
FINAL NOTICE

To: **Scott Robert Merrell**

Of: **203 Wigston Road
Oadby
Leicester
LE2 5JF**

FSA Reference Number: **SRM00028**

Dated: **14 July 2010**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the “FSA”) gives you final notice about an order prohibiting you, Scott Robert Merrell, 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 a Decision Notice on 8 June 2010 (the “Decision Notice”) which notified you that, for the reasons listed below and pursuant to section 56 of the Financial Services and Markets Act 2000 (the “Act”), 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”).
- 1.2. You have not referred the matter to the Upper Tribunal (Tax and Chancery Division) within 28 days of the date on which the Decision Notice was given to you.
- 1.3. Accordingly, for the reasons set out below, 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 14 July 2010.

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2. REASONS FOR THE ORDER

Introduction

- 2.1. The FSA has concluded, on the basis of the facts and matters and conclusions described in its Warning Notice dated 21 April 2010 (an extract from which is attached to and forms part of this Final Notice), and in the Decision Notice, that you are not a fit and proper person to perform any functions as your conduct demonstrates a lack of honesty and integrity. Specifically, on 27 June 2008, you were convicted of four counts of obtaining a money transfer by deception and two counts of attempting to obtain dishonestly a money transfer by deception, for which you were sentenced to 14 months imprisonment for each offence.

Relevant Statutory Provisions

- 2.2. The FSA's statutory objectives are set out in section 2(2) of the Act and include the protection of consumers, maintaining market confidence and the reduction of financial crime.
- 2.3. The FSA's power to make a prohibition order is set out in section 56 of the Act and the procedure to be followed is set out in section 58 of the Act.

Relevant Guidance

The Enforcement Guide ("EG")

- 2.4. The FSA's policy in relation to exercising its power to issue a prohibition order is set out in EG.
- 2.5. EG 9.1 explains the purpose of prohibition orders in relation to the FSA's regulatory objectives.
- 2.6. EG 9.3 to 9.5 sets out the FSA's policy on making prohibition orders. In particular:
- (a) EG 9.3 states that the FSA will consider all relevant circumstances, including whether enforcement action has been taken against the individual by other enforcement agencies, in deciding whether to make a prohibition order;
 - (b) EG 9.4 states that the FSA has power to make a range of prohibition orders: they may be unlimited or they may be limited to specific functions in relation to specific regulated activities, depending on the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally; and
 - (c) EG 9.5 states that the scope of a prohibition order will depend on the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally.
- 2.7. EG 9.17 sets out that where the FSA is considering whether to make a prohibition

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order against someone who is not an approved person, the FSA will consider the severity of the risk posed by the individual and may prohibit him where it considers that it is necessary to achieve the FSA's regulatory objectives.

- 2.8. EG 9.18 states that, when determining the fitness and propriety of such an individual, the FSA will consider a number of factors, including those set out in EG 9.9. These factors include: the criteria for assessing the fitness and propriety of approved persons set out in the Fit and Proper Test for Approved Persons ("FIT") section of the FSA Handbook, the relevance and materiality of any matters indicating unfitness, and the severity of the risk which the individual poses to consumers and to confidence in the financial system.

Fit and Proper Test for Approved Persons

- 2.9. The FSA has issued guidance on the fitness and propriety of individuals in FIT.
- 2.10. FIT 1.1.2G states that the purpose of FIT is to set out and describe the criteria that the FSA will consider when assessing the fitness and propriety of a candidate for a controlled function. The criteria are also relevant in assessing the continuing fitness and propriety of approved persons.
- 2.11. FIT 1.3.1G(1) states that the most important consideration includes a person's honesty, integrity and reputation.
- 2.12. FIT 2.1.3G(1) states that the FSA will have regard to whether a person has been convicted of any criminal offence, and goes on to say that particular consideration will be given to offences of dishonesty, fraud, financial crime or other offences under legislation relating to money laundering.

3. DECISION MAKER

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

4. IMPORTANT

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

Publicity

- 4.2. 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.
- 4.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

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FSA contact

- 4.4. For more information concerning this matter generally, you should contact Akintokunbo Oyebode (direct line: 020 7066 5798 / fax: 020 7066 5799) of the Enforcement and Financial Crime Division at the FSA.

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John Kirby
FSA Enforcement and Financial Crime Division

Attachment: Extract from Warning Notice dated 21 April 2010

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**EXTRACT FROM THE WARNING NOTICE DATED 21 APRIL 2010 ISSUED BY
THE FSA TO SCOTT ROBERT MERRELL**

“2. REASONS FOR THE PROPOSED ACTION

Facts and matters relied on

- 2.14. You were initially granted individual approval by the FSA in relation to an appointed representative of an FSA authorised firm, on 1 December 2001. You were approved by the FSA to perform the following controlled functions:
- (a) CF1 (Director), from 1 December 2001 until 25 January 2005; and
 - (b) CF21 (Investment Advisor), from 1 December 2001 until 24 October 2003.
- 2.15. In May 2005, you commenced employment as a mortgage advisor at an appointed representative of a second FSA authorised firm. Your employment at this firm terminated on 12 November 2008. You have not been an approved person since 25 January 2005.
- 2.16. On 27 June 2008, you were convicted at Nottingham Crown Court upon your own confession, of four counts of obtaining a money transfer by deception, and two counts of attempting to obtain dishonestly a money transfer by deception.
- 2.17. You committed these financial crime offences whilst you were an approved person. You submitted false mortgage applications to lenders, in order to facilitate the laundering of money obtained by drug trafficking.
- 2.18. The Court has discretion to impose a custodial sentence for those offences. Section 79(2)(a) of the Powers of Criminal Court (Sentencing) Act 2000 states that the Court shall not pass a custodial sentence unless it is of the opinion that the offence is so serious that only such a sentence can be justified for the offence. On 14 November 2008, you were sentenced to 14 months imprisonment for each offence, to run concurrently.

Conclusions

- 2.19. The facts and matters described above lead the FSA, having regard to its regulatory objectives which include the protection of consumers, maintaining market confidence and the reduction of financial crime, to the following conclusions:
- you have acted dishonestly and without integrity whilst being an approved person and allegedly, whilst being a mortgage advisor, by submitting false mortgage applications to lenders, in order to facilitate the laundering of money through drug trafficking;

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- you have been convicted of serious financial crime offences: four counts of obtaining a money transfer by deception, and two counts of attempting to obtain dishonestly a money transfer by deception;
- the convictions, and the conduct which gave rise to them, go directly to impugn your honesty, integrity and reputation and therefore 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;
- you present a risk to consumers, to the financial system, as well as to the FSA's statutory objective of the reduction of financial crime, as you have failed to demonstrate that you conducted your business in compliance with proper standards; and
- the severity of the risk that you pose to consumers and to confidence in the market generally is such that it is necessary in order to achieve its regulatory objectives for the FSA to make a prohibition order against you in the terms proposed."

END OF EXTRACT