



Reference No: FIN/2009/0010

AUTHORISATION – Fit and proper – Refusal to grant Part IV permission – Mortgage-related activities – Earlier authorisation of applicant cancelled on grounds of failure to submit RMAR returns – Refusal to re-authorise based on evidence of earlier failures – Reference dismissed – FSMA 2000 s.41(2)

**UPPER TRIBUNAL (TAX AND CHANCERY CHAMBER)
FINANCIAL SERVICES**

**MR TARLOCHAN SINGH
T/A OCEANS MORTGAGES**

Applicant

- and -

FINANCIAL SERVICES AUTHORITY

The Authority

**Tribunal: SIR STEPHEN OLIVER QC
SANDI O’NEILL
CHRISTOPHER BURBIDGE**

Sitting in public in London on 8 April 2010

The Applicant in person

Sarah Clark, counsel, for the Authority

© CROWN COPYRIGHT 2010

DECISION

1. By a Decision Notice of 8 May 2009 the FSA decided to refuse the application of Mr Tarlochan Singh (made under section 40 of FSMA 2000) for permission to carry on regulated activities as a mortgage and general insurance intermediary. Mr Singh referred the Decision to this Tribunal.

2. Mr Singh is a sole trader who operates under the trading name “Oceans Mortgages”. From mid 2005 his business included advising on and arranging regulated mortgage contracts. He was authorised by the FSA with permission under Part IV of FSMA.

3. On 15 July 2008 the FSA cancelled the permission having regard to the matters that are described below. On 31 July 2008 Mr Singh re-applied for authorisation seeking to carry on the regulated activities as a mortgage and general insurance intermediary (i.e. as previously).

4. Section 41(2) of FSMA provides that, in giving permission, the Authority must ensure that the applicant will satisfy and continue to satisfy the threshold conditions in relation to all of the regulated activities for which he will have permission. Threshold Condition 5 (suitability) requires that the person concerned must satisfy the Authority that he is a fit and proper person having regard to all the circumstances including the need to ensure that his affairs are conducted soundly and prudently.

5. The issue for this Tribunal to decide, on this reference, is whether Mr Singh, as applicant, satisfies the Tribunal that he will satisfy and continue to satisfy Threshold Condition 5 in relation to all of the regulated activities for which he seeks permission.

6. The FSA contends that Mr Singh cannot satisfy Threshold Condition 5 in this regard on account of repeated failures to file Retail Mediation Activities Returns (“RMAR”) which led to the cancellation of his previous permissions and late payment of administrative fees and other regulatory fees.

RMAR

7. We were provided with the evidence of Lesley Titcomb, Director of the Small Firms and Contact Division of the FSA. This evidence, which we accept, is summarised in paragraphs 8 to 12 below.

8. RMARs became part of the regulatory system when the FSA introduced mandatory electronic reporting for authorised firms, known as the Integrated Regulatory Reporting (“IRR”) regime. Under the IRR requirements, mortgage and general insurance intermediaries and personal investment firms are required to submit the RMAR electronically every six months. All mortgage and insurance intermediaries and personal investment firms were sent communications about “Firms

Online”. This was the electronic reporting system which firms were required to use to submit the RMAR. These communications included information about how to register and where to get information and advice about the reporting requirements.

5 9. The purpose of the RMAR is to bring together in a cost-effective and practical
way important information about regulated firms upon which the FSA relies to fulfil
its regulatory objectives and to conduct effective risk-based regulation of the industry.
For example, through the RMAR, firms must provide the FSA with information about
10 their financial resources and they must state whether they have compliant professional
indemnity insurance from which information the FSA will determine whether the
firms are satisfying the Threshold Condition 4 (adequate resources). The information
contained within the RMAR also enables the FSA to carry out a desk-based review of
a firm’s systems and controls, scope of permission, approved persons and product
15 sales data; it also enables the FSA to conduct trend analyses and assess the financial
stability of the markets that the FSA regulates. The information extracted from the
RMAR significantly reduces the need for the FSA to conduct routine visits to firms.
This makes it a cost-effective supervision tool.

20 10. The RMAR is essential to the regulation of small firms which do not have
designated supervisors. The RMAR provides the FSA with almost all the data which
it receives about its firms and it is the primary source of information that is supplied
to the FSA on a regular basis. The failure by an individual firm to submit the RMAR
promptly and, more significantly, collective failures to do so, therefore, place at risk
25 the ability of the FSA to discharge its risk-based supervisory functions and its
statutory consumer protection and objective.

30 11. To emphasise the importance of submitting the RMAR and of submitting it on
time, the FSA has notified firms that the reporting requirements are subject to strict
time limits and that an administrative fee of £250 will be imposed on firms that failed
to meet the submission deadlines. The firms have been notified by the FSA that
action will be taken to cancel their Part IV permission if they still do not submit the
relevant RMAR.

35 12. Experience has shown that the vast majority of firms have submitted RMARs
on time. In December 2007, for example, 2,584 firms were required to submit
RMARs to the FSA; 91% of these firms submitted the RMAR on time. Of the 9% of
firms who had failed to submit the required RMAR, the majority submitted the return
or cancelled voluntarily their Part IV permission when faced with regulatory
40 enforcement action. There remain a small proportion of firms which are still failing
to submit RMARs and where these have failed to submit RMARs on time, or failed to
submit them despite repeated warnings, the FSA has taken the view that these firms
have failed to meet the Threshold Conditions. The FSA has taken action against this
form of misconduct and have so far cancelled the permission and withdrawn the
45 authorisation of almost 200 firms in respect of non-submission or repeated late
submission of RMARs.

Events leading to the cancellation of the Part IV permission

13. Mr Singh has been late in submitting RMARs. The circumstances of these late returns are relied upon by the FSA as the main ground for their decision to refuse the application for authorisation. The RMARs cover six periods, each of six months.

14. The first RMAR (for the period to 25 October 2005) was due on 6 December 2005. It was received by the FSA on 28 December 2005. On 19 December 2005, Mr Singh had been charged a £250 fee for late submission.

15. The second RMAR (for the period to 25 April 2006) was due on 8 June 2006. It was submitted on 4 October 2006. On 24 May 2006 the FSA had emailed Mr Singh with a reminder to submit the return on the due date and on 26 June 2006 the FSA had notified him that the return was due and that he had incurred a £250 fee. The matter was referred to the FSA's enforcement division in September. Mr Singh was notified of this by letter of 18 September. Following payment in October the matter was closed and Mr Singh was notified of this outcome with a warning against possible action in the event of further late returns.

16. Regarding the lateness of the second RMAR, Mr Singh said that this had been a "true mistake". He had thought it was a twelve month return period and as soon as he had been reminded that it was late (in the letter of 18 September) he had phoned the FSA and made the return. He said he had not received the earlier email of reminders. We note, however, that he had in fact received the letter notifying him of the £250 fee for not submitting the second six-month RMAR and this had been sent to him on 26 June 2006.

17. The third RMAR return (for the period to 25 October 2006) was due on 6 January 2006. It was submitted on time. The fourth RMAR return (for the period to 25 April 2007) was initially due on 8 June 2007. Mr Singh queried this by phone on 7 June and the deadline was extended for all firms and on account of systems problems to 22 June. It was submitted on 28 June. Mr Singh said that he was having "log in" problems at the time.

18. During August 2007 the FSA had written to Mr Singh three times regarding overdue payments of the fees and levies.

19. The fifth RMAR (for the period to 25 October 2007) was due on 6 December 2007. On 21 November 2007 the FSA emailed a reminder to Mr Singh. The return was never submitted. On 11 January 2008 the FSA emailed him to inform him that he had not submitted the return and that he would be charged the £250 fee. He was told to submit a return within ten days.

20. Mr Singh told us that his father died in September 2007. He had had to go to India for the funeral and to deal with his father's estate. He submitted as evidence a copy of a letter dated 26 September 2007 to his clients stating that due to personal matters he would not be available between October 2007 and April 2008. (No

notification of the absence was given to the FSA.) He flew to India on 30 September 2007 and on 1 October he telephoned the FSA disputing the £250 for late payment. On 14 March 2008 the FSA wrote to Mr Singh stating that his firm had been referred to “enforcement” for non-submission of RMARs and that action would be taken to cancel his Part IV Permission.

21. On 20 March 2008 Mr Singh telephoned the FSA to inform it about a change of details of the firm on the register. Later the same day an email was sent to notify the FSA of those details. The same day he had flown from India to the UK. On 27 March 2008 the FSA sent an email to Mr Singh confirming that the RMAR was now significantly overdue and that Enforcement would be proceeding with the action referred to in the letter of 14 March. Mr Singh did not reply to any of the FSA’s correspondence referred to above.

22. A Warning Notice was issued on 16 April 2008 of the FSA’s proposal to cancel Mr Singh’s permission pursuant to section 45 of FSMA on the basis that Mr Singh had failed to submit his RMAR and had therefore breached Principle 11 and various Rules in the SUP part of the FSA Handbook. He was therefore failing to satisfy Threshold Condition 5 (Suitability). The Warning Notice set out his right to make representations to the FSA. Mr Singh did not respond to the Warning Notice.

23. By a Decision Notice of 4 June 2008 the FSA decided to cancel Mr Singh’s permission for the same reasons as set out in the Warning Notice. The Decision Notice also set out Mr Singh’s right to refer the matter to the Tribunal. He did not respond to the Decision Notice nor did he refer the matter to the Tribunal. Therefore, by a Final Notice of 15 July 2008, the FSA cancelled Mr Singh’s Part IV Permission. Following the cancellation of that permission, Mr Singh telephoned the Authority on 24 July 2008 stating that he wanted to be re-authorised. He gave as his explanation that his father had died and that he had been out of the country.

Mr Singh’s explanation as given to the Tribunal

24. Regarding the failure to deal with correspondence on his return from India, Mr Singh said that he had been backlogged with work and overwhelmed with family obligations. Throughout the period of the defaults, Mr Singh claimed that he had had problems communicating with the FSA. He stated that he had now come to realise his organisational weaknesses and intended to retain the services of an external compliance firm to submit the RMARs. His intention is to be fully up-to-date with the FSA’s handbook and to understand the rules and regulations. Moreover, he explained, he had received no complaints from his own clients and customers.

The FSA’s case for refusing to re-authorise Mr Singh

25. The FSA points to Mr Singh’s repeated failures to submit his RMAR returns in a timely manner or at all, despite repeated reminders and two referrals for Enforcement action (the second resulting in cancellation of Mr Singh’s permissions). The FSA say that Mr Singh has failed to satisfy it that his conduct will not recur in the

future. They acknowledged that he has apologised for his past behaviour and stated that it will not happen again; however, their view is that Mr Singh's bare assertions are insufficient to demonstrate required standards of compliance with Threshold Condition 5 when viewed against his history.

5

26. Mr Singh has not, say the FSA, been open and cooperative with it. He failed to inform the FSA that he would be out of the country for an extended period. He did not put in place systems to deal with his regulatory responsibilities (particularly his RMARs submissions) in his absence. This, they say, is particularly relevant because Mr Singh would have been aware that the second 2007 RMAR was due during the period of his absence. Even upon Mr Singh's return to the UK, the FSA point out, he had failed to file his RMAR return or respond to the FSA's correspondence regarding this including Warning and Decision Notices which stated clearly that the reason the FSA were cancelling his permissions was due to failures in respect of RMARs submissions. Mr Singh only engaged with the FSA on the issue of the outstanding RMAR when the Final Notice was issued cancelling his permission.

27. Moreover, say the FSA, Mr Singh has been inconsistent in his explanations as to why he did not file the outstanding RMAR upon his return to the UK and the explanations provided by him demonstrated a lack of openness during that period and demonstrated that he was selectively engaging with the FSA on matters which he clearly considered were important to his business.

28. Finally, the FSA point out that Mr Singh had repeatedly been late in paying administrative fees incurred in respect of late RMAR submissions and other regulatory fees. The FSA accepts that he eventually paid all the fees and levies that have been due from him.

Conclusion

30

29. We are satisfied that the threshold for compliance has to be high. The FSA has the statutory responsibility of regulating a large number of widely spread small firms such as that of Mr Singh. The RMAR is the main and usually the only source of information that the FSA receives about these firms. Failure to submit RMARs on time (or at all) deprives the FSA of its ability to discharge its risk-based supervisory functions and its statutory consumer protection objectives. The FSA cannot afford to drop its guard. Each return has to contain essential up to date information without which the FSA cannot carry out its regulatory function. The FSA cannot therefore allow late returns. It has to insist on the highest standard of compliance.

40

30. Mr Singh assures us that he has had a good relationship with his own clients. Nevertheless he has shown that he cannot be relied upon to comply with the requirement to lodge RMARs. We had some concerns, from the manner in which he gave oral evidence, about whether he was able to understand the written requirements of the FSA. His answers to cross-examination tended to miss the point of questions. His attempts to read exhibits left us in doubt as to his reading ability. We recognise that Mr Singh was nervous when required to give evidence. We recognise that he has

45

the best intentions as to his compliance in the future. We accept that there had been no criticism as to his proficiency when it comes to handling the requirements of clients and customers. We also accept that Mr Singh may, through experience of working in the future with better organised associates in a larger firm, bring his compliance standards up to the required level to enable him to make a more promising application. However he has not satisfied us that he can, in his present state of ability and experience, be relied upon to comply with the RMAR requirements.

31. For those reasons we do not consider that Mr Singh comes up to the standards of fitness and propriety demanded by Threshold Condition 5. The right course for the FSA is, we think, to refuse his application for Part IV Permission.

32. We dismiss the application.

15

20

**SIR STEPHEN OLIVER QC
JUDGE OF THE UPPER TRIBUNAL**

RELEASE DATE:

25

30