
FINAL NOTICE

To: **Kevan Ian Berry**

Of: **c/o HM Prison Preston
2 Ribbleston Lane
Preston
Lancashire
PR1 5AB**

Date: **27 January 2004**

TAKE NOTICE: The Financial Services Authority ("the FSA") of 25 The North Colonnade, Canary Wharf, London E14 5HS gives you final 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 5 December 2003 which notified you that, for the reasons set out in that notice, pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act") the FSA had decided to make an order prohibiting you, Mr Kevan Ian Berry, from performing any function in relation to any regulated activity carried on by any authorised person.

You have not referred 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, 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. This order has effect from 26 January 2004.

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REASONS FOR THE ORDER

Introduction

1. It appears to the FSA that you are not fit and proper to perform any function in relation to any regulated activity carried on by any authorised person because of your conduct, over a period of at least seven years from 1995 which involved numerous acts of dishonesty or fraud, while acting as a financial adviser, and culminated in your being convicted on 23 January 2003, of six counts of stealing monies, one count of attempting to steal monies and four counts of procuring the execution of a valuable security by deception.

Relevant Statutory Provisions

2. The FSA is authorised by the Act to exercise the powers contained in section 56 of the Act, which includes the following:

“(1) Sub-section (2) applies if it appears to the [Financial Services] Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.

(2) The Authority may make an order ('a prohibition order') prohibiting the individual from performing a specified function, any function falling within a specified description or any function.

(3) A prohibition order may relate to-

(a) a specified regulated activity, any regulated activity falling within a specified description or all regulated activities;

(b) authorised persons generally or any person within a specified class of authorised person”.

3. When exercising its powers, the FSA seeks to act in a way it considers most appropriate for the purpose of meeting its regulatory objectives, which are set out in section 2(2) of the Act. The FSA considers that making a prohibition order against you in the terms indicated meets the following regulatory objectives:

(a) the market confidence objective: that is, maintaining confidence in the financial system, and

(b) the protection of consumers objective: that is, securing the appropriate degree of protection for consumers.

Relevant Guidance

4. In deciding to take this action, the FSA has had regard to guidance published in the FSA Handbook, in particular the Enforcement Manual, as follows:

- ENF 8.1.2 explains that the purpose of prohibiting individuals who are not fit and proper is to help the FSA to work towards its regulatory objectives;

- ENF 8.4.2 concerns the scope of the FSA's power to make prohibition orders explaining that it 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;
 - ENF 8.4.3 states that the FSA will consider all relevant circumstances, including whether other enforcement action has been taken;
 - 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;
 - 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;
 - 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");
 - FIT 1.3.1 states that the most important considerations include a person's honesty, integrity and reputation. In determining a person's honesty, integrity and reputation, the matters to which the FSA will have regard include whether the person has been convicted of any criminal offence, with particular consideration to be given to offences of dishonesty or fraud (FIT 2.13.(1)).
5. The FSA is of the view that these matters are all relevant to its assessment of your conduct and that they support the FSA's conclusion 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.

Facts and Matters Relied On

6. The 11 offences for which you, after pleading guilty, were convicted were set out in documents produced by Burnley Magistrates Court, each of which is referred to as a "Memorandum of a conviction or order or other proceedings entered in the register of the Magistrates Court" and was dated 23 January 2003.
7. Those offences, for each of which you received a custodial sentence of four years, all to run concurrently, involved both dishonesty and fraud upon clients while you were acting as their financial adviser and for the purpose of your own financial advantage. Your misconduct continued over a long period of time. Under section 79 of the Powers of the Criminal Court (Sentencing) Act 2000 the Court may only pass a

custodial sentence where the offence is so serious that such a sentence can be justified by the offence.

Conclusions

8. By reason of the facts and matters described above, it appears to the FSA that you are not fit and proper to perform any function in relation to any regulated activity carried on by any authorised person.
9. You have been convicted of criminal offences, involving both dishonesty and fraud, of such seriousness as to justify lengthy custodial sentences. Those convictions, and the admitted conduct which gave rise to them, go directly to impugn your honesty, integrity and reputation and therefore to 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;
10. The severity of the risk 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 exercise its power to make a prohibition order against you in the terms proposed.
11. Consequently, the FSA has decided that a prohibition order should be made in the terms indicated.

IMPORTANT

This Decision Notice is given to you in accordance with section 390 of the Act.

Publicity

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.

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

FSA Contacts

For more information concerning this matter generally, you should contact John Kirby (direct line: 020 7066 1458/fax: 020 7066 1459) or Fiona Bisset (direct line: 020 7066 5622/fax: 020 7066 9722) of the Enforcement Division of the FSA.

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Julia Dunn
Head of Retail Selling
FSA Enforcement Division