
FINAL NOTICE

To: Delwyn Arthur Way

Of: 26 Cannon Hill Gardens
Wimborne
Dorset
BH21 2TA

IRN: DAW01181

Dated: 22 April 2010

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the “FSA”) gives you, Delwyn Arthur Way, final notice about the imposition of a financial penalty 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. ACTION

- 1.1. The FSA gave you, Mr Delwyn Arthur Way (“Mr Way”), Director of Shield Insurance Consultancy Limited (“Shield”), a Decision Notice on 16 March 2010 (“the Decision Notice”) which notified you that it had decided to:

- (1) impose on you a financial penalty of £77,957 for a failure to comply with Statements of Principle 1 and 4 of the FSA's Statements of Principle for Approved Persons and Code of Practice for Approved Persons ("APER"), pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act"); and
 - (2) 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 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 covers the disgorgement of the financial benefit, being the best estimate of the amount of client money that you misappropriated from Shield's client money account. You provided verifiable evidence of financial hardship. Otherwise the FSA would have imposed an additional punitive penalty of £50,000.
- 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. Accordingly the FSA has today imposed on you a financial penalty of £77,957 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 22 April 2010.

2. REASONS FOR THE ACTION

- 2.1. On the basis of the facts and matters summarised below, and set out in more detail at section 4 of the Warning Notice, the FSA concluded that you failed to meet minimum regulatory standards in terms of honesty and integrity, which includes an obligation to comply with the requirements and standards of the regulatory system and to be candid and truthful in all your dealings with the regulator.
- 2.2. You pose a risk to consumers.
- 2.3. You were a Director of Shield and you were responsible for its actions.

- 2.4. In summary, on your own admission, total premiums owed to product providers amounting to an estimated £77,957 were accepted from clients but not passed on to the relevant insurers, with the result that Shield's clients were left potentially and unknowingly uninsured and at risk of being asked to pay the same premium twice to maintain cover.
- 2.5. You admitted that client funds had been used for purposes other than for which they had been provided to Shield and that you had been drawing on Shield's client account funds from around July 2006.
- 2.6. By misappropriating client money in this way you failed to comply with APER Statement of Principle 1. You also failed to satisfy the FSA that you are a fit and proper person in terms of honesty and integrity.
- 2.7. You failed to deal with the FSA in an open and co-operative way by not disclosing information relating to Shield of which the FSA would reasonably have expected notice, namely by failing to notify the FSA about Shield's deteriorating financial situation and by providing misleading information to the FSA in Shield's Retail Mediation Activity Returns ("RMARs"). As such, you failed to comply with APER Statement of Principle 4.
- 2.8. The FSA has therefore decided to take the action for the reasons described in the Warning Notice, and to give this Final Notice. A copy of the relevant extract from the Warning Notice is attached to and forms part of this Final Notice.

3. DECISION MAKER

- 3.1. The decision which gave rise to the obligation to give this Final Notice was made by the Deputy Chairman of 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 of payment.

- 4.2. The financial penalty must be paid in full by you to the FSA by no later than 6 May 2010, 14 days after the date of this Final Notice.

If the financial is not paid

- 4.3. If all or any of the financial penalty is outstanding on 6 May 2010, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

- 4.4. 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.
- 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 and Financial Crime Division at the FSA (direct line: 020 7066 5894).

Tom Spender
Head of Department
FSA Enforcement and Financial Crime Division

EXTRACT FROM WARNING NOTICE DATED 29 JANUARY 2010

4. FACTS AND MATTERS RELIED ON

Background

- 4.1 Shield was an independent financial adviser firm based in Dorset. It was authorised by the FSA with effect from 14 January 2005. Under Part IV of the Act, Shield was granted permission to carry on the following regulated activities:
- (1) Making arrangements with a view to transactions in investments;
 - (2) Advising on investments (except pension transfers and pension opt-outs);
 - (3) Arranging (bringing about) deals in investments;
 - (4) Assisting in administration and performance of a contract of insurance;
 - (5) Dealing in investments as agent; and
 - (6) Agreeing to carry on a regulated activity.
- 4.2 You were the sole director of Shield and an approved person performing the controlled functions of CF1 (Director) and CF8 (Apportionment and Oversight). Your wife was the other shareholder in Shield but she had no day to day involvement in running the business.
- 4.3 You were personally responsible for insurance mediation at Shield. Shield was permitted to hold and control client money in respect of non-investment insurance contracts.

Conduct in issue

- 4.4 From July 2006 you started to draw more funds from Shield's client bank account than you were entitled to withdraw and, by September 2008, the amount misappropriated was an estimated £77,956.88. You drew a total of £123,796.46 from Shield's bank accounts in the period from July 2006 to September 2008.
- 4.5 The client monies withdrawn appear to have been dissipated by you over time and you told the FSA that you are not able to compensate clients.
- 4.6 You failed to notify the FSA about Shield's deteriorating financial situation and provided misleading information to the FSA in Shield's RMARs by reporting client money as Shield's 'current assets' in the returns for 2006 to 2008 and by omitting to deduct intangible assets from Shield's total capital resources calculation from July 2005 onwards. As such the regulatory capital & financial resources calculation was incorrectly calculated.

5. ANALYSIS OF MISCONDUCT AND PROPOSED SANCTION

- 5.1 The FSA has considered whether you are a fit and proper person to perform any functions in relation to regulated activities. In doing so, the FSA has considered its regulatory requirements and relevant guidance. In concluding your honesty, integrity and reputation for the purpose of considering whether you are a fit and proper person, the FSA highlights the following:

- (1) you accepted insurance premiums from Shield's clients but did not pass these monies on to the relevant intermediaries or underwriters in the knowledge that clients would be left uninsured and may have to pay the insurance premium again to obtain cover (in contravention of Statement of Principle 1);
 - (2) you misappropriated client money and used it to fund business and personal expenses (in contravention of Statement of Principle 1);
 - (3) you submitted incorrect and misleading information to the FSA about Shield's financial situation and you failed to disclose to the FSA the fact there was a deficit, or suspected deficit, in Shield's client account from at least July 2006 (in contravention of Statement of Principle 4).
- 5.2 The FSA considers that you pose a serious risk to consumers because you have failed to meet minimum regulatory standards in terms of honesty and integrity, which includes an obligation to comply with the requirements and standards of the regulatory system and to be candid and truthful in all your dealings with the regulator.
- 5.3 The FSA therefore considers that it is necessary to prohibit you from performing any function in relation to any regulated activity carried out by any authorised person, exempt person or exempt professional firm.
- 5.4 The FSA also considers it appropriate to impose a financial penalty. The reason for imposing the financial penalty on you under section 66 of the Act is that when you were an approved person you misappropriated client money and you failed to pass on insurance premiums, knowing the consequences for your customers could be serious.
- 5.5 In determining the proposed financial penalty the FSA has considered the benefit obtained by you and the need to punish you as well as deter others from engaging in this type of activity. As a matter of principle, your benefit should be disgorged regardless of your current financial position. Accordingly, the FSA proposes a financial penalty of £77,957. But for your financial hardship, the FSA would have proposed an additional punitive penalty of £50,000.

6. CONCLUSION

- 6.1 The FSA has had regard to the facts and matters referred to above and concluded 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 or exempt person or exempt professional firm. A prohibition order is therefore necessary and proportionate.
- 6.2 The FSA considers it necessary and proportionate to impose a financial penalty of £77,957 upon you for this misconduct. This level of financial penalty takes into account the amount of client money you have misappropriated and dissipated. It is also aimed at promoting high standards of regulatory conduct by approved persons and to deter other approved persons from acting in this way.