
FINAL NOTICE

To: **John Stanley Lepine**

Date of birth: 3 June 1953

Date: 20 December 2006

TAKE NOTICE: The Financial Services Authority of 25, The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about a decision to make a prohibition order against you and to withdraw your approval

ACTIONS

The FSA gave you, Mr John Stanley Lepine ("Mr Lepine"), a Decision Notice on 7 June 2006 which notified Mr Lepine that, pursuant to section 63(1) of the Financial Services and Markets Act 2000 (the "Act"), the FSA had decided to withdraw the approval granted to Mr Lepine in relation to First Class Mortgages Limited and, pursuant to section 56 of the Act, the FSA had decided to make an order prohibiting Mr Lepine from performing any function in relation to any regulated activity carried on by any authorised or exempt person.

Mr Lepine referred the matter to the Financial Services and Markets Tribunal on 30 June 2006 but has since agreed to settlement.

Accordingly, for the reasons set out below and having agreed with Mr Lepine the facts and matters relied on, the FSA, with effect from 22 December 2006:

- (a) makes an order prohibiting Mr Lepine from performing any function in relation to any regulated activity carried on by any authorised or exempt person; and

- (b) withdraws the approval granted to Mr Lepine to perform the controlled functions of Director (CF1) and Apportionment and Oversight (CF8) at First Class Mortgages Limited.

REASONS FOR ACTIONS

Summary

1. The FSA has concluded, on the basis of the facts and matters described below, that it is not satisfied that Mr Lepine is a fit and proper person to perform the functions for which he is approved in relation to First Class Mortgages Limited. That is because, in the opinion of the FSA, he has failed to meet the criteria for fitness and propriety contained in the Fit and Proper Test for Approved Persons contained in the High Level Standards block of the FSA Handbook.
2. The prohibition order arises from Mr Lepine's misconduct whilst employed by Nomura Bank International. Mr Lepine was convicted on 16 November 1989 at the Inner London Crown Court of conspiracy to obtain property by deception and received a custodial sentence.
3. The FSA's regulatory objectives, established in section 2(2) of the Act, include the protection of consumers and the reduction of financial crime.
4. By section 63(1) of the Act, the FSA is authorised to withdraw the approval of an individual, if it considers the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.
5. The FSA's power to make a prohibition order is set out in section 56 of the Act and the procedure to be followed is set out in section 58 of the Act.

Relevant Guidance

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

6. FIT 2.1.1 states that the FSA treats each candidate's application on a case-by-case basis, taking into account the seriousness of, and circumstances surrounding, the offence, the explanation offered by the convicted person, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation.
7. FIT 2.1.3 (1) states that the FSA will have regard to whether the person has been convicted of any criminal offence; this must include, where relevant, any spent convictions excepted under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of the order); particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence whether or not in the United Kingdom or other offences under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking and or other financial services, insolvency, consumer credit companies, insurance, and consumer protection, money laundering, market manipulation or insider dealing.

8. FIT 2.1.3 (11) states that the FSA will have regard to whether the person has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar.
9. FIT 2.1.3(13) states that the FSA will have regard 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.

Guidance on the FSA's use of Prohibition Orders – ENF 8

10. In proposing to impose a prohibition order, the FSA has had regard to guidance published in the FSA Handbook, in particular in the Enforcement Manual (“ENF”), as follows:
 - 10.1 ENF 8.1.2 explains the purpose of prohibition orders in relation to the FSA's regulatory objectives;
 - 10.2 ENF 8.4.2 concerns the scope of the FSA's power to make prohibition orders: they 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;
 - 10.3 ENF 8.4.3 states that the FSA will consider all relevant circumstances, including whether other enforcement action has been taken;
 - 10.4 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;
 - 10.5 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;
 - 10.6 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 FIT (see above);
 - 10.7 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 2.1.3(1)). Under its exemption from the Rehabilitation of Offenders Act 1974 (“the 1974

Act”), provided in the Rehabilitation of Offenders Act 1974 (Exception) Order 1975 (Articles 3 & 4), the FSA will also take into account any spent convictions.

Facts and matters relied on

11. Mr Lepine has been approved by the FSA since 31 October 2004, following the consideration of his application for approval, which disclosed no adverse information.
12. Mr Lepine failed to disclose in his application for approval, or subsequently, that he was dismissed from his employment with Nomura Bank for conspiracy to defraud the Bank, which led to his conviction on 21 November 1989 at Inner London Crown Court, of obtaining property by deception. He was sentenced to three years imprisonment for that offence.
13. The FSA relies upon the terms of the judgment of the Court of Appeal given on 19 July 1990. That court considered that Mr Lepine’s offence was “serious fraud of a kind which does the City great harm perpetrated over a period of nine months” and justified a custodial sentence.
14. When the FSA asked about the non-disclosure of Mr Lepine’s conviction, Mr Lepine gave an account of the matter which does not accord with either the offence for which he was convicted, nor with the terms of the judgment of the Court of Appeal.

Representations

15. Mr Lepine attended before the FSA to make oral representations.
16. Mr Lepine informed the FSA of the background to his employment as a foreign exchange trader with Nomura Bank. He also informed the FSA of his personal circumstances which affected his emotional state at the relevant time.
17. Mr Lepine admitted accepting the property which was the subject of the conviction against him but represented that the value of the property was relatively small. It nevertheless had the effect of finishing his career with Nomura Bank.
18. Mr Lepine said he was advised to plead guilty to the charges brought against him. He disputed the Court of Appeal's findings that he falsified statements on the balance sheets.
19. Mr Lepine admitted he did not make full disclosure on his application form for authorisation to the FSA. He expressed remorse and apologised for his error. He informed the FSA that he had a moment of denial on completing the form. He was concerned that if he did not receive the authorisation sought, his business may close and his 60 employees would lose their jobs. He was also concerned about supporting his family.
20. It was represented that Mr Lepine was not a serial offender. This was a single offence, he had not been dishonest and his actions had not caused any loss. It was further represented that one incident and one single wrong answer should not be sufficient to result in the removal of a party's authorisation.

21. Mr Lepine was asked if he had made full disclosure of his conviction in applying for a licence under the Consumer Credit Act 1974. Mr Lepine confirmed that he had not. Mr Lepine further confirmed that he knew and understood he should have completed the form correctly.
22. Mr Lepine admitted that he had committed an offence which deserved punishment. It was suggested that a fine at the level of £10,000 would be the most appropriate form of punishment in all the circumstances.

Findings

23. The FSA took note of the background to Mr Lepine's conviction and the personal and emotional stress as represented by him. It further noted Mr Lepine's admission of his failure to make full disclosure to the FSA
24. The FSA found that Mr Lepine had acted with lack of candour in not informing it of all the pertinent facts in relation to his conviction.
25. The FSA found that although they had been asked to consider one instance of non disclosure, it had transpired that there may have been misrepresentation and non disclosure by Mr Lepine in relation to another licence application where other regulators were involved.
26. The FSA took note that any removal of authorisation would have an impact on the business which has been built up. The FSA further took note of the party's representations about the stress he was under but did not consider that this excused his conduct. The business sector might cause a person to encounter many situations of stress. However, that did not absolve the party from complying with the rules.
27. Mr Lepine understood that he should have made full disclosure to the FSA but knowingly refrained from doing so. He was in a position of trust and his actions undermined market confidence.
28. In all the circumstances the FSA did not consider that the imposition of a financial penalty as an alternative is an appropriate penalty.

Conclusions

29. The facts and matters described above lead the FSA, having regard to its regulatory objectives which include the protection of consumers, to conclude that:
30. Mr Lepine has been convicted of criminal offences involving both dishonesty and fraud, being offences of such seriousness as to justify a custodial sentence:
 - 30.1 by failing to disclose these matters to the FSA, despite the requirement for such matters to be disclosed being clearly stated on the application form, Mr Lepine prevented the FSA from making a fully informed assessment of his fitness to be approved to perform a function in relation to any regulated activity;

- 30.2 the FSA does not accept Mr Lepine's explanation of why he failed to disclose these matters;
- 30.3 Mr Lepine's deliberate failure to disclose these matters is evidence of a lack of rehabilitation in respect of his past conduct;
- 30.4 Mr Lepine gave an inaccurate account of his conviction and the surrounding circumstances to the FSA when asked about it, thereby apparently seeking to mislead the FSA;
- 30.5 the matters Mr Lepine failed to disclose, his failure to disclose them and his apparent attempt to mislead the FSA about them go directly to impugn his honesty, integrity and reputation and therefore to demonstrate that he is not a fit and proper person to perform the functions to which his approval relates, nor any function in relation to any regulated activity carried on by any authorised or exempt person; and
- 30.6 the severity of the risk Mr Lepine poses 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 in the terms proposed.

DECISION MAKERS

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

IMPORTANT

This Final Notice is given to Mr Lepine 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 contacts

For more information concerning this matter generally, you should contact Lehong Mac at the FSA (direct line: 020 7066 5742 /fax: 020 7066 9721).

Jonathan Phelan
Head of Department – Retail 3,
Enforcement Division