
FINAL NOTICE

To: **Herald Finance Ltd**
887-897 Old Kent Road
London
SE15 1NL

FRN: **301116**

Dated: **6 April 2009**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") gives you, Herald Finance Ltd Final Notice about the decision to cancel the permission granted to you to carry on regulated activities.

1. ACTION

1.1. The FSA gave you a Decision Notice on 19 February 2009 ("the Decision Notice") which notified you that for the reasons given below and pursuant to section 45 of the Financial Services and Markets Act 2000 (the "Act"), the FSA had decided to cancel the permission granted to Herald Finance Ltd ("Herald"), pursuant to Part IV of the Act ("Herald's Part IV permission").

1.2. You have not referred the matter to the Financial Services and Markets Tribunal within 28 days of the date on which the Decision Notice was given to you. Accordingly, the FSA has today cancelled Herald's Part IV permission.

2. REASONS FOR THE ACTION

2.1. On the basis of the facts and matters set out in Warning Notice issued to Herald on 12 September 2008 ("the Warning Notice") and in the Decision Notice, the FSA concluded that, that Herald is failing, to satisfy the threshold conditions set out in Schedule 6 to the Act (the "Threshold Conditions").

2.2. The FSA has concluded that:

(1) Herald does not have adequate resources, given that the FSA has withdrawn the approvals of its principal, sole director and only approved person, Mr Abiola Babajide Agbalaya ("Mr Agbalaya"), and has made a prohibition order against him (Threshold Condition 4 – Adequate Resources); and

(2) Herald was not fit and proper having regard to all the circumstances including its connection with Mr Agbalaya, the nature of the regulated activities that it was carrying on and its failure to ensure that its affairs are conducted soundly and prudently (Threshold Condition 5 – Suitability).

3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FSA GUIDANCE

The Act

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

3.2. Section 41 of and Schedule 6 to the Act set out the Threshold Conditions which are conditions that the FSA must ensure a firm will satisfy, and continue to satisfy, in relation to regulated activities for which it has permission.

- 3.3. Paragraph 4 of Schedule 6 to the Act states that the resources of the person concerned must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on or carries on (Threshold Condition 4: Adequate Resources).
- 3.4. Paragraph 5 of Schedule 6 to the Act states that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances including (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently (Threshold Condition 5: Suitability).
- 3.5. The FSA may, by section 45(2) of the Act, cancel an authorised person's Part IV permission where it appears to it that he is failing, or is likely to fail, to satisfy the Threshold Conditions or it is desirable to exercise that power in order to protect the interests of consumers or potential consumers.

Principles, Rules and Guidance

- 3.6. The FSA's Principles for Businesses (the "Principles") are a general statement of the fundamental obligations of firms under the regulatory system. They derive their authority from the FSA's rule-making powers as set out in the Act and reflect the FSA's regulatory objectives.
- 3.7. Principle 1 of the Principles requires that a firm must conduct its business with integrity.

The FSA's approach to exercising its power to cancel a Part IV permission

- 3.8. The FSA's approach to exercising its power to cancel a Part IV permission is set out in the Enforcement Guide ("EG"). (Though the references in this notice are to EG, the FSA has also had regard to the relevant guidance set out in its Enforcement (ENF) and Decision Making (DEC) Manuals - which preceded DEPP and were in force until 28 August 2007 - as some of Herald's conduct which gives rise to this notice occurred prior to 28 August 2007). The main considerations in relation to the action specified above are set out below.
- 3.9. EG 8.13(1) provides that the FSA will consider cancelling an authorised person's Part IV permission where the FSA has very serious concerns about a firm, or the way its business is or has been conducted.

Threshold Conditions

- 3.10. The part of the FSA handbook entitled Threshold Conditions ("COND") gives guidance on the Threshold Conditions as set out in or under Schedule 6 to the Act.
- 3.11. COND 2.4.1 D states that the resources of the person concerned must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.
- 3.12. COND 2.4.2 G(2) provides that the FSA will interpret the term 'adequate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources, non-financial resources and means of managing its resources such as, for example, human resources and effective means by which to manage risks.
- 3.13. COND 2.5.1 D states that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances including (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently.
- 3.14. COND 2.5.6 G gives guidance in respect of whether a firm satisfies Threshold Condition 5, in conducting its business with integrity and in compliance with proper

standards including whether the firm is ready, willing and organised to comply with the requirements and standards under the regulatory system (COND 2.5.6 G(1)); and whether the firm has contravened, or is connected with any person who has contravened any provision of the Act or the regulatory system (COND 2.5.6 G(4)).

4. FACTS AND MATTERS RELIED ON

4.1. Herald Finance Ltd (“Herald”) was a small retail mortgage broker operating in the South London area. Herald became authorised by the FSA under Part IV of the Act on 31 October 2004 and has permission to carry on the following regulated activities:

- (a) advising on investments (except on Pension Transfers and Opt Outs);
- (b) arranging (bringing about) deals in investments;
- (c) making arrangements with a view to transactions in investments;
- (d) advising on regulated mortgage contracts;
- (e) agreeing to carry on a regulated activity;
- (f) arranging (bringing about) regulated mortgage contracts; and
- (g) making arrangements with a view to regulated mortgage contracts.

4.2. Mr Agbalaya was the principal, sole director and the only approved person at Herald. He was approved to perform the controlled functions of CF1 (Director), CF3 (Chief Executive), CF8 (Apportionment and Oversight), CF11 (Money Laundering Reporting), CF28 (Systems and Controls) and CF29 (Significant Management) at Herald.

4.3. Mr Agbalaya was also one of only two mortgage advisors and the only permanent member of staff and mortgage adviser at Herald. The other adviser, Ms Grace Olufunmiola Olatunji (“Ms Olatunji”) was not an employee of Herald but is retained on a self-employed basis.

- 4.4. Herald, together with and acting through Mr Agbalaya as its sole director, principal and approved person, was primarily responsible for ensuring that the firm conducted its business in compliance with the FSA's regulatory requirements.
- 4.5. Mr Agbalaya was the sole controlling mind of Herald. Mr Agbalaya's acts and omissions were therefore directly attributable to Herald.
- 4.6. In the period December 2002 to February 2008, through Herald, Mr Agbalaya:
- (1) submitted eight mortgage applications to lenders on his own behalf. Those applications contained and were supported by false and misleading information regarding his level of income, which he knew to be false and misleading;
 - (2) supervised the submission of two mortgage applications by Ms Olatunji. Those applications contained false and misleading information concerning Ms Olatunji's income and employment status which Mr Agbalaya must have known to be false and misleading; and
 - (3) failed to make accurate and honest tax returns to HMRC in the period 2003 to 2006 as the level of income declared by Mr Agbalaya is unrealistically small and manifestly insufficient to support mortgage payments on his main dwelling let alone any other outgoings or expenditure.
- 4.7. By reason of the above matters, the FSA has concluded that Mr Agbalaya was not a fit and proper person.
- 4.8. By a Final Notice to Mr Agbalaya dated 6 April 2009 , the FSA decided to:
- (1) pursuant to section 63 of the Act, withdrew the approvals given to Mr Agbalaya under section 59 of the Act; and
 - (2) pursuant to section 56 of the Act, a prohibition order was against Mr Agbalaya to prevent him from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

- (3) pursuant to section 66 of the Act, the FSA imposed a financial penalty of £100,000 on Mr Agbalaya for failing to comply with the FSA's Statements of Principle and Code of Practice for Approved Persons ("APER") with respect to the conduct of controlled functions by approved persons.

By a Final Notice dated 6 April 2009 the FSA has decided to take the action referred to above.

4.9. The FSA considered that Herald's conduct thereby failed to meet the requirements of the FSA's Principles for Businesses. In particular, Herald failed to comply with Principle 1, which provides that a firm must conduct its business with integrity.

4.10. Further, having regard to all the circumstances, including Herald's connection with Mr Agbalaya and the overall need to ensure that its affairs were conducted soundly and prudently, the FSA considered that, contrary to Threshold Condition 5, Herald:

- (1) failed, to conduct its business with integrity and in compliance with proper standards;
- (2) does not have a competent and prudent management; and
- (3) could not demonstrate that it conducts, its affairs with the exercise of due skill, care and diligence.

4.11. Further or alternatively, contrary to Threshold Condition 4, Mr Agbalaya's approval was withdrawn and/or he was prohibited (on the basis that he is not fit and proper). Herald is failing, to satisfy threshold condition 4 of the Threshold Conditions in that, in the opinion of the FSA, the firm does not have adequate resources in relation to the regulated activities it seeks to carry on or carries on. Specifically, the firm does not have adequate human resources.

4.12. Accordingly, the FSA considered it appropriate to cancel Herald's Part IV permission.

5. REPRESENTATIONS AND CONCLUSIONS

5.1. By written representations dated 16 October and 7 November 2008, Herald made representations on the Warning Notice dated 12 September 2008. By the same

representations Mr Agbalaya made written representations on the Warning Notice issued against him on 12 September 2008. Herald relied upon those representations which are set out in the Decision Notice issued against Mr Agbalaya dated 19 February 2009.

5.2. By the Final Notice issued against Mr Agbalaya, the FSA has decided to:

- (1) withdraw the approvals given to Mr Agbalaya under section 59 of the Act;
- (2) make a prohibition order against Mr Agbalaya to prevent him from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm; and
- (3) impose a financial penalty of £100,000 on Mr Agbalaya for failing to comply with the FSA's Statements of Principle and Code of Practice for Approved Persons ("APER") with respect to the conduct of controlled functions by approved persons.

5.3. Accordingly, in all the circumstances, Herald has failed and will continue to fail to satisfy Threshold Condition 4 and Threshold Condition 5. The FSA concludes that Herald is therefore not a fit and proper person and has decided to cancel its permission under Part IV of the Act.

6. DECISION MAKER

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

7. IMPORTANT

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

Publicity

7.2 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. 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 interest of consumers.

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

FSA contacts

- 7.7 For more information concerning this matter generally, you should contact Catherine Harris at the FSA (direct line: 020 7066 4872/fax: 020 7066 4873).

Georgina Philippou
Head of Department
FSA Enforcement Division