority and appoint another key official or substitute.

Reuben Portunier testified that as from the second of April two thousand and nine (2009) he was holding the position of Chief Executive Officer of the Authority. He stated that the Authority was established by law and as part of the remit given to it by law, it had to oversee that there is a full regulated market in terms of online gaming. It was in the Authority's normal routine in terms of operations to make sure that all licensees were abiding by the laws and by the remote gaming regulations. There were a number of checks and balances that occur on a regular basis, two of which were; (a) from player complaints, whereby players who play on line have a mechanism, a vehicle in order to submit complaints if they believe that there was some illegitimate type of long payment, or maybe the game in their opinion was not fair; and (b) the other check was that on a monthly basis the Authority receives a financial statement in order to ascertain that the online gaming

operator has a red circled account to pay the funds of the players which are being played in terms of the game.

The witness testified further that the first check, in terms of the players, practically every online gaming operator has a complaint of a sort. Not all of them are legitimate, but they have the channel to complain just the same. However in this case the Authority had a huge infuse of complaints coming in at one go in the period between end of February and March. The complaints were directed against Gold Victory Ltd which was a licensee of the Authority, a license which was awarded by the Authority on the twenty first (21) July two thousand and eight (2008).

He continued that apart from the player complaints there was further evidence till the month of January that the accounts of Gold Victory which were submitted to the Authority showed that there wasn't an issue of funds. However, subsequent complaints and investigations into the month of March showed that there was a depletion of funds from player accounts which, in accordance with the remote gaming regulations, could not be made legitimately unless the amount in that account went directly to pay the players in question. In this case, the Authority saw that the depletion of accounts was not the result of the players being paid in full, which in fact led to a number of complaints received by the Authority.

Following that period the Authority initiated talks with Gold Victory to see what the situation was, as part of the investigative process, and it resulted that it was true that there was the depletion of accounts which also was confirmed by the submissions given by Bank of Valletta. The witness then exhibited documents showing a document submitted by Gold Victory related to the January accounts which showed that they were still in line by that time, and other documents, one issued by Bank of Valletta showing that the account in the players account was almost completely depleted and another letter from the Authority requesting further information from the Bank of Valletta.

The witness also made reference to a meeting that had been set on request of Gold Victory prior to the

arraignment of the accused. The Authority had written to Mr. Drosos on the fifth (5) of May where it clearly specified that Gold Victory was in breach of the Remote Gaming Regulations, and whereby the Authority asked Dimitrios Drosos on behalf of Gold Victory to replenish all accounts that were the players' funds. The accused had been given a deadline till Wednesday thirteenth (13) May to do so, and following which the Authority needed to confirm through Bank of Valletta whether that transaction occurred.

Following that, on the fifteenth (15) of May, which was two (2) days after the closing day given, the Authority held the meeting with Mr. Drosos. During the meeting Mr. Drosos was accompanied by Mario Fiorini who was an employee of Gold Victory, and in this meeting it transpired that both Drosos and Fiorini as well confirmed that the accounts were depleted, and the accused requested further time in order to replenish the account. It was for this reason that criminal action had to be taken.

Police Inspector Ivan Cilia testified that on the fourteenth (14) May two thousand and nine (2009) the police received a report from the Lotteries and Gaming Authorities signed by the CEO of such Authority Ruben Portanier reporting matters about Gold Victory Limited and its Directors and key official, namely Dimitrios Drosos. Gold Victory Limited was a Maltese registered company with number C 40908, registered office at Soliair, Antonio Schembri Street, Kappara, San Gwann, and held a licence with the Authority. The Authority, following complaints by foreign players who were reporting to it that they were unable to retrieve their money from the bank account with funds that they placed with the company to play bets into a BOV account, account number 400 161 7656, started its internal investigations. The Authority reported to the police that these players were complaining that they could not retrieve their money back. The amount of such funds reached nearly five hundred thousand (500,000) Euros. From investigations it was found out that funds pertaining to the company Gold Victory Limited were being transferred to other BOV funds, which accounts also pertained to the same

company Gold Victory Limited. The Police had evidence that funds from account number 400 161 7656 were being transferred to account number 400 161 076 27 and into another account number 400 161 113 41. These accounts also pertained to Gold Victory Limited. Dimitrios Drosos was expected to attend a meeting with the Lotteries and Gaming Authority and soon after the police were informed about this matter and Mr. Drosos was picked up from the same premises of the Authority at Gzira. He was taken to the Police head quarters, he was given the due caution that he had the right to remain silent but anything that he was say it will be put down in writing and can be brought as evidence and he was asked about his role in the Gold Victory Limited. He said that he is the director and legal representative of such company and also a registered key official of the company with the Lottery and Gaming Authority. His company is in the business of accepting bets on the internet, accepting bets from various clients and these funds from the clients are placed into an account of the company.

Upon questioning, Drosos explained the operation of the company and how it managed the bets placed by its clients. There were several ways how the company received payments, Drosos mentioned there were bank transfers, net alert, money bookers, Pay Pal envoy and credit cards methods. These various amounts of money were put in a fund called Players' Account. The accused said that he was aware that there were several complaints from people trying to retrieve their money or receiving their winnings but at that moment the company was not able to honour these requests. He explained that there was a marketing strategy of the company that they try to give a one hundred per cent (100%) bonus on the betting's of each player, which meant that, for example, that every player playing a one hundred (100) Euro bet would be given another one hundred percent (100%) so his bet will be worth two hundred (200) Euros. However Drosos explained that he had the medical situation, he did an operation the previous December and was not up-to-date with how matters were evolving in his company but he had just returned back to work and was informed of this problem that the company was not meeting the

players' requests only a few weeks before and he was in discussion with Lotteries and Gaming Authority trying to solve the matter. Dimitrios Drosos said that it was important for the company to be able to cover all payments by the clients. However, due to the wrong policy carried out by the company this was not possible at the moment. Mr. Drosos also confirmed that payments received from the players were transferred to other accounts of the company in order to pay other expenses and in order to pay also other winning clients. He confirmed that the account number 400 161 7624 is a players' account fund, Mr. Drosos concluded his statement that his company follows all procedures and conditions set out by the Authority and also said that the Authority is in a position to check the companies' behaviour because its data, its computer was also linked to the server of the Authority. The police felt that there were enough reasons to charge Mr. Drosos with the current charges and therefore he was arraigned in Court on the sixteenth (16) May two thousand and nine (2009). The witness then exhibited the report sent by the Lotteries and Gaming Authority to the Police dated of the fourteenth (14) May two thousand and nine (2009), signed by Mr. Reuben Portanier, Chief Executive Officer of the same Authority.

The Prosecution submitted other witnesses in support of the evidence tendered, together with several other documents showing the discrepancies noted by the Authority.

At this stage in the proceedings the accused chose to admit the charges after the proceedings in the compilation of evidence were started afresh in accordance with Article 432(2) and (3) of Chapter 9 of the Laws of Malta, upon which admission the Court proceeded to deliver judgement. The Court allowed the parties to make their submissions as to punishment. Whereas the defence initially submitted that a suspended sentence would have been a suitable punishment on the accused, the Prosecution insisted that the punishment in this case be that of effective imprisonment. According to Article 310 of

Chapter 9 of the Laws of Malta the minimum punishment allowed at Law was that of thirteen months imprisonment. The regulations under Chapter 438 of the Laws of Malta did not establish a minimum term of imprisonment but established a maximum of two years. After having taken in consideration all the facts of the case as shown in the evidence produced, after having seen that the accused had a clean police conduct certificate and after having seen that he entered a plea of guilty at a stage in the proceedings where he could benefit from a reduction in punishment, the Court agrees with the Prosecution that the punishment to be awarded in this case should be that of effective imprisonment. On the other hand it is of the opinion that this punishment should lean towards the minimum established at Law, having taken at the consideration that the accused has already served a substantial part of this term under preventive custody pending these proceedings.

Now, therefore, for these reasons, the Court;

After having seen the Articles 18, 23A, 293, 294, 308, 309, 310 of Chapter 9 of the Laws of Malta;
And Regulations 15, 35, 37, 38 and 40 of Legal Notice 176 of 2004 (Chapter 438 of the Laws of Malta).

After having seen the accused admit the charges brought against him, which admission was confirmed by him after having been given due time to reconsider in accordance with the law;

After having heard the evidence and the documents exhibited;

After having heard the accused's plea and after having given the time prescribed by Law for the accused to consider his plea;

Informal Copy of Judgement

This Court finds the said accused guilty as charged and condemns him to a term of fourteen (14) months imprisonment.

The Court furthermore orders that the sum of seventy thousand euro deposited in Court as a condition of bail granted to the accused be forfeited in accordance with Article 579 of the Laws of Malta.

The Court explained in clear words the terms of the judgement to the accused.

< Final Judgement >

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