
FINAL NOTICE

To: Fox Hayes
FSA
Reference
Number: 123151

Address: Previously: 150 Roundhay Road
Leeds
West Yorkshire
LS8 5LJ

Date: 24 June 2011

ACTION

1. As directed by the Upper Tribunal (Tax and Chancery Chamber) in its decision of 3 June 2011, and pursuant to Section 206 of the Financial Services and Markets Act 2000 (the "Act"), the FSA hereby:
 - i. imposes on the Fox Hayes partnership comprising Mr John Robert Manning, Mr Stephen Maurice Coupland, Mr Ian David Coupland, Mr Philip Leigh Drazen, Mr Malcolm Richard Jones, Mr Richard Geraint Jones, Mr Colin Peter Frazer and Mr Ian Brill a financial penalty of £68,215.50; and
 - ii. imposes on the Fox Hayes partnership comprising the partners named above with the exception of Mr Brill a financial penalty of £386,554.50.

SUMMARY OF REASONS

2. In a Decision Notice dated 29 September 2006, the FSA imposed a penalty of £150,000 on Fox Hayes for breaches of the Conduct of Business ("COB") rules in force at the time (COB3.8.4R(1) and COB3.12.6R(2)) in relation to the approval of at least 20 financial promotions for five overseas unauthorised entities between February 2003 and June 2004. 670 UK customers purchased shares totalling approximately \$20 million which are now of little or no value. Fox

Hayes referred the matter to the then Financial Services and Markets Tribunal.

3. COB 3.8.4R(1) provides: “A firm must be able to show that it has taken reasonable steps to ensure that a non-real time financial promotion is clear, fair and not misleading.”
4. COB 3.12.6(1)(b)R provides: “A firm must not communicate or approve a specific non-real time financial promotion which relates to an investment or service of an overseas person, unless...

(b) the firm has no reason to doubt that the overseas person will deal with customers in the United Kingdom in an honest and reliable way.”
5. By decisions dated 24 September 2007 and 29 February 2008, the Tribunal reduced the penalty to £146,000.
6. The FSA appealed this decision to the Court of Appeal. In its decision dated 17 February 2009, the Court of Appeal increased the penalty to £954,770, consisting of £500,000 as a punitive element and £454,770 representing disgorgement of the secret profit received by one of the partners of Fox Hayes (which was held to be a partnership asset).
7. The Court of Appeal ordered that three issues be remitted to the Tribunal for determination, namely (1) which partners were as a matter of law liable to pay the penalty; (2) whether the penalty should be diminished by reason of the financial circumstances of the relevant partners who were liable to pay it; and (3) what the penalty should be.
8. In its decision dated 17 May 2010, the Tribunal determined the first question and held that the liable partners were those who were partners at the time of the contraventions in question. Mr Manning, Mr S Coupland, Mr I Coupland, Mr Drazen, Mr M Jones and Mr R Jones were partners throughout the relevant period. Mr Brill was a partner up to 31 July 2003. The Tribunal apportioned three twentieths of the penalty to the period when Mr Brill was a partner and seventeen twentieths for the period after he left.
9. Mr M Jones appealed this decision to the Court of Appeal but withdrew his appeal shortly before it was due to be heard in February 2011. The Tribunal’s task was then to determine the second and third questions remitted to it. By this stage, a number of the partners had entered individual voluntary arrangements or were bankrupt. The FSA considered that it was unlikely to recover the full amount of the penalty from the liable partners but that, as a matter of principle, the penalty should not be reduced below the level of the secret profit of £454,770. The FSA therefore asked the Tribunal to determine that the penalty should not be diminished to below this amount whatever the financial circumstances of the liable partners.

10. In its decision of 3 June 2011, the Tribunal agreed with the FSA's submission. It therefore determined that the penalty should be £454,770, apportioned between the liable partners as set out in paragraph 1 above.
11. Further details can be found in the decisions of the Financial Services and Markets Tribunal, the Court of Appeal and the Upper Tribunal.

PROCEDURAL MATTERS

12. This Final Notice is given in accordance with section 390 of the Act.

Manner of and time for Payment

13. The financial penalty must be paid in full by no later than 8 July 2011, 14 days from the date of this notice. The partners set out in paragraph 1 above are jointly liable for the penalty as set out.

If the financial penalty is not paid

14. If all or any of the financial penalty is outstanding on 9 July 2011, the FSA may recover the outstanding amount as a debt owed by the relevant partners and due to the FSA.

Publicity

15. 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 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.
16. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

17. For more information concerning this matter generally, contact Josie Durham (direct line: 020 7066 4102 / fax: 020 7066 4103) of the Enforcement and Financial Crime Division of the FSA.

Georgina Philippou

Head of Department
FSA Enforcement and Financial Crime Division