

To: Richard Matkin
Of: 19 Olive Street
Sunderland
SR1 3PE

11 April 2002

FINAL NOTICE

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 pursuant to section 56 of the Financial Services and Markets Act 2000 (“the Act”) prohibiting you from carrying out any functions in relation to any regulated activities carried on by any authorised person.

THE ORDER

The FSA gave you a decision notice on 1 March 2002 which notified you that, pursuant to section 56 of the Act, the FSA had decided to make an order prohibiting you from carrying out any functions in relation to any regulated activities 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 carrying out any functions in relation to any regulated activities carried on by any authorised person. The order has effect from 12 April 2002.

REASONS FOR THE ORDER

The FSA has concluded on the basis of the facts and matters described below that you are not fit and proper to perform functions in relation to regulated activities carried on by any authorised person.

Facts And Matters Relied On

The FSA considers that you have contravened requirements of the Act in that:

You started trading in 1988 as a sole trader in financial services. Your business was incorporated in 1991 as Albion Investment Management Limited. This company was subsequently dissolved in 1995.

Albion Management Services Limited (formerly known as Albion Investment Management Limited) (“the Firm”) was incorporated on 24 January 1996. You were registered as a director of the Firm. The Firm was admitted as a member of the Personal Investment Authority (“PIA”) on 5 December 1996 with A2 permissions. From October 1998, the Firm did not have any individuals registered with PIA to give investment advice.

The Firm undertook activities regulated by PIA, including holding and investing client funds. On the Firm’s application its permissions were changed on the 19 January 1999 to B3. From 19 January 1999, the Firm was no longer entitled to conduct discretionary portfolio management or handle client money. It was also from this date that you were registered as the sole director of the Firm.

The Firm applied to resign its membership from PIA on 25 August 2000. As the Firm had submitted a return for one FSAVC review (part of the pensions review) the PIA followed its normal policy and refused the Firm's request to resign until the time period (31 December 2001) had elapsed within which the individual identified could request a review. PIA informed the Firm on 9 November 2000 that it should not undertake any new business.

In October 2001 PIA received an enquiry from an investor as a result of which FSA investigators visited the Firm's premises and subsequently carried out an investigation into the investment business conducted by the Firm.

As a result of that investigation issues regarding your honesty, integrity and reputation have arisen as follows:

1. You initially inflated the value of clients' holdings to retain their business and enhance your reputation. You subsequently inflated the size of the holdings, and led clients to believe that they held shares you had not purchased on their behalf. You received the benefit of fees and commission payments from your clients on the inflated valuations you provided to your clients. You have been providing false information to your clients over a period of 10 years or more.
2. You produced Statements of Accounts for clients which did not reflect the true size and value of their investment holdings. These accounts were produced to clients on a regular basis. FSA staff have identified that of 75 clients of the Firm where investment advice was provided, 41 clients will have a shortfall between the actual and reported assets of approximately £992,386. (Calculation as at 30 November 2001)
3. Your overstatement of the values of the clients' portfolios led clients to expect higher payments on dividends and when cashing in their investments. When clients cashed in the investments that they believed they held, they were paid the overstated amount out of other clients' funds. Consequently, the overvaluation of remaining client assets increased throughout trading, resulting in a growing discrepancy between actual and reported asset values.

This behaviour occurred over a period of 10 years or more, has affected at least 41 clients and has resulted in a total deficit to your clients of close to £1,000,000.

On 15 November 2001 the PIA Disciplinary Committee determined that the Firm should cease conducting investment business. It appeared to the PIA Disciplinary Committee that the member may not have been fit and proper to carry on investment business, as the Firm's honesty and reputation had been called into question and as it had no registered individuals.

The FSA lodged a petition for the compulsory winding up of the Firm that was presented at the High Court on 30 November 2001. The Court placed the Firm into provisional liquidation.

As you were not a registered individual, you were not grandfathered in to the new regulatory system on 1 December 2001 and accordingly you are not an approved person for the purposes of FSMA.

On 16 January 2002 the court issued a winding up order against the Firm on the FSA's petition.

Relevant Statutory Provisions

Pursuant to section 56 FSMA the FSA may prohibit an individual from performing any functions in relation to regulated activities carried on by any authorised person, where it appears to the FSA that an individual is not fit and proper to do so.

Relevant Guidance

In deciding to take the action described above in reliance upon the facts and matters described above, the FSA has had regard to guidance published in the FSA Handbook, in particular ENF 8.4.4 sets out the FSA's policy on when a prohibition order (as opposed to other action) may be appropriate as follows:

“In most cases the FSA will consider whether the particular unfitness can be adequately dealt with by withdrawing approval or other disciplinary sanctions, for example, public censure or financial penalties, or by issuing a private warning. The FSA will consider making a prohibition order only in the most serious cases of lack of fitness and propriety. In most cases the FSA may consider it necessary to prevent the individual concerned from performing any functions in relation to any regulated activities carried on by any firm. Where the individual concerned is not an approved person the FSA will not have the option of withdrawing approval or exercising its disciplinary powers in relation to the individual concerned and therefore a prohibition order may be the only appropriate action available.”

ENF 8.6.2 sets out those factors at ENF 8.5.2 which the FSA will consider when considering whether to make a prohibition order against an individual who is not an approved person, including:

- (1)(a) Honesty, integrity and reputation – including the individual’s openness and honesty in dealing with consumers, market participants and regulators and ability and willingness to comply with requirements placed on him by or under the Act as well as with other legal and professional obligations and ethical standards; ...*

- (3) the relevance, materiality and length of time since the occurrence of any matters indicating unfitness; ...*

- (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system.*

It is clear to the FSA from the facts and matters described above that your conduct constitutes a most serious case of lack of fitness and propriety. You have:

1. consistently misled your customers;
2. maintained false paper trails; and

3. used assets belonging to certain clients knowingly to make overpayments to other clients.

This conduct remains both highly relevant and highly material and has occurred in the recent past. It has also posed a most severe risk to consumers and to confidence in the financial system. Your conduct has:

1. spanned a period of 10 years or more;
2. affected at least 41 clients; and
3. culminated in a total deficit to your clients of close to £1 million.

On the basis of the foregoing, the FSA considers that this behaviour demonstrates that you are not a fit and proper person to perform functions in relation to regulated activities carried on by any authorised person, and that this behaviour has damaged the interests of investors. The FSA considers that it is necessary to prevent you from performing any functions in relation to regulated activities carried on by any authorised person.

YOUR RIGHTS

This final notice is sent to you in accordance with section 390(1) of the Act.

PUBLICATION

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 and issue a press release.

For more information concerning this matter generally, please contact Felicity Rowan at the FSA (direct line: 020 7676 1424 / fax: 020 7676 1425).

Julia Dunn

Head of Department, Enforcement

11 April 2002