
FINAL NOTICE

To: **Martin Winer**

Of: **23 Boleyn Court**
Aragon Lodge
Epping New Road
Buckhurst Hill
Essex
IG9 5UE

Dated: **24 August 2009**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you, Martin Winer, final notice about an order 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. ACTION

1.1 The FSA gave you, Martin Winer, a Decision Notice on 8 July 2009 (“the Decision Notice”) which notified you that it had decided 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 any authorised person, exempt person or exempt professional firm (the “Prohibition Order”), because you lack competence and capability. While employed as a mortgage adviser, you did not appropriately scrutinise and challenge the information provided by customers on their mortgage application forms.

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 out by an authorised person, exempt person or exempt professional firm. The Prohibition Order takes effect from 10 August 2009.

2. REASONS FOR THE ACTION

2.1 By a Decision Notice dated 8 July 2009, the FSA concluded that:

- (1) You declared false and misleading information about the identities and income to lenders to obtain mortgages for your customers, and
- (2) You either failed to identify the anomalies and inconsistencies on file or you did identify them but failed to appreciate their significance as indicators of mortgage fraud, despite being an experienced mortgage adviser; and
- (3) You therefore have fail to meet the minimum regulatory standards in terms of competence and capability and that you are not therefore fit and proper to carry out any functions in relation to any regulated activities carried on by any authorised persons.

3. STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

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

4. FACTS AND MATTERS RELIED ON

Background

- 4.1 From January 2005 until March 2008, when it went into administration, you worked as a self-employed mortgage adviser at Lifestyle Mortgage Services Limited (“Lifestyle”), a mortgage broker in the Edgware area. The function you performed was not a controlled function and therefore you did not need to be an approved person.
- 4.2 In October 2007, the FSA commenced an investigation into Lifestyle after concerns were raised that the firm was submitting fraudulent mortgage business to lenders.
- 4.3 On 11 January 2008, the FSA commenced a separate investigation into your conduct during the period while you worked at Lifestyle due to circumstances suggesting that you were knowingly involved in the submission of mortgage applications based on false and misleading information to lenders.

Lifestyle customers you advised

Customers A and B

- 4.4 Customers A and B approached Lifestyle in March 2007 wishing to re-mortgage their property to consolidate existing debts. You were the adviser on this case.
- 4.5 You recorded on the fact find that Customer A is a self-employed sales representative with a gross annual income of £85,000 and that Customer B is a librarian employed by a London council and earning a gross annual salary of £28,000.
- 4.6 You submitted a mortgage application on behalf of these customers on 9 March 2007 to Lender U. On this application, Customer A stated that his annual income (net profit) was £85,000 in 2005/6, £84,250 in 2004/5 and £83,500 in 2003/4. Customer B stated that she had an annual salary of £28,000. The employment information declared by both applicants was consistent with that recorded by you on the fact find described above.
- 4.7 Lender U rejected the application. You therefore submitted another application in respect of the same property for Customers A and B to a different lender, Lender V,

on 23 April 2007. In this application, although Customer B's declared income was the same as that declared on the earlier application, Customer A's income, again expressed in terms of net profit, was declared as £103,000 in 2005/6, £101,750 in 2004/5 and £99,500 in 2003/4.

- 4.8 The mortgage application included a copy of Customer A's Inland Revenue Self Assessment statement of account as at 21 June 2006 and which was provided to Lender V in support of the mortgage application. This shows total payments on account of £10,545 (£5,272 in January 2006 and £5,272 in July 2006).
- 4.9 Self Assessment interim tax payments are based on the previous year's total tax charge with a balancing payment/repayment due in the following January when the actual taxable income figure is known. Customer A's statement of account can therefore be used to calculate his 2004/05 tax liabilities.
- 4.10 As Customer A stated that he is self employed, no tax is paid at source and therefore the tax bill for the year ended 2004/2005 was £10,545. On an income of £84,250, a tax figure of £10,545 would equate to an effective income tax rate of approximately 12.5%, which is clearly incorrect. Taking into account the relevant tax bands, a tax liability of £10,545 actually equates to an approximate income of £46,000 (with an effective income tax rate of approximately 23%). There is, therefore, a discrepancy between the incomes Customer A stated on both his mortgage application forms and his tax records.
- 4.11 The application to Lender V states that no mortgage application relating to this property had ever been declined. This is clearly incorrect, as the application submitted to Lender V was only submitted after Lender U rejected the customers' earlier application.
- 4.12 It appears that Customer A's income details have been inflated in an attempt to secure a higher loan amount from Lender V than that which Lender U was prepared to lend him.
- 4.13 The FSA submitted Customers A and B's declared income details to Her Majesty's Revenue and Customs ("HMRC") for verification. According to HMRC's records, Customer A's net profits for the years 2003/04, 2004/05, 2005/06 were £27,396; £41,032 and £21,188 respectively.

Customer C

- 4.14 Customer C approached Lifestyle in October 2007 because she wanted to arrange the necessary finances to purchase a new property, which necessitated the setting up of a bridging loan. You were the adviser working on her case.
- 4.15 You completed a fact find document for Customer C on which you recorded that she works full time as a housing officer for a local authority and that her gross annual income is £35,000. You also recorded that Customer C has a second income, which she earns through self-employed work as an IT consultant. According to the fact find, Customer C earned an additional annual income of £102,000 in 2006 through her consultancy work. The fact find states Customer C's net monthly income to be £8,500.
- 4.16 You submitted an application for a bridging loan to Lender W on Customer C's behalf on 3 October 2007. On this application, Customer C's net profit from her consultancy work is declared to be £111,000. She states her gross annual income from her full-time employment to be £35,000.
- 4.17 On 23 October 2007 you submitted an application for a self-certification mortgage to Lender X on Customer C's behalf. On the application, Customer C states that she is a senior housing officer employed full-time by a local authority on a permanent basis and that she also works as a self-employed IT consultant. She declares her net annual disposable income as £89,020 (£100,000 less £10,980 expenses).
- 4.18 You provided a copy of Customer C's Inland Revenue Self Assessment statement of account as at 3 May 2007 to Lender W. This shows an overdue payment of £3,587 but no payments on account.
- 4.19 It appears that Customer C's income details have been inflated in an attempt to meet lenders' criteria and secure higher loan amounts than lenders would have been prepared to lend her if she declared her genuine income.
- 4.20 The FSA submitted Customer C's declared income details to HMRC for verification. According to HMRC's records, for the tax year ending April 2006, Customer C was employed as an information officer by a London council and earned £23,090. HMRC's records show that Customer C also registered as self-employed, with a listed trade description suggesting that she was working in the IT field, but correspondence

sent to the business address provided by Customer C to HMRC was returned undelivered. Although HMRC issued a tax return to Customer C for the year ended April 2006, this has not been returned to HMRC. Similarly, for the tax year ended April 2007, no return has been sent back by Customer C. According to HMRC's records, Customer C continued to be employed by a London council and was paid £23,871.

Customer D

- 4.21 Customer D submitted an application through you to Lender Y for an interest only mortgage on 27 January 2006. On this application, Customer D states that he is a self-employed chauffeur and that his income for 2004 – 2005 was £63,200. Customer D did not supply any information about his earnings in previous years.
- 4.22 Customer D submitted three years' accounts in support of his mortgage application. On the accounts, Customer D's first name is different to that stated on the application. The accounts disclose his gross income for 2003, 2004 and 2005 as £82,352, £83,148 and £85,525 respectively and his net profit as £67,100, £67,950 and £68,000 respectively. This is inconsistent with the information declared on the mortgage application.
- 4.23 Customer D's mortgage application was supported by bank statements which you certified. The receipts into the account are inconsistent with Customer D's stated income of £63,200. In January 2006, total receipts into the account were £2,000 cash and in December 2005 the figure was £1,700. A salary of £63,200 would provide a monthly income of £3,488 after tax and national insurance.
- 4.24 Furthermore, Lender Y confirmed to the FSA that these statements were fraudulent, as the transactions were inconsistent with the account, details of which were genuine.
- 4.25 The FSA submitted Customer D's income details to HMRC for verification. HMRC was unable to find any record of Customer D.

Customer E

- 4.26 You completed two Mortgage Questionnaire documents for Customer E, in October 2006 and April 2007 respectively. Both documents state that Customer E is a self-employed taxi driver/chauffeur. The 2006 document records that Customer E has been self-employed from 2000, whereas the 2007 document states that he has been

self-employed since 2001. In the 2006 document Customer E's gross annual income is recorded as £37,500, whereas in the 2007 document it is £42,500.

- 4.27 You submitted a mortgage application to Lender Z on Customer E's behalf on 12 April 2007. On this application, Customer E's income is declared as £42,500.
- 4.28 The discrepancy between the income amounts recorded by you on Customer E's questionnaires and mortgage application form suggests that Customer E may have inflated his income in order to meet lenders' criteria.
- 4.29 The FSA submitted Customer E's income details to HMRC for verification. According to HMRC's records, for the tax year ended 5 April 2007 Customer E did not return a tax return and no employment details existed for him. For the year ended 5 April 2006, records show that Customer E was registered as a self-employed courier with a turnover of £5,039 and a net profit of £3,564. He was also in receipt of Job Seekers' Allowance during the 2005 - 2006 tax year.

Representations and findings

- 4.30 At interview, the FSA put all the anomalies and inconsistencies set out above in relation to Customers A, B, C, D and E to you and gave you the opportunity to comment.
- 4.31 You stated that, in cases where the income amount disclosed by the customer on their mortgage application was different from that recorded on other applications submitted by the same customer or other documents on their file, the discrepancies were largely due to your lack of understanding of gross and net figures and that on some occasions you deducted tax and on others you did not. In cases where, for example, bank statements did not correlate with income information declared by the customer on their mortgage application, your response was that you did not regard this as a cause for concern or as a reason to request further information. In the case of Customer C, who stated that she earned in excess of £100,000 per annum by working as an IT consultant in her spare time, despite being employed full-time as a housing officer, you stated that you did not see this as a questionable state of affairs and so never thought to actively challenge her.

4.32 More generally, you contended that for you to actively challenge or question the salary declarations made by your customers would be inconsistent with the FSA requirement to 'Treat Customers Fairly'.

5. CONCLUSIONS

5.1 The FSA has concluded that the conduct summarised in section 4 above represents a failure by you to meet the minimum regulatory standards in terms of competence and capability and that you are not therefore fit and proper to carry out any functions in relation to any regulated activities carried on by any authorised persons.

5.2 The mortgage applications for each of the customers discussed above were based on a combination of false identities and/or false information and were therefore fraudulent. In the FSA's opinion, the anomalies and inconsistencies in the information provided to you by these customers in support of their mortgage applications were such that a reasonably competent and capable mortgage adviser would have identified them and questioned the integrity of the information provided, particularly given the short space of time within which the applications were processed.

5.3 You failed to notice these anomalies and inconsistencies or you did identify them but failed to appreciate their significance as indicators of mortgage fraud, despite being an experienced mortgage adviser. As a result the FSA has concluded that you have failed to meet the minimum regulatory standards in terms of competence and capability.

5.4 You have admitted that your inability to identify such anomalies and inconsistencies meant that you failed to meet the minimum regulatory standards in terms of competence and capability. The FSA considers that your conduct is serious given your experience as mortgage adviser since 1999.

5.5 Given the facts and matters set out in this Final Notice, it appears to the FSA that you are not a fit and proper person to perform functions in relation to the regulated activity of advising on regulated mortgage contracts and related activities. It is necessary, therefore, in order to achieve its regulatory objectives, for the FSA to exercise its power to make a Prohibition Order against you. In particular, taking this action against you is consistent with the FSA's policy of seeking to prevent

individuals lacking competence and capability in the functions they are performing from working in authorised firms.

General conclusion

- 5.6 The FSA is satisfied that you are not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised firm and that his permission should be cancelled.

6. DECISION MAKER

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

7. IMPORTANT

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

Publicity

- 7.2 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 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.

- 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 Paul Howick of the Enforcement Division of the FSA (direct line: 020 7066 7954).

Tom Spender
Head of Department
FSA Enforcement Division

Annex

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

Statutory objectives

FSA's statutory objectives, set out in section 2(2) of the Act, include market confidence, 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 individual who is not 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), FIT2.2 (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.