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**FINAL NOTICE**

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To: **Mr Zia Chowdhury**

Individual reference: **ZXC01007**

Date of Birth: **16 June 1967**

Date: **8 April 2009**

**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, Zia Chowdhury, from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.**

**1. THE ACTION**

1.1. The FSA gave you a Decision Notice on 8 April 2009 which notified you that the FSA had decided, pursuant to section 56 of the Financial Services and Markets Act 2000 (“the Act”), 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 confirmed that you will not be referring the matter to the Financial Services and Markets Tribunal.

1.3. Accordingly, for the reasons set out below and having agreed with you the facts and matters relied on, 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 8 April 2009.

## **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 a fit and proper person in terms of your honesty and integrity and a Prohibition Order should be made against you in support of the FSA's financial crime and consumer protection objectives. In addition, you pose a risk to lenders and therefore to confidence in the financial system and action should be taken against you in support of the FSA's market confidence objective.

2.2. In summary:

- (1) you certified client identity documents accompanying three fraudulent mortgage applications in March 2007 (the "March Applications") and two fraudulent mortgage applications in May 2007 (the "May Applications") (collectively "the Mortgage Applications") as true copies of the originals without seeing the original documents or meeting the clients;
- (2) you submitted the Mortgage Applications in circumstances in which, in the FSA's opinion, you must have suspected that false information might have been used to support the Mortgage Applications and, at least in the case of the May Applications, must have suspected that the individuals who referred the applications to you might be involved in mortgage fraud;
- (3) you arranged for your father to become the sole approved person at Express Financial Solutions Limited ("Express Financial") from 31 October 2004, rather than yourself, even though you were the individual carrying out controlled functions at Express Financial; and
- (4) you knowingly carried out, from June 2007 at the latest, controlled functions at Express Financial without being approved.

### **3. STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY**

#### **Statutory provisions**

- 3.1. The FSA's statutory objectives, set out in section 2(2) of the Act, include the reduction of financial crime, the protection of consumers and the maintenance of market confidence.
- 3.2. 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 specified regulated activity, any regulated activity falling within a specified description or all regulated activities.

#### **The FSA's policy for exercising its power to make a prohibition**

- 3.3. The FSA's approach to exercising its powers to make prohibition orders is set out at Chapter 9 of the Enforcement Guide ("EG").
- 3.4. EG 9.1 states that the FSA's power to make prohibition orders under section 56 of the Act helps its work towards achieving its regulatory objectives. The FSA may exercise this power where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.
- 3.5. 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, amongst other things, the reasons why he is not fit or proper and the severity of the risk posed by him to the consumers or the market generally.
- 3.6. EG 9.17 to 9.18 provides 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.

3.7. EG 9.9 states that the FSA will consider all the relevant circumstances when deciding whether to make a prohibition order. Such circumstances include, but are not limited to, the following factors:

- (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing 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;
- (5) the severity of the risk posed by the individual to consumers and to confidence in the financial system; and
- (6) the previous disciplinary record and general compliance history of the individual.

3.8. EG 9.10 provides that the FSA may have regard to the cumulative effect of a number of factors.

## **Regulatory Requirements**

### **Fit and Proper Test for Approved Persons**

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

- 3.10. In this instance the criteria set out in FIT are relevant in considering whether the FSA may exercise its powers to make a prohibition order against an individual who is not an approved person in accordance with EG 9.9 and EG 9.18.
- 3.11. FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. Among the most important considerations will be the person's honesty, integrity and reputation.
- 3.12. In determining a person's honesty, integrity and reputation, FIT 2.1 states that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G. This 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 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)).

#### **4. FACTS AND MATTERS RELIED ON**

##### **Background**

- 4.1. Express Financial was authorised by the FSA on 31 October 2004 to carry on the following regulated activities in relation to regulated mortgage contracts:
- (1) advising on regulated mortgage contracts;
  - (2) agreeing to carry on a regulated activity;
  - (3) arranging (bringing about) regulated mortgage contracts; and
  - (4) making arrangements with a view to regulated mortgage contracts.
- 4.2. From 31 October 2004, Express Financial conducted mortgage business as an intermediary, predominantly on a non-advised basis. You have been the sole mortgage adviser at Express Financial since the firm was established.

- 4.3. Your father, Zia Us Samad Chowdhury, was the sole director of Express Financial from the date of its incorporation on 24 November 2003 to 1 June 2007, and from 31 October 2004 onwards was the approved person for the CF1 (Director) and CF8 (Apportionment) functions at Express Financial. However, you operated the firm through a power of attorney and were solely responsible for the running of the business. On 1 June 2007 you replaced your father as the sole director of Express Financial, although your father remained the approved person for the CF1 and CF8 functions.
- 4.4. Express Financial was dissolved on 3 September 2008. As a result, Express Financial's status as an authorised person was cancelled with effect from that date and your father ceased to be an approved person.

#### **Background to the FSA's investigation**

- 4.5. The FSA was informed by three lenders that they had removed Express Financial from their panels of mortgage introducers due to concerns over the submission of false documentation in relation to mortgage applications.
- 4.6. Subsequently, the FSA received specific information from a lender that Express Financial had submitted the Mortgage Applications which were supported by fraudulent passports, bank statements and identity papers.
- 4.7. On 26 November 2007, you applied to voluntarily vary Express Financial's Part IV permission so as to cease conducting regulated activities pending completion of the FSA's enquiries into the submission of the Mortgage Applications. The variation took effect on 4 December 2007.
- 4.8. The FSA appointed investigators on 8 October 2008. They reviewed the client files and other information and documents obtained by the FSA. They also conducted two interviews with you on 4 November 2008 and 4 December 2008 respectively.

#### **FSA's findings**

##### *The Mortgage Applications*

- 4.9. The FSA's enquiries established that, in your role as a mortgage adviser, you submitted the Mortgage Applications in March and May 2007 on behalf of individuals who, in fact, did not exist; an analysis by the Home Office's Identity and Passport Service of copies of the passports submitted by Express Financial with the Mortgage Applications showed them to be copies of falsified passports.
- 4.10. The FSA's review of client files showed that you certified false passports, bank statements and other identity papers accompanying the Mortgage Applications as being true copies of the original documents. You admitted having certified the documents without having seen either the original documents or meeting the clients.
- 4.11. You then proceeded to submit the Mortgage Applications even though:
- (1) the Mortgage Applications, although ostensibly for different people, contained a number of similarities, for example:
    - (a) the applications were all for interest-only mortgages, the clients were all first time buyers and self-employed, the clients were (with the exception of one client) all born in 1968 or 1969 and the clients' incomes were all self-certified;
    - (b) the same dates of birth were used in two separate applications (one in March 2007, one in May 2007) and the same home addresses were provided for another two applications (again, one in March 2007, one in May 2007). Although you stated that you did not notice the same date of births, you admitted having noticed the same addresses; and
    - (c) some of the client identity documents used in the Mortgage Applications were very similar (for example, many of the applications were supported by BT telephone bills) and the passport copies were all poor quality copies;
  - (2) you admitted to having concerns in relation to the identities of the individuals named in the Mortgage Applications; and

(3) it was evident that you had concerns, at least from March 2007, that there were problems with the clients in general being referred to you by the individuals who referred the Mortgage Applications to you.

4.12. You deny having knowingly submitted fraudulent mortgage applications. Nevertheless, the FSA's opinion, based on the extent of your personal involvement and the issues highlighted above, is that you suspected that false information was being used to support the Mortgage Applications and, at least in the case of the May Applications, you suspected that the individuals who referred the applications to you might be attempting to commit mortgage fraud.

*Performance of significant influence functions without being approved*

4.13. It was evident from your comments that:

(1) even though your father was named as the sole director from November 2003 to June 2007, you were effectively carrying out this role, via a power of attorney, and performing functions which had a significant influence on the conduct of Express Financial's affairs in relation to its regulated business and which constituted "controlled functions" under the Act;

(2) you should therefore have been an approved person from 31 October 2004, when Express Financial became authorised by the FSA;

(3) instead, you arranged for your father, who did not play any supervisory or day-to-day role in the business, to become the sole approved person at Express Financial from 31 October 2004; and

(4) you were aware that you were required to be an approved person from, at the latest, 1 June 2007 (when you replaced your father as sole director of Express Financial).

4.14. However, you never became an approved person for Express Financial. Furthermore, the FSA does not have any record of an application for you to become an approved person for Express Financial or any other firm. Your explanation at interview that you had sent some documentation to the FSA just before your father resigned in June



2007 and therefore thought you were an approved person is not credible, given, first, the absence of any records to this effect and, second, that you would have had to receive confirmation from the FSA that your application to be an approved person had been accepted and no such confirmation was sent by the FSA. Accordingly, the FSA has come to the conclusion that, at least from June 2007, you knowingly carried out controlled functions without being approved.

## **5. ANALYSIS OF BREACHES AND SANCTION**

5.1. Having regard to the facts and matters described above, the FSA has considered whether you are a fit and proper person to continue to perform some or any functions in relation to regulated activities. In doing so, the FSA has considered its statutory objectives, the regulatory requirements and relevant guidance referred to in section 3 above.

5.2. In assessing your honesty, integrity and reputation for the purpose of considering whether you are a fit and proper person, the FSA has had regard to the following:

- (1) you certified client identity documents accompanying the fraudulent Mortgage Applications as true copies of the originals without seeing the original documents or meeting the clients;
- (2) you arranged for your father, not yourself, to become the sole approved person at Express Financial from 31 October 2004 even though you were the individual carrying out controlled functions at Express Financial;
- (3) you knowingly carried out, from June 2007 at the latest, the significant influence function at Express Financial without being approved; and
- (4) you were either reckless or wilfully negligent by submitting the Mortgage Applications, in the circumstances outlined in paragraph 4.11, where you suspected that false information might be used to support the Mortgage Applications and, at least in the case of the May Applications, you suspected that the individuals who referred the applications to you might be attempting to commit mortgage fraud.

5.3. In light of your conduct, it appears to the FSA that:

- (1) you have contravened requirements and standards of the regulatory system;  
and
- (2) you have failed to demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory system and with professional obligations and ethical standards,

and in doing so you have failed to meet the FSA's standards of honesty, integrity and reputation.

5.4. The FSA has concluded from the above that you are not fit and proper to carry on regulated activities and that, if you performed any functions in relation to regulated activities you would pose a risk to consumers, to lenders (and therefore to confidence in the financial system) and to the fulfilment of the FSA's reduction of financial crime objective. The FSA therefore considers that the Prohibition Order is necessary and proportionate.

## **6. DECISION MAKERS**

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

## **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 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).

Signed:

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Jonathan Phelan

**Project Sponsor**

**FSA Enforcement Division**