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**FINAL NOTICE**

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**To: John Apicella**

**Of: 12 Manor Place  
Speen  
Newbury  
RG14 1RB**

**IRN: JXA01357**

**Dated: 1 April 2010**

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

**1. THE ORDER**

- 1.1. The FSA gave you, John Apicella, a Decision Notice on 26 February 2010 (“the Decision Notice”) which notified you that it had decided to 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”).
- 1.2. 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. The Prohibition Order takes effect from 6 April 2010.

## **2. REASONS FOR THE ORDER**

2.1. On the basis of the facts and matters described below, and set out in more detail in Section 4 of this Notice, the FSA had serious concerns that Mr Apicella:

- (1) provided false and misleading information to lenders regarding the income of his customers when he should have known that the information was false and misleading;
- (2) demonstrated disregard for the need to conduct the business with competence and capability and in compliance with proper standards at all times;
- (3) failed to ensure that he had put in place appropriate systems and controls to counter the risk of his business being used to further financial crime;
- (4) failed to ensure that he had put in place appropriate systems and controls to ensure the suitability of advice; and
- (5) failed to take remedial steps recommended by the FSA.

2.2. As a result of the nature and seriousness of these breaches, it was clear that Mr Apicella had failed to meet minimum regulatory standards in terms of competence and capability and is not fit and proper to perform any functions in relation to regulated activities carried on by authorised persons, exempt persons and exempt professional persons.

2.3. The action taken supports the FSA's statutory objectives of maintaining market confidence, reducing financial crime and protecting consumers.

## **3. RELEVANT STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY**

3.1. The relevant statutory provisions, regulatory guidance and policy are set out in the Annex to this Notice.

## **4. FACTS AND MATTERS RELIED ON**

### **Background**

4.1. Mr Apicella was a sole trader retail mortgage and general insurance intermediary, trading as Mortgages 4 You. He was the only mortgage adviser at Mortgages 4 You.

4.2. Mr Apicella became authorised by the FSA on 31 October 2004 to carry on regulated mortgage business, and was permitted from 14 January 2005 to carry on general insurance mediation business.

### **Systems and Controls and Conduct of business**

4.3. One of the sources of referrals for Mr Apicella's mortgage business was an introducer, ("the Introducer"), who was introduced to Mr Apicella by a solicitor with whom Mr Apicella had a professional relationship. A number of the mortgage applications

submitted by Mr Apicella on behalf of the customers introduced to him by the Introducer contained false and misleading information about applicants' employment and income.

- 4.4. Mr Apicella informed investigators that he conducted no due diligence on the Introducer prior to accepting business from him because Mr Apicella did not consider that he was required to conduct any form of due diligence on the Introducer.
- 4.5. Mr Apicella said that he would request the minimum evidence of income which was required by a lender. He said: *"If the lender doesn't require it then I don't ask for it"*. If a customer was self-employed, he would not generally ask for proof of income. He said he would *"accept it on face value"*, as long as the individual's accountant appeared willing to provide accounts to support the stated income. Mr Apicella added: *"There's no point in lying...if he's on ten grand they won't give him a mortgage...so that's why I don't bother"*.
- 4.6. Mr Apicella said that he would not generally check for anomalies by, for example, comparing bank statements provided by customers with their declared incomes, and he did not consider making any further checks, such as making enquiries with employers, to confirm the validity of the applicants' employment.
- 4.7. He informed investigators that he did not always meet his customers in person. When asked how he satisfied himself of the identity of his customers if he did not meet them, Mr Apicella said that, although he asked for identification documentation: *"If someone sends me a passport and I've never seen them I have no idea if it's them"*. He confirmed that he would certify, as a true copy, identification documents of individuals that he had never met.
- 4.8. In respect of self-certification mortgages Mr Apicella said that when he started working in the mortgage industry he was advised to *"just put any income down"* and that *"I was guilty of all that because that's the way I was trained. That's what the industry did"*. He added: *"the whole of the industry took the same view on self certification mortgages"*.
- 4.9. Mr Apicella said that he did not consider it to be his responsibility to assess the affordability of mortgage contracts for his customers *"it's up to [the] client to see whether they can afford it and I can't sit in judgment and say you can or can't afford it"*. To some extent this was mitigated by his comment *"it's reasonable to say that I try and ascertain where possible the affordability for each individual client"*.
- 4.10. Mr Apicella said that he would *"probably not"* keep a record on file of either the product research he conducted or of the discussions held with customers about repayment vehicles on interest-only mortgages and his clients' attitude to risk.
- 4.11. Therefore, Mr Apicella failed to satisfy the FSA that he accepted responsibility for complying with the regulatory requirement (MCOB 4.7.2R and 4.7.4R) to take reasonable steps to ensure the suitability and, in particular the affordability, of recommended mortgage contracts.

- 4.12. The FSA first visited Mr Apicella in August 2008 and concerns were raised regarding his systems and controls and sales process. However, he made no changes to these processes after the FSA's visit.

### **Financial crime**

#### Client One

- 4.13. Client One was introduced to Mr Apicella by the Introducer and Mr Apicella submitted two mortgage applications for Client One in August 2007. On the mortgage applications, Client One declared that he was a network analyst on an income of £55,000.
- 4.14. Client One's applications were accompanied by a payslip dated 1 August 2007 which disclosed net pay for the year to date (the first 17 weeks) of £2,366. This equated to an annual net salary of approximately £7,250. Mr Apicella could not explain the reason for the discrepancy. There was no further evidence of Client One's income on the client file and, despite Client One apparently being self-employed for the last ten years, nor were any accounts held on file.
- 4.15. According to records held by Her Majesty's Revenue and Customs ("HMRC"), Client One did not declare any income for tax purposes in the tax years ending 5 April 2007 and 2008.
- 4.16. The differences between the figures declared on Client A's mortgage application and the figures in his payslips were obvious and it appeared to the FSA that Mr Apicella ignored this information and therefore facilitated the submission of a mortgage application to a lender based on false and misleading information.

#### Clients Two and Three

- 4.17. Mr Apicella submitted three mortgage applications for Clients Two and Three (a married couple to whom he was related) jointly. Two applications were submitted in May 2006 and the third application was submitted in April 2007.
- 4.18. On the first of the applications, Client Three declared that she was self-employed with an income of £14,500. On the second application, Client Three declared she was self-employed with an income of £26,000. On the third application, Client Three declared that she was self-employed with an income of £25,000.
- 4.19. Mr Apicella said that he understated Client Three's income on the earlier applications, that her actual income was £26,000, and that her accountant had produced accounts which supported this higher level of earnings. Mr Apicella also said that he did not enter precise income figures on the mortgage applications as Client Three's accountant was expected to confirm her income for the previous three years at a later date.
- 4.20. Mr Apicella said that he did not "*need to know exact figures as long as she is earning about 25 or 20 [£25,000 or £20,000]*". He said that he did not look at any accounts for Client Three to verify her income for the previous three years "*because the*

*accountant would have when he sent it*". He could not remember whether he had ever received the accounts from the accountant.

- 4.21. According to records held by HMRC, Client Three's declared income for tax purposes was:
- (1) £11,577 in the tax year ended 5 April 2006;
  - (2) £9,019 in the tax year ended 5 April 2007; and
  - (3) £16,000 in the tax year ended 5 April 2008.
- 4.22. Given the discrepancies in the information contained in the applications, and Mr Apicella's failure to produce accounts supporting the income figures declared in the applications, the FSA had concerns that he was aware of the true level of Client Three's income and that, knowing that her income was not high enough to obtain the required loan, he then overstated her income on her mortgage application.

#### Client Four

- 4.23. In April and May 2005, Mr Apicella submitted two mortgage applications for Client Four.
- 4.24. On the first application, Client Four declared that he earned £90,000 in the year ending in March 2003 as an IT Consultant with an additional income of £5,000. On the second application, he declared annual incomes of £95,000, £89,500 and £87,500 for the previous three years respectively.
- 4.25. The mortgage applications were accompanied by two remittance advices, addressed to Client Four's company, showing remittances of £5,757 on 19 April 2005 and 11 May 2005. There was also a copy of Client Four's bank statement showing payments to him from the company of £2,000 on 19 April 2005, £2,000 on 27 April 2005 and £5,500 on 6 May 2005.
- 4.26. Prior to the submission of the second application Client Four sent a letter to Mr Apicella stating that his accountant had calculated his income as £72,000 and that his income for the tax year ended 5 April 2004 was £84,537.
- 4.27. Mr Apicella submitted another mortgage application for Client Four in January 2007. On this application, Client Four stated that he was self-employed and declared the following income:
- (1) £138,897 for 2004;
  - (2) £139,878 for 2005; and
  - (3) £141,223 for 2006.
- 4.28. Mr Apicella told the FSA that the higher income figures declared on the later mortgage application were based on the inclusion of Client Four's wife's earnings. He said that he had done so because Client Four did not have sufficient income on his own to meet the lender's criteria. Mr Apicella acknowledged that he did not record on the client file or on the mortgage application that he had included Client Four's wife's income in the total earnings figures declared to the lender.

4.29. According to records held by HMRC, Client Four's declared income for tax purposes was:

- (1) £43,000 in the tax year ended 5 April 2006; and
- (2) £12,000 in the tax year ended 5 April 2007.

## **5. REPRESENTATIONS**

5.1 Mr Apicella challenged the FSA's interpretation of the facts and matters relied upon as set out in the Decision Notice and repeated in this Notice. In relation to the allegations of a lack of systems and controls and conduct of business, Mr Apicella commented as follows:

5.1.1 In respect of his involvement with the Introducer, Mr Apicella submitted that he had not thought it necessary to conduct due diligence on the Introducer as he believed that the solicitor's referral was sufficient. He argued that he had never attempted to mislead lenders and that he had reported the Introducer to the police as soon as he became aware of the Introducer's misconduct. Mr Apicella submitted that the police were satisfied that he was not knowingly involved with the Introducer's misconduct.

5.1.2 Mr Apicella argued that he had followed the general industry practice in that he would do the minimum required by lenders when assessing affordability. He submitted that he would complete fact finds and make assumptions about affordability to determine which product was most suitable for his clients. He submitted that he would only obtain documents from his clients as required by the lenders to confirm their earnings. He acknowledged that he took reasonable steps to identify his clients, even though he did not meet with all his clients face to face, he would ask for the necessary documents and would certify them as a true copy but not as a true likeness. Mr Apicella further submitted that he would send the applications to packagers, who would advise him of the various options available to his clients and this would ensure that he kept up to date with the lender's requirements.

5.1.3 Mr Apicella accepted that he had made errors, but said that his lenders and clients had been unaffected. He said that, if given the opportunity, he would address and remedy the problems in his business, including enlisting the help of a compliance consultant.

5.1.4 He submitted that he had not been given enough time to address the problems in his business and that the FSA had not advised him of the changes that needed to be made.

5.2 In relation to the allegations of the risk of involvement in financial crime:

5.2.1 Mr Apicella stated that he never deliberately misrepresented the income of his clients to gain favour with lenders and that as a broker he did not know what income had been declared by his clients.

5.2.2 He argued that because his clients had incomes sufficient to allow them to obtain loans, and because their income could easily be proved, there was no

need to overstate a client's income. He submitted that all the mortgages were up to date.

5.2.3 He acknowledged that, with hindsight, he had laid himself open to be a conduit for financial crime

5.3 Mr Apicella submitted that the seriousness of the shortcomings that had been identified by the FSA did not warrant the action taken by the FSA.

## **6. CONCLUSION**

6.1 Having considered Mr Apicella's representations, the FSA was satisfied that in all circumstances he is not fit and proper to perform any functions in relation to regulated activities carried on by any authorised person, exempt person, or exempt professional firm. In particular, he lacks competence and capability in that he failed to maintain adequate systems and controls and left himself open to the risk of involvement in financial crime. The FSA found that Mr Apicella:

- (1) ignored obvious anomalies and inconsistencies on clients' mortgage applications. He submitted mortgage applications on behalf of three individuals which contained inflated incomes.
- (2) did not perform any due diligence on the Introducer before accepting business from him as an introducer;
- (3) indicated that, on occasions in the past, he had been knowingly involved in the submission of false and misleading information to lenders; and
- (4) did not always complete fact finds, record suitability, product research or research his clients' attitudes to risk.

6.2 The FSA found that although Mr Apicella did not act deliberately, the failure to maintain adequate systems and controls resulted in the failings highlighted in this Notice.

6.3 On the basis of the facts and matters set out above, the FSA concluded that Mr Apicella lacks competence and capability and is therefore not a fit and proper person to perform functions in relation to any regulated activities. A prohibition order was therefore necessary and appropriate, and is consistent with the FSA's policy of seeking to prevent individuals lacking competence and capability from working in authorised firms, in support of the FSA's financial crime, market confidence and consumer protection objectives.

## **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(1) of the Act.

## **Publicity**

- 8.2 Sections 391(4), 392(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final 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.
- 8.3 The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

## **FSA contacts**

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

**Tom Spender**  
**Head of Department**  
**FSA Enforcement and Financial Crime Division**



## **ANNEX: RELEVANT STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY**

### **1. Statutory objectives**

- 1.1. The FSA's regulatory objectives, set out in section 2(2) of the Act, include market confidence, the protection of consumers and the reduction of financial crime.

### **2. Prohibition orders**

- 2.1. 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.

### **3. Fit and Proper Test**

- 3.1. 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 individual who is not an approved person.
- 3.2. 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 competence and capability.
- 3.3. In determining a person's competence and capability, FIT 2.2.1G provides that the FSA will have regard to matters including, but not limited to:
  - (1) whether the *person* satisfies the relevant *FSA* training and competence requirements in relation to the *controlled function* the *person* performs or is intended to perform; and
  - (2) whether the *person* has demonstrated by experience and training that the *person* is suitable, or will be suitable if approved, to perform the *controlled function*.

### **4. The FSA's policy on exercising its power to make a prohibition order**

- 4.1. 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").
- 4.2. EG 9.4 sets out the general scope of the FSA's power 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 depend on 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 which he poses to consumers or the market generally.

- 4.3. EG 9.17 to 9.18 provide guidance on the FSA's exercise of its power to make a prohibition order against an individual who is not an approved person. The FSA will consider the severity of the risk posed by the individual and may prohibit the individual where it considers this is appropriate to achieve one or more of its regulatory objectives. When considering whether to exercise its power to make a prohibition order against such an individual, the FSA will consider all the relevant circumstances of the case, which may include but are not limited to the factors set out in EG 9.9.
- 4.4. EG 9.9 provides that when deciding whether to make a prohibition order the FSA will consider all the relevant circumstances of the case, which may include (but are not limited to):
  - (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety are set out in FIT 2.1 (Honesty, integrity and reputation), FIT2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
  - (2) the relevance and materiality of any matters indicating unfitness;
  - (3) the length of time since the occurrence of any matters indicating unfitness; and
  - (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

## **5. Rules regarding advised mortgage sales - MCOB 4.7**

- 5.1. MCOB 4.7.2 R states that a firm must take reasonable steps to ensure that it does not make a personal recommendation to a customer to enter into a regulated mortgage contract, or to vary an existing regulated mortgage contract, unless the regulated mortgage contract is, or after the variation will be, suitable for that customer.
- 5.2. MCOB 4.7.4 R states that for the purposes of MCOB 4.7.2 R:
  - (1) a regulated mortgage contract will be suitable if, having regard to the facts disclosed by the customer and other relevant facts about the customer of which the firm is or should reasonably be aware, the firm has reasonable grounds to conclude that:
    - (a) the customer can afford to enter into the regulated mortgage contract;
    - (b) the regulated mortgage contract is appropriate to the needs and circumstances of the customer; and
    - (c) the regulated mortgage contract is the most suitable of those that the firm has available to it within the scope of the service provided to the customer;

- (2) no recommendation must be made if there is no regulated mortgage contract from within the scope of the service provided to the customer which is appropriate to his needs and circumstances; and
- (3) if a firm is dealing with an existing customer in arrears and has concluded that there is no suitable regulated mortgage contract for the purposes of MCOB 4.7.2 R, the firm must nonetheless have regard to MCOB 13.3.2 E(1)(a), (e) and (f) (see also MCOB 13.3.4 G(1)(a) and (b)).