
FINAL NOTICE

To: Mr Gary Victor Lester

Address: 34 Centurion House
69 Station Road
Edgware
HA8 7JQ

Reference: GVL01005

Dated: 29 March 2010

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you, Gary Lester, final notice about the imposition of a financial penalty on you, and 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 Gary Lester, a Decision Notice on 17 February 2010 (“the Decision Notice”), which notified you that the FSA had decided to, pursuant to section 66 of the Financial Services and Markets Act 2000 (“the Act”), to impose a financial penalty of £103,000 on you, Mr Gary Lester and, pursuant to section 56 of the Act, to make an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person, or 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.
- 1.3. The FSA considers that your behaviour merits the imposition of a total penalty of £153,000. This amount has been reduced to take account of the evidence you provided regarding the financial hardship which would result from the imposition of

such a fine. However, considerations of financial hardship are not the only factors taken into account by the FSA in reaching its decision. Your financial hardship is outweighed by the need to promote high standards of regulatory conduct in relation to mortgage broking, the need to deter you and others from committing mortgage fraud and the nature and seriousness of your conduct. Accordingly, the FSA has decided that the appropriate level of penalty to impose on you is £103,000.

1.4. The financial penalty consists of the following elements:

- (1) a disgorgement of financial benefit of £3,000 arising from obtaining a regulated mortgage contract at a time when you were performing the controlled function of CF1 (Director); and
- (2) an additional penalty element of £100,000.

1.5. Accordingly, with effect from 29 March 2010, the FSA:

- (1) has imposed on you a financial penalty of £103,000; and
- (2) hereby 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 takes effect from 29 March 2010.

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, it appears to the FSA that you have fraudulently obtained mortgages for both yourself and the customers of Lifestyle, the firm of which you were principal, and may have submitted a fraudulent tax return to Her Majesty's Revenue and Customs ("HMRC"). This conduct merits the imposition of a financial penalty. The FSA has also concluded that you are not a fit and proper person in terms of honesty and integrity and that a Prohibition Order should be made against you as you pose a risk to lenders and to confidence in the financial system, and in support of the FSA's financial crime and consumer protection objectives.

2.2 In summary, in November 2006 you obtained a mortgage by significantly inflating your annual income on your mortgage application form and may also have filed a fraudulent tax return for the year in question. Furthermore, in the period since 1 April 2005, you have submitted and/or assisted in the submission of 42 fraudulent mortgage applications for customers of Lifestyle.

3. STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

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

4. FACTS AND MATTERS RELIED ON

4.1 You were the sole director, shareholder and approved person of Lifestyle, a mortgage broker operating in Edgware. With effect from 1 April 2005, you were approved to

perform CF1 (Director), CF8 (Apportionment and Oversight), CF10 (Compliance), and CF11 (Money laundering reporting) controlled functions. You are also solely responsible for insurance mediation at Lifestyle and are one of ten mortgage advisers.

- 4.2 Between 1 April 2005 and 1 July 2007, you took primary responsibility for compliance at Lifestyle on a day to day basis. One way in which you monitored compliance was to check the mortgage files being worked on by the other mortgage advisers and to make amendments where necessary. In the case of Adviser Y and Adviser Z, both inexperienced and new to Lifestyle, you checked every mortgage file that they worked on.
- 4.3 In May 2007, the FSA received a referral from a mortgage lender, Bank A, expressing concerns about the veracity of incomes disclosed in and documentation provided in support of mortgage applications submitted by Lifestyle. Bank A had found that the same bank account information was supplied for apparently unconnected applications in 10 of 38 mortgage applications submitted to it over a six month period. As a result of its concerns, Bank A removed Lifestyle from its panel of mortgage intermediaries.
- 4.4 The FSA began investigating Lifestyle on 11 October 2007. During the course of its investigation, the FSA reviewed a sample of 48 customer mortgage files selected using a variety of methods, including referral by lenders' financial crime teams, random selection by investigators, and pipeline cases at the time Lifestyle went into administration. The FSA also reviewed your own mortgage application, which you submitted through Lifestyle.
- 4.5 Lifestyle went into administration on 31 March 2008.

Personal mortgage application

- 4.6 You submitted your own mortgage application in November 2006 to Bank B. On the mortgage application form, you stated that you were self-employed and declared your share of income profit from Lifestyle for the years ended 31 March 2006, 2005 and 2004 to be £119,700, £115,000 and £109,000, respectively.
- 4.7 According to HMRC's records, your total earnings for the tax year ended 5 April 2005 were £21,000, made up of a £6,000 salary and £15,000 dividend.
- 4.8 The FSA also obtained copies of Lifestyle's accounts from Companies House. For the years ended 31 October 2006, 2005 and 2004 the declared profits were £63,281, £18,122 and £15,975, respectively. Although the FSA recognises that a direct correlation cannot be made between this information and the information on your mortgage application form due to the different accounting periods, it is clear that the amounts reported to Companies House are not close to the latter.
- 4.9 The inconsistencies between the income information you declared on your mortgage application form and the information held by HMRC and Companies House indicate that you deliberately entered false income figures on your mortgage application form and, in submitting it to a lender, committed mortgage fraud. You may also have falsified your tax return for the year in question.

- 4.10 You were given the opportunity to provide an explanation of these inconsistencies in person and in writing. The FSA considered the explanations that you provided and concluded that none of them is satisfactory.
- 4.11 As a result of this mortgage application, you obtained a mortgage.

Fraudulent mortgage applications for customers

- 4.12 During the course of its investigation, the FSA submitted the employment and income information from the 48 customer mortgage files it reviewed to HMRC for verification. In 14 cases, HMRC had no record of the applicant at all, which shows that the mortgage applications were fraudulent. In a further 28 cases, the details the applicants had disclosed on and in support of their mortgage application forms was inconsistent with HMRC's records, suggesting that the applicants had disclosed false employment and/or income information on their mortgage applications, thereby committing mortgage fraud.
- 4.13 Although these cases were submitted by a number of different advisers working at Lifestyle, we consider it likely, given your role as principal together with the fact that you checked the mortgage applications completed by advisers prior to their submission to lenders, that you were aware of the, or wilfully ignored the fact that a, high proportion of fraudulent mortgage business being put through Lifestyle.
- 4.14 At a minimum, the FSA considers that you knowingly submitted and/or assisted in the submission of eight fraudulent mortgage applications submitted by Adviser Y, as you checked these applications prior to their submission to lenders.

5. REPRESENTATIONS

- 5.1 You challenged the FSA's allegations that you had fraudulently obtained mortgages for both yourself and customers of Lifestyle.
- 5.2 In relation to your own applications, you represented that you had simply provided figures to the lender consistent with the information available at that time. The figures were correct to your knowledge. Furthermore, as the figures were twice those required by the lender, there was no need to inflate them.
- 5.3 As to your customer's applications, you stated that the supporting documentation required by the lenders was provided to them in good faith. You provided the information they required to process the applications and you had no reason to doubt their authenticity.
- 5.4 You challenged the allegations that you made amendments where necessary to the files of other mortgage advisers. You confirmed that although you did check their files, they were sufficiently experienced to be able to manage their own files.
- 5.5 In relation to the allegation of similarity of supporting income information, you informed the FSA that you were not aware that the bank account details were the same on several applications. It would not be usual for you to cross check bank account details from one client to another over a six month period. These were in any

event full status and not self certified mortgage applications and were supported by accounts prepared by accountants.

- 5.6 You explained that there was little correlation between the company's accounts and the figures shown on your mortgage application as a different system was used by your book-keeper to record the company's funds for formal accounting purposes and to show your earnings at any given time.
- 5.7 You represented that you had accurately and completely disclosed your own income on your mortgage application form. You had similarly disclosed the information given to you by clients. You could not however comment on the information held by HMRC as you had no knowledge of the submissions made by clients to HMRC in relation to their personal tax affairs and in any event was not required by the lenders to cross check incomes with the HMRC.
- 5.8 In relation to knowingly submitting eight fraudulent mortgage applications, you stated that quite the opposite is true. You asserted that these applications were completed with the benefit of full accounts, identification of applicants, proof of residence and other detailed requirements from the lender. You asserted that all the supporting documents were correct and in order.
- 5.9 You informed the FSA that you employed a book-keeper who came in twice weekly to prepare the accounts and maintain the company's books. An accountant also prepared your tax returns. Accordingly, you challenged the FSA's allegation that you falsified your tax returns.
- 5.10 Accordingly, you stated that you had no knowing involvement in any fraudulent mortgage applications.
- 5.11 You made extensive representations on your financial circumstances arguing serious financial hardship would be caused by the imposition of the FSA's proposed fine. You stated that you had not worked for a considerable period of time and the proposed fine would result in your bankruptcy.

6. CONCLUSIONS

- 6.1. Having considered your representations, the FSA has concluded that you are not a fit and proper person to remain an approved person. The FSA is satisfied that your conduct demonstrates that you lack honesty and integrity and accordingly a Prohibition Order should be made against you.
- 6.2. The FSA does not accept your reasons for inflating your income figures on your mortgage application. The lender's application form clearly asked for "net profit share" and in providing commission figures, you have misled the lender.
- 6.3. The FSA also finds that you were knowingly involved in the submission of fraudulent mortgage applications for at least six different clients. Of the 48 files reviewed by the FSA, 42 appear to have been based on fraudulent information.
- 6.4. You have a responsibility to make appropriate checks when assessing mortgage applications and supporting documentation. It is unacceptable to simply rely on the

applicants without yourself making further reasonable checks. You have an obligation to have an awareness of fraud and other financial crime indicators and make appropriate checks.

- 6.5. Given the factors described above, together with your inability to provide a reasonable explanation, the FSA is satisfied that you inflated your income in order to obtain a mortgage, thereby committing mortgage fraud, and that you may also have filed a falsified tax return in 2006.
- 6.6. As you processed your mortgage application through Lifestyle, this conduct amounts to a failure to act with integrity when carrying out a controlled function, which constitutes a breach of APER Principle 1. Your knowing involvement in fraudulent mortgage applications for customers of Lifestyle amounts to a further breach of APER Principle 1. The FSA considers it necessary and proportionate to impose a financial penalty of £103,000 upon you for these breaches, which were deliberate, allowed you to obtain financial benefits in the form of a mortgage, fees and commissions and constitute acts of financial crime. In addition to being appropriate and proportionate to the breach, this level of financial penalty will assist in the promotion of high standards of regulatory conduct by serving as a deterrent to you and others.
- 6.7. In determining the financial penalty the FSA has considered the benefit obtained by you and the need to punish you as well as deter others from engaging in this type of activity. As a matter of principle, your profit should be disgorged. If it was not for your financial hardship, the FSA would have imposed a penalty of £153,000. Having taken account of the evidence you provided regarding the financial hardship which would result from the imposition of such a fine, this amount has been reduced. However, considerations of financial hardship are not the only factors taken into account by the FSA in reaching its decision. Your financial hardship is outweighed by the need to promote high standards of regulatory conduct in relation to mortgage broking, the need to deter you and others from committing mortgage fraud and the nature and seriousness of your conduct. Accordingly, the FSA has decided that the appropriate level of penalty to impose on you is £103,000. This sum includes an element of disgorgement of profit of £3,000 and a financial penalty of £100,000.
- 6.8. Your apparent lack of honesty and integrity is also a serious case of lack of fitness and propriety. A Prohibition Order is therefore necessary and proportionate. Taking this action against you is consistent with the FSA's policy of seeking to prevent individuals lacking in honesty and integrity from working in authorised firms in order to secure an appropriate degree of protection for lenders and consumers. The FSA further considers that you pose a risk to lenders and to confidence in the financial system and the penalty and prohibition order support the FSA's financial crime and consumer protection objectives.

7. DECISION MAKERS

- 7.1. The decision which have 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.

Manner of and time of payment

- 8.2. The financial penalty must be paid in full by you to the FSA by no later than 6 April 2010, 14 days after the date of this Final Notice.

If the financial penalty is not paid

- 8.3. If all or any part of the financial penalty is outstanding on 7 April 2010 the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

- 8.4. 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.
- 8.5. 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 Alison Newton of the Enforcement and Financial Crime Division at the FSA (direct line: 020 7066 1918).

Tom Spender
Head of Department
FSA Enforcement and Financial Crime Division

ANNEX

1. Statutory provisions

- 1.1. The FSA's statutory objectives, set out in section 2(2) of the Act, include the reduction of financial crime and market confidence.
- 1.2. The FSA has the power, by virtue of section 66 of the Act, to impose a penalty on you of such amount as it considers appropriate where it appears to the FSA that you are guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action against you.
- 1.3. You are guilty of misconduct if, while an approved person, you fail to comply with a statement of principle issued under section 64 or have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.
- 1.4. 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.

2. The Statements of Principle and Code of Practice for Approved Persons

- 2.1. The Statements of Principle and Code of Practice for Approved Persons section of the FSA's Handbook ("APER") sets out the Statements of Principle in respect of approved persons and conduct which, in the opinion of the FSA, constitutes a failure to comply with them. It also describes factors the FSA will take into account by the FSA in determining whether an approved person's conduct complies with a particular Statement of Principle.
- 2.2. APER 3.1.3G states that, when establishing compliance with, or breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, the circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.
- 2.3. In this case, the FSA considers the most relevant Statement of Principle to be Statement of Principle 1.

Statement of Principle 1

- 2.4. Statement of Principle 1 requires an approved person to act with integrity in carrying out their controlled function.
- 2.5. APER 4.1 sets out a number of examples of behaviour which the FSA considers constitute a failure to comply with Statement of Principle 1. APER 4.1.3E states that deliberately misleading (or attempting to mislead) by act or omission either a client or the FSA is conduct which does not comply with Statement of Principle 1. Specific

examples of such conduct are set out in APER 4.1.4E and include providing false or inaccurate documentation or information, or deliberately falsifying documents.

3. Fit and Proper Test for Approved Persons

- 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 and FIT is also relevant in assessing the continuing fitness and propriety of 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 honesty, integrity and reputation.
- 3.3. 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, those set out in FIT 2.1.3G. The guidance includes:
 - (1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)); and
 - (2) 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 (FIT 2.1.3G(13)).

4. FSA’s policy on exercising its power to impose a financial penalty

- 4.1. Guidance on the imposition of penalties is provided in Chapter 6 of the FSA’s Decision Procedure and Penalties Manual (“DEPP”), entitled “Penalties”. DEPP 6 states that the FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty, and sets out a non-exhaustive list of factors that may be relevant for this purpose.
- 4.2. In determining the appropriate level of financial penalty the FSA has also had regard to Chapter 13 of the Enforcement Manual (“ENF”), the part of the FSA’s Handbook setting out the FSA’s policy on the imposition of financial penalties in force until 27 August 2007, and therefore during part of the relevant period.
- 4.3. The following factors are relevant to this case:
 - (1) The nature, seriousness and impact of the suspected breach, including:
 - whether the breach was deliberate or reckless;
 - the amount of any benefit gained or loss avoided as a result of the breach; and
 - the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach;

- (2) The conduct of the person after the breach, including:
 - the degree of co-operation the person showed during the investigation of the breach; and
 - the likelihood that the same type of breach (whether on the part of the person under investigation or others) will recur if no action is taken;
 - (3) The previous disciplinary record and compliance history of the person, including whether the FSA (or any previous regulator) has taken any previous disciplinary action resulting in adverse findings against the person;
 - (4) FSA guidance and other published materials; and
 - (5) Action taken by the FSA in previous cases.
- 4.4. In imposing a financial penalty, the FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty that is appropriate and in proportion to the breach concerned.
- 4.5. The FSA will consider number of factors when determining the appropriate level of financial penalty to be imposed on a person under the Act.

Deterrence

- 4.6. When determining the appropriate level of financial penalty, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

The nature, seriousness and impact of the breach in question

- 4.7. The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached, which can include considerations such as the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach.

The extent to which the breach was deliberate or reckless

- 4.8. The FSA will regard as more serious a breach which is deliberately or recklessly committed, giving to consideration to factors such as whether the breach was intentional, in that the person intended or foresaw the potential or actual consequences of its actions. Where the FSA decides the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case.

Whether the person on whom the penalty is to be imposed is an individual

- 4.9. When determining the amount of penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the same resources as a

body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed

- 4.10. The FSA may take into account a number of factors, including:
- (1) Whether there is verifiable evidence of serious financial hardship or financial difficulties if the person were to pay the level of penalty appropriate for the particular breach; and
 - (2) The purpose of a penalty is not to render a person insolvent or to threaten a person's solvency. Where this would be a material consideration, the FSA will consider, having regard to all other factors, whether a lower penalty would be appropriate.

The amount of benefit gained or loss avoided

- 4.11. The FSA may have regard to the amount of benefit gained or loss avoided as the result of the breach, for example the FSA will impose a penalty that is consistent with the principle that a person should not benefit from the breach and the penalty should also act as an incentive to the person (and others) to comply with regulatory standards and required standards of market conduct.

5. FSA's policy for exercising its power to make a prohibition order

- 5.1. The FSA's approach to exercising its powers to make prohibition orders is set out at Chapter 9 of the Enforcement Guide ("EG").
- 5.2. 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.
- 5.3. 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. EG9.5 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.
- 5.4. 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 make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.

- 5.5. 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. 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. (The criteria for assessing the fitness and propriety of an approved person in terms of honesty, integrity and reputation are set out in FIT2.1 (Honesty, integrity and reputation) and include an individual's openness and honesty in dealing with consumers, market participants and regulators and an ability and willingness to comply with requirements placed on him by or under the Act as well as with other legal and professional obligations and ethical standards);
 - (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.
- 5.6. 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.
- 5.7. 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. The examples include severe acts of dishonesty, for example those which may have resulted in financial crime.