
FINAL NOTICE

To: Mr Kevin Byrne

Address: 35 Gloucester Road
London E17 6AE

Individual FSA reference: KMB00019

Dated: 10 February 2010

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you, Mr Kevin Byrne, 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. ACTION

- 1.1. The FSA gave you, Mr Kevin Byrne, of Forest Financial Services Limited (“Forest Financial”), a Decision Notice on 10 February 2010 (“the Decision Notice”) which notified you that it had decided to:
- (1) withdraw the approval given to you to perform the controlled functions of Director (CF1), Compliance Oversight (CF10), Money Laundering Reporting (CF11) and Customer function (CF30), pursuant to section 63 of the Financial Services and Markets Act 2000 (“The Act”); and
 - (2) make 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 (the “Prohibition Order”), pursuant to section 56 of the Act.
- 1.2. You agreed to settle at an early stage of the FSA’s investigation.
- 1.3. Accordingly the FSA hereby withdraws your individual approval and 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 person, exempt person or exempt professional firm (the “Prohibition Order”). The withdrawal of approval and the Prohibition Order take effect from 10 February 2010.

- 1.4. This action was taken because you are not a fit and proper person in terms of a lack of integrity and a lack of competence and capability.

2. REASONS FOR THE ACTION

- 2.1. On the basis of the facts and matters summarised below, and set out in more detail in section 4 of this Notice, the FSA concluded that, between 31 October 2004 and 5 May 2009 (“the relevant period”), you acted recklessly and, therefore, that you failed to act with integrity, in that you:

- (1) accepted mortgage business from an introducer (“Company A”) in unusual circumstances without undertaking adequate due diligence, which resulted in Forest Financial submitting seven fraudulent mortgage applications to lenders;
- (2) submitted mortgage applications to lenders on behalf of customers of Forest Financial which contained obvious anomalies, in circumstances where there were in the FSA’s view reasonable grounds to suspect that the mortgage applications were based on false and misleading information;
- (3) certified customers’ supporting identification documents as true copies of the originals (on the assumption, you said, that you would see the original documents later), which resulted in false passports and bank statements being used to support mortgage applications; and
- (4) gave false and misleading information to the FSA when you said during a supervision visit that you had met in person the customers introduced to Forest Financial by Company A.

- 2.2. The FSA also concluded that you failed to demonstrate competence and capability in that, on your own admission, you took no steps to help prevent Forest Financial from being used to commit mortgage fraud. Such steps might have included checking documents provided by customers to authenticate their incomes and identity, and using management information to detect patterns of suspicious activity and anomalies.

- 2.3. As such, the FSA considered that you acted recklessly and that you lack integrity, and also that you are not sufficiently competent and capable to perform controlled functions at an authorised firm. The FSA therefore concluded that you are not a fit and proper person to perform functions in relation to regulated activities carried on by an authorised person. Having regard to its statutory objectives (including consumer protection, market confidence and the reduction of financial crime) it was considered appropriate for the FSA to exercise its powers to withdraw your individual approval and to make a prohibition order against you.

3. STATUTORY PROVISIONS, REGULATORY RULES, GUIDANCE AND POLICY

- 3.1. The relevant statutory provisions, regulatory rules, guidance and policy are set out as Annex A to this Final Notice.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. You are one of two directors of Forest Financial, a mortgage intermediary that operated from Walthamstow, East London. During the relevant period, you were approved by the FSA to perform the controlled functions of CF1 (Director), CF8 (Apportionment and Oversight)¹, CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer). You were also the sole mortgage adviser at Forest Financial.
- 4.2. With effect from 12 May 2004, Forest Financial was granted permission by the FSA to carry on the following designated investment activities:
- (1) advising on investments (except on Pension Transfers and Pension Opt Outs);
 - (2) arranging (bringing about) deals in investments;
 - (3) agreeing to carry on a regulated activity; and
 - (4) making arrangements with a view to transactions in investments.
- 4.3. With effect from 31 October 2004 Forest Financial was granted permission by the FSA to carry on the following regulated home finance activities:
- (1) advising on regulated mortgage contracts;
 - (2) arranging (bringing about) regulated mortgage contracts;
 - (3) agreeing to carry on a regulated activity; and
 - (4) making arrangements with a view to regulated mortgage contracts.

Referrals from Company A

- 4.4. In January 2008 you were contacted by Company A which offered to refer 15 new mortgage applicants each month to Forest Financial. You accepted seven cases from Company A and made applications to lenders for these customers through Forest Financial in the relevant period.
- 4.5. The client files for these seven introductions from Company A contained obvious anomalies and discrepancies which, when considered together, ought to have caused you to become suspicious and to have asked further questions before accepting the business.
- (1) The clients were recorded as working for large financial institutions on annual incomes of between £65,000 and £84,000.
 - (2) The payslips provided were all in the same format despite purportedly originating from different employers.

¹ Until 31 March 2009

- (3) Nearly all of the applicants were based in or around London but were purchasing residential properties on new property developments in Birmingham. Two of the applicants introduced by Company A were purportedly purchasing properties in the same development in Birmingham.
 - (4) In one case, the bank statement provided to verify the client's income had different account numbers and sort codes printed on pages one and two.
- 4.6. Upon further investigation the FSA identified that:
- (1) two of the applications originating from Company A were supported by false passports;
 - (2) Her Majesty's Revenue and Customs ("HMRC") had no tax records for four of the applicants originating from Company A; and
 - (3) for other customers the incomes declared on the mortgage applications were substantially less than the incomes declared to HMRC.
- 4.7. You certified copies of the supporting documents as true copies of the originals despite never having seen the originals and, during a supervision visit, you told the FSA supervisor that you had met all of the customers introduced by Company A when in fact you had not met any of them.

Other client files

- 4.8. The FSA also reviewed a random sample of 14 of Forest Financial's client files relating to business coming directly to Forest Financial and not originating from Company A. Of these 14 files, six contained indicators of false income figures having been submitted to lenders.
- 4.9. The FSA asked you about some of these discrepancies.
- (1) You declared a customer's projected income for a future year as actual earned income for a previous year on the mortgage application.
 - (2) You entered conflicting employment information on a fact find and the mortgage application.
- 4.10. You said that these examples were mistakes and that you did not typically scrutinise information given to you by clients to mitigate the risk of Forest Financial being used to commit fraud.

5. ANALYSIS AND CONCLUSIONS

- 5.1. The FSA concluded that you acted recklessly and that you therefore lack integrity by:
- (1) accepting mortgage business in unusual circumstances from an introducer without undertaking due diligence or further checks on the clients;

- (2) signing clients' mortgage application documents as true copies of originals when in fact you had not seen the original documents or met the clients introduced by Company A; and
 - (3) telling the FSA supervisor that you met the Company A clients to cover up your lack of due diligence on these customers.
- 5.2. The FSA also concluded that you lack competence and capability in that you took no steps to help prevent your business from being used to commit mortgage fraud. Such steps might have included checking documents provided by customers to authenticate their incomes and identity, and using management information to detect patterns of suspicious activity and anomalies.
- 5.3. In summary, the FSA therefore concluded that you lack integrity and that you lack the competence and capability to perform any of the controlled functions for which you were given approval. You posed a risk to consumers because of your failure to take reasonable steps, in terms of checking anomalies in clients' personal and financial circumstances, to ensure that customers were recommended regulated mortgage contracts that they could afford. You also posed a risk to lenders because, through your recklessness, no steps were taken at Forest Financial to help reduce the risk of submitting mortgage applications to lenders that were based on false income and employment details. By your actions, lenders may have been prevented from making accurate assessments of the credit risk of the mortgage applicants. The action in this Notice therefore supports the FSA's consumer protection and market confidence objectives as well as its financial crime objective.
- 5.4. Consequently, the FSA concluded 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, exempt person or exempt professional firm. It was therefore considered necessary to withdraw your individual approval and to make the Prohibition Order.

6. DECISION MAKER

- 6.1. The decision that gave rise to the obligation to give this Final Notice was made on behalf of the FSA by Settlement Decision Makers for purposes of the FSA's Decision Procedure and Penalties Manual.

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), 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.

- 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, you should contact Chris Walmsley of the Enforcement Division of the FSA (direct line: 020 7066 5894 / fax: 020 7066 5895).

Tom Spender
Head of Department
Financial Services Authority

Annex A: Statutory provisions, regulatory rules, guidance and policy

1. Statutory provisions

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

Prohibition and Withdrawal of approval

- 1.2. The FSA has the power, by virtue of section 56 of the Act, to make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the FSA that that individual is 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.
- 1.3. The FSA has the power pursuant to section 63 of the Act to withdraw an approval given under section 59, if the FSA considers that the approved person is not a fit and proper person to perform the function to which the approval relates.

2. Fit and Proper Test for Approved Persons ("FIT")

- 2.1. 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 and FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 2.2. 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 honesty and integrity and competence and capability.
- 2.3. 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 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.
- 2.4. In determining a person's competence and capability, FIT 2.2 provides that the FSA will have regard to matters including, but not limited to 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.

3. FSA's policy for exercising its power to make a prohibition order and withdraw a person's approval

- 3.1. The FSA's approach to exercising its powers to make prohibition orders and withdraw a person's approval is set out at Chapter 9 of the Enforcement Guide ("EG").

- 3.2. 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.
- 3.3. 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.
- 3.4. 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 that the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw that person's approval or both. In deciding whether to withdraw approval and/or make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.
- 3.5. 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 and/or to withdraw that person's approval. 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, (and refers to the criteria for assessing the honesty, integrity and reputation of an approved person set out in FIT 2.1 and for assessing competence and capability of an approved person set out in FIT2.2.;
 - (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.
- 3.6. 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.

- 3.7. 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 providing false or misleading information to the FSA, including information relating to business arrangements (EG 9.12(1) and serious lack of competence (EG 9.12(4).
- 3.8 EG 9.14 provides that, where the FSA considers it appropriate to withdraw an individual's approval to perform a controlled function within a particular firm, it will also consider, at the very least, whether it should prohibit the individual from performing that function more generally. Depending on the circumstances, it may consider that the individual should also be prohibited from performing other functions.