
FINAL NOTICE

To: Stephen Neil Sanders
Individual reference: SNS00002
Date 29 July 2009

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about a decision to prohibit you, Stephen Sanders, from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

1. ACTION

- 1.1 The FSA gave you a Decision Notice on 23 July 2009 which notified you that the FSA decided to take the following action:
- (1) to withdraw the approval granted to you, pursuant to section 63 of the Financial Services and Markets Act 2000 (“the Act”) to perform controlled functions; and
 - (2) to make an order, pursuant to section 56 of the Act, prohibiting you from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm (“the Prohibition Order”).
- 1.2 You confirmed on 10 July 2009 that you will not be referring the matter to the Financial Services and Markets Tribunal.

1.3 Accordingly, for reasons set out below, the FSA has today withdrawn your approval and made a Prohibition Order against you, which has effect from today.

2. REASONS FOR THE ACTION

2.1 The FSA has concluded, on the basis of the facts and matters described below, that you are not fit and proper to carry out any functions in relation to regulated activities carried on by authorised or exempt persons and that you should be prohibited from doing so.

2.2 In the opinion of the FSA you are not fit and proper because you have failed to act with honesty and integrity. In particular, you have:

- (1) submitted at least three mortgage applications on behalf of customers, which you knew contained false and misleading information regarding the customers' level of income;
- (2) withheld information from a prospective employer that you were the subject of an investigation and subsequently suspended by a mortgage intermediary; and
- (3) failed to disclose information to the FSA about an ongoing disciplinary investigation into your conduct in your application to the FSA to perform a controlled function.

2.3 In the opinion of the FSA you have also failed to act with competence and capability. In particular, you submitted two application forms to mortgage lenders on your own behalf, in which you mistakenly declared your gross annual turnover rather than your net profit as required by the lender.

2.4 You pose a risk both to consumers and lenders and to confidence in the financial system. This action also supports the FSA's objective of reduction of financial crime.

2.5 As a result of the nature and seriousness of these breaches, the FSA has concluded that you have failed to meet minimum regulatory standards in terms of honesty and integrity, and competence and capability, and that you are not

fit and proper to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm and should be prohibited from doing so.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

Statutory provisions

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

Withdrawal of approval

- 3.2 Section 59 of the Act provides that a person shall not perform a controlled function unless the FSA approves the performance by that person of the controlled function. The FSA may grant an application for approval if the FSA is satisfied under section 61 of the Act that the person in respect of whom the application is made is a fit and proper person to perform the function to which the application relates.
- 3.3 The FSA has the power pursuant to section 63 of the Act to withdraw an approval given under section 59, if the FSA considers that the approved person is not a fit and proper person to perform the function to which the approval relates.

Prohibition

- 3.4 Under section 56 of the Act, if it appears to the FSA that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or exempt professional firm, the FSA may make a prohibition order.
- 3.5 The effect of making a prohibition order is to prohibit an individual from performing functions within authorised firms and to prohibit authorised firms from employing the individual to perform specific functions. Such an order may relate to:

- (1) a specified function, any function falling within a specified description, or any function (section 56(2)); and
- (2) a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities (section 56(3) (a)).

- 3.6 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 firms. 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 the Enforcement Guide (“EG”). EG took effect from 28 August 2007, replacing the FSA's previous policy in relation to the prohibition of individuals (which was contained in Chapter 8 of the Enforcement Manual ("ENF")). Although the references in this notice are to EG, as the conduct described in this Final Notice spans both sets of policy, the FSA has also had regard to the relevant sections of ENF.
- 3.7 The relevant sections of EG are set out in Annex 1 to this Final Notice.

Regulatory Requirements

Fit and Proper test for Approved Persons (“FIT”)

- 3.8 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.
- 3.9 The relevant sections of FIT are set out in Annex 2 to this Final Notice.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1 Between 2002 and March 2008, you worked as a self-employed mortgage adviser at various brokers operating out of the Cornwall area. You provided

advice to customers on regulated mortgage contracts and life insurance products.

- 4.2 From 1 December 2001 until 1 July 2007 you were approved to perform the controlled function 21 (Investment Adviser). With effect from 19 May 2008 you were approved to perform the controlled function 30 (Customer function).
- 4.3 In March 2008 you were suspended from work by an authorised mortgage intermediary, which was one of a number of appointed representatives for an authorised network (“the Network”). You were subsequently investigated by the Network after concerns were raised about the quality of the advice that you had provided to customers and the accuracy of income figures that you had recorded in mortgage applications.
- 4.4 In May 2008, you commenced working for another investment and mortgage broker, (the “Mortgage Broker”). You continued to provide advice to customers on regulated mortgage business and life insurance products.

Mortgage applications submitted on behalf of others.

- 4.5 You have admitted to the FSA that you knowingly submitted mortgage applications on behalf of customers which contained information which you knew to be false and misleading to lenders. Further details are set out below:

Customer A

- 4.6 In relation to Customer A:
 - (1) You intentionally submitted an application for a re-mortgage on behalf of Customer A which included inflated income details. You also misled the lender to whom the application was made as to the number and nature of the customer’s sources of income. In particular, you have admitted to the FSA that:
 - (a) on Customer A’s mortgage application you stated that Customer A’s net profit for the year ending 2008 was £72,400 and for the year ending 2007 was £65,000;

- (b) the amounts included on the mortgage application were different to the amounts declared by Customer A to Her Majesty's Revenue and Customs ("HMRC"). Customer A declared to HMRC earnings of £2,822.28 for the tax year ending 2008 and £4,071.70 for the tax year ending 2007;
- (c) that the amounts included on the mortgage application submitted to the lender were not the actual income that Customer A earned;
- (d) you knew that Customer A derived her income from various sources, rather than the single source you recorded on Customer A's mortgage application. This information was submitted without Customer A's knowledge; and
- (e) the reason the application did not complete is because Customer A became aware of the fact that the application form contained reference to inflated income when receiving the offer and contacted the lender.

Customer B

4.7 In relation to a second customer ("Customer B"), applying for a re-mortgage, you have admitted to the FSA that:

- (a) you knowingly falsely stated Customer B's income on the application form. The income so described included some of the income of Customer B's parents which falsely stated was Customer B's own income;
- (b) you knowingly recorded a single source of income for Customer B in two different places on the factfind, which you then aggregated in order to secure a larger mortgage for that customer than the actual income would have allowed. You subsequently included this inflated income figure on the mortgage application form; and

- (c) you knowingly misled the lender with regards to Customer B's level of, and source of, income causing the lender to make lending decisions on the basis of inaccurate information.

Customers C and D

4.8 In relation to two customers ("Customers C and D"), applying for a joint mortgage, you have admitted to the FSA that:

- (a) one mortgage application form on Customers C and D's file was signed by Customers C and D before other details on the application were completed, including details of Customers C and D's incomes;
- (b) you knew that Customers C and D derived their income from various sources, including maintenance payments and rental income. However, you stated that Customers C and D derived their income from one source. You made this statement on their mortgage application without the customers' knowledge; and
- (c) there were discrepancies between Customer C's income as set out in the fact find and the income set out in the mortgage application.

Information provided to the FSA

4.9 When you began employment with the Mortgage Broker, on 12 May 2008, you completed an application form ("Form A") on behalf of the Mortgage Broker for your approval by the FSA to hold controlled function CF30.

4.10 You declared to the FSA on Form A that you have not been the subject of any investigation into allegations of misconduct or malpractice in connection with any business activity, and that you have not been suspended from the right to carry on any trade for which authorisation was required.

4.11 You admitted in interview that you should have declared to the FSA that you were under investigation, and had been suspended in March 2008 by the mortgage intermediary for whom you worked at that time.

4.12 The FSA considers that by failing to disclose this information you failed to deal with the FSA in an open and co-operative way, as this is information of which the FSA would reasonably have expected notice.

Mortgage applications submitted in your own name.

4.13 It appears that, in at least two personal mortgage applications, you mistakenly entered inaccurate income details. You have admitted to the FSA that:

- (1) you completed and submitted your own personal mortgage applications;
- (2) you declared your gross annual turnover as income rather than your net profits for the year, on both your residential mortgage application and an unregulated buy to let mortgage application; and
- (3) the lenders were unaware of the actual basis upon which they were granting you mortgages, because you had included false and misleading information on your mortgage applications.

5. ANALYSIS OF MISCONDUCT AND PROPOSED SANCTION

5.1 The facts and matters described above lead the FSA to conclude that you:

- (1) knowingly misled lenders in that you submitted mortgage applications which contained false and misleading information on behalf of at least three clients;
- (2) misled your prospective employer, by not informing the Mortgage Broker that you had been the subject of an investigation and had been suspended; and
- (3) failed to disclose to the FSA, on Form A, information regarding an investigation into your conduct at a mortgage intermediary and your suspension from your previous employer. This is information of which the FSA would reasonably expect notice.

5.2 The FSA considers that as a result of the nature and gravity of these matters you failed to act with honesty and integrity.

- 5.3 The FSA considers that, in addition, you lack sufficient competence and capability because you submitted two mortgage applications containing incorrect information to lenders on your own behalf.
- 5.4 Your failings demonstrate 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.
- 5.5 The FSA therefore considers it necessary to withdraw your approval pursuant to section 63 of the Act and to prohibit you pursuant to section 56 of the Act.

6. DECISION MAKER

- 6.1 The decision which gave rise to the obligation to give this Final Notice was made on behalf of the FSA by the Settlement Decision Makers.

7. IMPORTANT

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

Publicity

- 7.2 Section 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 opinion of the FSA, be unfair to you or prejudicial to the interests 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

- 7.4 For more information concerning this matter generally, you should contact Mario Theodosiou (direct line: 020 7066 5914 /fax: 020 7066 5915) of the Enforcement Division of the FSA.

Signed:

.....

Tom Spender

Head of Department

FSA Enforcement Division

ANNEX 1: RELEVANT GUIDANCE FOR MAKING A PROHIBITION ORDER

7.5 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 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.

7.6 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 the risk which the individual poses to consumers and to confidence in the financial system.

7.7 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 lack of competence.

ANNEX 2: RELEVANT GUIDANCE IN RELATION TO THE FIT AND PROPER TEST FOR APPROVED PERSONS

- 7.8 FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. The most important considerations include the person's honesty, integrity and reputation, and their competence and capability.
- 7.9 In determining a person's honesty, integrity and reputation, FIT 2.1 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. The guidance includes:
- (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)).
- 7.10 In determining a person's competence and capability FIT 2.2 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.2.1G. The guidance includes:
- (1) whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function (FIT 2.2.1G (2)).