



Financial Services Authority

FINAL NOTICE

To: **Michael James Foster**
Of: 15 The Meadows
Burnmoor
County Durham
DH4 6HG
Date: 26 February 2009

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the “FSA”) gives you final notice about a prohibition order against you.

1. THE ORDER

- 1.1. The FSA gave you a Decision Notice dated 4 February 2009 which notified you that pursuant to section 56 of the Financial Services and Markets Act 2000 (the “Act”), the FSA has decided to make an order prohibiting you, Michael James Foster, from performing any function in relation to any regulated activity carried on by any authorised person or exempt person or exempt professional firm (the “Prohibition Order”).
- 1.2. You have confirmed that you will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.3. Accordingly, for the reasons set out below, 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 on by any authorised person or exempt person or exempt professional firm. The Prohibition Order takes effect from 26 February 2009.

2. REASONS FOR THE ORDER

2.1. The FSA has concluded that, on the basis of the facts and matters below, you are not fit and proper to perform functions in relation to regulated activities carried on by an authorised person, exempt person or exempt professional firm. In particular, you have demonstrated that you lack honesty and integrity because:

- (1) you submitted at least five buy-to-let mortgage applications on your own behalf through Newcastle Home Loans Limited (“NHL”/ the “Firm”) to a mortgage lender to which NHL was tied (the “Lender”). All of them contained false information. You knew the information you had provided was false. As a result, you obtained mortgages which exceeded the sums that the Lender would have advanced had it known the true facts. At least £270,819 was obtained by you in this way; and
- (2) you introduced to NHL:
 - (a) one buy-to-let mortgage application to the Lender on behalf of a close relative which you knew contained false information. This application resulted in the close relative obtaining sums to the amount of £99,765 from the Lender in excess of those which it would normally have advanced had it known the true facts in respect of the mortgage application made; and
 - (b) one regulated mortgage application to the Lender on behalf of a personal friend, which you knew contained false information. This application resulted in the friend obtaining sums to the amount of £64,106 from the Lender in excess of those which it would normally have advanced had it known the true facts in respect of the mortgage application made.

Relevant Statutory and Regulatory Provisions

2.2. Section 56 of the Act states that the FSA may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function where it appears to the FSA that the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.

2.3. In deciding to take the action described above, the FSA has had regard to the relevant provisions of its Enforcement Guide (“EG”). In particular, the FSA has had regard to Chapter 9 of EG. Paragraph 9.17 states that in considering whether to make a prohibition order against an individual, other than an individual referred to in paragraph 9.8 to 9.14 of EG, it will consider the severity of the risk posed by the individual and may prohibit that individual where it considers this is appropriate to achieve one or more of its regulatory objectives.

2.4. Paragraph 9.18 states that the FSA will take into account all relevant circumstances, including those set out at paragraph 9.9. The following are most relevant:

- (1) a person's honesty and integrity with reference to Chapter 2.1 of the Fit and Proper Test for Approved Persons;
- (2) the relevance and materiality of any matters indicating unfitness;
- (3) the length of time since the occurrence of any matters indicating unfitness; and

- (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
- 2.5. As this matter relates to events prior to the introduction of EG (28 August 2007) the FSA has also had regard to the relevant provisions of the FSA's Enforcement Manual (which preceded EG).

Facts and matters relied upon

Background

- 2.6. You were approved to perform controlled functions 1 (Director) and 8 (Apportionment and Oversight) on behalf of NHL from 7 October 2005 to 21 March 2006. You were one of only two directors of the Firm during that period.
- 2.7. NHL became authorised to conduct mortgage activities on 7 October 2005 and is a mortgage intermediary, which arranges and packages both regulated and unregulated mortgages. In December 2003 NHL became a "branded lender" for the Lender. This meant it was contracted to arrange and package mortgage applications solely for this particular Lender.
- 2.8. In December 2005, the Lender began to review applications for both regulated and unregulated mortgage contracts submitted by NHL. By this date, a total of 1,700 applications had originated from NHL since December 2003. The Lender's initial findings raised concerns over the accuracy of property valuations. It also established differences between statements made on mortgage application forms and information held at the Land Registry. Its subsequent wider review found that mortgage applications were being presented as remortgages when they were actually purchases. The actual purchase price paid for some properties had been concealed from the Lender, and in some cases, the actual purchase price paid was significantly lower than the valuation that had been provided. The Lender referred 157 cases to the FSA. 20 of these were regulated mortgage applications and the remainder were unregulated applications.
- 2.9. On 17 May 2006 the Lender terminated its relationship with NHL.
- 2.10. From 31 October 2004 to 11 January 2006, you were also a sole trader, trading under the name of Mortgage Today, through which you introduced mortgage business. Mortgage Today was an appointed representative of an authorised firm.

Honesty and Integrity

- 2.11. Between 6 October 2005 and 5 January 2006, you knowingly submitted five non-regulated mortgage applications to the Lender that contained false information.
- 2.12. These applications were false in that they:
- (1) mis-stated the purpose of the loan. Your mortgage application forms stated that the loan was required to 'remortgage' a property. In fact, the funds were applied towards the purchase of a property; and
 - (2) mis-stated that you already owned the property to become subject to the mortgage. In fact, in each case you did not.
- 2.13. To further the illusion that the applications were remortgages rather than outright purchases, all five applications contained a fictional "original purchase price paid". In

each case, this amount exceeded the price you paid, or eventually paid, for each property.

- 2.14. You knew these applications contained false information. Through these applications you were able to obtain mortgages which exceeded the sum the Lender would normally have advanced by £270,819, had it known the true facts.
- 2.15. The Lender's policy was to lend 85% of the purchase price. In one case, the false information in your application resulted in the Lender unknowingly advancing you 141% of the purchase price of the property.
- 2.16. You also introduced, through your firm Mortgage Today, two mortgage applications to NHL which you knew contained false information. Both applications were made to appear to be for loans to remortgage properties already owned by the applicants when, in fact, they were first time purchases. The false information followed the pattern set out at paragraphs 2.12 and 2.13 above. The first application resulted in the applicant obtaining sums to the amount of £99,765 from the Lender in excess of those which it would normally have advanced had it known the true facts. In the second application, the applicant obtained sums to the amount of £64,106.

Dishonesty in submitting application forms: an example

- 2.17. In October 2005, you submitted a mortgage application in your own name which contained false information. You applied for a loan of £183,175 to 'remortgage' a property, stating on the mortgage application form that you had bought the property one month before, in September 2005, for £215,500 with a £160,000 bank loan. You signed the mortgage application form on 27 October 2005.
- 2.18. In fact, you did not own the property until 15 December 2005. You paid £130,000 for it on this date and used funds from the Lender to purchase the property.
- 2.19. The mortgage of £183,175 was received from the lender on 13 December 2005. On 15 December 2005 your solicitors paid £130,222 to the Vendor to complete the purchase. On 15 December 2005, you received two private loans. One was for £100,000, and was from a business owned by you and Grace Purdie, a director of NHL. The other payment was for £31,272, from a solicitor's ledger account in your own name. These two amounts were immediately repaid on the same day, shortly after the purchase price of £130,000 was paid to the vendor's solicitors. The purpose of the private loans was to give the illusion that the transaction was a genuine 'remortgage' and that the Lender's funds had not been used to finance the purchase.
- 2.20. On 16 December 2005 the balance of the mortgage, £51,609, was paid to you. Because of the false information on your application form, the Lender unknowingly advanced 141% of the purchase price, when its policy was to lend a maximum of 85%. It therefore lent £72,675 in excess of the amount it would have advanced had the true facts been known to it.

Conclusion

- 2.21. You knowingly submitted mortgage applications containing false information in your own name and those of at least two others. As a result, the FSA has concluded that you lack honesty and integrity.

- 2.22. Your lack of honesty and integrity is serious and your actions in submitting mortgage applications which contained false information may have resulted in financial crime. You are therefore not fit and proper to perform any function in relation to regulated activities carried on by an authorised person, exempt person or exempt professional firm.
- 2.23. Your firm traded as an appointed representative of an authorised firm. You were formerly approved to perform significant influence functions at NHL. Therefore your involvement in regulated mortgage business is apparent. As such you pose a risk to the FSA's regulatory statutory objectives of reducing financial crime, maintaining confidence in the financial system and protecting consumers. Given that you are not an approved person, a prohibition order is the only sufficient way for the FSA to achieve its regulatory objectives by ensuring that you are not permitted to perform any functions related to regulated activities.
- 2.24. The FSA is not aware that there were any genuine customers who suffered loss as a result of your lack of fitness and propriety. The concerns raised in this notice as regards loss caused by the submission of false mortgage applications relate to that suffered by the Lender.

3. DECISION MAKER

- 3.1. 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.

4. IMPORTANT

- 4.1. This Final Notice is given to you in accordance with section 390 of the Act.

Publicity

- 4.2. 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.
- 4.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 4.4. For more information concerning this matter generally, you should contact Bill Sillett at the FSA (direct line: 020 7066 5880).

William Amos
Head of Department
Enforcement Division