

Fit and proper person – Sections 40 and 60 Financial Services and Markets Act 2000 – Disciplinary finding by professional body and Applicant's omission to disclose it on application for approval – References dismissed

FINANCIAL SERVICES AND MARKETS TRIBUNAL

**(1) PS MORTGAGES LIMITED
(2) STANLEY OLUTOLA**

**First Applicant
Second Applicant**

- and -

FINANCIAL SERVICES AUTHORITY

The Authority

**Tribunal: JUDGE DAVID MACKIE QC
MR P LAING
MR C H SENIOR**

Sitting in public in London on 8 November 2006

Mr Stanley Olutola, in person and as a director of the First Applicant

Mr Simon Gerrish for the Authority

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DECISION

1. These two references to the Tribunal are about whether the Second Applicant, Mr Stanley Olutola is a fit and proper person to perform regulated activities relating to mortgage and insurance. The First Applicant PS Mortgages Limited (“PSML”) is a company owned and controlled by Mr Olutola and his wife.

Background Facts

2. The Financial Services Authority (“the Authority”) refused, by Decision Notices issued on 27th June 2006, applications made by PSML under Sections 40 , and 60 of the Financial Services and Markets Act 2000 (‘the Act’) .PSML applied first to carry on regulated activities in the mortgage and insurance field and secondly for the approval of Mr Olutola to perform certain regulated functions and activities. The Applications had been submitted in November 2005 (although that under Section 60 was dated 11th July 2005). On 10th July 2006 the Applicants referred these matters to the Tribunal. Directions were given by the President on 19th September and the matter was heard by us on 8th November 2006. The Directions required the parties to serve statements of witnesses of fact by no later than 6th October. No statements were submitted because the Authority called no evidence and Mr Olutola was under the impression that the direction applied to external witnesses but not to a party. As this was clearly a genuine misunderstanding we allowed Mr Olutola to give evidence. Mr Olutola represented both Applicants. Mr Simon Gerrish appeared for the Authority. At the end of the hearing we informed the parties that these applications would be dismissed for reasons to be given in this Decision.

Legal Background

3. The Authority has a general duty to meet the regulatory objectives set out in Section 2 of the Act which emphasise protection of consumers. The Authority may grant an Application only if it is satisfied that the person to whom it relates “*is a fit and proper person to perform the function to which the Application relates*”. It is common ground that this requirement applies in effect to both applications. The functions involve responsibility for advising and arranging non-investment insurance and regulated mortgage contracts for members of the public. The Applicant must satisfy the Authority that he is a fit and proper person having regard to all the circumstances which include his connections, the nature of the regulated activity which he seeks to carry on and the need to ensure that his affairs are conducted soundly and prudently. The Authority has guidance on the “*fit and proper*” test in its Handbook. The guidance most relevant to this case is as follows:-

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- “(i) *The most important considerations include the person’s honesty, integrity and reputation (FIT 1.3.1G).*
 - (ii) *In assessing fitness, the FSA will take account of the activities of the firm for which the controlled function is to be performed, the permission held by that firm and the markets within which it operates (FIT 1.3.2G).*
 - (iii) *If a matter comes to the FSA’s attention which suggests that the person might not be fit and proper, the FSA will take into account how relevant and how important that matter is (FIT 1.3.4G).*
 - (iv) *In determining a person’s honesty, integrity and reputation, the matters to which the FSA will have regard include, but are not limited to (FIT 2.1.3G):*
 - 3) *whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by the FSA, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies;”*
 - 4) *whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation which might lead to those proceedings;*
 - 5) *whether the person has contravened any of the requirements and standards of the regulatory system or the equivalent standards or requirements of other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies.*
 - 8) *whether as a result of the removal of the relevant licence, registration or other authority, the person has been refused the right to carry on a trade, business or profession requiring a licence, registration or other authority;*
 - 9) *whether the person, or any business with which the person has been involved, has been investigated, disciplined, censured or suspended or criticised by a regulatory or professional body, a court or Tribunal whether publicly or privately;*

13)whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards.

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4. Against that background the Authority can only grant an Application if it is satisfied that the Applicant is fit and proper. It is for the Applicant to establish that he is fit and proper not for the Authority to show that he is not. The task of the Tribunal is not to review the reasonableness of the Authority's decisions but for itself to determine what action the FSA should take over the Application. We have to ask ourselves, looking at the Applications again in light of the evidence available, whether or not we are satisfied that that Mr Olutola is a fit and proper person to perform the functions for which the Applications were made.

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The Facts

5. This case turns on Mr Olutola's dealings with the Association of Chartered Certified Accountants ("ACCA"), the disclosure he made in his Applications on PSML's behalf to the Authority and the significance of letters sent by Mr Olutola on PSML letterhead that included the words "regulated by the financial services authority". The facts themselves are largely agreed.

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6. In September 2001 ACCA wrote to Mr Olutola, then carrying on business as Candid Accountants, drawing attention to the fact that the firm had used the designation "Chartered Certified" even though it had no right to do so. Mr Olutola replied promptly on 14th September confirming that the firm would not use the phrase "Chartered Certified" and giving details of his student membership of ACCA and attributing the error to a Mr Munalula. On 24th May 2002 Mr Olutola wrote again to Ms Keen of ACCA referring to his earlier letter stating "*I would like to retract all the statements below, because I do accept that they are false statements.*"

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1. "*Please note that Munalula M S made the stamped and signed statement". Steve did not make the said stamped and signed statement. He has no access to the company stamp and had not at any time worked or had access to the files.*"

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2. "*I am a student of ACCA". I had previously misled him to believe that I am fully qualified ACCA due to my ignorance.*"

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3. "*We both have a small bookkeeping business". He had at no time had a bookkeeping business with me.*"

4. *“We have however ceased to use the phrase “Chartered Certified” until we obtain more clarification on whether Munalula M S is a Chartered Certified member or not and if he is why we are not allowed to use the phrase.”*

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7. On 2nd December 2002 the Disciplinary Committee of ACCA considered two complaints against Mr Olutola : first that he had held himself out to be in public practice and secondly that he had misled ACCA. The committee found the complaints proved and ordered that Mr Olutola should be removed from the register and pay costs of £944 and that their decision should be published in the professional and local press referring to him by name.

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8. In July 2005 Mr Olutola first prepared his Application for approval to perform controlled functions using the Authority’s Form.

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“Question 5.11 of Form A [Tab 9] asks:

“In respect of activities regulated by... any other regulatory body (see note) has the candidate ... ever-

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a been refused, had revoked, restricted or terminated, any licence, authorisation, notification, membership or other permission granted by any such body?

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b been criticised, censured, disciplined, suspended, expelled, fined, or been the subject of any other disciplinary or intervention action by any such body?

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Mr Olutola answered “No” to these questions. The Notes to Section 5 defines “Regulatory Body” as including the designated professional bodies. These are in turn defined by the Glossary of the Handbook as including the ACCA.

Section 7 of Form A contains a declaration which was signed by Mr Olutola. The declaration states:

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“Knowingly or recklessly giving the FSA information, which is false or misleading in a material particular is a criminal offence.

It should not be assumed that information is known to the FSA merely because it is in the public domain or has previously been disclosed to the FSA or to another regulatory body. If there is any doubt about the relevance of the information, it should be included...I confirm that the information in this form is accurate and complete to the best of my knowledge and belief and that I have read the notes to this form.”

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Further, the guidance notes to the form state:” *Do not assume that we know certain information merely because it is in the public domain, or has been previously disclosed to us, or to another regulatory body. In all the circumstances, disclosures should be full, frank and unambiguous. If there is any doubt about the relevance of the information it should be included.”*

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By letter dated 16 January 2006, the Authority requested Mr Olutola to explain his failure to disclose the action by ACCA on Form A. On 19 January 2006 Mr Olutola responded to this request :

5 *“I do apologise for not disclosing this matter. It was not my intention as I do know how serious non disclosure is. I had forgotten about this issue since it was [a] long time ago and I would not have thought of its relevance...As a director of a company called Candid Accountants the company employed a qualified accountant named Steve Monalula....Steve Monalula was asked to complete an accountant’s certificate to Chelsea Building Society for one of Candid’s clients. Steve completed the certificate but at that time neither Steve Monalula nor myself was aware that just been a qualified ACCA accountant is not sufficient to prepare such a document...A committee was set and at the end of the investigation I was disfellowshipped by ACCA. I am*
10 *sorry that I do not have all the facts relating to this matter as I lost all my records due to my recent divorce.”*

In written representation to the Authority’s Regulatory Transactions Committee dated 8 May 2006. Mr Olutola expanded upon his letter.

20 *“I had originally provided full statements of the event to ACCA which was true and consistent with my statement to the FSA.” He then describes being threatened by Steve Monalula. “I was very frightened and distressed over the situation that I had to sign this letter...I signed the letter under duress. As a result of this letter I was removed from ACCA register and was asked to pay a fine.”*

25 In further written submissions to the Regulatory Decisions Committee, dated 30 May 2006, Mr Olutola explained why he had not disclosed these matters to the Authority in the following way:

30 *“The reason for the omission was not intentioned. I stated previously that just as I have chosen to forget many issues that led to my divorce as remembering them is very painful; I had chosen to forget details of the ACCA action for the same reason. The copy of the false admission sent to me by the FSA in its warning notice brought back the memory of the very occasion of the night when I was forced to sign the false admission under duress...”*

35 *“At the time of replying to the FSA’s letter dated 16 January, I had not remembered the full account of the ACCA action. I had not remembered the false statement under duress and the content of that letter. There were no records to aid my memory as I had lost all*
40 *records due to my divorce...”*

9. Between 26th September 2005 and 23rd February 2006 Mr Olutola wrote seven letters to Pankhurst Financial Services Limited and Pink Home Loans on a letterhead which included at its foot both the FSA logo and the words
45 *“Regulated by the Financial Services Authority”*. When this was drawn to Mr Olutola’s attention by the Authority, he replied on 22nd March: *“We sent out the draft letterhead to Pankhurst in order to obtain their comments on its*

compliance". On 8th May 2006 Mr Olutola wrote to The Authority's Regulatory Decisions Committee "*the letterhead was in its draft stage and we had only used the letterheads in ignorance to Pankhurst and Pink while we are applying for authorisation from the FSA. I had discussed the compliance of the letterhead verbally with the two representatives of the two companies. We have not used the letter to the general public.*" At the time Mr Olutola was writing on PSML's behalf on headed letterhead and he was at the same time writing to the Authority, again on PSML's behalf but on plain paper.

10 **Evidence of Mr Olutola**

10. Mr Olutola gave evidence and was cross-examined about these matters. Mr Olutola said that the difficulty with ACCA occurred as a result of duress imposed on him by Mr Munalula and that the second letter had been written by him only because he was forced to do this. It was suggested to him in cross-examination that his account had changed over a period of time. Mr Olutola denied this and insisted that the second letter had been prepared and typed by Mr Munalula and he had simply signed it.

11. Mr Olutola said that as a result of what had happened with ACCA he had made a career change and sought to blot the experience out of his mind. He had at the same time been going through a difficult divorce. When Mr Olutola had filled out the Application to the Authority the entire ACCA experience had passed from his memory as he had lost all his records during the course of the divorce proceedings. An experience with his previous employer had discouraged him from approaching the FSA for advice, although the ACCA matter itself had passed from his memory. He had moved on, literally, by changing address. He had chosen to forget many matters of detail that led to his divorce because the pain that such memories caused to him.

12. The letterhead was used as a draft and only sent to the two companies with whom PSML had been working to apply for direct authorisation from the Authority. The letters began by stating that PSML was applying for FSA authorisation. PSML had been discussing and obtaining the views of these two companies about the draft letterhead. It was put to him that the letters themselves at no point sought the views of either company about the letterhead but Mr Olutola insisted that that was their purpose and that he had received an e-mail addressing the subject from one of the companies (although he no longer had this). He emphasised that the letters had been sent to no one else.

40 **Submissions of the parties**

13. Mr Olutola says that he has made these Applications to allow this Tribunal to take a fresher and more lenient look at his case, taking into consideration what he describes as its peculiar nature. He does not deny the substance of what is alleged against him but relies upon the explanations given in evidence. The claim to be regulated by The Authority was a genuine mistake. The non-

disclosure of the ACCA matter was due to loss of memory, stress and the absence of records. He asks for clemency.

14. The Authority submit that Mr Olutola's claim to have forgotten about the ACCA matter is incredible and that his account of the reasons for using letterhead on which his company claimed to be regulated by The Authority is contradicted by what the letters themselves say. Over all they say that the non-disclosure is very serious and cite two decisions of this Tribunal *Sonaike* (Tribunal Decision Number 24) and *Khungar* (Tribunal Decision No. 16). They say that the overall protective purpose of the regime which they operate requires a cautious and demanding approach and that Mr Olutola has not dispelled the concerns raised.

Decision of the Tribunal

15. Mr Olutola presented his case intelligently and with restraint. We have no doubt that he bitterly regrets the events which led him into difficulty with ACCA and caused him to mislead the Authority. Having read the material and heard Mr Olutola give evidence and be cross-examined, we have reservations about his account of having been forced to mislead the ACCA as a result of duress. Similarly, we do not accept that Mr Olutola could, when making his Application to the Authority, have forgotten all about his experience with the ACCA which had occurred less than three years previously and would have been burned onto the memory of most professional people. We also find it difficult to accept that the use of notepaper which claimed that PSML was regulated by the Authority was only for the limited purpose described by Mr Olutola. However, we accept his evidence that the letterhead was not sent to customers or used in any way which could have misled the public.
16. The Applicant has not satisfied us that he is a fit and proper person to carry out any of the functions which were the subject of PSML's Applications to the Authority. We endorse the view of the Authority about the seriousness of its duty to protect consumers. Mr Olutola was disciplined for misleading and stating untruths to an accountancy body. He misled the Authority about that very matter by stating an untruth on his Application. He must have been aware of the importance of being truthful on that form and of the consequences which might follow if he were not. It will be rare for someone who, in the face of clear warnings on the written form, shows a knowing or reckless want of truth or candour when making an important Application of this kind, to be able to satisfy The Authority that he is a fit and proper person. It seems to us that even if we accepted the truth of everything that Mr Olutola had to say he would still fail to satisfy us that he was a fit and proper person. Someone yielding to pressures from a colleague to mislead a professional body, or genuinely forgetting a serious finding of professional misconduct within two and a half years of it being made, is unlikely to be fit and proper to carry out the important mortgage and insurance functions on which members of the public depend.

17. It follows that these References are dismissed and that the Decisions of the Authority are upheld.

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**JUDGE DAVID MACKIE QC
CHAIRMAN**

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