

facility, and he would frequently make trips to the local Food Bank to pick up food for the petitioner when he went there for individuals in the facility where he worked. The alleged victim testified that she trusted the petitioner as a "friend".

3. Unbeknownst to the alleged victim, the petitioner had a compulsive gambling problem. In November 2000 she was seriously in debt and behind on several of her household bills.

4. At that time the petitioner asked the alleged victim to borrow \$1,500 telling her she was "in trouble" and would "go to jail" if she didn't come up with this amount to pay unspecified debts. The petitioner told the alleged victim she would repay the money by the end of January 2001.

5. The petitioner then drove the alleged victim to the bank where the alleged victim kept cash in a safe deposit box. The alleged victim removed \$1,500 from her safe deposit box and gave it to the petitioner.

6. The petitioner admits that she did not use this money to pay legitimate debts, but promptly spent it on gambling. There is no evidence that the petitioner believed, or had any reason to believe, that she was at any risk of going to jail at that, or any other, time.

7. In December 2000 the petitioner went back to the alleged victim and asked to borrow another \$1,700. This time the petitioner admitted to the alleged victim that she had a gambling problem, but told her that she was getting "help" and that would still repay the entire amounts she had borrowed by the end of January. Again, the petitioner drove the alleged victim to the bank where the alleged victim took it in cash out of her safe deposit box and gave it to the petitioner.

8. Sometime thereafter the alleged victim wrote a check for \$400 to the petitioner as another loan when the petitioner said she needed it to pay bills.

9. To date the petitioner has not repaid the alleged victim any of the money she borrowed from her. The petitioner maintains that this is largely due to the fact she lost her job (working for a community counseling and support service) when the allegations of exploitation arose in December 2001. Even by then, however, a year had already gone by without any repayment.

10. The petitioner testified that she intended to pay the loans back but that she was in "constant debt" due to her gambling problem.

11. At the hearing the alleged victim appeared to be competent, but she was clearly unsophisticated both in money

management and in knowledge about compulsive gambling. Even though the petitioner told the alleged victim (the second time she borrowed money) that she had a "gambling problem", she did not reveal the extent of her indebtedness or the fact that she was continuing to gamble with the money the alleged victim was loaning her.

12. It is clear from the evidence that the petitioner knew at the time she borrowed the money that she was not going to use the money to repay legitimate debts. Furthermore, it is found that she had no realistic expectation that she would be able to repay the money within the time she told the alleged victim. It is also clear that the petitioner chose the alleged victim to borrow money from because she knew the woman trusted her and because she knew the alleged victim was unsophisticated about gambling and lending money.

ORDER

The decision by the Department substantiating the report as one of exploitation against a disabled person by the petitioner is affirmed.

REASONS

The Commissioner of the Department of Aging and Disabilities is required by statute to investigate reports regarding the abuse and exploitation of elderly and disabled persons and to keep those reports that are "substantiated" in a "registry" under the name of the person who committed the abuse. 33 V.S.A. §§ 6906 and 6911. Within 30 days of notification that a report of abuse has been substantiated against them, individuals can apply to the Human Services Board for a fair hearing on the ground that the report is unsubstantiated. Id. § 6906(d). Reports that are found to be unsubstantiated must be destroyed pursuant to 33 V.S.A. § 6906(e) and not entered in the Department's registry.

The statute which protects elderly and disabled adults, 33 V.S.A. § 6902, includes the following in the definition of "exploitation":

As used in this chapter:

. . .

(7) "Exploitation" means:

(A) Willfully using, withholding, or disposing of funds or property of an elderly or disabled adult without legal authority for the wrongful profit or advantage of another;

(B) Acquiring possession or control of or an interest in funds or property of an elderly or disabled

adult through the use of undue influence, harassment, duress, or fraud;

. . .

In this case there is no evidence that the petitioner ever had any actual control over the alleged victim's money or property before it was lent to her. Thus, it cannot be concluded that the definition of paragraph (A), above, is met. However, based on the above findings, it must be concluded that the petitioner's conduct in this case meets paragraph (B) of the above definition.

The evidence is clear that the petitioner exploited her friendship with an elderly woman to obtain funds from her by intentionally misleading her about her circumstances and the actual purpose of the loans. It is concluded that this constitutes "fraud" within the meaning of the above statute. It is also clear that the petitioner used her friendship and knowledge of the woman's lack of sophistication to hide the fact that she was an extremely unworthy credit risk. It must be concluded that this constitutes "undue influence" as set forth above.

Inasmuch as the petitioner's actions are deemed to meet the statutory definition of exploitation the Board is bound to

affirm the Department's decision to substantiate the report in question. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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