



Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

This Decision Notice was superseded by a Final Notice dated 9 November 2017.

DECISION NOTICE

To: Church Hill Finance (Anthony Badaloo trading as)

Address: 178 Church Hill Road
East Barnet
Barnet
EN4 8PP

FCA Reference Number: 402188

Date: 12 October 2016

ACTION

1. For the reasons listed below and pursuant to section 55J of the Act, the Authority has decided to cancel Mr Badaloo's Part 4A permission.

REASONS FOR THE ACTION

2. It appears to the Authority that Mr Badaloo is failing to satisfy the suitability Threshold Condition in that:
 - (a) Mr Badaloo, a sole trader, has since 13 April 2015 repeatedly failed to comply fully, or at all, with reasonable Authority requests to provide information and documents to the Authority in relation to his business records and his creditor position;

- (b) Mr Badaloo has not been open and co-operative in all of his dealings with the Authority, in breach of Principle 11 (Relations with regulators) of the Principles; and
 - (c) On 2 October 2015, Mr Badaloo was convicted of one count of trespassing and one count of theft, and on 30 October 2015, he was sentenced for those offences to a Community Order of unpaid work of 100 hours, and ordered to pay £3,500 in costs, plus a £60 victim surcharge. On the basis of this, the Authority considers that Mr Badaloo cannot be expected to act with probity.
3. In the light of these matters, the Authority considers that Mr Badaloo is not fit and proper to be permitted to conduct regulated activities.

DEFINITIONS

4. The definitions below are used in this Notice:

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

“the appropriate resources Threshold Condition” means the threshold condition set out in Paragraph 2D of Schedule 6 to the Act;

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

“COND” means the Threshold Conditions part of the Handbook;

“EG” means the Authority’s Enforcement Guide;

“the Handbook” means the Authority’s Handbook of rules and guidance;

“the Principles” means the Authority’s Principles for Businesses;

“Mr Badaloo” means Anthony Badaloo, a sole trader, whose trading name is Church Hill Finance;

“Mr Badaloo’s Part 4A permission” means the permission granted to Mr Badaloo under Part 4A of the Act;

“the suitability Threshold Condition” means the threshold condition set out in paragraph 2E of Schedule 6 to the Act;

“SYSC” means the Senior Management Arrangements, Systems and Controls sourcebook in the Handbook;

“the Threshold Conditions” means the threshold conditions set out in Schedule 6 to the Act; and

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

FACTS AND MATTERS

5. Mr Badaloo was authorised by the Authority on 29 October 2004 to conduct designated investment business, and on 31 October 2004 he was also permitted to conduct regulated home finance business.
6. Mr Badaloo has since 13 April 2015 repeatedly failed to comply fully, or at all, with reasonable requests by the Authority that he provide information and documents to the Authority in relation to his business records and his creditor position.
7. In failing to provide information and documents to the Authority in relation to his business records, Mr Badaloo has failed to explain to the Authority what alternative arrangements he has made to demonstrate that he satisfies his record-keeping obligations under SYSC 9.1.1R, following the repossession of his principal place of business on 7 November 2014 and the destruction of his business records on 24 June 2015.
8. Further, Mr Badaloo's failure to provide the information and documents to the Authority in relation to his business records and his creditor position means that the Authority is unable to assess whether Mr Badaloo's financial and non-financial resources are appropriate in relation to the regulated activities that he carries on and therefore whether Mr Badaloo is satisfying the appropriate resources Threshold Condition.
9. On 2 October 2015, Mr Badaloo was convicted on indictment at Harrow Crown Court of one count of trespassing, contrary to sections 144(1) and (5) of the Legal Aid, Sentencing and Punishment Act 2012, and one count of theft, contrary to sections 1(1) and 7 of the Theft Act 1968.
10. On 30 October 2015, Mr Badaloo was sentenced for those convictions at Harrow Crown Court to a Community Order of unpaid work of 100 hours, and was ordered to pay £3,500 in costs, plus a £60 victim surcharge.
11. The Authority has invited Mr Badaloo to apply to cancel his Part 4A permission, but Mr Badaloo has declined to do so.

FAILINGS

12. The statutory and regulatory provisions relevant to this Notice are set out in Annex A.
13. Based on the facts and matters set out above, it appears to the Authority that Mr Badaloo is failing to satisfy the suitability Threshold Condition. In particular:
 - (a) Mr Badaloo's unreasonable failure to provide the information requested by the Authority leads the Authority to consider that he is failing to be open and co-operative with the Authority, in breach of Principle 11 (Relations with regulators) of the Principles;
 - (b) Mr Badaloo has failed to satisfy the Authority that he is ready, willing and organised to comply with the requirements and standards under the regulatory system (COND 2.5.6G(1)); and

- (c) On the basis of Mr Badaloo's criminal convictions, the Authority considers that Mr Badaloo cannot be expected to act with probity (COND 2.5.1AUK(1)(e) and COND 2.5.6G(2)).

14. In the light of these matters, the Authority considers that Mr Badaloo is not a fit and proper person having regard to all the circumstances. Accordingly, the Authority has decided that Mr Badaloo's Part 4A permission should be cancelled.

REPRESENTATIONS

15. Annex B contains a brief summary of the key representations made by Mr Badaloo, and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by Mr Badaloo, whether or not set out in Annex B.

PROCEDURAL MATTERS

16. This Notice is given to Mr Badaloo under section 55Z and in accordance with section 388 of the Act.
17. The following paragraphs are important.

Decision Maker

18. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

The Tribunal

19. Mr Badaloo has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Badaloo has 28 days from the date on which this Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email fs@hmcts.gsi.gov.uk). Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website: <http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>
20. A copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Roger Hylton at the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.
21. Once any referral is determined by the Tribunal and subject to that determination, or if the matter has not been referred to the Tribunal, the Authority will issue a final notice about the implementation of that decision.

Access to evidence

22. Section 394 of the Act applies to this Notice. In accordance with section 394(1), Mr Badaloo is entitled to have access to:

- (a) the material upon which the Authority has relied in deciding to give Mr Badaloo this Notice. Mr Badaloo has been provided with a copy of all such material. This consists of the material which was given with the Warning Notice issued to Mr Badaloo on 1 June 2016, and further material which the Authority has obtained since that date and made available to him; and
- (b) any secondary material which, in the opinion of the Authority, might undermine that decision. There is no such secondary material.

Confidentiality and publicity

- 23. This Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). In accordance with section 391 of the Act, a person to whom this Notice is given or copied may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details.
- 24. However, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. Mr Badaloo should be aware, therefore, that the facts and matters contained in this Notice may be made public.

Authority Contact

- 25. For more information concerning this matter generally, Mr Badaloo should contact Roger Hylton at the Authority (direct line: 020 7066 8168).

Tim Parkes
Chair, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. The Authority's operational objectives established in section 1B of the Act include securing an appropriate degree of protection for consumers.
2. The Authority is authorised by section 55J of the Act to, amongst other things, cancel a firm's Part 4A permission where it appears to the Authority that it is failing to satisfy the Threshold Conditions.
3. The appropriate resources Threshold Condition provides, in relation to a person ("A") carrying on or seeking to carry on regulated activities which do not consist of or include a PRA-regulated activity, that:

"The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on."
4. The suitability Threshold Condition provides, in relation to a person ("A") carrying on or seeking to carry on regulated activities which do not consist of or include a PRA-regulated activity, that:

"A must be a fit and proper person having regard to all the circumstances, including-

[...]

 - (c) the need to ensure that A's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;
 - (d) whether A has complied and is complying with ... requests made by the [Authority], relating to the provision of information to the [Authority] ...;
 - (e) whether those who manage A's affairs have adequate skills and experience and have acted and may be expected to act with probity;

[...]"
5. In exercising its power to cancel a Part 4A permission, the Authority must have regard to the regulatory requirements and guidance published in the Handbook. The main considerations relevant to the action stated in this Notice are set out below.

Relevant Principle

6. Principle 11 (Relations with regulators) of the Principles, states that a firm must deal with its regulators in an open and cooperative way, and must disclose to the appropriate regulator anything relating to the firm of which the regulator would reasonably expect notice.

Relevant rule

7. SYSC 9.1.1R states:

"A firm must arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the appropriate regulator ... to monitor the firm's compliance with the requirements under the regulatory system, and in particular to ascertain that the firm has complied with all obligations with respect to clients."

Guidance concerning the suitability Threshold Condition

COND 2.5 – Suitability: Paragraph 2E of Schedule 6 to the Act

8. COND 2.5.1AUK(1) reproduces the relevant statutory provision that the person concerned must satisfy the Authority that he is a fit and proper person having regard to all the circumstances, including amongst other things: the need to ensure his affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers; whether he has complied and is complying with requests made by the Authority, relating to the provision of information to the Authority; and whether those who manage his affairs have adequate skills and experience and act with probity (COND 2.5.1AUK(1)(c),(d) and (e)).
9. COND 2.5.4G(2) states that examples of the considerations to which the Authority may have regard when assessing whether a firm will satisfy and continue to satisfy the Threshold Conditions include whether the firm conducts its business with integrity and in compliance with proper standards (COND 2.5.4G(2)(a)).
10. COND 2.5.6G gives examples of the kind of particular considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, the suitability Threshold Condition, including but not limited to: (i) whether the firm has been open and co-operative in all its dealings with the Authority and is ready, willing and organised to comply with the requirements and standards under the regulatory system (COND 2.5.6G(1)); and (ii) whether the firm has been convicted, or is connected with a person who has been convicted, of any criminal offence, with particular consideration to be given to offences of dishonesty, fraud or financial crime (COND 2.5.6G(2)).

The Enforcement Guide

11. The Authority's policy in relation to its enforcement powers is set out in EG, certain provisions of which are summarised below.
12. EG 8.1.1 reflects the provisions of section 55J of the Act that the Authority may use its own-initiative power to cancel a firm's Part 4A permission where the firm is failing or is likely to fail to satisfy the Threshold Conditions (EG 8.1.1(1)); or where it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives (EG 8.1.1(3)).

13. EG 8.5.1(1) states that the Authority will consider cancelling a firm's Part 4A permission using its own-initiative power contained in section 55J of the Act in circumstances where the Authority has very serious concerns about the firm.

ANNEX B

REPRESENTATIONS

1. Mr Badaloo's representations (in italics), and the Authority's conclusions in respect of them, are set out below.
2. *The Authority relied, in support of the matters set out in this Notice, on materials which had not been appropriately verified; for example by being sealed by a court or other official body. As such, those materials did not constitute evidence of those matters and the matters in the Notice had not been proven by the Authority.*
3. *Individuals at regulated firms had stolen his business items and properties, with assistance from the Authority, the police and the courts.*
4. *Staff of the Authority's Enforcement and Market Oversight Division had concealed evidence which demonstrated certain matters of assistance to Mr Badaloo; for example, that he had never been properly evicted from the property to which his convictions for trespass and theft related, demonstrating that he could not be guilty of those offences; and that he was the beneficial owner of the property at the material time.*
5. *Information held by certain credit reference agencies relating to county court judgments against Mr Badaloo was inaccurate and misleading. His credit files show that there have been no missed payments, no arrears, no defaults, no court judgments and no repossessions.*
6. *He had explained to the Authority in January 2015 that he had computer back-ups of the files which had been stolen and that he would take steps to minimise the business interruption, which he has since taken.*
7. The decision to cancel Mr Badaloo's Part 4A permission was made on behalf of the Authority by the Regulatory Decisions Committee, a committee of the Authority which is independent from the Authority's Enforcement and Market Oversight Division ("Enforcement"). The decision was made on the basis of documentary evidence provided by Enforcement in support of the case against Mr Badaloo. The Authority is not required to provide "verified" documents, and is satisfied that the documents it has relied upon are evidence of the matters to which they relate and prove those matters. Mr Badaloo has not produced any evidence of his own to disprove any of those matters, beyond bare assertion.
8. The Authority's Regulatory Decisions Committee has not seen any evidence in support of Mr Badaloo's assertion that his business items and properties were stolen, or which would suggest that there has been any improper conduct by the Authority, the police or the courts.

9. The Authority's Regulatory Decisions Committee has also not seen any evidence in support of Mr Badaloo's allegation that Enforcement staff concealed evidence. In fact, Enforcement obtained further evidence to demonstrate certain of the matters disputed by Mr Badaloo, including that the relevant property was duly repossessed by creditors, and that the property is now owned by someone else.
10. The Authority does not accept that the information held by credit reference agencies is misleading, nor that the 'credit files' that Mr Badaloo produced at the oral representations meeting constitute satisfactory evidence of his creditor position. The provision of these documents at the oral representations meeting does not alter the Authority's conclusion that Mr Badaloo has not been open and cooperative with the Authority by repeatedly failing to comply with reasonable requests to provide the Authority with information and documents regarding his creditor position.
11. The Authority's Regulatory Decisions Committee has not seen any evidence that Mr Badaloo provided an explanation to the Authority in January 2015, or at any other time, regarding his business files. In any event, whether or not he provided such an explanation at that time, he has still repeatedly failed to comply with the Authority's reasonable requests, since 13 April 2015, for information regarding his business records.
12. Mr Badaloo has the right to pursue his allegations regarding the Authority's conduct using the Complaints Scheme established under the Financial Services Act 2012.