
FINAL NOTICE

To: Mr Sarfraz Mohammed

Address: 23 Aubrey Road
Small Heath
Birmingham
B10 9DQ

Individual FSA reference: SXM01982

Dated: 4 March 2010

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you, Mr Sarfraz Mohammed, final notice about 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 ORDER

1.1 The FSA gave you, Mr Sarfraz Mohammed, a Decision Notice on 28 January 2010 (“the Decision Notice”), which notified you that the FSA had decided to make 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 (the “Prohibition Order”), pursuant to section 56 of Financial Services and Markets Act 2000 (“The Act”), because you are lacking in honesty and integrity and therefore not a fit and proper person.

1.2 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.

1.3 Accordingly, the FSA hereby makes an 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 takes effect from 4 March 2010.

2. REASONS FOR THE ORDER

2.1 On the basis of the facts and matters summarised below, and set out in more detail in Section 4 of this Notice, the FSA concluded that, while you were a mortgage adviser at 2 Minds Mortgages Limited (“2 Minds”), you:

- (1) obtained a mortgage for yourself which was based on false and misleading information about your income and employment;
- (2) were knowingly involved in the submission of a mortgage application on behalf of a customer that was based on false and misleading information about his income and employment;
- (3) persuaded other people to be candidates for individual approval in support of 2 Minds’ authorisation application even though, in practice, it was you who made all of 2 Minds’ business decisions; and
- (4) were stated on 2 Minds’ authorisation application as being a 10% shareholder whereas in fact you were and have remained an 80% shareholder.

3. STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

3.1 Relevant statutory provisions, regulatory guidance and policy are set out as an Annex to this Final Notice.

4. FACTS AND MATTERS RELIED ON

4.1 You were the only adviser at 2 Minds, a small mortgage broker operating in Birmingham. 2 Minds has an appointed representative Edwards Estates Limited (“Edwards Estates”). You are the director of Edwards Estates and the majority shareholder of both 2 Minds and Edwards Estates. You were not a director or an approved person at 2 Minds but, in practice, you made all of the business decisions and were the majority shareholder.

Your personal mortgage application

4.2 You submitted a mortgage application to a lender for yourself in May 2006. On your mortgage application form, you stated that you were working as an IT Consultant for Company A earning a gross salary of £44,000 with overtime of £3,000 and a bonus of £3,000. You also said that you had been employed by Company A since May 2004.

4.3 According to HMRC’s records, you declared taxable income of only £16,580 in the tax year 2005/06 and £2,700 in the tax year 2006/07. None of this income came from Company A.

- 4.4 As you entered false and misleading income figures on your mortgage application form, the FSA concluded that you obtained the mortgage on a fraudulent basis and that you therefore lack honesty and integrity.

Customer mortgage application

- 4.5 In May 2005, you submitted a mortgage application to a lender on behalf of Customer X which stated that he worked for Edwards Estates earning a basic salary of £39,500 with guaranteed overtime of £2,000. You told the FSA that you knew Customer X had worked at Edwards Estates although you could not remember in what capacity.
- 4.6 Customer X made a statement that he never worked for Edwards Estates. According to HMRC's records, he declared taxable earnings of only £2,367 for the 2004/05 tax year and £10,898 for the 2005/06 tax year. None of this income came from Edwards Estates.
- 4.7 The FSA concluded that you were aware that Customer X did not work for Edwards Estates and therefore you were knowingly involved in the submission of a mortgage application based on false and misleading information.

Other concerns

- 4.8 On 2 Minds' authorisation application, you were shown as a 10% shareholder whereas, according to Companies House records and your admission in a taped interview, you have an 80% shareholding. Furthermore, even though you disclosed a previous criminal conviction during the authorisation application process, you led the FSA to believe that you did not have a controlling interest in 2 Minds and that other individuals would perform controlled functions at 2 Minds. In practice, you were the majority shareholder and a shadow director. You performed all functions at 2 Minds but persuaded family members and other individuals to apply for significant influence functions at 2 Minds and its appointed representative.

5. REPRESENTATIONS

- 5.1 You made representations about your background and experience prior to setting up 2 Minds. You stated that, from the outset, you had declared your criminal conviction to the FSA when you made the application for 2 Minds to be authorised. You stated that you had been honest about your past and that you had sought to explain the criminal conviction as a minor transgression which you sincerely regretted.
- 5.2 You enlisted the assistance of two other individuals to take on the necessary controlled functions required to operate 2 Minds. You did this knowing that they did not have any relevant experience of financial services. However, you said that you intended to teach them and to help them to build up experience. You said that it was not your intention to run the business with them simply being the public face of 2 Minds, either for the benefit of the FSA or the public.
- 5.3 On the contrary, you argued that the individuals took responsibility for their work and made all the necessary business decisions, that they attended the business premises on a regular basis, and that they were involved in the running of the business. However, you acknowledged that their limited financial and business experience meant that you

had to be actively involved in the business, although you represented that you left the decision making to them.

- 5.4 You were uncertain as to whether you had told the individuals about your criminal conviction prior to asking them to take on the controlled functions of 2 Minds. You were of the opinion that no particular experience was required for a person to be a director holding a controlled function.
- 5.5 You confirmed that 2 Minds was very much a family business and, in involving the other individuals, you had hoped to help the whole family. Prior to becoming involved in 2 Minds, the individuals were unemployed.
- 5.6 With regard to your own mortgage application you challenged the FSA's allegation that it was based on false and misleading information as to your income. You explained that you were employed at the time, with a local firm, as an IT Consultant. As your salary was paid in cash, you did not have any records to confirm the precise amount that you received. You said that the responsibility for paying the tax on your salary was that of your employers and you could not explain why HMRC's records of your earnings did not match your recollection of the monies received. You represented that you had nevertheless completed the mortgage application form accurately.
- 5.7 In relation to Customer X, you challenged the FSA's allegation that you had not recorded his employment and earnings details correctly on his mortgage application form. You were not able to further clarify or explain why Customer X's declared taxable earnings as recorded at HMRC were significantly less than stated on the mortgage application form. You rejected Customer X's evidence that he had not worked for Edwards Estates but admitted that you had made a mistake on his mortgage application form by recording that he was an employee when he was working in a self employed capacity.
- 5.8 You were unable to clarify your exact shareholding in 2 Minds, including whether it had changed at any time since the business had been set up. It was your understanding that your holding may be as high as 80% rather than the 10% referred to by the FSA. As 2 Minds is a family business you were not particularly concerned about the precise holding but appreciated that it would be relevant for the FSA to be given the correct information.
- 5.9 You accepted that you had acted inappropriately in relation to your dealings in the business and the other individuals. However, you said that your motives were simply to help the family and you would like another chance to carry on with your business.

6. CONCLUSIONS

- 6.1 Having considered your representations the FSA found that you are lacking in honesty and integrity and therefore you are not a fit and proper person.
- 6.2 You provided lenders with false and misleading information about your own income and employment and that of Customer X in order to obtain mortgages. You also failed to be candid and truthful in all your dealings with the FSA.

- 6.3 The FSA also does not accept your representations as to the management and day to day running of the business. The other individuals did not have the experience to perform the controlled functions required of their roles. The FSA found that you deliberately involved the individuals to provide a public face for 2 Minds and that you were in fact a shadow director. Throughout the relevant period you controlled 2 Minds.
- 6.4 In all the circumstances, a prohibition order is therefore necessary and proportionate.
- 6.5 Taking this action against you is consistent with the FSA's policy of seeking to prevent individuals lacking in honesty and integrity from working in authorised firms, in support of the FSA's financial crime, market confidence and consumer protection objectives. Taking this action is also consistent with the concerns which the FSA has on the prevalence of mortgage fraud and the detriment it has for the mortgage sector and ultimately the borrowers.

7. DECISION MAKER

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

8. IMPORTANT

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

Publicity

- 8.2 Sections 391(4), 392(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.
- 8.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 8.4 For more information concerning this matter, you should contact Chris Walmsley of the Enforcement and Financial Crime Division at the FSA (direct line: 020 7066 5894) of the FSA.

Tom Spender
Head of Department
FSA Enforcement and Financial Crime Division

Annex (paragraph 3.1)

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

Statutory objectives

FSA's statutory objectives, set out in section 2(2) of the Act, include the protection of consumers and the reduction of financial crime.

Prohibition orders

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 specific regulated activity, an activity falling within a specified description or all regulated activities.

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. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. One of 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 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)).

FSA's policy for exercising its power to make a prohibition order

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

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.

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.

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.