
FINAL NOTICE

To: Forest Financial Services Limited

Address: 35 Gloucester Road
London E17 6AE

FRN: 232012

Dated: 10 February 2010

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives final notice about the cancellation of the Part IV permission of Forest Financial Services Limited (“Forest Financial”)

1. ACTION

- 1.1. The FSA gave Forest Financial a Decision Notice on 10 February 2010 (“the Decision Notice”) which stated that it had decided to cancel the permission to carry on regulated activities granted to Forest Financial in relation to Part IV and pursuant to section 45 of the Act.

2. REASONS FOR ACTION

- 2.1. Forest Financial is a limited company (Registered No. 4466201). It was incorporated on 20 June 2002. Its registered office is: 35 Gloucester Road, London E17 6AE. Forest Financial operated as a mortgage intermediary. It has two directors. Mr Kevin Byrne was approved by the FSA to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer). Mr Byrne has a 50% shareholding in Forest Financial but explained to the FSA that none of the decision making at Forest Financial was shared with the other Director.
- 2.2. On the basis of the facts and matters summarised below, and set out in more detail in section 4 of this Notice, the FSA concluded that, between 31 October 2004 and 5 May 2009 (“the relevant period”), Mr Byrne acted recklessly and that he therefore failed to act with integrity, in that he:

- (1) accepted mortgage business from an introducer (“Company A”) in unusual circumstances without undertaking adequate due diligence, which resulted in Forest Financial submitting seven fraudulent mortgage applications to lenders;
 - (2) submitted mortgage applications to lenders on behalf of customers of Forest Financial which contained obvious anomalies, in circumstances where there were in the FSA’s view reasonable grounds to suspect that the mortgage applications were based on false and misleading information;
 - (3) certified customers’ supporting identification documents as true copies of the originals (on the assumption, he said, that he would see the original documents later), which resulted in false passports and bank statements being used to support mortgage applications; and
 - (4) gave false and misleading information to the FSA when he said during a supervision visit that he had met in person the customers introduced to Forest Financial by Company A.
- 2.3. The FSA also concluded that Mr Byrne failed to demonstrate competence and capability in that, on his own admission, he took no steps to help prevent Forest Financial from being used to commit mortgage fraud. Such steps might have included checking documents provided by customers to authenticate their incomes and identity, and using management information to detect patterns of suspicious activity and anomalies.
- 2.4. As such, the FSA considered that Mr Byrne acted recklessly and that he lacked integrity, and also that he was not sufficiently competent and capable to perform controlled functions at an authorised firm. The FSA therefore concluded that Mr Byrne is not a fit and proper person to perform functions in relation to regulated activities carried on by an authorised person. Having regard to its statutory objectives (including consumer protection, market confidence and the reduction of financial crime) it was appropriate for the FSA to exercise its powers to withdraw his individual approval to perform controlled functions and to make a prohibition order against him.
- 2.5. As the FSA considered that Mr Byrne is not fit and proper, Forest Financial was failing to satisfy the threshold conditions set out in Schedule 6 to the Act (the “Threshold Conditions”) in that, in the opinion of the FSA, Forest Financial did not have adequate resources in relation to the regulated activities that it carried on. Specifically, Forest Financial did not have adequate human resources (Threshold Condition 4).
- 2.6. Furthermore, Forest Financial was not able to satisfy the FSA that it was fit and proper having regard to all the circumstances, including its connection with Mr Byrne and the overall need to ensure that its affairs were conducted soundly and prudently (Threshold Condition 5).

3. STATUTORY PROVISIONS, REGULATORY RULES, GUIDANCE AND POLICY

- 3.1. The relevant statutory provisions and regulatory requirements are attached at Annex A.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. Mr Byrne was one of two directors of Forest Financial, a mortgage intermediary that operated from Walthamstow, East London. During the relevant period, he was approved by the FSA to perform the controlled functions of CF1 (Director), CF8 (Apportionment and Oversight), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer). He was also the sole mortgage adviser at Forest Financial.

- 4.2. With effect from 12 May 2004, Forest Financial was granted permission by the FSA to carry on the following designated investment activities:

- (1) advising on investments (except on Pension Transfers and Pension Opt Outs);
- (2) arranging (bringing about) deals in investments;
- (3) agreeing to carry on a regulated activity; and
- (4) making arrangements with a view to transactions in investments.

- 4.3. With effect from 31 October 2004 Forest Financial was granted permission by the FSA to carry on the following regulated home finance activities:

- (1) advising on regulated mortgage contracts;
- (2) arranging (bringing about) regulated mortgage contracts;
- (3) agreeing to carry on a regulated activity; and
- (4) making arrangements with a view to regulated mortgage contracts.

Referrals from Company A

- 4.4. In January 2008 Mr Byrne was contacted by Company A which offered to refer 15 new mortgage applicants each month to Forest Financial. He accepted seven cases from Company A and made applications to lenders for these customers through Forest Financial in the relevant period.

- 4.5. The client files for these seven introductions from Company A contained obvious anomalies and discrepancies which, when considered together, ought to have caused Mr Byrne to become suspicious and to have asked further questions before accepting the business.

- (1) The clients were recorded as working for large financial institutions on annual incomes of between £65,000 and £84,000.
- (2) The payslips provided were all in the same format despite purportedly originating from different employers.
- (3) Nearly all of the applicants were based in or around London but were purchasing residential properties on new property developments in Birmingham. Two of the applicants introduced by Company A were purportedly purchasing properties in the same development in Birmingham.
- (4) In one case, the bank statement provided to verify the client's income had different account numbers and sort codes printed on pages one and two.

4.6. Upon further investigation the FSA identified that:

- (1) two of the applications originating from Company A were supported by false passports;
- (2) Her Majesty's Revenue and Customs ("HMRC") had no tax records for four of the applicants originating from Company A; and
- (3) for other customers the incomes declared on the mortgage applications were substantially less than the incomes declared to HMRC.

4.7. Mr Byrne certified copies of the supporting documents as true copies of the originals despite never having seen the originals and, during a supervision visit, he told the FSA supervisor that he had met all of the customers introduced by Company A when in fact he had not met any of them.

Other client files

4.8. The FSA also reviewed a random sample of 14 of Forest Financial's client files relating to business coming directly to Forest Financial and not originating from Company A. Of these 14 files, six contained indicators of false income figures having been submitted to lenders.

4.9. The FSA asked Mr Byrne about these discrepancies. Two examples are given below.

- (1) He declared a customer's projected income for a future year as actual earned income for a previous year on the mortgage application.
- (2) He entered conflicting employment information on a fact find and the mortgage application.

4.10. He said that these examples were mistakes and that he did not typically scrutinise information given to him by clients to mitigate the risk of Forest Financial being used to commit fraud.

5. DECISION MAKER

- 5.1. The decision that gave rise to the obligation to give this Final Notice was made on behalf of the FSA by Settlement Decision Makers for purposes of the FSA's Decision Procedure and Penalties Manual.

6. IMPORTANT

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

Publicity

- 6.2. 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.
- 6.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 6.4. For more information concerning this matter, you should contact Chris Walmsley at the FSA (direct line: 020 7066 5894).

Tom Spender
Head of Department
Financial Services Authority

Annex A: Statutory provisions, regulatory rules, guidance and policy

- 1.1. The FSA's statutory objectives, set out in Section 2(2) of the Act, are: market confidence; public awareness; the protection of consumers; and the reduction of financial crime.
- 1.2. Section 41 and Schedule 6 of the Act set out the Threshold Conditions which are conditions that the FSA must ensure a firm will satisfy, and continue to satisfy, in relation to regulated activities for which it has permission.
- 1.3. Paragraph 4 of Schedule 6 to the Act states that the resources of the person concerned must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on or carries on (Threshold Condition 4: Adequate Resources).
- 1.4. Paragraph 5 of Schedule 6 to the Act states that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances including (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently (Threshold Condition 5: Suitability).
- 1.5. The FSA is authorised by section 45(2) of the Act to cancel an authorised person's Part IV permission where it appears that an authorised person is failing, or likely to fail, to satisfy the Threshold Conditions or it is desirable to exercise that power in order to protect the interests of consumers or potential consumers.

Principles, Rules and Guidance

FSA's policy for exercising its power to cancel Part IV permission

- 1.6. The FSA's policy for exercising its power to cancel a Part IV permission is set out in the Enforcement Guide ("EG"). The main considerations in relation to the action specified above are set out below.
- 1.7. EG 8.13(1) provides that the FSA will consider cancelling an authorised person's Part IV permission where the FSA has very serious concerns about a firm, or the way its business is or has been conducted.

Threshold Conditions

- 1.8. The part of the FSA handbook entitled Threshold Conditions ("COND") gives guidance on the Threshold Conditions as set out in or under Schedule 6 to the Act.
- 1.9. COND 2.4.1 D states that the resources of the person concerned must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.

- 1.10. COND 2.4.2 G(2) provides that the FSA will interpret the term 'adequate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources, non-financial resources and means of managing its resources such as, for example, human resources and effective means by which to manage risks.
- 1.11. COND 2.5.1 D states that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances including (a) his connection with any person; (b) the nature of any regulated activity that he carries on or seeks to carry on; and (c) the need to ensure that his affairs are conducted soundly and prudently.
- 1.12. COND 2.5.6 G gives guidance in respect of whether a firm satisfies Threshold Condition 5, in conducting its business with integrity and in compliance with proper standards including whether the firm is ready, willing and organised to comply with the requirements and standards under the regulatory system (COND 2.5.6 G (1)); and whether the firm has contravened, or is connected with any person who has contravened any provision of the Act or the regulatory system (COND 2.5.6 G (4)).