
FINAL NOTICE

To: Raymond Wagner
Date of birth: 14 December 1942
Individual Ref No: RXW00088
Date: 4 December 2012

ACTION

1. For the reasons given in this notice, the FSA hereby imposes on Raymond Wagner:
 - i. a public censure for failing to comply with Principle 1 of the FSA's Statements of Principle for Approved Persons; and
 - ii. an order prohibiting Mr Wagner from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. This order takes effect from 4 December 2012.
2. Mr Wagner's conduct merits the imposition of a substantial financial penalty. However, as Mr Wagner provided verifiable evidence that imposing such a financial penalty would have caused him serious financial hardship, the FSA has decided to censure him publicly instead.
3. The public censure will be issued on 4 December 2012 and will take the form of this Final Notice, which will be published on the FSA's website.

SUMMARY OF REASONS

4. The FSA gave Mr Wagner a Decision Notice on 14 April 2011 which notified him that the FSA had decided to impose a financial penalty on him pursuant to section 66 of the Act, and make a prohibition order pursuant to section 56 of the Act.
5. On 12 May 2011, Mr Wagner referred the Decision Notice to the Upper Tribunal.
6. The written decision of the Upper Tribunal was published on 19 October 2012, and can be found on the Upper Tribunal's website.
7. The Upper Tribunal determined that the FSA should not impose on Mr Wagner a financial penalty (on the grounds of serious financial hardship), pursuant to section 66 of the Act; and should make a prohibition order, pursuant to section 56 of the Act, prohibiting Mr Wagner from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm, on the grounds that he is not a fit and proper person.

DEFINITIONS

8. The definitions below are used in this Final Notice:

“the Act” means the Financial Services and Markets Act 2000;

“Ambergate” means Ambergate Business Services Limited;

“the Decision Notice” means the decision notice dated 14 April 2011 (incorrectly dated 14 April 2010) given by the FSA to Mr Wagner;

“the FSA” means the Financial Services Authority;

“FIT” means the Fit and Proper test for Approved Persons part of the FSA's Handbook;

the “Prohibition Order” means the prohibition order imposed on Mr Wagner and taking effect on 4 December 2012;

“Statements of Principle” means the FSA’s Statement of Principles and Code of Practice for Approved Persons part of the FSA’s Handbook issued under section 64 of the Act; and

the “Upper Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

FACTS AND MATTERS

9. Ambergate was a mortgage broker based in Piccadilly, London, which dealt mainly with high net worth clients.
10. In July 2011, Mr Wagner amended his reference to the Upper Tribunal. He accepted the prohibition order and limited his reference to challenging whether it was appropriate to impose a financial penalty, and the level of that penalty.
11. At the hearing on 16 July 2012, Mr Wagner disputed the substantial findings set out in the Decision Notice, namely that he had been knowingly involved in mortgage fraud by (i) submitting a residential mortgage application which contained false and misleading information through Ambergate for his own benefit; and (ii) deliberately allowing false and inflated income figures to be submitted on his behalf in order to obtain four buy-to-let mortgages between May 2006 and July 2007.
12. In the light of Mr Wagner’s earlier amendment to his reference, the Upper Tribunal adjourned the hearing.
13. Following the hearing, the FSA gave further consideration to the evidence as to whether Mr Wagner had been knowingly involved in regulated mortgage fraud. This included some evidence which was not in the possession of the FSA when the matter was before the Regulatory Decisions Committee.
14. As a consequence, the FSA was satisfied that, whilst Mr Wagner recklessly allowed a regulated mortgage application which contained false and misleading details about his income to be submitted to a lender, his conduct was not deliberate and he did not deliberately mislead the lender.

Accordingly, the FSA and Mr Wagner agreed, subject to the consent of the Upper Tribunal, that the reference should be determined on this basis.

15. The Upper Tribunal considered the matter in light of the information available to it and determined the reference would fairly and justly be determined in the manner agreed between the FSA and Mr Wagner.

FAILINGS

16. As the Upper Tribunal's decision records and, as the parties agreed, whilst Mr Wagner recklessly allowed a regulated mortgage application which contained false and misleading details about his income to be submitted to a lender, his conduct was not deliberate and he did not deliberately mislead the lender.. Mr Wagner failed to check the income details on the residential mortgage application properly or at all; by disregarding the importance of this information and failing to consider the risks that the application was fraudulent, his conduct was reckless.
17. Mr Wagner recklessly allowed four non-regulated, buy-to-let mortgage applications to be submitted to lenders for his own benefit which contained inaccurate and misleading information. His conduct was not deliberate and he did not deliberately mislead the lenders.
18. Mr Wagner also failed properly to supervise two employees at Ambergate which resulted in both individuals submitting mortgage applications through Ambergate containing false information. Mr Wagner put only minimal systems and controls in place to monitor mortgage applications (e.g. by way of file-checks). These systems and controls were inadequate and Ambergate was therefore at risk of being used for the purposes of financial crime.
19. Mr Wagner did not dispute the FSA's findings that his conduct, set out in paragraph 16, breached Statement of Principle 1 (integrity); and his conduct, set out in paragraphs 17 and 18 breached FIT 2.1 (honesty, integrity and reputation).

PROHIBITION

20. The Upper Tribunal directed the FSA to make an order prohibiting Mr Wagner from performing any function in relation to any regulated activity carried on by any authorised or exempt person, or any exempt professional firm.

SANCTION

21. The FSA accepted that Mr Wagner had demonstrated that he was suffering from serious financial hardship. The Upper Tribunal directed the FSA not to impose a financial penalty on Mr Wagner.

PROCEDURAL MATTERS

22. The Final Notice is given to Mr Wagner in accordance with section 390 of the Act and at the direction of the Tribunal.

Publicity

23. Sections 391(4), (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 Mr Wagner or prejudicial to the interests of the consumers.
24. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

25. For more information concerning this matter generally, contact Paul Howick (direct line: 020 7066 7954 or email paul.howick@fsa.gov.uk) of the Enforcement and Financial Crime Division of the FSA.

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Bill Sillett

Head of Department

FSA Enforcement and Financial Crime Division