
FINAL NOTICE

To: **Andrew Emelife**
4 Cambridge Court
210 Shepherds Bush Road
London W6 7NJ

Dated: **20 January 2010**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you, Mr Andrew Emelife, final notice about 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.

1. ACTION

- 1.1. The FSA gave you, Mr Andrew Emelife, trading as Loans4Assets.com (“Loans4Assets”), a Decision Notice on 18 December 2009 (“the Decision Notice”) which notified you that for the reasons listed below, after consideration of your written representations, it had decided to make an order pursuant to section 56 of the Financial Services and Markets Act 2000 (“the Act”) 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”), because you are not a fit and proper person in terms of a lack of honesty and integrity.
- 1.2. You did not refer 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, for the reasons set out below, the FSA hereby makes an order, pursuant to section 56 of the Act, prohibiting you from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. The Prohibition Order takes effect from 20 January 2010.

2. REASONS FOR THE ACTION

- 2.1. On the basis of the facts and matters described below, and set out in more detail in section 4 of this Notice, the FSA concluded that:

- (1) you declared false and misleading information about your income to a lender to obtain two mortgages for yourself; and
- (2) while trading as Loans4Assets you submitted a mortgage application for one of your customers that included false income and employment details.

- 2.2. To support the level of income declared on the mortgage applications, you paid an accountant (“Accountant A”) to provide false accounting statements for yourself and for a customer, based on details you supplied to Accountant A.

3. STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

Statutory provisions

- 3.1. The relevant statutory provisions, regulatory guidance and policy are set out as Annex A to this Notice.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. You were a mortgage intermediary operating from 4 Cambridge Court, 210 Shepherds Bush Road, London W6 7NJ.

- 4.2. Loans4Assets was authorised to carry on the following activities:

- (1) advising on investments (except on Pension Transfers and Pension Opt Outs);
- (2) advising on regulated mortgage contracts;
- (3) agreeing to carry on a regulated activity;
- (4) arranging (bringing about) regulated mortgage contracts;
- (5) assisting in the administration and performance of a contract of insurance;
- (6) dealing in investments as an agent;
- (7) making arrangements with a view to regulated mortgage contracts;
- (8) making arrangements with a view to transactions in investments; and

- (9) arranging (bringing about) deals in investments.

Your buy-to-let mortgage application

- 4.3. In November 2005 you submitted a buy-to-let mortgage application to a lender (“Lender A”) for yourself through Loans4Assets. On the mortgage application form, you declared yourself to be self-employed with a personal annual income from the business (before tax) of £187,765.
- 4.4. According to Her Majesty’s Revenue and Customs (“HMRC”) records for the tax year 2005/2006 you were self-employed as an independent financial adviser. You declared a taxable income of £15,305 from that self-employment.
- 4.5. The income that you declared to HMRC bears no relation to and is substantially less than the income figure you declared on your mortgage application.

Your commercial mortgage application

- 4.6. In or around July 2006, you submitted a mortgage application for a commercial mortgage, to assist with the purchase of your business premises, to a lender (“Lender B”).
- 4.7. Your mortgage application was supported by accounts provided by an accountant (“Accountant A”). The trading profit and loss account prepared by Accountant A for the year ended 31 December 2004 showed a net profit of £188,712. You were described as the principal of Loans4Assets on this application.
- 4.8. Accountant A provided a witness statement to the FSA in which he made the following points.
- (1) You instructed him to make up a set of accounts for Loans4Assets despite the fact that Accountant A had not previously acted as your accountant.
 - (2) He generated three years of accounts for you. The figures in these accounts were invented by him. The net figure was provided by you and the other figures were produced by him to fit around the net figure provided by you. You knew that he had invented the figures.
 - (3) The accountant’s certificate and accounts were produced in the name of another qualified accountant and fellow of the Association of Chartered Certified Accountants (“ACCA”). He used a separate company name to distinguish this work from his genuine work.
 - (4) You were sent an invoice for £200 (which included a discount of £100) in respect of the preparation of the accounts.
- 4.9. This commercial mortgage application which you submitted to Lender B contained false income information. The income figures used in this application bore no relation to, and were substantially less than, the income figures that you declared to HMRC.

Mortgage application for Customer A

- 4.10. You submitted a mortgage application to a lender (“Lender C”) for a customer (“Customer A”) in March 2007. The application stated that Customer A was employed as a Director/IT Consultant and had been so employed for six years. The application stated that Customer A had an income of £93,433 for 2004 rising to £98,331 in 2005 and £107,494 in 2006.
- 4.11. Customer A’s application for mortgage finance was supported by an accountant’s certificate prepared by Accountant A. The accountant’s certificate records Customer A as having net profits of £93,433 in 2004, rising to £98,330 in 2005 and £104,494 in 2006.
- 4.12. In his witness statement to the FSA, Accountant A made the following points about providing accounts for your customers.
- (1) You would telephone him and ask him to prepare accounts or a certificate of affordability (i.e. accountant’s certificate) for people who he had never met.
 - (2) These financial statements would be based on client details and profit figures supplied by you, with no proof other than your word. Any other figures/information not supplied by you were, on your instruction, made up.
 - (3) He has prepared false accounts and/or accountant’s certificates for a number of your clients (and he provided several examples).
- 4.13. HMRC records do not correspond with the income details given on the application or on the accountant’s certificate for Customer A. In particular the income declared to HMRC is significantly lower than that declared in the mortgage application and on the accountant’s certificate.
- 4.14. In an interview with the FSA you stated that you knew Customer A and that Customer A produced this accounting certificate to you when the lender had declined to accept information provided by Customer A’s previous accountant. However, we found on your client file for Customer A a letter from Accountant A dated 16 April 2007 attached to which was the accountant’s certificate. As that correspondence was addressed to Loans4Assets, and originated from Accountant A, we do not accept your assertion that the accountant’s certificate came directly from Customer A.
- 4.15. The FSA concluded that you knowingly commissioned and relied on false income information about Customer A to enable Customer A to obtain a mortgage that he could not demonstrably afford.

5. REPRESENTATIONS

- 5.1 Your written representations were provided by letter dated 9 October 2009 (the “response”). The response, although not directly referring to the decision to make the prohibition order against you in your personal capacity, was treated as your

representations about the Warning Notice. The response stated that, because Loans4Assets had submitted a cancellation of Part IV Permission application form, it followed that the FSA's proposed action against you in your personal capacity and against Loans4Assets was no longer relevant or appropriate.

6. CONCLUSION

- 6.1 Having considered the response, the FSA notes that although you proposed to voluntarily cancel the Part IV Permission of Loans4Assets, this would not preclude you from continuing to provide services in the financial services industry. The FSA concluded that the seriousness of your misconduct cast serious doubt on the appropriateness of your continued participation in the financial services industry. The FSA therefore made a Prohibition Order against you, and cancelled the Part IV Permission of Loans4Assets.
- 6.2 The FSA considered whether you are a fit and proper person. In doing so, the FSA had regard to its regulatory requirements and the relevant guidance. In assessing your honesty, integrity and reputation for the purpose of considering whether you are a fit and proper person, the FSA had regard to your knowing involvement in the submission of mortgage applications to lenders based on information which you knew to be false and misleading.
- 6.3 The FSA considers that you are not a fit and proper person to perform any functions in relation to regulated activities. The seriousness of your misconduct means that if you continued to perform any functions you would pose a serious risk to the FSA's statutory objectives of maintaining confidence in the financial system and reducing financial crime.
- 6.4 The FSA considers that you lack honesty and integrity and, as such, that you are not a fit and proper person.

7. DECISION MAKER

- 7.1 The decision which gave rise to the obligation to give this Final 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.

Publicity

- 8.2 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the FSA must publish such information about the matter to which this Notice relates as the FSA considers appropriate. The information may be published in such manner 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 interests of consumers.

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

FSA Contact

- 8.4 For more information concerning this matter generally, you should contact Chris Walmsley at the FSA (direct line: 020 7066 5894 /fax: 020 7066 5895).

Tom Spender
Head of Department
Financial Services Authority

Annex A

Statutory Provisions

The FSA's regulatory objectives, which are set out in section 2(2) of FSMA, include the maintenance of market confidence, the protection of consumers and the reduction of financial crime.

Prohibition order

Further, the FSA has the power, by virtue of section 56 of FSMA, 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.

Fit and Proper Test for Approved Persons

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.

FIT 1.3 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.

In determining a person's honesty, integrity and reputation, FIT 2.1 states that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. This guidance includes:

Whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)); and

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 (FIT 2.1.3G(13)).

The FSA's policy for exercising its power to make a prohibition order

The FSA's approach to exercising its powers to make prohibition orders is set out at Chapter 9 of the Enforcement Guide ("EG").

EG 9.1 states that the FSA's power to make prohibition orders under section 56 of FSMA 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.

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. EG 9.5 provides that the scope of a prohibition order will vary according to the range of functions that the individual performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of the risk posed by him to consumers or the market generally.

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 withdraw approval and/or make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.

EG 9.9 provides that when deciding whether to make a prohibition order against an approved person, and/or withdraw its approval, the FSA will consider all the relevant circumstances of the case, which may include (but are not limited to):

- (1) 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), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
- (2) 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 FSMA (including the Principles and other rules);
- (3) the relevance and materiality of any matters indicating unfitness;
- (4) the length of time since the occurrence of any matters indicating unfitness;
- (5) 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
- (6) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

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.

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) providing false or misleading information to the FSA;
- (2) severe acts of dishonesty, for example those which may have resulted in financial crime; and
- (3) 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.