

FINAL NOTICE DATED 12 January 2011

Steven Andrew Hemmings

SUMMARY OF THE MATTER TO WHICH THE NOTICE RELATES

Date of issue: 12 January 2011

The FSA has refused an application made by Firm A under Section 60 of the Financial Services and Markets Act (FSMA) for Steven Andrew Hemmings to perform the Customer Function (CF30).

The reason for this decision is because the FSA is not satisfied that Mr Hemmings is a fit and proper person to perform the controlled function applied for, in terms of his honesty, integrity and reputation, arising from his failure to disclose relevant information to the FSA of which it required disclosure.

Mr Hemmings failed to disclose that;

- (1) he had been the subject of two separate investigations at his previous employer (“Firm B”) which resulted in him receiving final written warnings;
- (2) in relation to the second investigation, he had been suspended on 19 June 2009 whilst Firm B carried out its investigation; and
- (3) he had an unspent drink driving conviction which resulted in him being banned from driving.

The FSA did not accept Mr Hemmings’ explanation that the reason he did not disclose the investigations was because he did not believe he was disciplined or investigated in relation to his *‘business or professional activities’*. The FSA also found it implausible that Mr Hemmings did not believe he was formally suspended by Firm B given the seriousness of the situation; Mr Hemmings was issued with a suspension letter and sent home while Firm B carried out its second investigation. Mr Hemmings also claimed that he did not disclose the investigations because he considered them to relate to his “competence and performance” rather than “misconduct or malpractice”. However, the wording of the questions on the application form is clear and unambiguous and the FSA did not find this explanation for non-disclosure credible.

Mr Hemmings failed to satisfy the FSA that the issues in this matter illustrated a pattern of conduct which highlights material and deliberate non-disclosure. The FSA

could not therefore be satisfied that Mr Hemmings explanation for the non-disclosure of the drink driving conviction and ban were genuine.

Mr Hemmings signed the declaration in the Form A which states ‘*Knowingly or recklessly giving the FSA information which is false or misleading in a material particular may be a criminal offence*’ (section 398 of FSMA). Mr Hemmings was in a senior position and the standards expected of someone in his position are quite properly high. Applicants are required to approach such forms with caution and seek advice where necessary. It is important that the FSA is not deprived of the opportunity to make its own assessment.

The FSA considers that the matters set out above demonstrate that Mr Hemmings has failed to satisfy the disclosure requirements in respect of this application. Mr Hemmings has therefore contravened the standards and requirements of the regulatory system and has not, in the FSA’s view, been candid and truthful in all his dealings with the FSA or demonstrated a readiness and willingness to comply with the requirements and standards of the regulatory system (FSA Handbook, The Fit and Proper Test for Approved Persons, FIT2.1.3G (5) and (13).

The FSA is not satisfied for the purposes of Section 61(1) of FSMA that Mr Hemmings is a fit and proper person to perform the CF30 customer function. On this basis, the FSA has refused the application.

Mr Hemmings referred the matter to the independent Upper Tribunal (formerly known as the Financial Services and Markets Tribunal) but subsequently withdrew his reference.