
FINAL NOTICE

To: **Michael David Hart**
Of: **c/o HM Prison Wayland**
Griston
Thetford
Norfolk
IP25 6RL

Dated: **20 July 2005**

TAKE NOTICE: The Financial Services Authority ("the FSA") of 25 The North Colonnade, Canary Wharf, London E14 5HS gives you final notice about an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised or exempt person

1. THE ORDER

The FSA gave you a Decision Notice dated 15 June 2005 which notified you that, for the reasons listed below and pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to make an order prohibiting you, Michael David Hart, from performing any function in relation to any regulated activity carried on by any authorised or exempt person.

You have not referred the matter to the Financial Services & Markets Tribunal within 28 days of the date on which the Decision Notice was given to you.

Accordingly, for the reasons set out below, the FSA 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 any authorised or exempt person. This order has effect from 20 July 2005.

2. REASONS FOR THE ORDER

Introduction

On the basis of facts and matters relied on by the FSA and its conclusions, described in its Warning Notice dated 6 May 2005 (“the Warning Notice”) (an extract from which is attached and forms part of this Final Notice) and in the Decision Notice, it appears to the FSA that you are not fit and proper to perform any function in relation to any regulated activity carried on by any authorised or exempt person.

Relevant Statutory Provisions

The FSA is authorised by the Act to exercise the powers contained in section 56 of the Act, which includes the following:

- “(1) *Sub-section (2) applies if it appears to the [Financial Services] Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.*
- (2) *The Authority may make an order ('a prohibition order') prohibiting the individual from performing a specified function, any function falling within a specified description or any function.*
- (3) *A prohibition order may relate to-*
- (a) *a specified regulated activity, any regulated activity falling within a specified description or all regulated activities;*
 - (b) *authorised persons generally or any person within a specified class of authorised person”.*

When exercising its powers, the FSA seeks to act in a way it considers most appropriate for the purpose of meeting its regulatory objectives, which are set out in section 2(2) of the Act. The FSA considers that making a prohibition order against you in the terms indicated meets the following regulatory objectives:

- (a) the market confidence objective: that is, maintaining confidence in the financial system, and
- (b) the protection of consumers objective: that is, securing the appropriate degree of protection for consumers.

Relevant Guidance

In deciding to take this action, the FSA has had regard to guidance published in the FSA Handbook, in particular the Enforcement Manual, as follows:

- ENF 8.1.2 explains that the purpose of prohibiting individuals who are not fit and

proper is to help the FSA to work towards its regulatory objectives;

- ENF 8.4.2 concerns the scope of the FSA's power to make prohibition orders explaining that such orders may be unlimited or they may be limited to specific functions in relation to specific regulated activities, depending on the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally;
- ENF 8.4.3 states that the FSA will consider all relevant circumstances, including whether other enforcement action has been taken;
- ENF 8.8 states that the FSA will consider exercising its power to make prohibition orders against individuals who are neither approved persons nor employed by authorised persons where such individuals have shown themselves to be unfit to carry out functions in relation to regulated activities;
- ENF 8.8.2A recognises that, where it is considering whether to exercise its powers to make a prohibition order against such an individual, the FSA will not have the option of considering the adequacy of other enforcement action and provides that it will consider the severity of the risk posed by the individual and may prohibit him where it considers that it is necessary to achieve the FSA's regulatory objectives;
- ENF 8.8.3 states that, when determining the fitness and propriety of such an individual, the FSA will consider a number of factors including the criteria for assessing the fitness and propriety of approved persons set out in the Fit and Proper test for Approved Persons ("FIT");
- FIT 1.3.1 states that the most important considerations include a person's honesty, integrity and reputation. In determining a person's honesty, integrity and reputation, the matters to which the FSA will have regard include whether the person has been convicted of any criminal offence, with particular consideration to be given to offences of dishonesty or fraud (FIT 2.13.(1)).

The FSA is of the view that these matters are all relevant to its assessment of your conduct and that they support the FSA's conclusion that you are not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person.

3. IMPORTANT

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

Publicity

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.

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

FSA Contact

For more information concerning this matter generally, you should contact Andrew Wilson (direct line: 020 7066 5170/fax: 020 7066 5171) of the Enforcement Division of the FSA.

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John Kirby
Manager - FSA Enforcement Division

EXTRACT FROM THE WARNING NOTICE DATED 6 MAY 2005

REASON FOR THE PROPOSED ACTION

Facts and Matters Relied On

The 14 offences for which you were convicted are stated on the Conviction Certificate dated 7 January 2005 issued by Norwich Crown Court.

Those offences, for each of which you received a custodial sentence of six years, all to run concurrently, involved both dishonesty and fraud upon clients while you were acting as their financial adviser and for the purpose of your own financial advantage. Under section 79 of the Powers of the Criminal Court (Sentencing) Act 2000 the Court may only pass a custodial sentence where the offence is so serious that such a sentence can be justified by the offence.

The 4 offences for which you were convicted in 1985 are stated on the Bournemouth Magistrates Court Register dated 5 December 1985. Those offences, for each of which you received a 2 year probation order, all to run concurrently, involved dishonesty and fraud. You did not disclose these convictions to the Personal Investment Authority at any time, but particularly you failed to do so in two separate registration applications which specifically required disclosure of such information.

Conclusions

The facts and matters described above lead the FSA to the following conclusions:

- you have been convicted of criminal offences, involving both dishonesty and fraud, including offences of such seriousness as to justify lengthy custodial sentences;

- those convictions, and the conduct which gave rise to them, go directly to impugn your honesty, integrity and reputation and therefore to demonstrate that you are not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised or exempt person;
 - the severity of the risk you pose to consumers and to confidence in the market generally is such that it is necessary in order to achieve its regulatory objectives for the FSA to exercise its power to make a prohibition order against you in the terms proposed;
 - your failure to disclose material adverse information to the PIA when you were required to do so, shows that you have not been candid and truthful in your dealings with the PIA; this further questions your honesty, integrity and reputation and demonstrates that you are not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised or exempt person.
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