
FINAL NOTICE

To: **David John Hobbs**

Reference
Number: DJH01236

Address: 10 Sovereign Mews
Off Bournwell Close
Cockfosters
Barnet EN4 0JQ

14 February 2014

1. ACTION

- 1.1. For the reasons given in this notice, the Authority hereby makes an order prohibiting David John Hobbs from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm. This order takes effect from 14 February 2014.

2. SUMMARY OF REASONS

Procedural background

- 2.1. By the Decision Notice dated 23 July 2010 the Authority gave Mr Hobbs notice that, in light of its findings that Mr Hobbs had committed market abuse and that

he had lied to the Authority during the course of its investigation, it had decided to impose a financial sanction and a prohibition order on Mr Hobbs.

- 2.2. Mr Hobbs referred the matter to the Tribunal. In the First Tribunal Decision the Tribunal found that Mr Hobbs did not commit market abuse and directed the Authority to take no action against Mr Hobbs. The First Tribunal Decision can be found on the Tribunal's website at:

http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Hobbs_full_decision.pdf

- 2.3. The Authority appealed the Tribunal's decision not to impose a prohibition order on Mr Hobbs on the basis of Mr Hobbs's lying to the Authority, its decision making committee, and the Tribunal; however, the Authority did not appeal the Tribunal's decision that Mr Hobbs did not commit market abuse. In its written decision dated 29 July 2013, the Court of Appeal remitted the matter to the Tribunal for it to consider whether Mr Hobbs was a fit and proper person based on the Tribunal's findings. The Court of Appeal's decision can be found at:

<http://www.bailii.org/ew/cases/EWCA/Civ/2013/918.html>

- 2.4. In its Second Written Decision, the Tribunal found that Mr Hobbs was not a fit and proper person and that the appropriate action was for the Authority to make a prohibition order pursuant to section 56 of the Act. The Second Tribunal Decision can be found on the Tribunal's website at:

<http://www.tribunals.gov.uk/financeandtax/Documents/decisions/David-John-Hobbs-v-FCA.pdf>

- 2.5. In light of the above, the Authority has issued this Final Notice.

Summary

- 2.6. On the basis of the facts and matters set out in the First and Second Tribunal Decisions and for the reasons set out therein, the Authority has concluded that Mr Hobbs lacks integrity and is not a fit and proper person to perform functions in relation to a regulated activity.
- 2.7. The First and Second Tribunal Decisions set out fully the Tribunal's (and thus the Authority's) reasons for prohibiting Mr Hobbs and should therefore be read in full. By way of summary, the Authority notes the following particular aspects/paragraphs of the First and Second Tribunal Decisions.

2.8. At paragraph 241 of the First Tribunal Decision the Tribunal concluded that:

“...despite our finding in his favour on the reference before us, Mr Hobbs emerges from these proceedings with very little credit. We have already referred to the unsatisfactory nature of the evidence he gave to us. We have, as we have described, found that his assertions that he was engaged in a strategy of confusion were false. That is a serious matter. We can only surmise as to why, in the light of our own findings, Mr Hobbs thought fit to develop and persist with such a story. We can only think that he did so as a desperate attempt to explain what he feared might otherwise be inexplicable, namely what we have concluded, on balance, were his rambling and nonsensical conversations with Mr Kerr. That was a grave error. Not only did it cast Mr Hobbs in a poor light. It could very easily have led to his words being taken completely at face value, with a different conclusion to this reference.”

2.9. At paragraph 13 of the Second Tribunal Decision, the Tribunal noted the significant period of time for which Mr Hobbs maintained the false “strategy of confusion” story:

“Mr Hobbs had maintained the strategy of confusion story in the course of the Authority’s investigation. It had first appeared, in a letter from Mr Hobbs’ then solicitors, as a process of reconstruction whereby Mr Hobbs believed that he had used certain phrases in an attempt to obscure his difficult risk position, and resulting lack of flexibility, from other market participants. It had been maintained, and enlarged upon, during the subsequent part of the Authority’s investigation, the decision of the RDC, and through the Tribunal proceedings.”

2.10. At paragraph 29 of the Second Tribunal Decision, the Tribunal concluded that:

“We have no doubt that, viewed independently of the Tribunal’s findings in respect of market abuse, the conduct of Mr Hobbs in, as the Tribunal found, lying repeatedly to the Authority and in evidence before the Tribunal is such that renders him as lacking in integrity, and consequently as not fit and proper to perform functions in relation to a regulated activity. Unless relevant factors can be demonstrated against the imposition of a prohibition order, or which go to show that a limited prohibition or some other sanction would be more

appropriate, we consider that a full prohibition of the nature put forward by the Authority will be apt.”

- 2.11. At paragraphs 32 and 33 of the Second Tribunal Decision, the Tribunal went on to consider whether there were any such relevant factors. It also considered the relevance of Mr Hobbs’s expressed intention not to return to the financial services industry:

“32. In this case, as we have found, the conduct of Mr Hobbs was such as to demonstrate a lack of integrity. In these proceedings Mr Hobbs has had an opportunity to address the findings made by the Tribunal. He has, however, failed to acknowledge any wrongdoing in relation to his discredited story of the strategy of confusion, and the lies the Tribunal found that he told in this respect both to the Authority and to the Tribunal. We were told only by Mr Jaffey that Mr Hobbs continues to disagree with certain of the Tribunal’s findings. We regard with concern the failure by Mr Hobbs, even at such a remove from the original decision of the Tribunal, to acknowledge his lack of integrity in concocting the strategy of confusion story, and in persisting with it during these proceedings. We agree with Mr Hunter that this gives rise to a significant risk to the market were Mr Hobbs ever to seek to re-enter it.

33. It is in that context that the expressed intention of Mr Hobbs not to return to the financial services industry falls to be regarded. Although Mr Hobbs may have no such present intention to return, his intentions may change in the future, and it would be necessary at that time to have in place an appropriate mechanism to enable the Authority to assess whether to allow Mr Hobbs to play any role, whether authorised or not, within the regulated industry. A full prohibition order is such a mechanism, and is in our view, in the circumstances of this case, both justified and proportionate. Should Mr Hobbs desire to return to the industry in any capacity, it will be possible for him to apply, under s 56(7) FSMA, for the prohibition order to be varied or revoked.”

3. DEFINITIONS

- 3.1. The following definitions are used in this Final Notice:

“the Act” means the Financial Services and Markets Act 2000;

“the Authority” means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

“the Decision Notice” means the decision notice dated 23 July 2010 given by the Authority to Mr Hobbs in relation to this matter;

“the First Tribunal Decision” means the written decision of the Tribunal dated 22 November 2012 in relation to this matter;

“the Second Tribunal Decision” means the written decision of the Tribunal dated 13 December 2013 in relation to this matter; and

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

4. FACTS AND MATTERS

- 4.1. The facts and matters relied upon are set out fully in the First and Second Tribunal Decisions and are incorporated herein by reference.

5. FAILINGS

- 5.1. The Authority has the power, pursuant to section 56 of the Act, to prohibit an individual from performing any function in relation to any regulated activity where it appears to the Authority that that individual is not a fit and proper person.
- 5.2. The regulatory provisions relevant to this Final Notice are set out more fully in paragraphs 15 to 17 of the Second Tribunal Decision and are incorporated herein by reference.

6. IMPORTANT NOTICES

- 6.1. This Final Notice is given under, and in accordance with, section 390 of the Act.

Publicity

- 6.2. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However,

the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to the person with respect to whom the action in this notice was taken, be prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

- 6.3. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

- 6.4. For more information concerning this matter generally, contact Steven Clark (direct line: 020 7066 2172) of the Authority's Enforcement and Financial Crime Division.

Matthew Nunan

Project Sponsor

Financial Conduct Authority, Enforcement and Financial Crime Division