
FINAL NOTICE

To: **Grace Olufunmiola Olatunji**

Date: **6 April 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, Grace Olufunmiola Olatunji, 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 on 19 February 2009 (“the Decision Notice”) which notified you that it 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 (the “Act”)

- 1.2. You have not referred 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. 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 functions in relations 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 7 April 2009.

2. REASONS FOR THE ORDER

- 2.1. On the basis of the facts and matters and conclusions described in the Warning Notice (“the Warning Notice”) and in the Decision Notice, the FSA concluded that you pose a risk to lenders and consumers and, therefore, to confidence in the financial system. Action should be taken against you in support of the FSA’s financial crime objectives because you failed to meet minimum regulatory standards in terms of honesty and integrity, which includes an obligation to comply with the requirements and standards of the regulatory systems.
- 2.2. In summary, you knowingly entered false information on your own mortgage application forms, and submitted mortgage applications to lenders based on information that you knew to be false whilst you were working as a mortgage consultant for Herald Finance Ltd (“Herald”).

3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

- 3.1. The FSA’s regulatory objectives, which are set out in section 2(2) of the Act, include the maintenance of market confidence, the protection of consumers and the reduction of financial crime.

- 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, 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.

The FSA's approach to exercising its power to make a prohibition order and/or withdraw a person's approval

- 3.3. The FSA's approach to exercising its powers to make prohibition orders and/or withdraw approvals is set out in Chapter 9 of the Enforcement Guide ("EG").
- 3.4. 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 she may perform.
- 3.5. EG 9.4 sets out the general scope of the FSA's power 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. 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.
- 3.6. EG 9.17 to 9.18 provide guidance on the FSA's exercise of its power to make a prohibition order against an individual who is not an approved 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.

3.7. 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 the fitness and propriety are set out in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (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 risk posed by the individual to consumers and to confidence in the financial system; and
- (5) the previous disciplinary record and general compliance history of the individual.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. You were working as a self employed mortgage advisor at Herald since 1 February 2005. You were not, nor have you been at any time in the past, an employee or a director of Herald or the holder of a controlled function at Herald or any other FSA regulated firm.
- 4.2. During the course of an investigation by the FSA into Herald, the FSA found that you submitted two mortgages applications (“the Applications”) to lenders. These applications were submitted on Property 1 on 25 January 2006 and on Property 2 on 3 February 2006.

- (1) On your mortgage application for Property 1 you declared your basic income to be £42,000, with a regular/guaranteed commission of £10,650 and investment income to be £7,358. The total income you declared was £60,008. You completed the application, declaring yourself to be an employee of Herald, and not self employed.
 - (2) On your mortgage application for Property 2 you declared your basic income to be £42,000, with regular commission of £10,650; you also stated your income from maintenance payments of £7,358 per annum, and your investment income to be £6,040. Your total income declared was £66,048. You completed the application declaring you to be an employee of Herald; not self employed.
- 4.3. You stated in interview that you knew the difference between the employed and self employed status. However, you could offer no reasonable explanation for declaring yourself to be employed, other than that you failed to understand your employment status at the time, despite signing a contract that clearly specified you are self employed.
- 4.4. At interview you were asked to account for your income declared on your mortgage applications. You stated that the basic annual income was calculated by forecasting your projected income based upon your actual income for December 2005. You later admitted that your method of calculating an annual salary based on a single month's income was not acceptable practice, particularly for a mortgage advisor.
- 4.5. You stated that the commission payment of £10,650 was comprised of both child maintenance payments, which are not commissions, as well as the commissions received upon the sale of insurance products through Herald. You also confirmed that the investment income of £7358 was not actually income at all. Rather, the figure related to the total capital sum invested.
- 4.6. When questioned about your income declaration on the mortgage application for Property 2, you stated that the additional sum of £6,040, investment income, was

income derived from room rental to foreign students. You admitted that you did not declare this income to HMRC.

- 4.7. The FSA concluded that your Applications contained false and misleading information about your earnings, and your employment status. The information about your earnings is inconsistent with both Her Majesty's Revenue and Customs ("HMRC") records for this period and the consultant contracts dated 1 February 2005 and 9 January 2006 signed by you and the principal of Herald.
- 4.8. Furthermore, you provided an unsatisfactory explanation to FSA investigators during a compelled interview on 27 May 2008 when asked about your income sources and the basis on which you completed the mortgage applications. You also failed to provide any supporting evidence of your income.
- 4.9. The information that you declared to the lenders to whom the Applications were sent was not consistent with the earnings information that you reported to HMRC.
- 4.10. The FSA has concluded that you knowingly entered false information in the Applications, and submitted those applications to lenders based on information which you knew to be false.

5. ANALYSIS OF MISCONDUCT AND SANCTION

- 5.1. The FSA considered whether you are a fit and proper person to perform any functions in relation to regulated activities. In doing so, the FSA has had regard to its regulatory requirements and relevant guidance. In assessing your honesty, integrity and reputation for the purpose of considering whether you are a fit and proper person, the FSA has had regard to your knowing involvement in the submission of your own mortgage applications, demonstrating a lack of honesty and integrity.
- 5.2. The FSA considered that you pose a serious risk to lenders, and to confidence in the financial system, and also that action should be taken in support of the FSA's financial crime objective.

- 5.3. The FSA considered it is necessary to prohibit you from performing any functions in relation to any regulated activities carried out by any authorised person, exempt person or exempt professional firm.

6. REPRESENTATIONS AND CONCLUSIONS

- 6.1. In letters dated 16 October and 7 November 2008, you made written representations to the FSA on the Warning Notice dated 12 September 2008. You argued that, for the reasons set out in your written representations, the FSA should not take the action proposed in the Warning Notice. Alternatively, in the event the FSA decided to proceed with the action, you argued that the sanctions proposed are excessive.
- 6.2. You denied deliberately entering false information on your mortgage application forms or that the applications were submitted based on information you knew to be false.
- 6.3. You accepted that errors had been made on the forms but argued that they were due to inexperience and simple mistakes rather than dishonesty or want of probity.
- 6.4. You referred to the document dated 23 December 2005 and argued that, at the time the mortgage applications were submitted, that is, 25 January 2006 and 3 February 2006, there was a basis for your assertion that your annual income, including commission of 55% (on new clients introduced to the firm on mortgage applications in excess of £180,000) would be in the region of £42,000. You did not intend the estimates of annualised income to be precise but to reflect a genuine belief that the income would be in the region of £42,000. You referred the FSA to periods of training and business development as well as extended leave for personal reasons. All of these factors contributed to your earnings being far less than projected.
- 6.5. You informed the FSA that your financial position was less promising by 18 February 2006 by which time Mr Agbalaya was pessimistic that you would achieve the targets set, unless you obtained external leads. However, at the time of submitting the mortgage application forms, you believed it to be a reasonable forecast of your earnings. You also stated that future income cannot be stated precisely and that this should not be interpreted as dishonesty.

- 6.6. You represented that you did not intend to deliberately mislead the FSA in relation to your employment status and did not appreciate the importance of the distinction from the employer's perspective.
- 6.7. You conceded you had made mistakes in completing the forms but that these were not made deliberately or dishonestly. You also asked the FSA to take account of your previous record and credibility.
- 6.8. Having considered your representations, the FSA was not satisfied that the evidence supported your representations on the Warning Notice.
- 6.9. You knew that the income declared to the lenders was based on projected rather than actual income. This should have been made clear to the lenders. It was not and you deliberately misled the lenders.
- 6.10. You knew or should have known the difference between working as a consultant and as an employee. Accordingly, the FSA found you deliberately provided false information about your employment status and income in order to secure a mortgage from two lenders.
- 6.11. Accordingly, the FSA found that you knowingly entered false information in making fraudulent mortgage applications.
- 6.12. In all the circumstances, the FSA found that the sanctions set out in this Notice are appropriate.

7. DECISION MAKER

The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

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. 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 interest of consumers.
- 7.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 8.7 For more information concerning this matter generally, you should contact Catherine Harris at the FSA (direct line: 020 7066 4872/fax: 020 7066 4873).

Georgina Philippou

Head of Department

FSA Enforcement Division

