
FINAL NOTICE

To: **John David Cook**

Date of Birth: **2 August 1961**

Reference: **JDC01133**

Date: **26 January 2009**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you 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 professional firm:

1. THE ORDER

1.1 The FSA gave you a Decision Notice dated 16 January 2009 (the “Decision Notice”) which notified you that the FSA had decided, pursuant to section 56 of the Financial Services and Markets Act 2000 (the “Act”), to make a prohibition order against you to prevent you from carrying out any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm (“the Prohibition Order”).

1.2 You agreed that you would not be referring the matter to the Financial Services and Markets Tribunal.

1.3 Accordingly, for the reasons set out below and having agreed the facts and matters relied on with you, 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 out by an authorised person, exempt person or exempt professional firm. The Prohibition Order takes effect from 26 January 2009.

2. REASON FOR THE ORDER

2.1 The FSA has concluded that you are not fit and proper to carry out any functions in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm and that you should be prohibited from doing so.

2.2 On the basis of the facts and matters summarised below, and set out in more detail at section 4 of this notice, the FSA has concluded that you have failed to meet minimum regulatory standards of fitness and propriety, which include an obligation to comply with the requirements and standards of the regulatory system.

2.3 Whilst an approved person, you submitted 3 mortgage applications in such circumstances where you were aware that the information was inaccurate and misleading.

2.4 Further, following the voluntary withdrawal of your approved person status in January 2007, you put in place two consecutive replacement directors to hold the requisite significant influence controlled functions in relation to Stone Financial Management Limited (“SFML”) in order that the regulated mortgage business of SFML could continue.

2.5 From October 2007 you appointed the second replacement director who did not have the requisite level of competence, to fulfil the regulatory obligations inherent to their controlled functions. You thus retained the overall day to day control of SFML, indicating a fundamental lack of understanding of the regulatory regime and/or an unwillingness to comply with it.

3 RELEVANT STATUTORY AND REGULATORY PROVISIONS

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

3.2 The FSA has the power pursuant to 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 specified regulated activity, any regulated activity falling within a specified description or all regulated activities.

The FSA's policy for exercising its power to make a Prohibition Order

3.3 The FSA's approach to exercising its powers to make prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").

3.4 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. EG 9.3 states that, in deciding whether to make a prohibition order and/or, in the case of an approved person, to withdraw its approval, the FSA will consider all the relevant circumstances.

3.5 EG 9.4 sets out the general scope of the FSA's power in this respect. The FSA has 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 which he poses to consumers or the market generally.

3.6 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.

3.7 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 fitness and propriety are set out in FIT2.1 (honesty, integrity and reputation), FIT2.2 (Competence and capability) and FIT2.3 (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;
- 4) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and
- 5) the previous disciplinary record and general compliance history of the individual.

3.8 E.G 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:

- 1) serious breaches of the Statements of Principle and Code of Practice for Approved Persons, such as providing misleading information to clients, consumers or third parties.

4 **FACTS AND MATTERS RELIED ON**

Background

- 4.1 You are the sole shareholder and senior mortgage adviser at SFML. Until January 2007 you held controlled functions CF1 (Director), CF8 (Apportionment and Oversight), CF11 (Money Laundering Reporting) and were responsible for insurance mediation (“RIM”) with SFML.

False mortgage applications

- 4.2 The FSA has found that whilst an approved person you were responsible for the submission of mortgage applications which you admitted you knew contained inaccurate and misleading information.
- 4.3 The following evidence gathered from three mortgage client files supports the FSA’s finding that you knowingly provided inaccurate and misleading information, including inflated incomes on fact finds and/or mortgage applications submitted to lenders on behalf of your clients:

Client file A

- client A’s salary and income were inflated in order to meet the mortgage lender’s criteria.

Client file B

- in the course of organising a mortgage for two individuals - client B and another individual - you discovered that the other individual had an adverse credit history. You therefore attempted to make a sole mortgage application for client B using the combined income of client B and the other individual;
- had the mortgage lender not asked for additional information, including payslips to confirm stated income, this application would have been completed based on inaccurate financial information for client B;
- there is a hand-written note on the file that indicates that this application was abandoned once it was clear that the mortgage lender would not accept the

application without further supporting documentary evidence.

Client file C

- client C's income was inflated in order to meet the mortgage lender's criteria.

Conclusion

- 4.4 The FSA has concluded that you are not a fit and proper person as you knowingly provided inaccurate information on clients' mortgage applications and submitted mortgage applications which you knew to be misleading whilst working as a mortgage adviser at SFML. Given the serious nature of your actions the FSA is of the view that you pose a risk to consumers and to confidence in the financial system.

Performance of controlled functions

- 4.5 The FSA received an application in February 2006 from SFML for you to be approved to hold Compliance Oversight and Investment Adviser controlled functions (CF10 and CF21 respectively) at SFML. The FSA had earlier granted your approval as CF1 (Director), CF8 (Apportionment and Oversight), CF11 (Money Laundering Reporting) and RIM at SFML.
- 4.6 As a result of the FSA's concerns regarding your non-disclosure of material facts relevant to your fitness and propriety in your application for individual approval to perform controlled functions in relation to SFML, you agreed to voluntarily withdraw the approval you held at SFML and the pending application to hold controlled functions at another firm of which you were also the sole shareholder and controller,
- 4.7 Following the voluntary withdrawal of your approval in January 2007, you could not hold the relevant significant influence controlled functions yourself. Therefore after discussion with the compliance manager at SFML at the time (who already held the Compliance and Oversight controlled function, CF10) it was agreed that he take on the significant influence controlled functions, including CF1 (Director) and CF8 (Apportionment and Oversight) and became the first replacement director of SFML until he left in October 2007.
- 4.8 With effect from 1 October 2007, you appointed, the second replacement director,

who obtained approval to carry out controlled functions CF1 (Director), CF8 (Apportionment and Oversight), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and responsibility for RIM.

- 4.9 The second replacement director had no qualifications relevant to the business conducted by SFML and had insufficient knowledge of the mortgage industry and compliance matters to appropriately carry out the controlled functions held.

Conclusion

- 4.10 The second replacement director of SFML lacked the requisite competence and capability to perform the controlled functions, as a result you retained overall day to day control of SFML, indicating a fundamental lack of understanding of the regulatory regime and/or an unwillingness to comply with it.

5. FACTORS RELEVANT TO THE ACTION, ANALYSIS OF CONDUCT AND SANCTION

- 5.1 The FSA has concluded that the conduct summarised above demonstrates a failure to meet minimum regulatory standards and therefore considers that you are not fit and proper to carry out any functions in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

- 5.2 The FSA considers that you pose a risk to lenders and to confidence in the financial system, and also that action should be taken in support of the FSA's regulatory statutory objective of reducing financial crime.

- 5.3 Your continued exercise of significant influence functions at SFML without FSA approval is apparent. As such you pose a risk to the FSA's regulatory statutory objectives of maintaining confidence in the financial system and protecting consumers.

- 5.4 Given that you are not an approved person a prohibition order is the only sufficient way for the FSA to ensure it achieves its regulatory objectives.

- 5.5 The FSA therefore considers that it is necessary to prohibit you from performing any functions in relation to any regulated activities carried on by any authorised person,

exempt person or exempt professional firm.

6 DECISION MAKER

6.1 The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers on behalf of the FSA.

7. IMPORTANT

7.1 This Final Notice is given to you under 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. 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.

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

FSA contacts

7.4 For more information concerning this matter generally, you should contact John Tutt of the Enforcement Division of the FSA (direct line 020 7066 1240).

Jonathan Phelan
Head of Department
FSA Enforcement Division