
FINAL NOTICE

To: **Przemyslaw Soszynski t/a Phenix Consultancy**

Firm Reference Number: **839011**

Date: **16 May 2023**

ACTION

1. By an application dated 31 July 2019, Przemyslaw Soszynski t/a Phenix Consultancy ("Phenix") applied under section 55A of the Financial Services and Markets Act 2000 ("the Act") for Part 4A permission to carry on the regulated activities of:
 - Agreeing to carry on a regulated activity;
 - Seeking out, referrals and identification of claims or potential claims (personal injury claim; financial services or financial products claim; housing disrepair claim; claim for a specified benefit; criminal injury claim; employment related claim);
 - Advice, investigation or representation in relation to a personal injury claim;
 - Advice, investigation or representation in relation to a criminal injury claim;
 - Advice, investigation or representation in relation to an employment related claim;
 - Advice, investigation or representation in relation to a financial services or financial product claim;
 - Advice, investigation or representation in relation to a claim for a specified benefit; and
 - Advice, investigation or representation in relation to a housing disrepair claim.

(the "Application").

2. For the reasons listed below, the Authority has refused the Application.

SUMMARY OF REASONS

3. Phenix applied to have permissions relating to all regulated Claims Management Companies ("CMC") claim sectors. In order to be authorised by the Authority, it has to be able to demonstrate it can meet the Authority's standards in relation to each of these sectors. For the reasons summarised below, Phenix has not satisfied the Authority that it is able to meet the requirements of Threshold Conditions 2C (Effective supervision), 2D (Appropriate resources) and 2E (Suitability).
4. Phenix has failed on a number of occasions to provide in a timely manner documentation that is essential to the Authority's assessment of the Application. Additionally, Mr Soszynski, Phenix's sole employee, ("Applicant") informed the Authority that he should not have to provide detailed information to the Authority about how Phenix operated. This gives rise to concerns that, if authorised, Phenix would not meet the standards of the Handbook, in particular, Principle 11 of the Principles for Businesses, which requires an authorised firm to deal with the Authority in an open and co-operative way.
5. Phenix has been unable to demonstrate that it has adequate or compliant PII cover, has failed to show that it can meet the prudential requirements for a firm of its nature, and does not meet the Client Money and Assets (CASS) requirements for protecting client money. Phenix has also failed to demonstrate that it has adequate business continuity plans. Further, Phenix has not demonstrated that it has adequate or appropriate human resources. Mr Soszynski has demonstrated a lack of awareness of the rules with which Phenix must comply, which suggests that he is not competent to run the firm in a compliant manner.
6. Moreover, Mr Soszynski does not have rights of audience, and instead acts for clients as a McKenzie friend. Phenix does not have the systems or controls to ensure that this is communicated to clients in a fair and transparent manner, so there is a risk that Phenix's clients would not be able to understand the services that Phenix can and cannot provide. Phenix therefore lacks the controls to protect the interests of its consumers, and to ensure continued compliance with the Authority's rules.
7. On 28 May 2021, the Authority issued Phenix with a Decision Notice (the "Decision Notice") which notified Phenix that the Authority had decided to refuse the Application on the basis that it was not satisfied that it could ensure Phenix met, and would continue to meet, the threshold conditions (in particular, the effective supervision, appropriate resources and suitability threshold conditions).
8. On 25 June 2021, the Applicant referred the Decision Notice to the Upper Tribunal (Tax and Chancery Chamber) (the "Tribunal"). The written decision of the Tribunal was released on 12 September 2022 ("the Decision") and can be found on the Tribunal's website:

<https://www.gov.uk/tax-and-chancery-tribunal-decisions/przemyslaw-soszynski-trading-as-phenix-consultancy-v-financial-conduct-authority-2022-ukut-00247-tcc>
9. The Tribunal dismissed the reference.
10. The Tribunal's written decision sets out fully the Tribunal's reasons and should

therefore be read in full. Those reasons are incorporated herein by reference.

11. The Tribunal noted at paragraph 37 of the Decision that the Applicant's reference to the Tribunal could be summarised as follows:

"In essence, the Applicant's case contains two principal criticisms of the Authority's approach to his application: (i) that it has been acting in a discriminatory manner; and (ii) the Authority's regulation of small CMCs such as his, and the requirements imposed on him thereby, is disproportionate"

12. In dealing with allegations of discrimination, the Tribunal considered the documents and arguments put forward by the Applicant. The Tribunal found that the Applicant had provided no evidence to support the allegation that the Authority's rules and guidance (or their application thereof) as they applied to CMCs had a discriminatory effect. The Tribunal also considered the materials and evidence provided by the Authority and found no evidence of the Authority discriminating against the Applicant, whether indirectly or directly when refusing to grant the Application.

13. At paragraph 124 of the Decision, the Tribunal stated:

"Discrimination played no part in his application for authorisation being rejected. We are satisfied that the Authority acted reasonably and flexibly in giving the Applicant sufficient time to correspond and meet deadlines within the application process – its approach to the application process was reasonable".

14. The Tribunal found that the Authority's decision to refuse the Application was reasonably open to the Authority and that on the balance of probabilities, the Tribunal was satisfied that the Applicant did not meet the Threshold Conditions.

15. The Tribunal also noted that they agreed with the Authority's inference that the Applicant's unwillingness and inability to cooperate with the Authority in the future could be based on the Applicant's past behaviour.

16. At paragraph 184 of the Decision, the Tribunal noted that while some of the individual instances of the Applicant's non-compliance with the Threshold Conditions or guidance could be viewed as insignificant, *"There have been a number of breaches of each of the three relevant Threshold Conditions and they have been repeated – they must therefore be viewed cumulatively. They demonstrate the Applicant's approach and mindset"*. The Tribunal continued to state that the Applicant's *"attitude is unsuitable for regulation. This situation is of the Applicant's own making – there have been significant breaches of the Threshold Conditions when examined both individually and cumulatively that entitled the Authority to refuse the Applicant's application"*.

17. In light of the above, the Authority has issued this Final Notice.

IMPORTANT NOTICES

18. This Final Notice is given under section 390 of the Act.

Publication

19. 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 Authority must publish such information about the matter to which this Notice relates as the Authority considers appropriate. The information may be published in

such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

21. For more information concerning this matter generally, contact Greg Williams, Claims Management Companies Department at the Authority (direct line: 020 7066 1475/ email: Greg.Williams@fca.org.uk).

Greg Williams

Manager, Cross Market Interventions Department