
FINAL NOTICE

To: **Abiola Babajide Agbalaya**
Address: **Herald Finance Ltd**
887-897 Old Kent Road
London
SE15 1NL
Individual FSA reference: **ABA01024**
Dated: **6 April 2009**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS (the "FSA") gives you Final Notice about the following action:

THE ORDER

- 1.1. The FSA gave you a Decision Notice dated 19 February 2009 ("the Decision Notice") which notified you that FSA had decided
- (1) pursuant to section 63 of the Financial Services and Markets Act 2000 (the "Act"), to withdraw the approval given to you, Mr Abiola Babajide Agbalaya, under section 59 of the Act;

- (2) pursuant to section 56 of the Act, to make an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm (the "Prohibition Order"); and
 - (3) pursuant to section 66 of the Act, to impose a financial penalty of £100,000 on you for failing to comply with the FSA's Statements of Principle and Code of Practice for Approved Persons ("APER") with respect to the conduct of controlled functions by approved persons.
- 1.2. You have not referred the matter to the Financial Services and Markets Tribunal within 28 days of the date on which the Decision Notice was given to you.
- 1.3. Accordingly, the FSA has today imposed a financial penalty of £100,000 on you and hereby makes an order, pursuant to section 56 of the Act, prohibiting you from performing any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm. The Prohibition Order takes effect from 7 April 2009.

2. REASONS FOR THE ORDER

- 2.1. On the basis of the facts and matters and conclusions described in the Warning Notice ("the Warning Notice") and in the Decision Notice, the FSA concluded that you pose a risk to lenders and consumers and, therefore, to confidence in the financial system. Action should be taken against you in support of the FSA's financial crime objectives because you failed to meet minimum regulatory standards in terms of honesty and integrity, which includes an obligation to comply with the requirements and standards of the regulatory systems.
- 2.2. In summary, you were the principal, sole director and sole approved person at Herald Finance Ltd ("Herald"). Through that firm, you submitted eight mortgage applications to lenders on your own behalf. Those applications contained and were supported by false information regarding your level of income, that you knew to be false.

3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FSA GUIDANCE

Statutory Provisions

- 3.1. The FSA's regulatory objectives, which are set out in section 2(2) of the Act, include the maintenance of market confidence, the protection of consumers and the reduction of financial crime.
- 3.2. Pursuant to s 63 of the Act, the FSA has the power to withdraw the approval given to you under s 59 of the Act - to perform the controlled functions set out in section 4 below – if it considers that you are not a fit and proper person to perform them.
- 3.3. Further, the FSA has the power, by virtue of section 56 of the Act, to make an order prohibiting you from performing a specified function, any function falling within a specified description or any function, if it appears to the FSA that you are not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities.
- 3.4. Pursuant to s 66 of the Act, where it appears to the FSA that an approved person is guilty of misconduct and it is appropriate to take action against him, it has the power, inter alia, to impose on that person a financial penalty of such amount as it considers appropriate.

Regulatory requirements

- 3.5. The Statements of Principle and Code of Practice for Approved Persons (“APER”) are made pursuant to s 64 of the Act. They are general statements of the fundamental obligations of approved persons under the regulatory system and conduct which, in the opinion of the FSA, constitutes a failure to comply with them. They also describe factors to be taken into account by the FSA in determining whether an approved person’s conduct complies with a particular Statement of Principle.
- 3.6. On the facts of this case, the FSA considers the most relevant Statement of Principle to be Principle 1. Statement of Principle 1 requires that an approved person must act with integrity in carrying out his controlled function.

FSA guidance

- 3.7. FSA guidance relevant to the above statutory provisions and regulatory requirements are set out in Annex A to this notice.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. You were the principal and sole director of Herald, which is a small mortgage broker operating in the South London area. You were also the only approved person at the company. With effect from 31 October 2004, you were approved to perform the controlled function of CF1 (Director), CF3 (Chief Executive), CF8 (Apportionment and Oversight), CF11 (Money Laundering Reporting), CF28 (Systems and Controls) and CF29 (Significant Management) at Herald. You were one of two mortgage advisors at Herald.

Your personal mortgage applications

- 4.2. The FSA has reviewed eight mortgage applications, in which you were the applicant, submitted by you to four lenders between December 2002 and February 2008 (the “relevant period”). Applications 1-3 noted below pre-date FSA regulation, and Applications 4-8 relate to buy-to-let and none of the applications are therefore

regulated mortgage contracts. All of these mortgage applications were submitted through Herald (the “Applications”):

Mortgage Applications Pre-dating FSA Regulation

- (1) On 2 December 2002, you submitted a mortgage application to Lender A for your main dwelling in which you declared your income to be £100,225 in 2000, £131,775 in 2001 and £140,000 in 2002. You declared that you were self employed, and that you were a director and a shareholder, owning more than a 10 percent shareholding in Herald.
- (2) On 13 December 2002, you submitted a mortgage application on the same property to Lender B. Again you declared your income to be £131,775 in 2001 and £140,000 in 2002. You declared that you were self employed, and that your income was net profit and salary.
- (3) On 3 January 2003, you submitted another mortgage application on your main dwelling to Lender C, in which you declared a basic gross income of £135,000, with £23,200 as other guaranteed income. You also incorrectly declared your net monthly income to be £87,750 per annum. You stated that you were the sole shareholder of Herald (owning 100%), that you were employed, and that you were a company director of Herald.

Buy-to-Let Mortgage Applications

- (4) On 27 July 2007 you submitted an application to Lender C declaring your basic income to be £150,000. You declared yourself as an employed mortgage advisor and struck through the self employed section.
- (5) On 16 August 2007 you submitted a mortgage application to Lender C in which you declared your income to be £3,000 PAYE basic income and £120,000 PAYE commission, and that your total income was £150,000. In interview you stated that the £3,000 PAYE was written by you in error and should have read £30,000. On the same mortgage application you stated that you were employed.

- (6) On 2 May 2007 you submitted a mortgage application to Lender D in relation to the same property declaring your annual basic gross income to be £150,000. You also declared, incorrectly, that you were not a shareholder of Herald.
 - (7) On 24 October 2007 you submitted a further mortgage application to Lender C stating your basic income to be £120,000 with an additional £30,000 income from working overtime. You declared yourself as employed and not related to your employer.
 - (8) On 27 July 2006 you submitted a mortgage application to Lender C stating your basic income to be £110,000, with further commission payable of £59,500, and £8,500 derived from investment income. The application document contains the instruction, “Where income includes rental income this must be declared net of all investment and mortgage payments.” In interview you admitted that the rental income declared was gross, and not net, contrary to what was required on the application form. You also declared yourself as employed and not related to your employer.
- 4.3. The FSA has considered that you knowingly and intentionally included in the Applications false information about your status and earnings, and submitted them to lenders. In the Applications, you consistently state that your annual income is over £150,000. You later admitted to the FSA in interview that this figure was Herald’s turnover, and that your actual income was considerably lower.
- 4.4. The FSA has therefore concluded that you knowingly entered false information in the Applications, and submitted them to lenders based on information which you knew to be false and misleading.

Mortgage applications relating to Ms Grace Olufunmiola Olatunji

- 4.5. In addition, in January and February 2006, you supervised the submission of two mortgage applications for Ms Grace Olufunmiola Olatunji (“Ms Olatunji”). You signed the “Supervisor’s statement” on Ms Olatunji’s Mortgage fact finds indicating that you had reviewed and inspected the details contained in them, and that you took responsibility for the actions of Ms Olatunji in both cases. Each of the Applications

by Ms Olatunji stated that she was employed as a mortgage broker by Herald. This was untrue. At the date of the applications, Ms Olatunji was and remains, a self-employed mortgage advisor working at Herald.

- 4.6. The income declared by Ms Olatunji in the Applications is comprised of several items. The majority of Ms Olatunji's income is stated to come from Herald. The FSA understands, from a compelled interview with Ms Olatunji that this income was based upon only one month's earnings, and was not representative of her true income. Further, Ms Olatunji had no reasonable explanation or evidence to support any of the other strands of income which were claimed.
- 4.7. Given your knowledge of the financial position of Herald, at the dates of the Applications by Ms Olatunji, you must have known that there was no or no reasonable prospect of Ms Olatunji receiving the income from Herald declared to the lenders.
- 4.8. The FSA has therefore concluded that the information in respect of Ms Olatunji's income provided in support of the Applications by Ms Olatunji was false, that you knew it to be false, and that you knowingly supervised the submission of those applications based on false and misleading material information.

Information submitted to HMRC and stated in company accounts

- 4.9. Your annual mortgage payments on your main dwelling in the relevant period are approximately three times your net annual income as declared by you to HMRC in the relevant period and as stated in Herald's annual accounts.
- 4.10. You admitted at interview that your actual income was significantly higher than that declared in Herald's accounts.
- 4.11. The FSA has concluded that you have failed to make accurate and honest tax returns to HMRC in the period 2003 to 2006 as the level of income declared by you was unrealistically small and manifestly insufficient to support mortgage payments on your main dwelling let alone any other outgoings or expenditure.

5. ANALYSIS OF MISCONDUCT AND PROPOSED SANCTIONS

5.1. The FSA considered whether you are a fit and proper person to continue to perform some or any functions in relation to regulated activities. In doing so, the FSA considered its statutory objectives, the regulatory requirements and relevant guidance referred to in section 3 above. In assessing your honesty, integrity and reputation for the purpose of considering whether you are a fit and proper person, the FSA has had regard to and highlighted the following:

- (1) your supervision of and knowing involvement in the submission of two mortgage applications for Ms Olatunji which you knew to contain false and misleading information (in contravention of Statement of Principle 1 of APER); and
- (2) your knowing involvement in the submission, through Herald, of at least eight false and misleading mortgage applications on your own behalf demonstrating a lack of honesty and integrity; and
- (3) your submission of false information concerning your income to HMRC and in Herald's accounts demonstrating a lack of honesty and integrity.

5.2. The FSA has therefore concluded that the nature of these matters, the period of time during which they occurred and the gravity of them directly impugned your honesty, integrity and reputation. They demonstrated that you have failed to meet minimum regulatory standards in respect of honesty and integrity, and that you were not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person, exempt person, or exempt professional person.

5.3. Having regard to the FSA's statutory objectives of maintaining confidence in the financial system, protecting consumers and reducing financial crime, and the severity of the risk posed by you to prospective lenders and potentially to consumers and therefore to confidence in the financial system, the FSA considered it necessary to withdraw your individual approval under s 59 of the Act to perform controlled functions and has exercised its power to make a Prohibition Order against you.

- 5.4. Furthermore the FSA decided to impose a financial penalty of £100,000 on you for displaying a lack of honesty and integrity in relation to supervising the submission of two mortgage applications containing false declarations of income on behalf of Mrs Olatunji through Herald.

6. REPRESENTATIONS AND CONCLUSIONS

- 6.1. In letters dated 16 October and 7 November 2008, you made written representations to the FSA on the Warning Notice dated 12 September 2008. You argued that, for the reasons set out in your written representations, the FSA should not take the action proposed in the Warning Notice. Alternatively, in the event the FSA decided to proceed with the action, you argued that the sanctions proposed are excessive.
- 6.2. You challenged the FSA's allegation that your conduct demonstrated a lack of honesty and integrity or that as a consequence you are not a fit and proper person. Accordingly, you represented, there was no basis for the proposed financial penalty of £100,000.
- 6.3. You accepted that, as an approved person, you are required to comply with the FSA's statutory obligations and regulatory requirements. However, you represented that you had not breached those obligations or requirements
- 6.4. In relation to Ms Olatunji you argued that you honestly believed, on the basis of her performance to date, that she would reach the income targets referred to in the documents. You also stated that the mortgage application forms do not make clear whether the income to be reported is projected or actual. Therefore, you stated that the evidence does not support the FSA's assertion that you knowingly supervised the submission of applications based on false and misleading information. In these circumstances you asserted that it would be improper to impugn dishonesty in a situation where the requirements of the lenders are not clear.
- 6.5. As to Ms Olatunji's employment status, you confirmed that she was working as a consultant with Herald. You represented that as Ms Olatunji was working full time and exclusively for Herald, there was materially no difference between her status as an employed or self employed person.

- 6.6. In relation to your personal mortgages, you argued that you had not acted dishonestly in the completion of your personal mortgage application forms. In support of your representations you submitted a detailed review of the specific allegations made by the FSA in relation to the various mortgage forms you had submitted. You stated that in your view the information submitted was true and there was no deception or dishonesty committed by you in submitting the applications.
- 6.7. You further represented that the FSA should have particular regard to the candidness and truthfulness of your dealings with the FSA as well as your co-operation with the FSA's investigation.
- 6.8. Having considered your representations, the FSA was not satisfied that the evidence supported your representations on the Warning Notice.
- 6.9. In particular, the FSA found that you knowingly entered misleading information as to Ms Olatunji's income on her mortgage application forms. Based on her previous earnings, you knew that Ms Olatunji's actual earnings, including commission of 55% (on new clients introduced to the firm on mortgage applications in excess of £180,000) were not enough to match the income you had submitted in the mortgage application forms. This resulted in the making of fraudulent mortgage applications.
- 6.10. You also falsely stated that Ms Olatunji was employed as a mortgage broker by Herald. Ms Olatunji was self employed and you were aware of her proper employment status.
- 6.11. Furthermore the FSA did not accept your representations as to the level of your income. The evidence did not support you earning an income at the level presented by you. This too resulted in the making of fraudulent mortgage applications.
- 6.12. Accordingly, the FSA found that you were knowingly concerned in making fraudulent mortgage applications and you are not a fit and proper person.
- 6.13. In all the circumstances, the FSA finds that that the sanctions set out in this Notice are appropriate.

7. DECISION MAKERS

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

8. IMPORTANT

- 8.1. This Final Notice is given to you in accordance with section 390 of the Act.

Manner of and time of Payment

- 8.2. The financial penalty must be paid in full by you to the FSA by no later than 15 April 2009, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 8.3. If all or any of the financial penalty is outstanding on 15 April 2009, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

- 8.4. 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 FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interest of consumers.
- 8.5. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 8.7 For more information concerning this matter generally, you should contact Catherine Harris at the FSA (direct line: 020 7066 4872/fax: 020 7066 4873).

Jonathan Phelan
Head of Department
FSA Enforcement Division

Annex A

1. REGULATORY GUIDANCE

Fit and Proper Test for Approved Persons

- 1.1. The part of the FSA Handbook entitled “FIT” sets out the Fit and Proper test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function and FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 1.2. FIT1.3 provides that the FSA will have regard to a number of factors when assessing a person’s fitness and propriety. Among the most important considerations will be the person’s honesty, integrity and reputation.
- 1.3. In determining a person’s honesty, integrity and reputation, FIT2.1 states that the FSA will have regard to matters including, but not limited to, those set out in FIT2.1.3G. This guidance includes:
 - (1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT2.1.3G(5));
 - (2) whether the person is or has been subject of any proceedings of a disciplinary or criminal nature or has been notified of any potential proceedings or any investigation which might lead to those proceedings (FIT 2.1.3G(4)); and
 - (3) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards (FIT2.1.3G(13)).

FSA's policy for exercising its power to make a prohibition order and withdraw a person's approval

- 1.4. The FSA’s approach to exercising its powers to make prohibition orders is set out at Chapter 9 of the Enforcement Guide (“EG”).

- 1.5. EG 9.1 states that the FSA's power to make prohibition orders under section 56 of the Act helps it work towards achieving its regulatory objectives. The FSA may exercise this power where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.
- 1.6. EG 9.4 sets out the general scope of the FSA's powers in this respect, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. EG9.5 provides that the scope of a prohibition order will vary according to the range of activities that the individual performs in relation to regulated activities, the reasons why he is not fit or proper and the severity of the risk posed by him to the consumers or the market generally.
- 1.7. In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provide guidance. In particular, EG 9.8 states that in deciding whether to make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing other disciplinary sanctions.
- 1.8. EG 9.9 provides that when deciding whether to make a prohibition order the FSA will consider all the relevant circumstances of the case, which may include (but are not limited to):
- (1) the matters set out in section 61(2) of the Act;
 - (2) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety are set out in FIT 2.1 (Honesty, integrity and reputation), FIT2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
 - (3) whether, and to what extent, the approved person has:
 - (a) failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons; or

- (b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules);
 - (5) the relevance and materiality of any matters indicating unfitness;
 - (6) the length of time since the occurrence of any matters indicating unfitness;
 - (7) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates; and
 - (8) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
- 1.9. EG 9.10 provides that the FSA may have regard to the cumulative effect of a number of factors and may take into account the particular controlled function which an approved person is performing for a firm, the nature and activities of the firm concerned and the markets within which it operates.
- 1.10. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person. The examples include:
- (1) severe acts of dishonesty, for example those which may have resulted in financial crime; and
 - (2) serious breaches of the Statements of Principle and Code of Practice for Approved Persons, such as providing misleading information to clients, consumers or third parties.

The Statements of Principle and Code of Practice for Approved Persons

- 1.11. APER 3.1.3G states that, when establishing compliance with, or breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that

function. APER 3.1.4(1)G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, in a situation where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.

- 1.12. APER 4.1.2(E) sets out a number of examples of behaviour which the FSA considers constitute a failure to comply with Statement of Principle 1. APER 4.1.3E states that deliberately misleading (or attempting to mislead) by act or omission either a client or the FSA does not comply with Statement of Principle 1. Specific examples of such conduct are set out in APER 4.1.4E and include providing false or inaccurate documentation or information, or deliberately falsifying documents. In considering a person's integrity the FSA may also have regard to whether that person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)).