



Financial Services Authority

FINAL NOTICE

To: **Moses Luzinda trading as Remos & Co**
FRN: **304703**
Individual ref: **MXL01493**
Address: Berkeley House
18-24 High Street
Edgware
Middlesex
HA8 7RP

Dated: **8 January 2009**

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, Moses Luzinda, from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm and about the cancellation of your Part IV permission.

1. THE ACTION

- 1.1. The FSA gave you a Decision Notice on 8 January 2009 ("the Decision Notice"), which notified you that the FSA had decided to make a prohibition order against you to prevent you from carrying out any function in relation to any regulated activity carried out by any authorised person, exempt person or exempt professional firm

(“the Prohibition Order”) pursuant to section 56 of the Financial Services and Markets Act 2000 (the “Act”) and to cancel your Part IV permission pursuant to section 45 of the Act.

- 1.2. You agreed that you would 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 out by an authorised person, exempt person or exempt professional firm and has cancelled your Part IV permission pursuant to section 45 of the Act. The Prohibition Order and the cancellation of your Part IV permission take effect from 8 January 2009.

2. REASONS FOR THE ACTION

- 2.1. You were knowingly involved in the submission of mortgage applications to lenders which were based on false and misleading information, in relation to your own mortgage application and also mortgage applications for customers of Remos and Co. As such, you have failed to meet minimum regulatory requirements in terms of honesty and integrity.
- 2.2. The FSA has therefore 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.
- 2.3. You also failed to comply fully, without reasonable excuse, with the FSA’s statutory requests for mortgage client files by giving two contradictory excuses. On one occasion, you said that the files were stored at another location. On another occasion, you said that you had recently converted your office to a paperless environment, which entailed the conversion into electronic format and subsequent destruction of all hard-copy client files; your computer systems then crashed during an office move and as a result all of your client file records were lost.

- 2.4. You pose a risk to consumers, and to lenders and, therefore, to confidence in the financial system. It is also appropriate for action to be taken against you in support of the FSA's financial crime objective.

3. RELEVANT STATUTORY PROVISIONS

- 3.1. The FSA's statutory objectives, set out in Section 2(2) of the Act, include the protection of consumers, market confidence and helping to reduce financial crime.

Prohibition

- 3.2. The FSA is authorised pursuant to section 56(1) of the Act to prohibit an individual from performing functions in relation to regulated activities where it appears to the FSA that the individual is not a fit and proper person to perform such functions.

Cancellation of Part IV permission

- 3.3. Section 41 and Schedule 6 of the Act set out the Threshold Conditions which are conditions that the FSA must ensure a firm will satisfy, and continue to satisfy, in relation to regulated activities for which it has permission.
- 3.4. Paragraph 5 of Schedule 6 to the Act states that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances including (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently (Threshold Condition 5: Suitability).
- 3.5. The FSA is authorised by sections 45(1) & (2) of the Act to cancel an authorised person's Part IV permission where it appears that an authorised person is failing, or likely to fail, to satisfy the Threshold Conditions or it is desirable to exercise that power in order to protect the interests of consumers or potential consumers.

4. RELEVANT REGULATORY GUIDANCE AND OTHER PROVISIONS

- 4.1. In deciding to take the action described above, the FSA has had regard to the guidance published in the FSA Handbook and its relevant published policies. The relevant considerations in relation to the proposed action are set out below.

Although the references in this notice are to the FSA's Enforcement Guide ("EG"), the FSA has had regard to the appropriate provisions of the FSA's Enforcement Manual ("ENF"), which applied during the relevant period in which the misconduct occurred.

Prohibition

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

- 4.2. The FSA will consider making a prohibition order where it appears that an individual is not fit and proper to carry out functions in relation to regulated activities carried on by a firm. The FSA may exercise these powers where it considers that, to achieve any of its statutory objectives, it is necessary to prevent an individual from carrying out any function in relation to regulated activities. The FSA policy in relation to the decision to make a prohibition order is set out in Chapter 9 of EG.
- 4.3. EG 9.4 sets out the general scope of the FSA's 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 which he poses to consumers or the market generally.
- 4.4. EG 9.17 to 9.18 provides guidance on the FSA's exercise of its power to make a prohibition order against an individual who is not an approved or exempt person. The FSA will consider the severity of the risk posed by the individual and may prohibit the individual where it considers this is appropriate to achieve one or more of its regulatory objectives. When considering whether to exercise its power to make a prohibition order against such an individual, the FSA will consider all the relevant circumstances of the case, which may include but are not limited to the factors set out in EG 9.9.

4.5. EG 9.9 provides that when deciding whether to make a prohibition order the FSA will consider all the relevant circumstances of the case, which may include (but are not limited to):

- (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing fitness and propriety are set out in FIT 2.1 (Honesty, integrity and reputation), FIT2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
- (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.

Fit and Proper Test for Approved Persons

4.6. The section 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.

4.7. 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 an individual in accordance with EG 9.9.

4.8. In determining a person’s honesty, integrity and reputation, FIT 2.1.1G provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G including:

- (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)).

Cancellation

FSA's policy for exercising its power to cancel Part IV permission

- 4.9. The FSA's policy for exercising its power to cancel a Part IV permission is set out in EG. The main considerations in relation to cancellation are set out in EG 8.13(1). This provides that the FSA will consider cancelling an authorised person's Part IV permission where the FSA has very serious concerns about a firm, or the way its business is or has been conducted.

Guidance concerning Threshold Condition 5: Suitability (Paragraph 5, Schedule 6 to the Act)

- 4.10. COND 2.5.1D states that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances including (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently.
- 4.11. COND 2.5.2G(1) provides that Threshold Condition 5 requires the firm to satisfy the FSA that it is "fit and proper" to have Part IV permission having regard to all the circumstances, including its connections with other persons, the range and nature of its regulated activities and the overall need to be satisfied that its affairs are conducted soundly and prudently.
- 4.12. COND 2.5.4G(2) provides that when determining whether the firm satisfies Threshold Condition 5, relevant matters include whether a firm conducts its business with integrity and in compliance with proper standards.
- 4.13. COND 2.5.6G provides guidance on the matters that are relevant to determining whether a firm satisfies Threshold Condition 5 in respect of it conducting its business with integrity and in compliance with proper standards. Such matters include whether the firm has been open and co-operative in all its dealings with the

FSA and is ready, willing and organised to comply with the requirements and standards under the regulatory system (COND 2.5.6G(1)); and whether the firm has contravened, or is connected with any person who has contravened, any provision of the Act or the regulatory system (COND 2.5.6G(4)).

5. FACTS AND MATTERS RELIED ON

Background

- 5.1. You are the authorised person. You are a sole trader, trading as Remos & Co. You operated as a mortgage broker in the north London area and were the only adviser. You also operate as an accountant.
- 5.2. You became authorised by the FSA on 31 October 2004 to carry on the following regulated activities:
 - (1) agreeing to carry on a regulated activity;
 - (2) arranging regulated mortgage contracts; and
 - (3) making arrangements with a view to regulated mortgage contracts.
- 5.3. On 14 January 2005, you were granted permission to carry on the following additional regulated activities in relation to non-investment insurance contracts (this permission was withdrawn on 1 August 2008):
 - (1) arranging (bringing about) deals in investments; and
 - (2) making arrangements with a view to transactions in investments.
- 5.4. The FSA received information, on 9 August 2007, which suggested that you had submitted mortgage applications based on false and misleading information. The FSA reviewed a sample of mortgage applications submitted by you to lenders, including your own mortgage application.
- 5.5. On 19 August 2008, you agreed to vary your Part IV permission on a voluntary basis such that you would cease conducting regulated activities pending the outcome of the FSA's investigation.

Your mortgage application

- 5.6. In May 2007, you applied for a mortgage through Remos and Co. You applied for a joint remortgage with a loan amount of £207,999 with another individual. In your application, you declared your current income to be £87,800 and the second mortgage applicant's current income to be £79,500. You acted as accountant for the second applicant.
- 5.7. According to HMRC's records, your declared income for tax purposes was £14,169 in 2005/06 and £9,501 in 2006/07, and the income of the second applicant was £3,174 in 2005/06 and £3,123 in 2006/07.
- 5.8. The FSA has concluded that you knowingly submitted a mortgage application to a lender which contained false income details for you and the second mortgage applicant. Given the discrepancy between both of the incomes declared on the application form and what was declared to HMRC, you must have known that there was no prospect of you and the second applicant achieving these levels of income.

Other mortgage applications

- 5.9. You submitted mortgage applications to two different lenders for the same client in November 2006 and February 2007. In the first application, for a residential mortgage with a loan amount of £218,500, made in November 2006, the individual applicant was said to be self-employed as a consultant (with an income of: £31,018 for year end 31 May 2005; and £42,702 for year end 31 May 2006) and also earning additional income (of £23,000 per annum) as an accounts manager on a PAYE basis during 2005 and 2006. On the mortgage client file, there was an accountant's report made by Remos & Co in support of the declaration about the self-employed income. This application was cancelled.
- 5.10. In the second application, for a residential mortgage with the loan initially being for £217,000, made to a different lender in February 2007, the individual was declared to be self-employed in a cleaning business (with an income of: £64,489 for 2005; and £65,028 for 2006) and with no additional PAYE income during 2005 and 2006. This application was revised and the mortgage completed with a loan amount of £184,500.

- 5.11. In two further mortgage applications, submitted to different lenders, for another of your clients, we found other significant discrepancies. In the first mortgage application, for a residential remortgage with a loan amount of £145,000, in March 2007 the customer was said to be a self-employed IT consultant with income of £35,800 in 2005 and £37,055 in 2006. In the second application in June 2007, for a residential mortgage with a loan amount of £274,500, made to a different lender, the same customer declared income for the same business of £85,072 in 2005 and £85,766 in 2006. Both of these mortgages were completed.
- 5.12. As well as providing lenders with false and misleading information, you may have helped customers to obtain mortgages that they could not afford to repay.
- 5.13. When the FSA interviewed you on 10 September 2008, and it was put to you that you had acted as the mortgage broker and the accountant, you could provide no satisfactory explanation for these discrepancies.

Failure to co-operate with the FSA

- 5.14. When the FSA visited your office on 28 July 2008 and compelled you to provide a sample of client files, you said that the requested client files were stored off-site at your home address and a former business address in Cricklewood. The FSA arranged for a courier to collect the requested files from your office on 29 July 2008 and to deliver them to the FSA. You did not provide the requested files on 29 July 2008 and you did not comply fully with subsequent compelled requests dated 31 July 2008 and 8 August 2008 to provide all of the specified client files.
- 5.15. Having previously stated that your client files were stored off-site, you said in a letter to the FSA dated 9 August 2008 and in an interview on 10 September 2008 that, after converting your office to a paper-free environment, which involved destroying all hard-copy client files after converting them to an electronic format, your computer systems crashed during a recent office move, which meant that all of your client file records were lost. This explanation contradicted your previous claims that the files were stored off-site.
- 5.16. You only provided nine of the fifteen client files requested by the FSA, all of which were incomplete. You therefore failed to comply with the FSA's statutory document

request. As set out above, the two explanations given by you for failing to provide the requested files were contradictory.

6. ANALYSIS OF SANCTIONS

- 6.1. The FSA has considered whether you are a fit and proper person. In assessing your honesty, integrity and reputation, the FSA had regard to your knowing involvement in the submission of false information on mortgage application forms and submitting applications based on information which you knew to be false to lenders. You also failed to fully comply with a compelled document request for client files from the FSA and provided contradictory explanations to the FSA as to why this was the case. As such, you have failed to act with honesty and integrity.
- 6.2. The FSA considers that you pose a serious risk to consumers, lenders and to confidence in the financial system, and also that action should be taken in support of the FSA's financial crime objective.
- 6.3. These facts and matters have also led the FSA to conclude that you are not a fit and proper person. The FSA, therefore, considers that it is necessary to prohibit you, pursuant to section 56 of the Act, from performing any functions in relation to any regulated activities carried out by any authorised person, exempt person or exempt professional firm.
- 6.4. The facts and matters described above have led the FSA to conclude that you are failing, and are likely to continue to fail to satisfy Threshold Condition 5 (Suitability) of the Threshold Conditions, set out in Schedule 6 to the Act, as you are not a fit and proper person, due to your failure to act with honesty and integrity, in compliance with proper standards. Accordingly, the FSA considers it appropriate to cancel your Part IV permission.

7. DECISION MAKERS

- 7.1. 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.

8. IMPORTANT

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

Publicity

8.2. 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.

8.3. 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 Chris Walmsley (direct line: 020 7066 5894) of the Enforcement Division of the FSA.

Jonathan Phelan
Head of Department
FSA Enforcement Division