
FINAL NOTICE

To: **William Rose (trading as Rose and Partners)**

Of: **The Starlings
102 Eastmoor Park
Harpenden
Hertfordshire
AL5 1BP**

Dated: **28 February 2007**

TAKE NOTICE: The Financial Services Authority (the "FSA") of 25 The North Colonnade, Canary Wharf, London E14 5HS gives you final notice about a decision to cancel the permission granted to you, William Rose, trading as Rose and Partners, to carry on regulated activities.

1. ACTION

The FSA gave you a Decision Notice on 20 September 2006 (the "Decision Notice") which notified you that for the reasons given below and pursuant to section 45 of the Financial Services and Markets Act 2000 (the "Act"), the FSA had decided to cancel the permission granted to you pursuant to Part IV of the Act ("your Part IV permission").

2. REASONS FOR ACTION

2.1 On the basis of the facts and matters and conclusions described in the Warning Notice issued to you on 25 May 2006 (the "Warning Notice"), and in the Decision Notice, it appears to the FSA that you are failing to satisfy the threshold conditions set out in Schedule 6 to the Act (the "threshold conditions") in that, the FSA is not satisfied that you are a fit and proper person and that you are conducting your business soundly and prudently and in compliance with proper standards. You have failed to comply with

Principle 6 (Customers' interests) of the Principles for Businesses, and Threshold Condition 5 (Suitability).

- 2.2 Specifically, you have failed to comply with an Award made by the Financial Ombudsman Service (the "FOS") on 20 April 2005 in the favour of a complainant (the "Award").
- 2.3 On 17 October 2006, you exercised your right to make a reference to the Financial Services and Markets Tribunal (the "Tribunal"), about the matters contained in the Decision Notice, an extract from which is attached to, and forms part of, this Notice. You withdrew your reference to the Tribunal on 27 February 2007.
- 2.4 Accordingly, the FSA has today cancelled your Part IV permission.

3. IMPORTANT

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

Publicity

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

FSA Contact

- 3.4 For more information concerning this matter generally, you should contact Ed Birrell at the FSA (direct line: 020 7066 1882/fax: 020 7066 1883).

John Kirby
FSA Enforcement Division

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**EXTRACT FROM THE DECISION NOTICE ISSUED ON 20 SEPTEMBER 2006 TO
WILLIAM ROSE TRADING AS ROSE AND PARTNERS**

"Facts and matters relied on

- 2.12 You became authorised by the FSA on 1 December 2001 to carry on designated investment business. You were permitted to carry on mortgage advisory business from 31 October 2004.
- 2.13 On 20 April 2005 the FOS made an Award in the favour of a complainant. You refused to accept the Award and failed to comply with it.
- 2.14 On 16 November 2005 you submitted an application, out of time, seeking permission to apply for Judicial Review of the FOS Award. By an Order of the High Court dated 25 January 2006, permission was refused on the grounds that the application was made far too late and the FOS was entitled to conclude as they did. A Notice of Renewal of claim for permission to apply for Judicial Review was submitted on 31 January 2006 and this too was refused by an Order of the High Court on 10 March 2006.
- 2.15 Despite the Orders of the High Court referred to above, you maintain your refusal to accept the FOS decision and have been unwilling to pay the Award to the complainant. You have informed the FSA that, with some reluctance, you consider you must comply with the Award and have instructed an actuary to calculate the amount due to the complainant.
- 2.16 Payment of the FOS Award remains outstanding.
- 2.17 You have also previously demonstrated an unwillingness to comply with the regulatory regime by your failure to pay FSA fees, on two occasions, on a timely basis.

Representations

- 2.18 You informed the FSA of the background to your dispute with the complainant and reiterated your continued refusal to accept the validity of the Award made by the FOS.
- 2.19 However, in spite of this, you said you had instructed an actuary to prepare an assessment of the Award which you anticipated receiving by the end of September 2006. You informed the FSA that you would obtain written confirmation of the timing of the preparation of the assessment from the actuary and would provide this to the FSA.
- 2.20 You accepted there had been significant delays in the matter progressing to the current stage. You stated your view that the cause of the delays were in large part due to the failure of the FOS and the FSA to advise you of your legal rights, in particular of your right to seek a Judicial Review of the FOS's decision following the

notification of the Award. You said that this had resulted in you not being able to make your application for Judicial Review within the requisite time limits.

- 2.21 As to the delays related to the assessment of the Award, you represented that the whole process had taken much longer to finalise than you had expected. In a letter dated 29 March 2006 your representative informed the FSA that you anticipated the assessment would be completed within another 4-6 weeks. You informed the FSA that, at the time the letter was written, you believed that this was the time which would be taken to prepare the assessment. In fact it has taken much longer. You told the FSA that this was in large part because the actuary had experienced considerable delays in obtaining information from the pension provider. Your representative said that, with the benefit of hindsight, he could probably have tried to push the actuary to obtain a speedier result.
- 2.22 You confirmed to the FSA that you had been informed by the actuary that he now had all the information he needed to prepare his assessment and you were therefore confident that the assessment would be completed by the end of September 2006.
- 2.23 Once the assessment is received by you, you stated you would then consider how best to deal with it. Although you confirmed you had every intention to settle the amount assessed, you said you may have to review your finances, depending on the amount, with a view to possibly refinancing your assets.
- 2.24 You gave as your view that the FSA had pre-determined this matter and it was for that reason these proceedings were being taken. You stated you had always indicated you would settle the Award but considered that the FSA believed you would not comply with the actuary's assessment and would also engage in further regulatory default in the future. You stated that it was not the FSA's role to try to predict the future conduct of those parties it regulates.

Findings

- 2.25 The Award made by the FOS against you is final and legally binding on you. The FSA has no power, nor can it see any basis to review the Award.
- 2.26 The FSA finds there has been significant delay by you in settling the Award due to the complainant. Your refusal to accept the correctness of the Award is noted and is a factor in your failure to deal with this matter expeditiously. It is unlikely that any difficulties in obtaining information from the pension provider account for anything more than a short part of the overall time taken since the Award was made. In the light of the delay and in the light of the representations, the FSA finds that you remain unwilling to comply with the Award.
- 2.27 The FSA has reviewed a further communication, dated 15 September 2006 from the actuary appointed by you to prepare the loss assessment. The FSA notes that the actuary advises that his report will be sent to you before the end of September 2006.
- 2.28 The FSA does not accept that it (or the FOS) is obliged to advise firms and/or individuals of their legal rights upon the issue of an Award by FOS against them and cannot see any basis for any such obligation. The FSA notes that you did seek legal advice on your position, having apparently chosen not to do so previously. In any

event, the FSA notes that the High Court's initial decision to refuse permission to apply for Judicial Review included the comment "...the Defendant was entitled to conclude as he did".

- 2.29 The FSA further rejects any suggestion that the FSA has pre-determined the decision in this matter. The FSA has complied with its responsibilities and obligations under the Act and followed the appropriate procedure as set out in the Decision Making Manual. The regulatory supervision of firms and individuals (and the wording of the Act, in particular S41(2)) envisages the FSA making an assessment as to the likely conduct by parties in the future. The FSA finds that your past conduct including your attitude and approach to the handling of the assessment of the FOS Award, indicates that future regulatory default is likely.

Conclusions

- 2.30 The facts and matters described above lead the FSA, having regard to its regulatory objectives which include market confidence and the protection of consumers, to the following conclusions:

- you have breached DISP 3.9.14 R, a requirement imposed by the FSA, and have failed to remedy that breach notwithstanding the FSA's reasonable requests for you to do so;
- despite informing the FSA that you have recently taken steps to comply with the Award you have continued to reject the FOS's decision in respect of the Award and, given your past inaction, the FSA is not satisfied that you will, even now, comply promptly or at all with the Award;
- by failing to comply with the Award you have also breached Principle 6 (Customers' interests) of the FSA's Principles for Businesses in that you have not paid due regard to the interests of a customer or treated the customer fairly;
- by these failures, you are failing to conduct your business with integrity and in compliance with proper standards, and therefore fail to satisfy Threshold Condition 5: Suitability. These failures present a risk to the FSA's consumer protection objective. Appropriate action is necessary to help provide protection to consumers and to help maintain consumer confidence in the FOS."

END OF EXTRACT