
FINAL NOTICE

To: Daniel Djaba trading as DPD Consultancy Services
Daniel Djaba t/a DPD Consultancy Services
Of: Willesden Lane
London
NW2 5JA
FRN: 305233
Date: 9 December 2010

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") gives you, Mr Daniel Djaba, final notice about the imposition of an order prohibiting you from carrying out any controlled function involving the exercise of any significant influence function carried on by any authorised person, exempt person, or exempt professional firm, in relation to any regulated activity and the cancellation of your Part IV Permission.

1. ACTION

1.1 The FSA gave you Daniel Djaba trading as DPD Consultancy Services ("DPD") a Decision Notice on 4 November 2010 (the "Decision Notice") which notified you that, the FSA had decided to take the following action against you:

- (1) to make a prohibition order, pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), to prevent you from carrying out any

controlled function involving the exercise of any significant influence function carried on by any authorised person, exempt professional firm, in relation to any regulated activity “the Prohibition Order”); and

(2) to cancel, pursuant to section 45 of the Act, the permission granted to DPD, pursuant to Part IV of the Act ("your Part IV permission").

1.2 You confirmed on 3 December that you will not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber). Accordingly, for reasons set out below, the FSA has made a prohibition order against you, which has effect from today.

2. REASONS FOR THE ACTION

2.1 The FSA has concluded, on the basis of the facts and matters described below that you are not fit and proper to carry out any controlled function involving the exercise of any significant influence function in relation to regulated activities carried on by authorised persons and you should be prohibited from doing so.

2.2 In the opinion of the FSA you are not fit and proper, because you have failed to act with competence and capability. In particular, you have failed to:

(1) establish and maintain appropriate systems and controls. As a result, you have failed to prevent your firm from being used as a vehicle for mortgage fraud; and

(2) take reasonable care to ensure the suitability of advice, and to evidence the suitability of mortgage recommendations.

2.3 The FSA has concluded, on the basis of the above and the facts and matters described below, that DPD has failed to satisfy the Threshold Conditions set out in Part 1 of Schedule 6 to the Act (the "Threshold Conditions"). In the opinion of the FSA:

(1) DPD has failed to satisfy Threshold Condition 5 (Suitability) by virtue of its connection with you, because you are not fit and proper to conduct regulated activities, having regard to all the circumstances of the case, the nature of any regulated activity that you seek to carry on and the need to

ensure that your affairs are conducted soundly and prudently. Specifically, you:

- (a) have failed to conduct your business in compliance with proper standards;
 - (b) do not have competent and prudent management in place; and
 - (c) have failed to conduct your affairs with due skill, care and diligence.
- (2) DPD has failed to satisfy Threshold Condition 4 (Adequate resources) because by virtue of your failings there is no one fit and proper to manage DPD and there is therefore a deficiency in terms of adequate resources. This is because you are a sole trader and therefore are effectively “the firm” and for all intents and purposes the controlling mind of DPD.

2.4 The FSA has also concluded that you are not fit and proper to perform controlled function involving the exercise of any significant influence function in relation to to any regulated activity carried on by any authorised person, exempt person, or exempt professional firm.

2.5 The FSA therefore concludes that, pursuant to Section 45 of the Act, DPD’s Part IV permission should be cancelled.

3. RELEVANT STATUTORY PROVISIONS

3.1 The relevant statutory provisions, regulatory guidance and policy relied upon are attached at Annex A to this Final Notice.

4. FACTS AND MATTERS RELIED ON

Background

4.1 Trading as DPD, you have been authorised by the FSA to sell regulated mortgage contacts since 31 October 2004. You engaged one other self-employed mortgage adviser (“Adviser A”) during this period.

- 4.2 You were one of 50 mortgage brokers visited by the FSA in 2008 as part of a thematic project looking into the ‘quality of advice processes’ in relation to mortgage brokers. The FSA visited you in March 2008.
- 4.3 Unless otherwise stated the facts and matters set out in paragraphs 4.4 to 4.38 below, relate to the period between 31 October 2004 and 18 March 2008 (“the relevant period”).

Systems and Controls

Monitoring of Advisers

- 4.4 You did not have a documented system or process for supervising and monitoring the activities of Adviser A. You informed the FSA that you had a policy that you should audit two or three of Adviser A’s files each month, but you admitted that this did not always occur. You accepted that this monitoring should have been formalised and documented.
- 4.5 During its visit in March 2008, the FSA reviewed some of Adviser A’s customer files and later highlighted its findings to you, including that some of these files did not meet your own internal requirements. Some of these files had record keeping failures and did not contain sufficient evidence to support the income which had been declared by the customers in their applications. You subsequently terminated Adviser A’s agency agreement with your firm on 30 April 2008.
- 4.6 You failed to identify these issues prior to them being brought to your attention by the FSA. You accepted that your supervision process was not sufficiently robust to identify the failings identified by the FSA. Had you followed your policy of auditing two or three of Adviser A’s files each month, you would have identified these failings and would have been able to take immediate steps to address these issues.

Applications submitted by Adviser A in his own name

- 4.7 Adviser A submitted mortgage applications in his own name through your firm. You informed us that there was no process for checking and auditing the information that had been submitted by Adviser A. You have acknowledged that the income declared on one of these applications appeared to be fraudulent and that

the application contained inaccurate information about the level of Adviser A's income. You did not identify this until the FSA brought it to your attention.

4.8 You accepted that your systems and controls, including your supervision of Adviser A, failed to the extent that they allowed Adviser A to submit a fraudulent mortgage application for himself to a lender containing false income information.

4.9 You acknowledged that you could have taken steps to reduce the risk of Adviser A submitting fraudulent applications.

Training and Competence in respect of Adviser A

4.10 Adviser A did not obtain the relevant qualifications and was not assessed as competent by you. You allowed Adviser A to give mortgage advice to customers despite the fact he had not been assessed as competent by you and that you did not check his advice. This is in direct contravention of the T&C plan, and exposed customers to the risk of receiving unsuitable mortgage advice from an unqualified adviser.

4.11 You accepted that there was no formal procedure to assess the competence of advisers or to supervise their training needs. This exposed customers to the risk of receiving unsuitable mortgage advice from an incompetent adviser.

Reasonable care to ensure suitability of advice

Gathering customer information

4.12 You failed both to:

- (1) put in place systems and controls to ensure that Adviser A gathered sufficient customer information before making a recommendation; and
- (2) ensure that you personally gathered sufficient customer information before making a recommendation.

4.13 The FSA has reviewed 25 customer files containing mortgage applications that you and Adviser A submitted to lenders through your firm. Information relating to the customer's circumstances is missing from five of these files. Within these five files, two of the fact finds did not have a completed affordability assessment, and

three of the fact finds did not contain sufficient information relating to the customer's circumstances. As a result, it was not possible to ascertain whether the product you or Adviser A recommended to the customer in each of these five cases was:

- (1) Suitable for the customer's needs; or
- (2) Affordable.

Evidencing Income

- 4.14 You have a document which sets out your Sales and Advice procedures. This documents states that advisers must be satisfied that the income declared by the customer is justified, and retain evidence to support the income.
- 4.15 You accepted that there was not robust documentary evidence on file to support income, as stated by customers, in cases submitted by you and Adviser A.

Applicant A

- 4.16 You did not obtain any evidence of Applicant A's income. You explained that you had previously arranged unregulated buy to let mortgages for Applicant A and had built up a rapport with him. You said that you had no reason to doubt the information provided by Applicant A in respect of his income and occupation on his regulated residential mortgage application. You therefore did not seek any evidence to support his income and occupation.
- 4.17 The FSA subsequently obtained information from HMRC which showed that the applicant did not declare any income for the period in question. As a result, it would appear that the information provided in the application form you submitted to the lender on behalf of Applicant A was false and/ or misleading.
- 4.18 You accepted that your systems and controls were not sufficiently robust to ensure that evidence to support a customer's income and occupation was obtained if a customer who previously had bought an unregulated buy to let mortgage through your firm subsequently purchased a regulated residential mortgage through your firm.

Applicant B

- 4.19 You submitted a mortgage application for Applicant B in which you recorded his occupation as the owner of a chauffeur car business with net profits of £67,820 for 2005 and £84,250 for 2006.
- 4.20 You explained that you contacted Applicant B's accountant to confirm that these income figures were correct. The accountant did not verify the income to you, but instead said that he would provide further documentation to Applicant B. You did not obtain this documentation from Applicant B.
- 4.21 The FSA subsequently obtained information from HMRC which showed that the applicant declared income of £13,099 for 2005 and £11,619 for 2006.
- 4.22 You accepted that if you had complied with your systems and controls and obtained evidence of Applicant B's income, a mortgage application with inaccurate income details would not have been submitted in this case. As a result, it would appear that the information provided in the application form to the lender was false and/ or misleading.

Applicant C

- 4.23 You submitted a mortgage application for Applicant C in which you recorded his occupation as the owner of a property development business and his net profit as £142,500 for 2006.
- 4.24 You explained that you had seen some evidence of income in the form of book keeping documents prepared by Applicant C's sister. You said that you obtained bank statements from Applicant C but did not review the statements with a view to verifying the income that had been declared.
- 4.25 The FSA subsequently obtained information from HMRC which showed that Applicant C did not declare any income for 2007. For 2008, Applicant C declared gross rental income of £103,640 and a net loss after expenses of £1,726 for 2008. As a result, it would appear that the information provided in the application form to the lender was false and/ or misleading.

4.26 You accepted that the failings in your systems and controls may have allowed fraudulent income information to be included in mortgage applications submitted by you and Adviser A. This was aggravated by a lack of due skill, care and diligence in your case. You further accepted that your firm had been used to commit mortgage fraud by two customers whom you had advised.

Evidencing suitability of advice

4.27 You used a computer software research tool to ascertain the most suitable product for a customer. You did not always keep copies of the results of this research. You have failed, therefore, to evidence that you and Adviser A conducted research across the market before recommending a particular product.

You therefore failed to retain sufficient information on 8 of the files reviewed in order to demonstrate whether the advice given was suitable.

REPRESENTATIONS

5.1 In the course of the proceedings leading to the Decision Notice, representations were made by means of a letter to the FSA dated 29 December 2009.

5.2 You accepted the FSA's broad case against you in relation to your role as supervisor and controller of the firm. You acknowledged that you did not have measures in place to ensure that Adviser A conducted himself in a competent manner. You therefore failed in your duty of care and supervision.

5.2 However, you argued that your failings as admitted above should be set in context. During the period of Adviser A's employment with you, he received only one complaint from a client which was not subsequently upheld. Adviser A arranged in excess of 210 mortgages and the vast majority of the files for which he had responsibility, with your oversight, were conducted in a competent and professional manner.

5.3 You further accepted that there were some deficiencies in Adviser A's files and that once these were known to you, Adviser A's contract was terminated and an internal auditing process commenced.

- 5.4 You informed the FSA that as a result of your experiences you would not be taking on another associate in the foreseeable future.
- 5.5 In relation to the issues relevant to the firm, you stated that the responsibility for the key administrative functions was shared between yourself and the office manager. The office manager was an extremely capable member of your office and her departure had a significant impact on the firm's ability to meet its regulatory obligations.
- 5.6 You challenged the FSA's allegations of a lack of fitness and propriety and represented that the constituent elements of an assessment of fitness and propriety, that is, honesty, integrity and reputation, competence and capability and financial soundness, had been met.
- 5.7 In relation to allegations relating to systems and controls, you accepted the firm had suffered due to weakness in your compliance function. Having recognised this, you have begun the process of review and adjustment to address the issues. You explained the steps being taken to review various aspects of the business, including record keeping, file auditing, personnel and recruitment.
- 5.8 In particular, you addressed the matter of unwittingly exposing the firm to fraudulent activity, particularly in relation to self certified mortgages. You confirmed that you no longer offered clients such mortgages, thereby eliminating the risks involved in this type of lending.
- 5.9 Your business planning now also includes a stricter code of best practice which is far more rigorous, again with the intent of eliminating the risk of fraudulent activity.
- 5.10 You accepted that the FSA had quite properly highlighted aspects of the firm's activities where it was demonstrated that it had failed to meet its regulatory obligations. However, the failings were not deliberate and you have taken steps to actively identify and address the matters raised.
- 5.11 In the light of the above you argued that the penalty proposed is disproportionate and a penalty which does not have such severe impact on your ability to run the firm would be more appropriate.

6. FINDINGS

6.1 You have failed to implement adequate systems and controls to prevent your firm from being used as a vehicle for mortgage fraud. In particular, you have:

- (1) failed to ensure that Adviser A was adequately monitored, because;
 - (a) Adviser A was able to submit a fraudulent regulated mortgage application to a lender containing false income information on his own behalf;
- (2) failed to ensure that adequate evidence of the customer's income was gathered;
- (3) submitted false or misleading information to lenders, through your firm, on behalf of two of your customers; and
- (4) failed to ensure that you had adequate training and competence arrangements in place for Adviser A

6.2 Your failings occurred despite the fact that you knew that Adviser A was not competent to give mortgage advice and that your own procedures stated that you should monitor the advice that he gave to customers.

6.3 You have failed to take care to ensure the suitability of the advice given by you and Adviser A. In particular, you have failed to ensure that:

- (1) adequate information about customers' circumstances, needs and preferences was gathered;
- (2) adequate records relating to the advice given by you and Adviser A were retained on file.

7. CONCLUSIONS

7.1 By reason of the facts and matters referred to above the FSA has concluded that you are not fit and proper and that your conduct, as DPD's sole proprietor and the authorised person responsible for the day-to-day activities and running of your

business, means that you are not competent and capable to conduct regulated activities.

7.2 In assessing your competence and capability, the FSA has had regard to:

- (1) your failure to establish and implement appropriate and adequate systems and controls, in particular, to prevent your firm being used as a vehicle for financial crime;
- (2) your failure to take reasonable care to ensure that the advice given to customers by you and Adviser A was suitable and to evidence the recommendations you made;
- (3) the fact that you demonstrated a serious lack of compliance with regulatory standards in the way you managed your business, and in particular your oversight of Adviser A; and
- (4) the fact that you had processes in place which, had you followed them, would have reduced the risk of DPD being utilised as a vehicle for mortgage fraud.

7.3 The FSA has concluded that you pose a serious risk to lenders and consumers and to the FSA's regulatory objectives of maintaining confidence in the financial system, protecting consumers and the reduction of financial crime.

7.4 The facts and matters described above have led the FSA to conclude that you are not a fit and proper person to carry out any controlled function involving the exercise of any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

7.5 The facts and matters described above have led the FSA to conclude that DPD is failing, and is likely to continue to fail, to satisfy Threshold Condition 4 (Adequate resources) and Threshold Condition 5 (Suitability). The FSA therefore considers it necessary to cancel DPD's Part IV permission.

8. DECISION MAKER

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

9. IMPORTANT

9.1 This Final Notice is given to you in accordance with section 390(1) of the Act.

Publicity

9.2 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 Final 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.

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

FSA contacts

9.4 For more information concerning this matter generally, you should contact Mario Theodosiou (direct line: 020 7066 5914 /fax: 020 7066 5915) of the Enforcement and Financial Crime Division of the FSA.

Tracey McDermott

Head of Department

FSA Enforcement and Financial Crime Division

Annex A

1. STATUTORY PROVISIONS

- 1.1 The FSA's statutory objectives, set out in section 2(2) of the Act, are: market confidence; promoting public awareness; the protection of consumers; and the reduction of financial crime.

Prohibition

- 1.2 The FSA has the power, under 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 or any regulated activity falling within a specified description or all regulated activities.

Cancellation

- 1.3 Section 41 and Schedule 6 of the Act set out the Threshold Conditions. These are the minimum standards for becoming and remaining authorised and which are conditions that the FSA must ensure a firm will satisfy, and continue to satisfy, in relation to regulated activities for which it has permission.
- 1.4 The FSA is permitted by section 45(2) of the Act to cancel an authorised person's Part IV permission where it appears that they are failing, or likely to fail, to satisfy the Threshold Conditions.
- 1.5 Paragraph 5 of Schedule 6 to the Act sets out Threshold Condition 5 which provides that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances including: (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently.

2. REGULATORY GUIDANCE AND POLICY

2.1 In considering the appropriate sanction, the FSA has had regard to its published guidance. Although the references in this notice are to the Enforcement Guide (“EG”), the FSA has had regard to the appropriate provisions of the Enforcement Manual (“ENF”) which is no longer in force but applied to Ability during some of the relevant period. The FSA has also had regard to the relevant provisions in its Decision Procedure and Penalties Manual (“DEPP”) which came into effect on 28 August 2007.

Prohibition

2.2 The FSA will consider making a prohibition order where it appears that an individual is not fit and proper to carry out functions in relation to regulated activities carried on by firms. The FSA may exercise these powers where it considers that to achieve any of its statutory objectives it is necessary to prevent an individual from carrying out any function in relation to regulated activities. The FSA policy in relation to the decision to make a prohibition order is set out in Chapter 9 of EG.

2.3 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 which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally.

2.4 EG 9.17 to 9.18 provides guidance on the FSA’s exercise of its power to make a prohibition order against an individual who is not an approved person. The FSA will consider the severity of the risk posed by the individual and may prohibit the individual where it considers this is appropriate to achieve one or more of its regulatory objectives. When considering whether to exercise its power to make a prohibition order against such an individual, the FSA will consider all the relevant

circumstances of the case, which may include but are not limited to the factors set out in EG 9.9.

2.5 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) 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 the Fit and Proper test for Approved Persons (“FIT”) in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
- (2) the relevance and materiality of any matters indicating a lack of fitness and propriety;
- (3) the length of time since the occurrence of any matters indicating lack of fitness and propriety; and
- (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

Fit and Proper Test for Approved Persons

2.6 The section 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 also applies to firms and applicants for Part IV permissions and therefore is relevant to assessing the fitness and propriety of a sole trader, given that he is responsible for ensuring that a firm meets its regulated requirements.

2.7 FIT 1.3 provides that the FSA will have regard to a number of factors when assessing a person’s fitness and propriety, including the person’s competence and capability.

2.8 In determining a person's competence and capability FIT 2.2 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.2.1G. The guidance includes:

- (1) whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs or is intended to perform (FIT 2.2.1G(1)); and
- (2) whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function (FIT 2.2.1G(2)).

Cancellation

2.9 In exercising its power to cancel a Part IV permission, the FSA must have regard to relevant provisions in the FSA Handbook. The main provisions relevant to the action specified above are set out below.

Threshold Condition 5: Suitability (Paragraph 4, Schedule 6 to the Act) – COND 2.5

2.10 COND 2.5.1D states that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances, including: (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently.

2.11 COND 2.5.2G(1) provides that Threshold Condition 5 requires the firm to satisfy the FSA that it is "fit and proper" to have Part IV permission having regard to all the circumstances, including its connection with other persons, the range and nature of its regulated activities and the overall need to be satisfied that its affairs are and will be conducted soundly and prudently.

2.12 COND 2.5.3G(1) provides that the emphasis of this Threshold Condition is on the suitability of the firm itself. The suitability of each person who performs a controlled function will be assessed by the FSA under the approved persons regime. In certain circumstances, however, the FSA may consider that the firm is

not suitable because of doubts over the individual or collective suitability of persons connected with the firm.

- 2.13 COND 2.5.3G(2) permits the FSA, when assessing this Threshold Condition in relation to a firm, to have regard to any person appearing to it to be, or likely to be, in a relevant relationship with the firm, as permitted by section 49 of the Act (Persons connected with the applicant). The guidance in COND 2.5.3G(2) also refers to COND 2.4.3G, which sets out examples of persons in a relevant relationship with the firm.
- 2.14 COND 2.5.4G(2) provides that when determining whether the firm will satisfy and continue to satisfy Threshold Condition 5, the FSA will have regard to all relevant matters including whether a firm: (a) conducts, or will conduct, its business with integrity and in compliance with proper standards; or (b) has or will have a competent and prudent management.
- 2.15 COND 2.5.6G(4) provides that in determining whether a firm will satisfy, and continue to satisfy, Threshold Condition 5 in respect of conducting its business with integrity and in compliance with proper standards, relevant matters may include whether the firm is connected with a person who has contravened any provisions of the Act or the regulatory system.
- 2.16 COND 2.5.7G(1) provides that in determining whether a firm will satisfy, and continue to satisfy, Threshold Condition 5 in respect of having competent and prudent management, relevant matters may include whether the governing body of the firm is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities.