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**FINAL NOTICE**

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**To:** Mr Gabriel Aramide

**Of:** 1<sup>st</sup> Point Financial Services Limited  
PO Box 6  
Agege  
Lagos  
Nigeria

**Individual FSA reference:** GXA01204

**Dated:** 27 April 2009

**TAKE NOTICE:** The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about a requirement to pay a financial penalty 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, Gabriel Aramide of 1<sup>st</sup> Point Financial Services Limited (“1<sup>st</sup> Point”), a Decision Notice on 24 March 2009 which notified you that it had decided to:

- (1) impose on you a financial penalty of £101,279.49 in respect of a failure to comply with Statements of Principle 1 and 4 of the FSA's Statements of Principle for Approved Persons ("APER") pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act"); and
- (2) make an order pursuant to section 56 of the Act 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 The financial penalty consists of the following elements:

- (1) a disgorgement of financial benefit of £1,279.49; and
- (2) a penalty element of £100,000 for a failure to comply with Principles 1 and 4 of APER.

1.3 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.

1.4 Accordingly, for the reasons set out below, the FSA has today imposed on you a financial penalty of £101,279.49 and hereby makes an order, pursuant to section 56 of the Act, 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 27 April 2009.

## **2. REASONS FOR THE ACTION**

2.1 By a Decision Notice dated 24 March 2009, the FSA concluded that you:

- (1) obtained individual approval on a false basis by failing to disclose material facts and matters about yourself to the FSA, thereby deliberately concealing your involvement in fraud and your criminal record;
- (2) obtained a mortgage for yourself, through 1<sup>st</sup> Point, which was based on false and misleading information; and

- (3) failed to co-operate with the FSA's investigation into circumstances suggesting your knowing involvement in mortgage fraud for yourself and for 1<sup>st</sup> Point's mortgage customers.

### **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 the protection of consumers and the reduction of financial crime.
- 3.2 The FSA has the power, by virtue of section 66 of the Act, to impose a penalty on you of such amount as it considers appropriate where it appears to the FSA that you are guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action against you.
- 3.3 You are guilty of misconduct if, while an approved person, you fail 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 Act.
- 3.4 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, an activity falling within a specified description or all regulated activities.

#### **APER**

- 3.5 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.
- 3.6 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.

- 3.7 In this case, the FSA considers the most relevant Statements of Principle to be Statements of Principle 1 and 4.

#### **Statement of Principle 1**

- 3.8 Statement of Principle 1 requires an approved person to act with integrity in carrying out their controlled function.

- 3.9 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**

- 3.10 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.

- 3.11 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, falls within APER 4.4.3E and is therefore conduct which, in the opinion of the FSA, does not comply with Statement of Principle 4.

#### **Fit and Proper Test for Approved Persons**

- 3.12 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.

- 3.13 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.
- 3.14 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**

- 3.15 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.
- 3.16 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.
- 3.17 The following factors are relevant to this case:
- (1) the nature, seriousness and impact of the suspected breach, including:
    - whether the breach was deliberate or reckless;
    - the amount of any benefit gained or loss avoided as a result of the breach; and

- 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:
- the degree of co-operation the person showed during the investigation of 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;
- (3) the previous disciplinary record and compliance history of the person, including whether the FSA (or any previous regulator) has taken any previous disciplinary action resulting in adverse findings against the person;
- (4) FSA guidance and other published materials; and
- (5) action taken by the FSA in previous cases.

3.18 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.

3.19 The FSA will consider number of factors when determining the appropriate level of financial penalty to be imposed on a person under the Act.

*Deterrence: DEPP 6.5.2G(1)*

3.20 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)*

- 3.21 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 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)*

- 3.22 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)*

- 3.23 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)*

- 3.24 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)*

- 3.25 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.

*Disciplinary record and compliance history: DEPP 6.5.2G(9)*

- 3.26 The FSA seeks to ensure consistency when it determines the appropriate level of penalty. The FSA has taken into account previous decisions made in relation to similar misconduct.

### **FSA's policy for exercising its power to make a prohibition order**

- 3.27 The FSA's approach to exercising its powers to make prohibition orders is set out at Chapter 9 of the Enforcement Guide ("EG").
- 3.28 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.
- 3.29 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.



- 3.30 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.
- 3.31 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 Act 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;
  - (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and
  - (6) the previous disciplinary record and general compliance history of the individual.
- 3.32 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.

- 3.33 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 a director and shareholder of 1<sup>st</sup> Point, a mortgage intermediary which operated in Romford, Essex.
- 4.2 With effect from 31 October 2004, you were approved to perform the controlled function of CF1 (Director). You were the only mortgage adviser at 1<sup>st</sup> Point.

##### **Application for individual approval**

- 4.3 You applied to the FSA for individual approval to perform controlled functions in relation to 1<sup>st</sup> Point in October 2004. When applying to the FSA for individual approval, applicants are required to provide certain details, including details of any previous convictions.
- 4.4 On 10 July 1997, you were convicted at the Crown Court of the Central Criminal Court of 17 counts of acting with intent to prejudice Her Majesty the Queen and the Public Revenue with intent to defraud her Majesty the Queen, as a result of which you were sentenced to a term of two years and six months' imprisonment.
- 4.5 On the application for your individual approval, the declaration stated that you had no previous criminal convictions. This constitutes the deliberate concealment of your involvement in fraud and your criminal record and the deliberate submission of a false and misleading application for individual approval.

##### **Personal mortgage application**

- 4.6 You submitted your own mortgage application in November 2007 to a lender. On the mortgage application form, you stated that you were self-employed and declared your share of net income from 1<sup>st</sup> Point to be £120,000 for the tax year ended 2007.

4.7 According to records held by Her Majesty's Revenue and Customs ("HMRC"), your total earnings for the tax year ended 5 April 2007 were only £6,000. It appears, therefore, that you provided a lender with false information in respect of your income.

4.8 As you deliberately entered false income figures on your mortgage application form, the FSA concluded that you obtained a mortgage loan of £255,000 on a fraudulent basis.

#### **Failure to co-operate with the FSA**

4.9 You were compelled to attend the FSA's offices on 30 July 2008 to answer questions. As you did not confirm whether you would attend, the FSA contacted you by telephone on 21 July 2008. You said that you were in Nigeria and that you would contact the FSA when you returned to the UK later in the week.

4.10 On 23 July 2008, you sent a fax to the FSA in which you said:

"I believe that the meeting of the 30 July is not necessary since I am not in the country to resume work and do not have any ongoing cases".

4.11 The FSA advised you of the consequences of refusing to attend the interview and offered a further date. You replied by e-mail on 25 July 2008, saying:

"Regarding the interview, I would like to reiterate to you that I have relocated to Nigeria and if you deem it necessary to conduct an interview with me, you can arrange the interview to be conducted in Lagos, Nigeria, where I am currently staying. I made it clear to you that I am working and have relocated to Nigeria".

4.12 You failed to comply with a statutory request to attend an interview and thereby failed to co-operate with the FSA.

#### **Relevant background information**

4.13 The FSA compared the financial details of six of 1<sup>st</sup> Point's customers, as they appeared on mortgage applications submitted by you to lenders, with HMRC's records. Five of the customers' incomes declared for tax purposes were substantially

less than the amounts stated on their mortgage application forms. HMRC had no records at all for the sixth applicant.

- 4.14 The inconsistencies between the information disclosed by five of the applicants on their mortgage application forms and that held by HMRC suggests that, through 1<sup>st</sup> Point, the individuals provided lenders with false and misleading information about their incomes in order to obtain mortgages. The fact that HMRC had no records for the sixth applicant suggests that said applicant created a false identity and used it to obtain a mortgage.
- 4.15 You were the only mortgage adviser at 1<sup>st</sup> Point and were solely responsible for the submission of all six of these applications to lenders. In the FSA's view, there were anomalies and inconsistencies between the various documents provided by these applicants and the information disclosed on their mortgage application forms such that you should have been prompted to question the integrity of the information, yet you failed to do so.

## **5. REPRESENTATIONS**

- 5.1. You made written representations to the FSA by a letter dated 3 December 2008. By those representations you challenged the allegations made in the Warning Notice and asserted you had not committed the alleged misconduct. You further represented that the proposed penalty was disproportionate.
- 5.2. You represented that you had not deliberately concealed your criminal record or your involvement in the alleged mortgage fraud. You asserted that you had not completed the individual approval application on which the FSA sought to rely in support of its allegation of non disclosure. You confirmed that you had neither seen the form nor approved its contents before it was submitted to the FSA and accordingly could not be accused of concealing relevant information in relation to your past.
- 5.3. You also represented that the mortgage you had obtained for yourself was not based on false and misleading information. You challenged the FSA's assertion that your income was only £6,000 per annum, representing that it was much higher. You provided correspondence from the Inland Revenue setting out a demand for unpaid

tax and interest of £90,491.38 and argued that a tax demand of this amount would support an income far greater than £6,000.

- 5.4. You further represented that the disgorgement of financial benefit sought by the FSA was not properly due as it had been based on an incorrect assumption that the property was a new purchase. The transaction was in fact a remortgage. You had owned the property for a number of years and had not as yet made a realisable gain on it. Also, the property was currently worth far less than at the time of its purchase and even the FSA's own valuation had indicated negative equity of approximately 35% of the mortgaged amount. Accordingly, you argued that there could not be any financial benefit to disgorge.
- 5.5. You further rejected the FSA's allegation of non co-operation. You represented that you had informed the FSA of your re-location to Nigeria and spoken to representatives from the FSA on a number of occasions from Nigeria. You confirmed that due to work commitments and limited resources it was not possible for you to attend an interview in London but offered to be interviewed in Nigeria.
- 5.6. Related to the relocation was an issue as to general communication with you and in particular the receipt of correspondence from the FSA. You represented that even though you had provided a forwarding address in Nigeria to the FSA, some of your correspondence was still being sent to your former address in England. You regarded this as a serious matter and felt that allowance should be given for the length of time it takes for correspondence to reach Nigeria.
- 5.7. In relation to the alleged fraud by 1<sup>st</sup> Point's customers, you represented that the FSA had overlooked the fact that the applicant's income had been verified by suitably qualified accountants.
- 5.8. You stated that you had always acted with integrity, to the extent that you even contacted one of the lenders to correct a mistake as to the amount of income stated on an application form. You stated you had never sought to deliberately or otherwise mislead the FSA and have always been open and co-operative. You also stated you have a good compliance history with no previous disciplinary action being taken against you.

5.9. With regard to the financial penalty, aside from the comments on disgorgement, you asserted that the amount is excessive. You implied that the penalty may threaten your solvency position.

## **6. CONCLUSIONS**

6.1. While the FSA noted the representations made by you, it was not satisfied that you had adequately addressed the issues raised. Accordingly, the FSA was not satisfied that you are fit and proper to perform controlled functions.

6.2. The FSA noted that as the individual approval application was submitted electronically, it did not include the signature of the party completing the form. While there is no conclusive evidence that you submitted the application you did not provide any information about the other person who purportedly completed the form on your behalf. The FSA noted that you were actively involved in the approvals process, and file notes confirm that you spoke to the FSA about your application and that you provided additional information when requested. Accordingly, the FSA found it implausible that you did not know of the contents of the individual approval application and was satisfied that you were aware of the contents of the form and the deliberate omissions of relevant information.

6.3. The FSA noted your comments with regard to the re-mortgage of the property and the impact this has on the FSA's claim for disgorgement of profit. However, the FSA found that the procurator fees of £1,279.49 were of financial benefit to you and that these fees should be disgorged.

6.4. On the matter of co-operation, the FSA would generally expect an approved person to attend at the FSA for interview, if so requested. It is a matter for the FSA to judge the most appropriate manner of investigating a case, including whether a face to face interview is appropriate or if a telephone or video conference would suffice. Aside from issues of the availability of appropriate resources in Nigeria, it is unreasonable to require FSA staff to travel to Nigeria to interview you, particularly when there is no certainty that an interview will even take place. It was noted that correspondence sent by the FSA to the PO Box that you provided as your correspondence address was returned as undelivered.

- 6.5. The FSA is of the opinion that you obtained FSA individual approval on a false basis and that you inflated your income in order to obtain a mortgage, thereby committing mortgage fraud.
- 6.6. As you processed your mortgage application through 1<sup>st</sup> Point, this conduct amounts to a failure to act with integrity when carrying out a controlled function, which constitutes a breach of APER Principle 1. Your failure to comply with a statutory request to attend an interview amounts to a failure to co-operate with the FSA and therefore constitutes a breach of APER Principle 4.
- 6.7. The FSA considered it necessary and proportionate to impose a financial penalty of £101,279.49 upon you for these breaches, which were deliberate and, in the case of the former, allowed you to obtain financial benefits in the form of a mortgage, 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 you and others.
- 6.8. In determining the proposed financial penalty, the FSA considered the benefit obtained by you and the need to punish you as well as deter others from engaging in this type of activity. As a matter of principle, your profit should be disgorged. Accordingly, the FSA has imposed a financial penalty of £101,279.49, which includes an element of disgorgement of profit, being the procurement fee of £1,279.49 and an additional punitive element of £100,000.
- 6.9. Your apparent lack of honesty and integrity is also a serious case of lack of fitness and propriety. A prohibition order is 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 in order to secure an appropriate degree of protection for lenders and consumers.

## **7. DECISION MAKER**

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

## **8. IMPORTANT**

8.1. This Final Notice is given to you in accordance with section 390 of the Act.

### **Manner of and time for Payment**

8.2 The financial penalty must be paid in full by you to the FSA by no later than 11 May 2009.

### **If the financial penalty is not paid**

8.3 If all or any of the financial penalty is outstanding on 12 May 2009, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

### **Publicity**

8.4 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.

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



**FSA contacts**

- 8.6. 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**