
FINAL NOTICE

To: **Mr Amjad Ali Malik**

Of: 37 York Road
Ilford
Essex
IG1 3AD

Reference: AAM01101

Date: 14 February 2008

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, Amjad Ali Malik, 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 14 February 2008 (“the Decision Notice”) which notified you that, for the reasons listed below and pursuant to section 56 of the Financial Services and Markets Act 2000 (“the Act”), the FSA has decided to make an order prohibiting you, Amjad Ali Malik, from performing any function in relation

to any regulated activities (“the Prohibition Order”)” carried on by any authorised person, exempt person or exempt professional firm.

- 1.2. You agreed that you will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3. You agreed to settle at an early stage of the FSA’s investigation on the basis of the Prohibition Order.
- 1.4. Accordingly, for the reasons set out below, and having agreed with you the facts and matters relied on, the FSA hereby makes the Prohibition Order against you.

2. REASONS 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 in section 4 of this notice, the FSA has concluded that you have failed to meet minimum regulatory standards in terms of honesty and integrity, which includes an obligation to demonstrate 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.
- 2.3. You pose a risk to lenders and therefore to confidence in the financial system. Also this action should be taken against you in support of the FSA’s financial crime objective.
- 2.4. In summary, mortgage applications submitted by you to lenders when you worked at a firm called York Financial Services were based on false information. Subsequently, in your capacity as a person performing governing functions at an authorised person (Abbaci Associates), you failed to take steps to identify and act on obvious anomalies and false information contained in mortgage applications, such that you failed to take reasonable steps to prevent the authorised person from being used to commit financial

crime. You also failed to notify the FSA that Abbaci Associates, of which you are a partner, was removed from the panels of three mortgage lenders.

2.5. Furthermore, you are not appropriately qualified to give mortgage advice, and yet you acted as a mortgage adviser at Abbaci Associates.

3. RELEVANT STATUTORY PROVISIONS, RULES AND OTHER REGULATORY PROVISIONS

Statutory provisions

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

3.2. The FSA has the power, by virtue of section 56 of the Act, to make an order prohibiting you from performing a specified function, or 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 or any regulated activity falling within a specified description or all regulated activities.

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 at Chapter 9 of the Enforcement Guide ("EG"). EG9.1 states that the FSA's power 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.

3.4. EG9.4 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 activities that the individual performs in relation to regulated activities, the reasons why he is not fit or proper and the severity of the risk posed by him to the consumers or the market generally.

- 3.5. In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG9.8 to 9.14 provides guidance. In particular, EG9.8 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.
- 3.6. EG9.9 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) the matters set out in section 61(2) of the Act;
 - (2) 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); and
 - (3) whether, and to what extent, the approved person has:
 - (a) failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons; or

- (b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules);

...

- (5) the relevance and materiality of any matters indicating unfitness;
- (6) the length of time since the occurrence of any matters indicating unfitness;
- (7) 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; and
- (8) the severity of the risk posed by the individual to consumers and to confidence in the financial system.

3.7. EG9.10 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.

3.8. EG9.12 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:

...

- (3) severe acts of dishonesty, for example those which may have resulted in financial crime; and

...

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

Regulatory requirements

Fit and Proper Test for Approved Persons

- 3.9. 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.
- 3.10. In this instance, the criteria set out in FIT are relevant in considering whether the FSA may exercise its powers to make a prohibition order against you, as an approved person, in accordance with EG9.9.
- 3.11. FIT1.3 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.
- 3.12. In determining a person’s honesty, integrity and reputation, FIT2.1 states that the FSA will have regard to matters including, but not limited to, those set out in FIT2.1.3G. This guidance includes:
- (1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT2.1.3G(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 (FIT2.1.3 G(13)).

The Statements of Principle and Code of Practice for Approved Persons

- 3.13. The Statements of Principle and Code of Practice for Approved Persons (“APER”) set 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. They also describe

factors to be taken into account by the FSA in determining whether an approved person's conduct complies with a particular Statement of Principle.

- 3.14. APER3.1.3G 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 precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function. APER3.1.4G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, in a situation where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
- 3.15. In this case, the FSA considers the most relevant Statement of Principle to be Principle 1.

Statement of Principle 1

- 3.16. Statement of Principle 1 requires an approved person to act with integrity in carrying out his controlled function.
- 3.17. APER4.1 sets out a number of examples of behaviour which the FSA considers constitute a failure to comply with Statement of Principle 1. APER4.1.3E states that deliberately misleading (or attempting to mislead) by act or omission either a client or the FSA does not comply with Statement of Principle 1. Specific examples of such conduct are set out in APER4.1.4E and include providing false or inaccurate documentation or information, or deliberately falsifying documents. In considering a person's integrity the FSA may also have regard to whether that person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5)).

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. You are currently a partner at Abbaci Associates which operates in Ilford as a mortgage broker and which also provides accountancy services. The other partner is Mr Tahir Mahmood. With effect from 31 October 2004, you were approved to perform the controlled function of CF4 (Partner) at Abbaci Associates. Previously, you were a director of York Financial Services, with Mr Mahmood.

False mortgage applications

- 4.2. You submitted two applications on the same day for **Client A**, with two different income amounts and two different accountants disclosed on the application forms (one of which was Abbaci Associates). Further, the information disclosed on the application forms did not correlate with the information in respect of income and occupation disclosed in Client A's accounting file, despite the fact that you have acted as Client A's accountant since at least 2000 and you should therefore have been aware of Client A's financial circumstances.
- 4.3. You submitted two applications for **Client B** with two different incomes and two different occupations disclosed on the application forms.
- 4.4. There was a close similarity between the information disclosed on Client B's mortgage application form and that of **Client C** (both of which you processed). Client C purportedly worked as a self employed estate agent. The date of commencement of this business was purportedly 10 August 1999 and the most recent profit recorded was £76,000. Similar information was recorded on Client B's mortgage application form. Client B was said to be working at an estate agent where the most recent profit was also £76,000 and the date of commencement was 10 August 2000; and
- 4.5. False information, particularly relating to clients' occupations and incomes, was entered on all nine of the mortgage applications that the FSA reviewed in which you were the mortgage adviser.
- 4.6. You accept that you had recorded false information relating to clients' occupations and incomes on mortgage application forms which were submitted to lenders.

- 4.7. You are jointly responsible, along with Mr Tahir Mahmood, for the general running of Abbaci Associates and for complying with regulatory requirements.
- 4.8. You failed to make any checks of clients' occupations and incomes in respect of the three clients whose files were discussed with you at interview.
- 4.9. You admitted to a systematic failure to make any checks of clients' occupations and incomes when processing mortgage applications, particularly in respect of applications for "self certification" mortgages. You said that you do not consider it to be your responsibility to check the accuracy of the incomes and occupations of clients. Given the obvious nature of the anomalies and inconsistencies on the mortgage applications and your association with clients as accountants, we do not accept your response as a mitigating factor.
- 4.10. You failed to put in place and implement any systems within Abbaci Associates to prevent the occurrence of financial crime, failing to identify serious and obvious risks from your business practices. Given your involvement in submitting mortgage applications containing false information which it is highly likely you knew to be false, our view is that this failure was deliberate rather than attributable to a lack of competence on your part.
- 4.11. You present yourself as a person qualified to give mortgage advice despite having failed to pass the CeMAP 3 examination. You have been giving mortgage advice at Abbaci Associates it became regulated by the FSA on 31 October 2004, but you are not appropriately qualified to give mortgage advice.

5. CONCLUSIONS

- 5.1. The FSA has concluded that the conduct summarised in section 4 above represents a failure by you to comply with Statement of Principle 1 for Approved Persons. The reasons for the FSA's conclusions are summarised below.

- (1) Mortgage applications submitted by Abbaci Associates which were reviewed by the FSA were found to be based on false information. Your role at Abbaci Associates, as one of its two partners and as one of its two mortgage advisers, and the fact that all the applications reviewed by the FSA submitted by you

contained a number of inconsistencies and anomalies, has caused the FSA to conclude that you were likely to be knowingly and dishonestly involved in the submission of false applications, demonstrating a lack of integrity.

(2) You gave mortgage advice to customers despite not being qualified to give such advice. The FSA has concluded that your lack of willingness or ability to comply with regulatory requirements by obtaining the required professional qualifications demonstrates a lack of integrity.

5.2. The FSA therefore concludes that you have failed to meet minimum regulatory standards in respect of honesty and integrity and you are not therefore fit and proper to carry out any functions in relation to any regulated activities carried on by any authorised persons.

Relevant period of breach

5.3. The period of breach is from 31 October 2004 to 11 October 2007 when Abbaci Associates agreed to cease conducting regulated activities at the request of the FSA.

Summary

5.4. The failures identified in this Notice are very serious. You are not appropriately qualified to give mortgage advice and you have failed to meet the requirements expected of a person approved to perform governing functions at an authorised person. These failings are evident over a long period.

5.5. You pose a risk to consumers, to confidence in the financial system and to fulfilment of the FSA's financial crime objective. The FSA has therefore concluded that it is necessary to make a prohibition order against you in order to fulfil these regulatory objectives.

6. DECISION MAKERS

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 in accordance with 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.

Third party rights

7.3. A copy of this notice is being given to Mr Tahir Mahmood of Abbaci Associates as a third party identified in the reasons above and to whom in the opinion of the FSA the matter is prejudicial. That party has similar rights of representation and access to material in relation to the matter which identifies him.

FSA contacts

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

Jonathan Phelan
Head of Department
FSA Enforcement Division