
FINAL NOTICE

To: **Mr Ayodele Olubunmi Thomas (AOT01007)**

And: **Atom Associates Ltd trading in its own name and as
“Divine Mortgages” (454877)**

Of: **117 Hillview Avenue
Hornchurch
RM11 2DJ**

Date: **2 October 2009**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) has taken the following action:

1. ACTION

- 1.1 The FSA gave you, Ayodele Olubunmi Thomas (“Mr Thomas”), a Decision Notice dated 18 August 2009 which notified you that it 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 Thomas) to perform the controlled functions of CF1 (Director), CF8 (Apportionment and oversight) and responsibility for insurance mediation, and
 - (2) pursuant to section 56 of the Act to make an order prohibiting you (Mr Thomas) from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm, because you are not a fit and proper person in terms of a lack of honesty and integrity.
- 1.2 In this notice, “you” and “your” refer to Mr Thomas.
- 1.3 Atom Associates Ltd (“Atom”) is given this Notice as an interested party in accordance with section 63 of the Act.
- 1.4 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.

1.5 Accordingly, for the reasons set out below, the FSA hereby:

- (1) withdraws the individual approval given to you to perform the controlled functions of CF1 (Director) and CF8 (Apportionment and oversight); and
- (2) 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.

1.6 The withdrawal of your individual approval and the Prohibition Order take effect from 2 October 2009.

2. REASONS FOR THE ACTION

2.1. By a Decision Notice dated 18 August 2009 FSA decided that:

- (1) you knowingly applied for mortgages and loan advances for yourself and your wife which were based on false and misleading income information. All but two of these applications were submitted through Atom, of which you are the sole director and shareholder, while you were acting as the sole approved person there, or using the name Divine Mortgages, a trading name for Atom; and
- (2) you failed to comply with the FSA's statutory request for information and documents about the nature of your income which, you said, came largely from overseas.

3. STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

Statutory provisions

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

3.2 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 specific regulated activity, any regulated activity falling within a specified description or all regulated activities. The power to withdraw your individual approval arises from section 63 of the Act.

Statements of Principle for Approved Persons (“APER”)

3.3 The APER section of the FSA Handbook sets out the Statements of Principle in respect of approved persons and conduct which, in the opinion of the FSA, constitutes a failure to comply with them. It also describes factors the FSA will take into account in determining whether an approved person's conduct complies with a particular Statement of Principle.

- 3.4 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 circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.
- 3.5 In this case, the FSA considers the most relevant Statements of Principle to be Statements of Principle 1 and 4.

Statement of Principle 1

- 3.6 Statement of Principle 1 requires an approved person to act with integrity in carrying out their controlled functions.
- 3.7 APER 4.1 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 is conduct which 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.

Statement of Principle 4

- 3.8 Statement of Principle 4 provides that an approved person must deal with the FSA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FSA would reasonably expect notice.
- 3.9 APER 4.4.9E states that failing without good reason to attend an interview or answer questions put by a regulator, despite a request or demand having been made, and failing to supply a regulator with appropriate documents or information when requested or required to do so and within the time limits attaching to that request or requirement, fall within APER 4.4.3E and therefore constitute conduct which, in the opinion of the FSA, does not comply with Statement of Principle 4.

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

- 3.10 The FSA's approach to exercising its powers to make prohibition orders and withdraw approvals is set out at Chapter 9 of the Enforcement Guide ("EG").
- 3.11 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.
- 3.12 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.

3.13 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 the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw that person's approval or both. 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.

3.14 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 and/or to withdraw that person's approval. 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 whether the person has contravened any of the requirements and standards of the regulatory system, their openness and honesty in dealing with regulators, and their readiness and willingness to comply with the requirements and standards of the regulatory system as well as with other legal and professional obligations and ethical standards;
- (2) whether, and to what extent, the approved person has failed to comply with the Statements of Principle or 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);
- (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;
- (6) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and
- (7) the previous disciplinary record and general compliance history of the individual.

3.15 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.

3.16 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.

4. FACTS AND MATTERS RELIED ON

- 4.1 You are the controller and sole director of Atom, which has operated as a mortgage intermediary in East London. You were the only approved person and the only mortgage adviser working at Atom.
- 4.2 With effect from 7 September 2006, you were approved to perform the controlled functions of CF1 (Director) and CF8 (Apportionment and Oversight). You were also made responsible for insurance mediation.
- 4.3 Between 2005 and 2008, you applied for mortgages and loan advances both individually and jointly with your wife, whose name is Oluwayemisi Adeyemi.

Your mortgage applications

- 4.4 In July 2005, you submitted a mortgage application to Lender A. On that application, you declared your annual income to be £85,000.
- 4.5 In July 2007, you submitted a mortgage application to Lender B, through Atom, in which you stated that your annual income was £137,066 in 2007.
- 4.6 In August 2007, you applied through Atom to Lender C for a mortgage on the same property. On that application, you declared your income to be £75,283 in 2005 and £84,409 in 2006.
- 4.7 In October 2007, you applied to Lender A through Atom for a loan advance. In that application, you declared your earnings to be £137,066 in 2007.
- 4.8 According to records held by Her Majesty's Revenue and Customs ("HMRC"), however, your earnings were:
 - (1) £11,428 for the tax year to April 2005,
 - (2) £30,020 for the tax year to April 2006,
 - (3) £42,338 for the tax year to April 2007, and
 - (4) £17,971 for the tax year ended April 2008.

- 4.9 The income that you declared to HMRC bears no relation to and is substantially less than the income figures that you declared on your mortgage applications.

Mrs Thomas' mortgage applications

- 4.10 On 22 March 2007, your then-future wife, completed and signed a fact find document compiled by you. The fact find remained on file but does not appear to have been submitted to any lenders. In this document, it stated that Mrs Thomas was a self-

employed IT contractor working for her own company. The document stated that she was self-employed for seven years. Her income was stated as £45,000 in 2004, £58,300 in 2005 and £69,948 in 2006.

- 4.11 In August 2007, the then-future Mrs Thomas applied to Lender A for additional borrowing of £10,000. This application was submitted through Atom. In that application, she declared that she earned £58,338 in 2005 and £69,948 in 2006.
- 4.12 According to HMRC's records, Mrs Thomas earned £5,246.27 in the tax year to April 2004, nothing in the tax year to April 2005 and £1,878.70 in the tax year to April 2006. HMRC could find no record for Mrs Thomas' earnings in the tax year to April 2007.
- 4.13 The income that Mrs Thomas declared to HMRC bears no relation to and is substantially less than the income figures that were declared on her mortgage applications.

Your joint applications

- 4.14 In May 2008, you applied to Lender A jointly with your wife for a mortgage. In this application, you stated that you were self-employed and that your share of net profit was £84,409 in 2006 and £137,066 in 2007.
- 4.15 Also in May 2008, you applied to Lender A jointly with your wife for a further loan advance. In this application, you stated again that you were self-employed and your share of net profit in 2007 to be £77,518. Your wife was also declared to be self employed with a share of net profit of £84,409 in 2006 and £137,066 in 2007. However, the figures appear to have been transposed accidentally.
- 4.16 These two applications were submitted using the trading name of Divine Mortgages. They contained false income information. The self-employed income figures that you used in these two applications bear no relation to, and are substantially less than, the income figures declared to HMRC.

Failure to cooperate with the FSA

- 4.17 You told the FSA that the income information declared on your mortgage applications were genuine, and that some of it comes from overseas investments which you said you were not obliged to disclose to HMRC.
- 4.18 To establish the existence and amount of any income that you brought into the UK the FSA required you to provide supporting information and documents.
- 4.19 You failed to comply with that request, saying that you were not prepared to disclose the sources of your overseas income.

Your representations

- 4.20 In your letter of 11 March 2009 to the FSA, you said that your letter was not written representations but you enclosed as exhibits a number of documents "to provide the Panel with a different view and evidential facts of my overseas earnings to ponder

upon". You promised to come with more evidence when you came to make your oral representations. The exhibits, in the order attached, were:

- A. a Sale of Land Agreement dated 16 June 2008 between yourself as Seller and another person as Purchaser;
- B. an unsigned application form dated 3 August 2007 for shares in Access Bank plc with the "Value of Shares paid for/Amount Paid" stated as "298,000.00" naira;
- C. a debit advice dated 7 March 2006 given by Magnum Trust Bank plc 'Being cost of cheque booklet printed and stamp duty' for 787.50 naira;
- D. a "Manager's cheque" drawn on Access Bank plc dated 27 June 2008 for 60,129.05 naira with the name of a plot of land in Lagos given on the face of the cheque;
- E. a share certificate for ordinary shares in Access Bank plc with the date of issue and number of shares unclear in the copy; and
- F. a receipt dated 27 December 2005 given by a family in Isolo Town, Mushin for payment by you for "one plot of land".

- 4.21 At a meeting on 27 May 2009, when you gave your oral representations assisted by your legal adviser, you tabled more documents. You also left a further bundle of documents for the consideration of the FSA as you were leaving.
- 4.22 At the meeting, you addressed the matters raised in: the Warning Notice giving rise to the Decision Notice; to the Warning Notice addressed to Atom proposing to cancel its permission; and to the First Supervisory Notice removing all the regulated activities from the permission of Atom, each dated 10 March 2009. In the same way, this summary of your representations and the findings does not distinguish between the subject matter of those notices.

The two year time period

- 4.23 In your oral representations, you said that the FSA should consider whether it was necessary to proceed with the matter since the two year period referred to in section 66(4) of the Act had expired. You accepted the explanation that the two year period related only to the use of its disciplinary powers, including imposing a penalty, and not the use of powers relating to the withdrawal of approval and prohibition.

'Knowingly' misleading the FSA

- 4.24 In response to the allegation that you had 'knowingly' misled the FSA, you said that in order to establish this it was necessary to show that there was a deliberate and conscious act on your part. Although it had to be proved only to the civil standard of the balance of probabilities as this was not a criminal matter, it was nonetheless a very serious allegation. You may have been careless, misunderstood or misread the instructions, or you may have been negligent, but these were different tests. The FSA should treat the evidence with circumspection and only find fraud against very high

standards.

- 4.25 You pointed to the different forms of the questions about income in the application forms, particularly as to whether it should be declared gross or net, even from the same lender. In your view, the practice of the industry was to consider gross income and you had completed the forms consistently on this basis.
- 4.26 When looking at specific examples, you accepted that your answers in the mortgage forms were misleading. For example, in response to a question under 'Self Employment Details', you put £85,000 and number of sources as '1' but it did include other income. And in a similar form, you indicated your share of net profit from self employment as £137,066 and that you had no other income. However, you accepted that it did include other income.
- 4.27 Notwithstanding these examples, you said that there was no cogent evidence that you had knowingly and deliberately misled the prospective mortgage lenders on the application forms and it could not be said that you were unfit to carry out regulated activities. You had declared your income 'as you knew it to be' with no intent to deceive notwithstanding the exact wording of the question or the declaration at the end.
- 4.28 Although your answers in the forms had the appearance of dishonesty, you said you were not in fact dishonest because you had not knowingly intended to mislead.

Evidence of your income

- 4.29 You said that the practice was not to include sources of income if the total exceeded the amount which was required to fund the mortgage applied for. In your case, you had evidence to show that your total income from Nigeria and Poland exceeded the amount required. What appeared to be inconsistent was not a deliberate attempt to mislead. In support of your case, you tabled some documents during the meeting and left others at the end of the meeting. As all the applications were self certified, no evidence was required by the lender. To provide it, given that some of the income was from Poland and Nigeria, would have been difficult. But at no time had you any intention to mislead.
- 4.30 When pressed specifically to explain how the very precise figure of £137,066 was calculated, you were unable to do so but referred to the further material you were putting before the FSA. You said that this would show that the amount was made up of income derived from the United Kingdom, Poland and Nigeria.

Non-cooperation

- 4.31 You said that the fact that you may not have complied with all the requirements of the FSA on one or two occasions did not mean that you were not co-operative in general with the FSA. Cooperation was a continuous process and, in fact, you had, as a whistle blower, referred others to the FSA for non-compliance. You said that you had been largely cooperative, had been honest and open, had attended meetings and had returned telephone calls.

The further material, fairness and Article 6

4.32 You said that any decision on the day that you were making your representations, not having had the opportunity to consider the new material, would be premature and therefore unfair. It would also therefore be a breach of Article 6 of the European Convention on Human Rights. The FSA indicated that it would read the material.

Proportionality

4.33 On the evidence before the FSA, you said that it would be disproportionate to prohibit you from earning your living as a mortgage broker given the impact that it would have on your family.

Findings

The central issue

4.34 The central reason advanced by you for why the FSA should not make an order prohibiting you from performing the controlled functions for which you were approved was that you did not intend to mislead prospective lenders, that you did not in fact mislead them and that you are not dishonest. However, the simple answer to the question ‘Have you misled a prospective mortgage lender?’ was, on your own admission, ‘Yes’.

The further evidence

4.35 You invited the FSA to accept that you had the funds to meet the repayments and to read the bundle of documents you left with it to demonstrate not only that you could but in support of the very specific figure of £137,066. The bundle consisted of a bank statement for the three months ending 13 April 2009 showing a closing balance of £705.10 and moneys in and out of over £7,000; a transmission slip for £2,500 from you in London to yourself in Nigeria; several leases dated 2006 and 2007 of a property in Nigeria with yourself as lessor; and your tax return for the period to November 2006. If these documents are relied to support the statement that you received significant income from Poland and, especially, Nigeria, they do not appear to do that.

4.36 However, the bundle also included your trading accounts dated 31 May 2007, with a certified accountants report, and a letter from the accountants to a prospective lender enclosing their certificate dated 1 November 2007. The accounts showed a net profit of £137,066 and the certificate gave that figure as the ‘Net Profit after Tax’. The FSA accepted therefore that there was a basis for that figure and that the figure was characterised as ‘net’ in line with the question. It did though call into question your representations which were clearly that the figure was gross and included overseas income in addition to the income from the mortgage broking business in the United Kingdom. It was also a stark contradiction to your evidence given to the FSA on 23 September 2008 in which you said, several times, that this figure was gross and included income from Nigeria. At one point during that interview you said –

“That’s not the net. There’s no way that’s ...”

The FSA found therefore that your evidence was, at best, unreliable.

4.37 These accounts were also sent to you by the Enforcement Division of the FSA after the representations meeting in May 2009 in an e-mail primarily concerned with your activities as a whistle blower (which is dealt with later). However, you made no reference to them in your reply.

Dishonesty and the intention to deceive

4.38 However unreliable your evidence was, you said that you always had the funds to meet the payments, the questions did not in effect mean what they said and you had no intention to deceive. Your mindset was one of 'I will tell them what I think they want to know'.

4.39 The FSA found that this was dangerous, irresponsible and unacceptable. It denied the prospective lender the opportunity to consider the application in the full circumstances of the application. It assumed that the prospective lender, another authorised person, did not know what it was asking for. And it assumed that the prospective lender processed the information on the basis that each applicant interpreted the questions in the same way. So although the FSA made no finding on your ability to meet the repayments (and would be inclined to accept that you did if further evidence supported this), it found that this was irrelevant to the declaration that the information was true and that if it was "false, inaccurate or misleading" it may constitute a criminal offence.

4.40 The FSA has no doubt that, however honest in your own mind your replies were, it was a serious error of judgement of a professional in the market to distort the replies on such a fundamental matter as income, its amount and source, according to your view of the meaning of the question and your assessment of risk.

4.41 The FSA noted that you accepted that you may have been careless or negligent but found with concern that fundamentally there was no recognition that what you did was wrong.

Co-operation

4.42 As evidence of your cooperation, you mentioned that you had on several occasions given information to the FSA as a whistle blower. The FSA took the opportunity to verify this and reported its findings to you. They were that the records for 2006 and 2007 do not disclose any contact with you in that capacity. The Customer Contact Centre did have contact with you in relation to your complaint that another company was improperly using your details as a packager and you were invited to e-mail the details to it but none was received. There is no record of you having reported dishonest brokers or similar matters as a whistle blower.

4.43 You expressed your disappointment in the result of this enquiry. The FSA accepts that you may have thought that your complaint constituted a whistle blowing report. The findings in this respect did not support your representations but neither did the FSA take the view that the activities in relation to the mortgage applications were any the worse for this reason.

4.44 Although you claimed to have been generally co-operative with the FSA, the FSA noted that it took until the representations meeting itself for you to produce the further

bundle of evidence and even then to submit it in a seemingly random and haphazard manner causing additional delays. Your explanation that it was difficult to produce it earlier given your travel commitments between Poland, Nigeria and the United Kingdom, and the location and source of the documents, was not convincing. You were interviewed about this in September 2008 and the date of the Warning Notice was 10 March 2009. The material documents are all from the United Kingdom.

Proportionality and fairness

4.45 The FSA accepted your submission that it should consider the additional material before making its decision and it took into account all the matters referred to above in reaching its conclusions.

5. CONCLUSIONS

5.1 In the absence of satisfactory evidence to support your assertion that the income figures that you declared to lenders were accurate, the FSA has concluded that you submitted mortgage and loan advance applications to lenders for yourself and your wife which contained income information which you knew to be false and misleading. The FSA has therefore concluded that you lack honesty and integrity and that you are not therefore a fit and proper person to work in regulated financial services.

5.2 As you submitted mortgage and loan advance applications through Atom, or using the trading name of Divine Mortgages, at a time when you were the only approved person at Atom, you also failed to act with integrity while carrying out his controlled functions, in contravention of Statement of Principle 1 for approved persons.

5.3 Your failure to comply with the requirement to provide information and documents about your claimed overseas earnings constitutes a failure to co-operate with the FSA and therefore a contravention of Statement of Principle 4 for approved persons.

5.4 The withdrawal of your individual approval and the prohibition order are therefore necessary and proportionate. Taking this action against you is consistent with the FSA's policy of seeking to prevent individuals lacking in honesty and integrity from working in authorised firms which in turn supports the FSA's consumer protection, market confidence and financial crime objectives.

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 In this part of the notice, "you" includes Atom.

7.2 This Final Notice is given to you in accordance with section 390 of FSMA.

7.3 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.

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

FSA contacts

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

Tom Spender
Head of Department
Enforcement Division