

VARIATION TO PROHIBITION ORDER

This prohibition order was varied by the FCA on 10 July 2014 to allow Mr Barreto to refer individuals to authorised firms and individuals that provide regulated advice. Mr Barreto can have no involvement after the referral and in particular cannot be involved in the giving of advice nor be present when individuals receive advice. All other terms of the prohibition order remain in effect.

FINAL NOTICE

To: Larry John Barreto

**Of: 53 Smithurst Road
Giltbrook
Nottingham
NG16 2UD**

Date: 11 May 2004

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you notice about an order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person.

THE ORDER

The FSA gave you a Decision Notice dated 1 August 2003, which notified you that pursuant to section 56 of the Financial Services and Markets Act 2000 ("FSMA"), the FSA had decided to make an order prohibiting you, Larry John Barreto, from performing any function in relation to any regulated activity carried on by any authorised person.

You referred the matter to the Financial Services and Markets Tribunal ("the Tribunal"), by way of a Reference Notice dated 26 August 2003 on the ground that your expulsion by the Personal Investment Authority ("PIA") in 1996 was wrongful as you were not represented by a solicitor when the PIA investigators first came to interview you and when the interview was tape recorded.

On 25 November 2003, on an application by the FSA, the Tribunal struck out your reference for want of jurisdiction on the ground that the Tribunal and the FSA must treat the revocation of your authorisation in 1996 as an established fact and the validity of the PIA order can no longer be challenged.

On 28 November 2003 you made an application to appeal the Tribunal's decision of 25 November 2003. On 19 February 2004 the Tribunal refused you leave to appeal because the only ground advanced was that you wished to challenge the revocation of your authorisation by PIA in 1996, a matter outside the Tribunal's jurisdiction.

You then indicated that you intended to appeal to the Court of Appeal, however, on 7 April 2004 the FSA was informed that you did not now intend to proceed with your application to the Court of Appeal.

Accordingly and for the reasons set out below and having taken into consideration your written representations dated 28 June 2003, 5 July 2003 and 14 August 2003 to the Regulatory Decisions Committee ("RDC"), the FSA hereby makes an order pursuant to Section 56 FSMA prohibiting you, Larry John Barreto, from performing any function in relation to any regulated activity carried on by any authorised person.

This order has effect from **11 May 2004**.

REASONS FOR THE ACTION

Introduction

1. The action arises from your conduct since June 1996, when you, as a partner of Barreto & Partners trading from The Futurist, Valley Road, Bashford, Nottingham, were the subject of an order by PIA revoking your authorisation to undertake investment business in the UK ("the PIA Order") by reason of your conduct in relation to the falsification of mortgage applications.
2. In particular:
 - (a) between 1997 and April 2003, trading as Barreto & Company, you carried on regulated activities in contravention of the PIA Order and therefore in breach of section 3 of the Financial Services Act 1986 ("the FS Act") up to December 2001 and thereafter in breach of the general prohibition in section 19 FSMA;
 - (b) between July 1998 and February 2001, during the course of undertaking those unauthorised activities, you made a number of statements which you knew to be misleading, false or deceptive for the purpose of inducing other persons to enter into investment agreements in contravention of section 47 of the FSAct;
 - (c) between 1999 and 2001, notwithstanding that your Consumer Credit Licence ("CCL") had been revoked by the Office of Fair Trading ("OFT") in 1999, you continued to undertake mortgage broking business and falsely represented that you held a valid licence when you did not; and
 - (d) in 2002 you also failed to be truthful with FSA investigators.
3. By your conduct you have demonstrated such wilful and persistent disregard of the requirements and standards of the regulatory system, and thereby such a lack of fitness and propriety, that the FSA considers it necessary to make a prohibition order in the terms stated in order to achieve its regulatory objectives. Those include maintaining market confidence in the financial system and protecting consumers.

Relevant Statutory Provisions

4. The FSA's regulatory objectives are set out in section 2 FSMA.
5. Section 3 of the FS Act prohibited any person from carrying on or purporting to carry on investment business in the UK without authorisation. The FS Act remained in force until the commencement of FSMA on 1 December 2001 and since that date section 19 FSMA has prohibited any person from carrying on or purporting to carry on a regulated activity in the UK unless he is authorised or exempt.
6. Arranging deals and advising on investments constituted investment business by virtue of paragraph 13 and 15 of Part II, Schedule 1 to the FS Act and constitute regulated activities for the purpose of paragraph 3 of Part 1, Schedule 2 to FSMA and Articles 25 and 53 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.
7. Under section 47 of the FS Act, any person who makes a statement, promise or forecast which he knows to be misleading, false or deceptive or who dishonestly conceals material facts, or who recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive, is guilty of an offence if he does so for the purpose of inducing, or is reckless as to whether it may induce, any person to enter into an investment agreement.
8. By virtue of the Transitional Provisions and Commencement Orders made under FSMA, the FSA is empowered to deal with breaches occurring both under the FS Act and under FSMA.
9. The FSA's power to make a prohibition order is set out in section 56 FSMA and the procedure to be adopted is set out in section 58 FSMA.

Relevant Guidance

10. In considering the nature, extent and means by which your actions constitute unauthorised regulated activity, the FSA has had regard to guidance published in the FSA Handbook, in particular in the Authorisation Manual, as follows:
 - (a) AUTH 2.4.1 explains that section 19 FSMA requires persons to be authorised only in relation to activities that are carried on in the UK and acknowledges that when there is a cross border element, for example because a client is outside the UK or because some other element of the activity happens outside the UK, the question may arise as to where the activity is carried on.
 - (b) However, AUTH 2.4.2 states that even with a cross border element a person may still be carrying on a regulated activity in the UK; for instance, a person who is situated in the UK will still be carrying on activities in the UK even when they are limited to safeguarding or administering investments in the UK and even though his client may be overseas.
11. In deciding to make the order, the FSA has also had regard to guidance published in the FSA Handbook, in particular in the Enforcement Manual, as follows:

- 11.1. ENF 8.1.2 explains the purpose of prohibition orders in relation to the FSA's regulatory objectives.
- 11.2. ENF 8.4.2 concerns the scope of the FSA's power to make 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.
- 11.3. ENF 8.4.3 states that the FSA will consider all relevant circumstances, including whether other enforcement action has been taken.
- 11.4. ENF 8.8 states that the FSA will consider exercising its power to make prohibition orders against individuals who are neither approved persons nor employed by authorised persons where such individuals have shown themselves to be unfit to carry out functions in relation to regulated activities.
- 11.5. ENF 8.8.2A recognises that, where it is considering whether to exercise its powers to make a prohibition order against such an individual, the FSA will not have the option of considering the adequacy of other enforcement action and provides that it 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.
- 11.6. ENF 8.8.3 states that when determining the fitness and propriety of such an individual, the FSA will consider a number of factors including the criteria for assessing the fitness and propriety of approved persons set out in the Fit and Proper test for Approved Persons ("FIT").
 - (a) The most important considerations include the individual's honesty, integrity and reputation (FIT 1.3.1).
 - (b) In determining an individual's honesty, integrity and reputation, the matters to which the FSA will have regard include whether the individual has been candid and truthful in all his dealings with any regulatory body and whether the individual demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system.

Facts and Matters Relied On

12. On the basis of the facts and matters described below the FSA considers 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.

Background

13. Prior to May 1996, you traded as a principal partner in Barreto & Partners and you were regulated by virtue of the FS Act with regard to the conduct of investment business by PIA.

14. In June 1996, after a period of suspension, PIA revoked your authorisation to conduct investment business by reason of your activities involving the falsification of mortgage applications. Since that time, neither you nor any of your businesses have been authorised or exempt.
15. In August 1996, you entered into an international agency agreement with Scottish Provident International Life Assurance Limited ("SPI") enabling you to conduct non-UK investment business. This entailed the provision of investment services, outside the UK, in respect of offshore investment products for non-UK based investors.
16. The products concerned ("SPI Products") included SPI Capital Investment Portfolios, SPI Momentum Funds (including individual retirement plans) and SPI Bonus Growth Investment Portfolios. Your sole business premises are, and were at all relevant times, in Nottingham, England.
17. In 1999, the OFT revoked your CCL in respect of mortgage broking business for the reasons which gave rise to the PIA's revocation Order.
18. In August 2002, the FSA commenced a statutory investigation into your activities. You were interviewed under the provisions of section 173 FSMA. The FSA has taken witness statements from persons who have done business with you and from the Compliance Officer at SPI. The FSA has obtained information from other material provided by you, such as client files, application forms and sources such as the OFT.

Unauthorised investment business in breach of section 3 of the FSAct and carrying on regulated activities in breach of section 19 FSMA

19. The SPI Products were, at all relevant times, investments within the meaning of Part 1 Schedule 1 to the FSAct and Part 2 Schedule 2 FSMA. In that the products were investments, advising on their purchase or sale or arranging deals in them in the UK constituted regulated activity.
20. Since the third quarter of 1997, when you commenced business in relation to SPI products in the UK, you advised on or arranged the purchase, amendment or surrender of SPI Products on more than 40 occasions. The 17 clients who purchased SPI products as a result of your advice or arrangements enabled you to earn some £45,000 in commission.
21. It appears to the FSA that you routinely entered into these transactions. Furthermore, the day to day administration of these activities was carried on from your sole business premises in Nottingham.
22. SPI has confirmed to the FSA that in January 2003, during the course of this investigation and after your formal interview and notwithstanding that you had given an oral undertaking not to conduct investment business, you arranged the surrender of a client's policy.
23. In the circumstances described in paragraphs 19 to 22, the FSA considers that between 1997 and 2003 you:

- (a) carried on regulated activities in contravention of section 3 of the FS Act and section 19 FSMA; and
- (b) did so in direct contravention of the PIA Order, which specifically revoked your authorisation to do so.

Misleading statements

- 24. There is clear evidence that on a number of occasions dating as far back as 1998, you encouraged investors to complete product application forms (which you later submitted) giving details of overseas addresses which you were aware were false. In a number of instances the clients, while having access to addresses abroad, were resident, to your knowledge, in the UK at the time their applications to invest were made. Your purpose was to induce SPI to accept the information as correct and therefore enter into investment agreements with the investors.
- 25. In the application forms relating to five clients you effected entries stating that the investment advice provided by you had been given outside the UK. This was not true in any of these instances.
- 26. In another instance, in 1998, you provided a client with an address in the West Indies belonging to another of your clients, thereby encouraging her to state it falsely in her application for SPI Products. This information was restated in a second application form in 1999 and submitted to SPI by you. You were aware that this information was false.
- 27. In that each of them was made in the context of your arranging deals in and advising clients in relation to SPI Products, you made these statements for the purpose of inducing SPI to enter into investment agreements and therefore in contravention of section 47 of the FS Act.

Lack of truthfulness

- 28. In 1997, during an informal enquiry following a complaint regarding your business activities, a Securities and Investments Board investigator reminded you of the consequences of the revocation of your PIA authorisation. You confirmed your understanding of the PIA Order.
- 29. In January 2002, the FSA conducted a further enquiry into the scope of your investment business. You specifically stated that you carried out no administration work on, in or from the UK and that your UK business related solely to mortgage broking.
- 30. The FSA now has information that you have consistently and repeatedly advised on and arranged deals in investments in the UK, both in respect of investors who were resident in the UK and also in respect of clients who were resident abroad but to whom you provided investment services from the UK.
- 31. The statements you made to investigators in 2002 were, therefore, untruthful. Further, you knew that the FSA would be relying upon the information that you provided and therefore that the FSA's investigators would be materially misled.

32. In March 1999, the OFT revoked your CCL for reasons of unfitness relating to the PIA findings. In July 2001, you applied for a new licence. The OFT obtained evidence that you had continued to conduct mortgage broking business notwithstanding the revocation of your CCL and you falsely represented that you held a valid licence when you did not. Your application was refused. You appealed unsuccessfully to the Adjudicator who in 2002 found, among other things, that she was not satisfied that you were fit to hold a licence.
33. By the conduct described in paragraphs 27 to 32 you have failed fundamentally not only to be candid and truthful in all your dealings with regulatory bodies but also to show that you are ready and willing to comply with the requirements and standards of the regulatory system.

Admissions

34. The FSA conducted a formal interview under the provisions of FSMA on 28 August 2002. During the course of that interview, you readily made the following admissions:
 - (a) that you had given advice and arranged deals in investments since the revocation of your PIA authorisation in 1996;
 - (b) that, although you had given such advice within the UK, you submitted forms to SPI stating that the advice had been given outside the UK; and
 - (c) that you had provided another client's address in the West Indies to a UK resident client, albeit, you contended, at the latter's request.

You also contended that some of your clients were aware that you were not authorised to conduct regulated activities in the UK and alleged that SPI was not only fully briefed as to the status of your clients, being particularly aware of the situation concerning the client using the address in the West Indies, but also assisted you in getting round the regulations. These allegations are denied by SPI.

Conclusions

35. On the basis of the facts and matters described above the FSA considers that the severity of the risk you pose to consumers and/or to confidence in the market generally is such that it is necessary for the FSA to exercise its power to make a prohibition order against you.
36. The FSA considers that you are not fit and proper to perform any function in relation to any regulated activity. In particular you do not satisfy the criterion of honesty, integrity and reputation. You have demonstrated a fundamental lack of openness and honesty in dealing with consumers, market participants and regulators and that you are not ready and willing to comply with regulatory, legal and professional and ethical standards. You have carried on unauthorised investment business in contravention of section 3 of the FS Act and in breach of the general prohibition contained in section 19 FSMA and you have been involved in other misconduct and activities contrary to section 47 of the FS Act. You have also been the subject of an adverse finding in connection with other financial business, namely mortgage broking business.

37. In considering all relevant circumstances, the FSA is mindful that no other enforcement action has been taken against you and that no such other administrative action is available to it.
38. The length of time that has passed since your misconduct started is not such as to make the imposition of a prohibition order inappropriate. The conduct in question demonstrates a fundamental lack of fitness and propriety, and has continued throughout the period 1997 to 2003, following consistent themes and modes of behaviour and demonstrating a ready willingness to act in breach of the law.

DECISION MAKER

39. The decision that gave rise to the obligation to give this notice was made by the Regulatory Decisions Committee on behalf of the FSA.

IMPORTANT NOTICES

40. This Final Notice is given to you in accordance with Section 390 FSMA.

Publicity

41. Section 391(1), 391(6) and 391(7) FSMA 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. 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 interest of consumers.
42. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Third party rights

43. A copy of the Decision Notice was given to SPI as a third party identified in the reasons described above which relate to matters which, in the opinion of the FSA, are prejudicial to it. The FSA will also give a copy of this notice to SPI.

FSA contacts

44. For more information concerning this matter generally, you should contact John Tutt at the FSA (direct line: 020 7066 1240/fax: 020 7066 1241).

Julia Dunn
Head of Retail Selling
FSA Enforcement Division