

REGULATED ACTIVITIES – Variation of permission – Conviction of Applicant for offences involving dishonesty – Applicant failed to notify arrest, charge and conviction in questionnaires issued by Authority – Removal of all regulated activities – Cancellation of permission – Reference dismissed

FINANCIAL SERVICES AND MARKETS TRIBUNAL

**THEOPHILUS FOLAGBADE SONAIKE
T/A FT INSURANCE SERVICES**

Applicant

- and -

FINANCIAL SERVICES AUTHORITY

Authority

**Tribunal: STEPHEN OLIVER QC
SANDI O’NEILL
CHRISTOPHER CLAYTON**

Sitting in public in London on 17 October 2005

The Applicant in person

Simon Gerrish, counsel, for the Authority

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DECISION

1. This decision relates to a consolidated reference by Mr Theophilus Sonaïke in
5 respect of :

(a) A First Supervisory Notice directed to Mr Sonaïke and given on 19
10 May 2005. This notice, among other things, has removed all regulated
activities from the permission granted to Mr Sonaïke with immediate effect on
the basis that the Authority was not satisfied that Mr Sonaïke satisfied the
threshold conditions; specifically it was not satisfied that Mr Sonaïke was a fit
and proper person to be authorised to conduct regulated activities.

(b) A Decision Notice directed to Mr Sonaïke and given on 20 July 2005.
15 This cancelled the permission granted to Mr Sonaïke.

2. The First Supervisory Notice was issued pursuant to section 45(1) and (2) of
the Financial Services and Markets Act 2000 (“the Act”). The Decision Notice was
20 issued pursuant to section 45(1) and (3) of the Act.

3. Section 45(1) of the Act provides, so far as is relevant, that the Authority may
exercise its own-initiative power where it appears to the Authority that an authorised
person is failing or likely to fail to satisfy the threshold conditions; or it is desirable to
exercise its power in order to protect the interests of consumers or potential
25 consumers. Section 45(2) gives the Authority power to vary a Part IV permission. In
essence the Authority has such power where it appears to it that the person in question
does not satisfy the threshold conditions set out in Schedule 6 of the Act. In the
present circumstances the basis for the Authority’s decision is that it appears to them
that Mr Sonaïke has failed to satisfy the threshold condition that he is a fit and proper
30 person in that he has recently been convicted for offences involving fraud and that he
has not been open and cooperative in all dealings with the Authority.

4. Section 45(3) provides that if, as a result of a Part IV permission under that
section, there are no longer any regulated activities for which the Authorised person
35 concerned has permission, the Authority must, once it is satisfied that it is no longer
necessary to keep the permission in force, cancel it.

The facts and matters relied upon by the Authority

40 5. Mr Sonaïke, a sole trader, was authorised by the Personal Investment
Authority on 8 August 1994 and again authorised by the Authority on 1 December
2001 when its authorization passed into the new regulatory regime. Mr Sonaïke was
granted a variation of the permission to conduct mortgage mediation activities from
31 October 2004, and general insurance mediation activities from 14 January 2005.
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6. On 11 March 2003 Mr Sonaïke was arrested in relation to allegations of false
claims for housing benefit. He was convicted on 26 January 2004 following trial at

Manchester Crown Court on five counts of furnishing false information contrary to section 17 of the Theft Act 1968. The offences all related to dishonest claims for housing benefit in the period from April 1999 until November 2002. On 27 February 2004 Mr Sonaike was sentenced to a community punishment order totalling 150 hours. In his sentencing remarks the judge stated:

“You obtained that money by making a variety of false representations. Some are specifically set out in the indictment. But it is right, I think, to record that in support of their case that you were acting dishonestly, the Crown sought to prove and, in my view, clearly did prove, that you made a number of false representations over and above those specifically referred to. The period of time for which you were doing this, the number of false representations and the amount of money in total which you obtained make this, on any fair view, a very serious case and one which most certainly crosses what lawyers would call the custody threshold, that is, certainly brings the case into the realms of seriousness where it would be perfectly proper to pass a prison sentence. And, I have had carefully to consider whether such a sentence is the only way of dealing with your case”.

The Authority claims to have had no notification from Mr Sonaike of these charges, conviction or sentence. Mr Sonaike claims to have specifically notified the Authority by letter of 4 April 2003 of the arrest and by another letter of 30 January 2004 of the conviction. We will deal with these letters at a later stage in this Decision.

7. A further point relied on by the Authority is that Mr Sonaike had not notified it of either the arrest or the conviction when he completed two annual questionnaire forms.

8. On 12 January 2005 the Authority received from Mr Sonaike a completed annual questionnaire form for the calendar year 2003. Question 10 of that form asked:

“Are there outstanding, or have there been during the period, any legal proceedings against the firm, its principals or any of its appointed representatives?”

This question had been answered in the negative.

9. On 10 March 2005 the Authority received from Mr Sonaike a completed annual questionnaire for the calendar year 2004. In answer to question 10, the same as set out above, Mr Sonaike answered “Yes” Supplementary to question 10 was the further question – “If yes, please give details”. In answer to that question Mr Sonaike stated:

“All legal proceedings against the principal and the firm have been settled. Only one proceeding commenced by Norwich Union remains outstanding due

to Norwich Union's reluctance/failure to provide detailed commission statements".

10. On 22 April 2005 the Authority wrote to Mr Sonaïke stating that it had become aware of the convictions and on 25 April Mr Sonaïke responded that he had written to the Investment Firms Division of the Authority on two occasions concerning this case. Enquiries of all staff at the Authority have not revealed the existence of these letters. We return to this point later.

11. On 14 January 2005 an adjudicator, acting on behalf of the Office of Fair Trading, having heard written and oral representations from Mr Sonaïke, served notice that she was minded to revoke his Consumer Credit Licence having decided that she was not satisfied that he was fit to hold a licence on grounds that he had committed offences involving fraud and dishonesty. The Department of Trade and Industry received a notice of appeal against that determination from Mr Sonaïke on 13 March 2005. The appeal proceedings have not yet been concluded. Mr Sonaïke has not notified the Authority of the determination to revoke his Consumer Credit licence.

12. The Authority claims that it has a reasonable basis to conclude that it appears that Mr Sonaïke is failing to satisfy the threshold conditions and that there is a reasonable basis upon which it may exercise its discretion to use its own-initiative power granted by section 45 of the Act to vary Mr Sonaïke's permission by removing all regulated activities, and imposing the requirements set out in the Supervisory Notice. The Authority further concludes that it is no longer necessary to keep the permission in force.

Mr Sonaïke's case

13. Mr Sonaïke questioned certain aspects of the conviction before Manchester Crown Court. He observed that the jury may have been misdirected and provided with misleading information about his turnover and bank accounts. He went on to point out that no client had been disadvantaged as a result of the conviction or indeed as a result of the incomplete answers to the annual questionnaires. He emphasized that he had been carrying on regulated activities for eighteen years. He had always been open with the relevant Authority. There had at no time during that period been any suggestion of any mis-selling on his part. He had, he said, taken the initiative of notifying the Authority of an instance of "product churning"; we will refer to this point later. He ended by making the point that he planned to leave the financial services industry at the end of the year 2005 and go abroad. It was, therefore, unnecessary for any action to be taken by the Authority for the purpose of protecting consumers.

The alleged letters

14. For reasons that will appear later, it is not necessary, in reaching our decision, to take account of the two alleged letters. We do however record the evidence about them. Mr Sonaïke claims to have written on 4 April 2003 to a Mr Henry Melrose of

the Authority's Edinburgh office informing him that he had been arrested and charged on 1 April. Mr Sonaïke claims to have written again on 30 January 2004 notifying the Authority of his conviction. He accepted that he had received neither acknowledgment of those alleged letters nor any follow up. Copies of the alleged letters were produced by Mr Sonaïke when he came to the Tribunal on 13 July 2005 to make certain applications. That, the Authority say, was the first occasion when they had seen those two letters. Mr Melrose was called to give evidence, as was Mrs Carole Cunningham, office manager at the Edinburgh office. Neither had any recollection or record of having received those two letters; nor had Ms Audrey Elder of the FSA's Firms Contact Centre (who also gave evidence).

15. Mr Sonaïke produced a letter dated 16 January 2003 to the Authority, again directed to Mr Melrose. This referred to a county court judgment against an individual who had apparently been involved in product churning. There had been no acknowledgement of that by the Edinburgh Firm Contact Centre. Its receipt had not been recorded on the Centre's database. This did not exclude the possibility that it had been forwarded to another department of the Authority (IVAD).

16. Although our decision is reached without need to form any conclusions on those letters, it is, we think, a matter for adverse comment that the Authority did not, at least at the time of Mr Melrose's employment, have a policy of acknowledging receipt of letters. This ought, we feel, to be done. When no action is to be taken there should have been a short note of acknowledgement of receipt. When action is to be taken that would normally create the response.

Conclusions

17. Mr Sonaïke, as already noted, criticizes the judge's summing up at the trial before Manchester Crown Court. The fact is, however, that he was convicted on the five counts of furnishing false information. It follows that he has recent convictions of offences of dishonesty, being offences committed with intent to cause gain for him. Moreover the offences continued over a period of two to three years. We note from the sentencing remarks of the judge, set out above, that in his view the Crown had proved a number of false representations over and above those referred to in the indictment and that he viewed Mr Sonaïke's activities as a "very serious case".

18. It seems to us that the fact and the nature of the convictions of Mr Sonaïke shows that he does not meet the threshold condition five in that he is not a fit and proper person. The fact of the convictions raise serious implications as to his integrity. Thus the convictions alone justify the action taken by the Authority.

19. We turn on to Mr Sonaïke's failure to disclose the fact of the arrest and the convictions in the annual questionnaires referred to above. It is quite clear to us that Mr Sonaïke was not being open and honest and fair in his dealings with the regulator. He took personal responsibility for the errors that appeared on the face of those documents. The information that he should have disclosed was of the highest

relevance and importance to the Authority which has an obligation to protect consumers.

5 20. Looking at all the facts, therefore, we are driven to the conclusion that the interests of consumer confidence and consumer protection can only be protected by the actions taken by the Authority. For those reasons we dismiss the References and direct the Authority to issue Final Notices in the same terms as the notices referred to this Tribunal.

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**STEPHEN OLIVER
CHAIRMAN**

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