
FINAL NOTICE

To: Dele MacAulay

Address: 2 Palmer Drive
Bromley
Kent
BR1 2FP

Individual FSA reference: DXM01817

Dated: 26 June 2009

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the “FSA”) gives you, Dele MacAulay, final notice about the imposition of a financial penalty on you, the withdrawal of your individual approval, and 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, Dele MacAulay, a Decision Notice dated 21 May 2009 which notified you that it had decided to:

- (1) to impose on you pursuant to section 66 of the Financial Services and Markets Act 2000 (“FSMA”), a financial penalty of £115,157 in respect of your knowing concern in breaches of Principles 1 and 11 of the FSA’s Principles

for Businesses (“the Principles”) by your business as a sole trader, trading as Dele MacAulay Financial Services (“DMFS”);

- (2) withdraw the approval given to you to perform the controlled function of CF8 (Apportionment and Oversight) and responsibility for insurance mediation, pursuant to section 63 of the Financial Services and Markets Act 2000 (“FSMA”); and
- (3) make an order pursuant to section 56 of FSMA 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 have fallen below minimum regulatory standards in terms 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 Accordingly, for the reasons set out below, the FSA has today imposed on you a financial penalty of £115,157, has withdrawn the approval given to you and hereby makes an order, pursuant to section 56 of FSMA, prohibiting you from performing any function in relation to any regulated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 26 June 2009.

2. REASONS FOR THE ACTION

2.1 By a Decision Notice dated 21 May 2009, the FSA concluded that Dele MacAulay:

- (1) knowingly submitted mortgage applications (for himself and others) which contained false and misleading income and employment information; and
- (2) submitted false and misleading information to the FSA in his Retail Mediation Activities Returns (“RMARs”) about tax that he had paid to Her Majesty’s Revenue and Customs (“HMRC”). According to HMRC’s records, he had not declared any income or paid any tax since 2002/03. Additionally, the income amounts he had recorded in the five mortgage applications which he had

submitted on his own behalf were inconsistent with the amounts he had disclosed both to the FSA and to HMRC.

3. STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

3.1. The relevant statutory provisions and regulatory requirements are attached at Annex A.

4. FACTS AND MATTERS RELIED ON

4.1. Dele MacAulay was a sole trader mortgage intermediary. He operated in the Orpington area and he was the only mortgage adviser in his business, DMFS.

4.2. He became authorised by the FSA on 31 October 2004 to carry on the following regulated activities:

- (1) advising on regulated mortgage contracts;
- (2) agreeing to carry on a regulated activity;
- (3) arranging regulated mortgage contracts; and
- (4) making arrangements with a view to regulated mortgage contracts.

4.3. He was granted approval by the FSA under section 59 of FSMA to perform the controlled function of CF8 (Apportionment and Oversight) and responsibility for insurance mediation with effect from 31 October 2004.

4.4. Dele MacAulay ceased trading on a voluntary basis with effect from 19 August 2008.

Dele MacAulay's mortgage applications

4.5. Dele MacAulay obtained five residential mortgages for himself between June 2006 and July 2007, from three different lenders, by declaring false income and employment information.

4.6. In his mortgage applications, he declared the following three amounts of income for 2006 (all of which were in excess of the income that he had declared to the FSA in his RMARs for the same period):

- (1) £245,812;
- (2) £245,812 + £75,000 investment income; and
- (3) £283,360.

4.7. However, in his RMARs for reporting periods in 2006, he declared income amounts which were entirely inconsistent with the income he had declared in his mortgage applications for the same reporting period. The amounts he had declared in his RMARs were as follows:

- (1) £74,854 for the twelve months to 30 June 2006; and
- (2) £96,198 for the twelve months to December 2006.

4.8. Additionally, according to HMRC's records, he had not declared any income, paid any income tax, or made any national insurance contributions since 2002/03. However, in his RMARs, he declared tax of £33,431 for 2006 and £28,431 for the 12 months to 30 June 2006.

4.9. He therefore falsely declared to the FSA in his RMARs that he had paid £28,431 for the 12 months to 30 June 2006 and £33,431 in tax for the 12 months to December 2006.

Daud MacAulay's mortgage applications

- 4.10. Dele MacAulay obtained two residential mortgages for his brother, Daud MacAulay.
- 4.11. On 14 October 2005, Dele MacAulay submitted an application for a residential mortgage on behalf of Daud MacAulay for a property in Bristol with GMAC in which he declared his residential address to be "24 Forest Road", London. He also declared "24 Forest Road" to be the business address of a company called Network Information Systems Limited ("NIS") since 2001.
- 4.12. In the summer of 2006, Dele MacAulay submitted an application for a re-mortgage on behalf of Daud MacAulay for a property at 24 Orchid Close, Waltham Cross, through The Mortgage Business. In this application he stated that 24 Forest Road was both his

“current home address” and his “current business address”. There was no mention in the application for this residential mortgage of the property in Bristol.

- 4.13. Daud MacAulay also stated that the Waltham Cross address was the address where his other business Penchant Properties Limited (“PPL”) was located, which was not consistent with his declaration that the property was being purchased for residential purposes.
- 4.14. For the following reasons, the FSA concluded that Dele MacAulay was knowingly involved in the submission of mortgage applications for Daud MacAulay using false income and employment information.
- 4.15. On his mortgage application form, Daud MacAulay stated that he was self-employed (with reference to NIS and PPL).
- 4.16. He stated that, as a director of NIS, he earned £120,000 in 2006 and £73,572 in 2005. According to HMRC’s records, however, he was employed by NIS, and had received a salary, but NIS had never provided any pay or tax details about his employment there.
- 4.17. He stated in his mortgage application to The Mortgage Business that he earned £115,700 from PPL in 2006. According to HMRC’s records, however, he has never declared tax on income from PPL. HMRC’s records show instead that in 2005/06 Daud MacAulay had earned £30,222 and in 2006/07 he had earned £13,334.
- 4.18. In the application to The Mortgage Business, Daud MacAulay stated that he had earned £166,800 in rental income for the year ending 2006. However, according to HMRC’s records, Daud MacAulay had earned £15,163 in rental income in 2005/06 and £86,906 in 2006/07.
- 4.19. Daud MacAulay is Dele MacAulay’s brother. Their respective businesses were interdependent in that Dele MacAulay worked as a mortgage broker and Daud MacAulay used Dele MacAulay’s mortgage intermediary business, DMFS, to purchase properties both for himself and on behalf of his clients (i.e. Dele MacAulay acted as mortgage broker for Daud MacAulay). Given the fact that:

- (1) Dele MacAulay and Daud MacAulay are close relatives;

- (2) Dele MacAulay and Daud MacAulay have a working relationship; and
- (3) the inconsistencies and anomalies in Daud MacAulay's applications about his purported business interests and income levels,

the FSA concluded that Dele MacAulay must have known that his brother's mortgage applications were based on false and misleading information.

Ms Osanyin/MacAulay's mortgage applications

4.20. Dele MacAulay obtained two residential mortgages for Ms Osanyin/MacAulay. The FSA considers it highly likely that she is Dele MacAulay's wife. In coming to this conclusion, it had regard to the following matters.

- (1) HMRC records state that Ms Oluyemisi Osanyin/MacAulay, who submitted two mortgage applications through Dele MacAulay in November 2005 and September 2006, changed her surname to MacAulay on 4 January 2006. A mortgage application was submitted for her by Dele MacAulay with the surname of Osanyin with an application date of 27 September 2006.
- (2) HMRC records also state that Ms Oluyemisi Osanyin/MacAulay was living in a property with the address "2 Palmer Drive, BR1 2FP". This is Dele MacAulay's home address. On 15 October 2008, the Land Registry confirmed that he owned "2 Palmer Drive, BR1 2FP".
- (3) In Dele MacAulay's own mortgage applications to Birmingham Midshires in 2005 and 2006 he stated that he was married.
- (4) The date of birth of 10 June 1978 for Ms Oluyemisi Osanyin/MacAulay appeared on both of the mortgage applications submitted for her by Dele MacAulay. This is the same date of birth on records held by HMRC for Ms Oluyemisi/MacAulay.

4.21. For the following reasons, the FSA concluded that Dele MacAulay obtained for Ms Osanyin/MacAulay mortgages based on false income and employment information.

4.22. In her application to GMAC, submitted by Dele MacAulay and dated 28 November 2005, she said that she was employed by Anthony Falcon Limited until December 2004

after which she worked for Dele MacAulay. She made no reference to being self-employed or running her own business. In her application to Birmingham Midshires, she stated that she had been running her own business since August 2004.

- 4.23. In her application to Birmingham Midshires, submitted by Dele MacAulay in September 2006, she stated that she was self-employed and earned £78,670 in the year ending 2005 and in the year ending 2006. However, according to HMRC's records, she was employed by Anthony K Falcon Limited, and she earned £26,500.04 in 2004/05 and £4,933.34 in 2005/06.
- 4.24. Despite having purchased a residential property less than ten months earlier in Berkshire through a mortgage provided by GMAC, there is no mention of this property in her application to Birmingham Midshires. In fact, she provided an entirely different residential address in Grays, Essex as her 'current address' and an address in Rockmount Road, London as her 'previous address'.
- 4.25. Given the anomalies on the mortgage applications submitted by Dele MacAulay on behalf of Ms Oluyemisi Osanyin/MacAulay, because it is highly likely that she is Mr Dele MacAulay's wife, the fact that Dele MacAulay and Ms Oluyemisi Osanyin/MacAulay live together, that she applied for a residential mortgage using Dele MacAulay's surname, and that she also declared that she worked for Dele MacAulay in one of her mortgage applications, the FSA concluded that Dele MacAulay was knowingly involved in the submission of mortgage applications for her which contained false and misleading income information.

5. CONCLUSIONS

- 5.1. The FSA concluded that Dele MacAulay inflated his income in order to obtain five mortgages for himself and that he was knowingly involved in the submission of mortgage applications for Daud MacAulay and Ms Oluyemisi Osanyin/MacAulay using false income and employment information.
- 5.2. The FSA is also of the opinion that Dele MacAulay submitted false and misleading information to the FSA in his RMARs, regarding tax that he had paid to HMRC. However, according to HMRC's records, he had not any income or paid any tax since 2002/03. Additionally, the income amounts Dele MacAulay recorded in the five

mortgage applications which he submitted on his own behalf was inconsistent with the amounts he had disclosed both to the FSA and to the HMRC.

- 5.3. As Dele MacAulay processed all nine mortgage applications, this conduct amounts to a failure to act with integrity when carrying out a controlled function, which constitutes a breach of Principle 1 of the Principles. The submission of RMARs containing false and misleading information amounts to a failure to deal with the FSA in an open and cooperative way and therefore constitutes a breach of the Principle 11 of the Principles.
- 5.4. The FSA considered it necessary and proportionate to impose a financial penalty of £115,157 on Dele MacAulay for these breaches, which were deliberate and allowed him to obtain financial benefits in the form of mortgages, fees and commissions and constitute acts of financial crime. In addition to being appropriate and proportionate to the breach, this level of financial penalty will assist in the promotion of high standards of regulatory conduct by serving as a deterrent to him and others.
- 5.5. In determining the proposed financial penalty, the FSA considered the benefit obtained by Dele MacAulay and the need to punish him as well as deter others from engaging in this type of activity. As a matter of principle, his profit should be disgorged. Accordingly, the FSA imposed a financial penalty of £115,157, which includes an element of disgorgement of profit, being the procurement fee of £15,157, and an additional punitive element of £100,000.
- 5.6. Dele MacAulay's lack of honesty and integrity means he is not a fit and proper person. The withdrawal of the approval given to him and the prohibition order is therefore necessary and proportionate. Taking this action against him is consistent with the FSA's policy of seeking to prevent individuals lacking in honesty and integrity from working in authorised firms.

6. DECISION MAKER

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

7. IMPORTANT

- 7.1. This Final Notice is given to you in accordance with section 390(1) of FSMA.

Manner of and time for Payment

- 7.2. The financial penalty must be paid in full by you to the FSA by no later than 6 July 2009.

If the financial penalty is not paid

- 7.3. If all or any of the financial penalty is outstanding on 7 July 2009, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

- 7.4. Sections 391(4), 391(6) and 391(7) of FSMA 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. 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.
- 7.5. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

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

Jonathan Phelan
Head of Department
FSA Enforcement Division

Annex A

Statutory provisions

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

The FSA has the power, by virtue of section 66 of FSMA, to impose a penalty on Mr Dele MacAulay of such amount as it considers appropriate where it appears to the FSA that he is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action against him.

Mr Dele MacAulay is guilty of misconduct if, while an approved person, he fails to comply with a statement of principle issued under section 64 or have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the FSMA.

The FSA has the power, by virtue of section 63 of FSMA, to withdraw the approval given to Mr Dele MacAulay under section 59 of FSMA to perform controlled functions if it considers that he is not a fit and proper person to perform them.

The FSA has the power, by virtue of section 56 of FSMA, to make an order prohibiting Mr Dele MacAulay from performing a specified function, any function falling within a specified description or any function, if it appears to the FSA that he is 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 specific regulated activity, an activity falling within a specified description or all regulated activities.

Principles for Businesses

The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the FSA's Handbook ("PRIN"). They derive their authority from the FSA's rule-making powers as set out in FSMA and reflect the FSA's regulatory objectives. The relevant Principles are as follows:

Statement of Principle 1

Statement of Principle 1 states that a firm must conduct its business with integrity.

Statement of Principle 11

Statement of Principle 11 states that a firm must deal with its regulators in an open and cooperative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.

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. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing a person’s fitness and propriety. One of 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 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. The guidance includes:

- (1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)); and
- (2) 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)).

FSA’s policy on exercising its power to impose a financial penalty

Guidance on the imposition of penalties is provided in Chapter 6 of the FSA’s Decision Procedure and Penalties Manual (“DEPP”), entitled “Penalties”. Chapter 6 of DEPP states that the FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty and sets out a non-exhaustive list of factors that may be relevant for this purpose.

In determining the appropriate level of financial penalty, the FSA has also had regard to Chapter 13 of the Enforcement Manual ("ENF"), the part of the FSA's Handbook setting out the FSA's policy on the imposition of financial penalties that was in force until 27 August 2007, and therefore during part of the relevant period.

The following factors are relevant to this case:

- (1) the nature, seriousness and impact of the suspected breach, including:
 - the duration and frequency of the breach;
 - whether the breach was deliberate or reckless;
 - the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach;
- (2) the conduct of the person after the breach, including:
 - whether the person has given no apparent consideration to the consequences of the behaviour that constitutes the breach; and
 - the likelihood that the same type of breach (whether on the part of the person under investigation or others) will recur if no action is taken; and
- (3) FSA guidance and other published materials.

In imposing a financial penalty, the FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty that is appropriate and in proportion to the breach concerned.

The FSA will consider the following provisions of DEPP when determining the appropriate level of financial penalty to be imposed on a person under FSMA.

Deterrence: DEPP 6.5.2G(1)

When determining the appropriate level of financial penalty, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from

committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

The nature, seriousness and impact of the breach in question: DEPP 6.5.2G(2)

The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached, which can include considerations such as the duration and frequency of the breach and the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach.

The extent to which the breach was deliberate or reckless: DEPP 6.5.2G(3)

The FSA will regard as more serious a breach which is deliberately or recklessly committed, giving consideration to factors such as whether the breach was intentional, in that the person intended or foresaw the potential or actual consequences of its actions. Where the FSA decides the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case.

Whether the person on whom the penalty is to be imposed is an individual: DEPP 6.5.2G(4)

When determining the amount of penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the same resources as a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G(5)

The FSA may take into account a number of factors, including:

- (1) whether there is verifiable evidence of serious financial hardship or financial difficulties if the person were to pay the level of penalty appropriate for the particular breach; and

- (2) the purpose of a penalty is not to render a person insolvent or to threaten a person's solvency. Where this would be a material consideration, the FSA will consider, having regard to all other factors, whether a lower penalty would be appropriate.

The amount of benefit gained or loss avoided: DEPP 6.5.2G(6)

The FSA may have regard to the amount of benefit gained or loss avoided as the result of the breach, for example the FSA will impose a penalty that is consistent with the principle that a person should not benefit from the breach and the penalty should also act as an incentive to the person (and others) to comply with regulatory standards and required standards of market conduct.

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

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 9.2 states that, where it considers it appropriate, the FSA may prohibit an approved person, in addition to withdrawing their approval.

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 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 provides guidance. In particular, EG 9.8 states, among other things,

that the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities. In deciding whether to make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.

EG 9.9 states that the FSA will consider all the relevant circumstances when deciding whether to make a prohibition order against an approved person. Such circumstances may include, but are not limited to, the following factors:

- (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of an approved person in terms of honesty, integrity and reputation are set out in FIT 2.1 (Honesty, integrity and reputation) and include an individual's openness and honesty in dealing with consumers, market participants and regulators and an ability and willingness to comply with requirements placed on him by or under the FSMA as well as with other legal and professional obligations and ethical standards;
- (2) the relevance and materiality of any matters indicating unfitness;
- (3) the length of time since the occurrence of any matters indicating unfitness;
- (4) 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
- (5) 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 severe acts of dishonesty, for example those which may have resulted in financial crime.