
FINAL NOTICE

To: **Richard Kennedy**
Date of Birth: **31 July 1962**
Reference: **RXK01251**
Dated: **14 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 the imposition of a financial penalty, the withdrawal of your individual approval, and an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm:

1. THE ACTION

- 1.1. The FSA gave you a Decision Notice on 9 December 2008 ("the Decision Notice"), which notified you that, for the reasons listed below, it had decided to:
- (1) impose on you, Mr Richard Kennedy, director of Dynamic Mortgage Brokers Limited ("Dynamic"), a financial penalty of £101,106 for failing to comply with Statement of Principle 1 of the FSA's Statements of Principle for Approved Persons ("APER") pursuant to section 66 of the Financial Services and Markets Act 2000 (the "Act");
 - (2) withdraw the approval given to you to perform the controlled functions of CF1 Director and CF8 Apportionment and Oversight pursuant to section 63 of the Act; and

- (3) make a prohibition 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, exempt person or exempt professional firm (the “Prohibition Order”) because you are not a fit and proper person.

1.2. The financial penalty consists of the following elements:

- (1) a punitive penalty element of £100,000; and
- (2) disgorgement of financial benefit of £1,106 arising from the fees paid to you on completion of two regulated mortgage contracts which you arranged in the performance of the controlled function of CF1 (Director) at Dynamic which were based on false information.

1.3. You did not refer the matter to the Financial Services and Markets Tribunal within 28 days of the date on which the Decision Notice was given to you.

1.4. Accordingly, the FSA has today imposed a financial penalty of £101,106 on you and 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. The Prohibition Order takes effect from 14 January 2009.

2. REASONS FOR THE ACTION

2.1. By a Decision Notice dated 9 December 2008, the FSA concluded that you obtained a mortgage using false and misleading information about your earnings and employment, and that you were also knowingly involved in the submission of mortgage applications for at least four customers that were based on false and misleading information about them. Two of the four mortgage applications completed.

2.2. You are one of two directors of Dynamic and the only approved person at Dynamic. In summary, you submitted an application in your own name, using the services of a third party intermediary, which contained false information about your own employment and earnings. Payslips accompanying the application were found to contain false information. You also submitted, through Dynamic, at least four mortgage applications to lenders on behalf of Dynamic’s customers which contained and were supported by false information about the customers’ employment and income.

2.3. You were aware that for four mortgage applications in particular, the customers’ applications were based on false information because:

- (1) two applicants stated that their work address was your home address;
- (2) one applicant gave your home address as his home address;
- (3) one applicant stated that they worked for a company run by you which had ceased trading; and

- (4) one applicant provided conflicting income verification information from two accountants, and you saw both sets of accounting information in your role as mortgage adviser.

Statutory provisions, regulatory guidance and policy

- 2.4. The relevant statutory provisions and regulatory requirements are attached at Annex A.

Facts and matters relied upon in the Warning and Decision notices

- 2.5. You are one of two directors of Dynamic, which is a small mortgage broker operating in East London. You were the only approved person at Dynamic. With effect from 31 October 2004, you were approved to perform the controlled functions of CF1 (Director) and CF8 (Apportionment and Oversight). You were also the only mortgage adviser at Dynamic. Dynamic varied its permission on a voluntary basis to cease conducting regulated activities on 29 July 2008.

Your personal mortgage application

- 2.6. The FSA reviewed your own mortgage application (the “Application”) and an application for a further advance under the same mortgage (the “Advance Application”).
- 2.7. The employment and income information that you provided to the lender in the Advance Application was not consistent with information that you filed at Companies House. According to Companies House, the company that you purportedly worked for (“Company A”) had ceased trading at the time of the Advance Application as you had applied to get the company struck off the register three months before applying for the further advance.
- 2.8. You knowingly entered false information on the Advance Application and submitted it to the lender to obtain the further advance.
- 2.9. Furthermore, according to records held by the FSA, Companies House and on the electoral roll, you were not living at this property at the time of the Advance Application and have not lived there since then. However you did not inform the lender that you were no longer occupying the property. The mortgage is still being paid on a residential rather than a buy-to-let basis.

Customers’ mortgage applications

- 2.10. You submitted mortgage applications to lenders for at least four customers which contained false information about the applicants’ employment and income details. These mortgage applications were also supported by false documents (e.g. false pay slips and false P60 forms.)
- 2.11. The employers’ address declared on two of the mortgage applications was your home address. One of these applicants declared that she worked for Company A and stated that she had worked for Company A from a date prior to its incorporation. The

company was not trading at the time of her application; the application was submitted two months after you applied to get Company A struck off the register.

- 2.12. In a third application, the applicant declared that he worked for a large multi-national engineering company (“Company B”) and lived at your home address. However, in his home insurance certificate, which was also on the mortgage application file, the applicant declared that he was a market trader living at a different address.
- 2.13. In the fourth case, the applicant submitted mortgage applications to two different lenders which contained contradictory information about the nature of the applicant’s business and the income received from it. You certified the first set of accounts and, as you are the only adviser at Dynamic, we have concluded that you were also aware of the second set of accounting information on your file. You used these conflicting sets of information to arrange a mortgage for the customer.
- 2.14. You were knowingly involved in the submission of these four mortgage applications.

Analysis of the sanctions

Deterrence: DEPP 6.5.2G (1)

- 2.15. The principal purpose of the imposition of this penalty is to promote high standards of regulatory conduct by deterring approved persons from acting in this way.
- 2.16. In determining the appropriate level of penalty, the FSA has had regard to your conduct in the performance of your controlled function. It has taken into account the need to ensure those who are approved persons act with integrity and do not abuse their positions in the financial services industry and obtain mortgages on a false basis. The FSA considers that a significant penalty should be imposed to demonstrate to you and others the seriousness with which the FSA regards such behaviour.
- 2.17. In determining this penalty, the FSA has also had regard to the FSA's financial crime objectives in ensuring that behaviour by approved persons, which undermines confidence in the financial system and encourages customers to apply for mortgages which they cannot afford, is not tolerated.

The nature, seriousness and impact of the breach: DEPP 6.5.2G(2)

- 2.18. You have demonstrated your lack of integrity by knowingly submitting fraudulent mortgage applications to lenders for customers. The FSA considers that you pose a serious risk to customers and to confidence in the financial system.

The extent to which the breach was deliberate or reckless: DEPP 6.5.2G(3)

- 2.19. The FSA considers that your actions were deliberate and taken by you without concern for the risk posed to customers and lenders. In this regard they amounted to deliberate misconduct. Your actions were below the standard of behaviour that could reasonably be expected of an approved person.

Whether the person on whom the penalty is to be imposed is an individual – DEPP 6.5.2G (4)

- 2.20. The FSA recognises that the financial penalty imposed on you is likely to have a significant impact on you as an individual but it is considered to be proportionate in relation to the seriousness of the misconduct.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G (5)

- 2.21. No representations were received from you about the level of the penalty. See paragraph 2.27 below.

The amount of benefit gained or loss avoided: DEPP 6.5.2G (6)

- 2.22. The FSA imposed a penalty which takes account of the benefit you have received from the breach.

Conduct following the breach: DEPP 6.5.2G (8)

- 2.23. You agreed to suspend conducting regulated activities on a voluntary basis.

- 2.24. The FSA has not previously taken any disciplinary action against you.

Disciplinary record and compliance history: DEPP 6.5.2G (9)

- 2.25. The FSA seeks to ensure consistency when it determines the appropriate level of penalty. The FSA has taken into account previous decisions made in relation to similar misconduct by approved persons.

Fit and proper test

- 2.26. Based on the conduct summarised above and your actions in submitting your own false mortgage application, you failed to meet the minimum regulatory standards for approved persons in respect of honesty and integrity, and you are not fit and proper to perform any functions in relation to any regulated activities carried on by any authorised person, exempt person or exempt professional firm.

Representations and findings

- 2.27. In a letter of 29 September 2008 to the FSA, you said that you would be making oral representations in response to the FSA's warning notice and would be attending with your legal representatives and others. However, no-one attended.

- 2.28. After waiting an appropriate period, the FSA considered the supplementary evidence received from Her Majesty's Revenue and Customs concerning your income. This showed that your income for the tax year 2004/5 was £209.10 and that there was no data for the subsequent two tax years. On the basis of this evidence, the payslips submitted with your own mortgage application were clearly false.

Conclusion

- 2.29. The FSA has concluded that you provided false and misleading information about customers to lenders to obtain mortgages, in breach of Statement of Principle 1. You submitted the customers' mortgage applications to lenders through Dynamic whilst you were an approved person at Dynamic.
- 2.30. The FSA considered it necessary and proportionate to impose a financial penalty of £100,000 upon you for this misconduct. This level of financial penalty is also aimed at promoting high standards of regulatory conduct by approved persons and to deter other approved persons from acting in this way. A further financial penalty of £1,106 was imposed as disgorgement of benefit, based on our estimate of the procurement fees obtained by you for the two mortgage applications for your customers that completed.
- 2.31. Furthermore, you submitted an application on your own behalf containing false information. The FSA has concluded that you are not a fit and proper person in terms of a lack of honesty and integrity. The Prohibition Order is therefore necessary and proportionate. Taking this action against you is consistent with the FSA's policy of seeking to prevent individuals who lack honesty and integrity from working in authorised firms.

3. DECISION MAKERS

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

4. IMPORTANT

- 4.1. This Final Notice is given to you in accordance with section 390(1) of the Act.

Manner of and time for payment

- 4.2. The financial penalty must be paid in full by you to the FSA by no later than 28 January 2009, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 4.3. If all or any of the financial penalty is outstanding on 28 January 2009, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

- 4.4. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final 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.

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

FSA contacts

- 4.6. For more information concerning this matter generally, you should contact Chris Walmsley of the Enforcement Division of the FSA (direct line: 020 7066 5894/ fax 020 7066 5895).

Jonathan Phelan
Head of Department
FSA Enforcement Division

Annex A

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.

Pursuant to section 63 of the Act, the FSA has the power to withdraw the approval given to you under section 59 of the Act - to perform the controlled functions set out in section 2.5 above – if it considers that you are not a fit and proper person to perform them.

Further, 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, any regulated activity falling within a specified description or all regulated activities.

Pursuant to section 66 of the Act, where it appears to the FSA that an approved person is guilty of misconduct and it is appropriate to take action against him, it has the power, inter alia, to impose on that person a financial penalty of such amount as it considers appropriate.

Regulatory requirements

The Statements of Principle and Code of Practice for Approved Persons (“APER”) are made pursuant to section 64 of the Act. They are general statements of the fundamental obligations of approved persons under the regulatory system 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.

On the facts of this case, the FSA considers the most relevant Statement of Principle to be Principle 1. Statement of Principle 1 requires that an approved person must act with integrity in carrying out his controlled function.

Fit and Proper Test for Approved Persons

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.

FIT 1.3 provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. Among the most important considerations will be the person's honesty, integrity and reputation.

In determining a person's honesty, integrity and reputation, FIT 2.1 states that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. This guidance includes:

- (1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3G(5));

- (2) whether the person is or has been subject of any proceedings of a disciplinary or criminal nature or has been notified of any potential proceedings or any investigation which might lead to those proceedings (FIT 2.1.3(4)G); and
- (3) 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 2.1.3 G(13)).

FSA's policy for exercising its power to make a prohibition order and withdraw a person's approval

The FSA's approach to exercising its powers to make prohibition orders is set out at Chapter 9 of the Enforcement Guide ("EG").

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 he may perform.

EG 9.4 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. EG 9.5 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.

In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provide guidance. In particular, EG 9.8 states that in deciding whether to make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing other disciplinary sanctions.

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) 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 are set out in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
- (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 which the individual poses to consumers and to confidence in the financial system.

EG 9.10 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.

EG 9.12 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:

- (1) severe acts of dishonesty, for example those which may have resulted in financial crime; and
- (2) serious breaches of the Statements of Principle and Code of Practice for Approved Persons, such as providing misleading information to clients, consumers or third parties.

The Statements of Principle and Code of Practice for Approved Persons

APER 3.1.3G 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. APER 3.1.4(1)G 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.

APER 4.1.2(E) sets out a number of examples of behaviour which the FSA considers constitute a failure to comply with Statement of Principle 1. APER 4.1.3E 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 APER 4.1.4E 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)).