THE NATIONAL LAW REVIEW

Former Keydata boss stuck with £76 million FCA fine

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UK Finance Disputes and Regulatory Investigations Blog
Financial Institutions & Banking
Global
United Kingdom

Tuesday, November 13, 2018

The Upper Tribunal, the independent Court that hears appeals from FCA decisions, last week upheld the regulator's decision to fine Stewart Ford, the former CEO of Keydata Investment Services Limited, a huge £76million (the largest FCA fine on an individual) and ban him from working in the financial services industry.

The Tribunal decided that the FCA had been correct to ban and fine Mr Ford for a lack of integrity, and for failing to deal with the regulator in an open way after he made false statements during compelled interviews with the regulator.

The record fine results from allegations of active concealment and lack of integrity.

Background

Keydata used its customers' money to invest in US senior life settlement policies, through a Luxembourg-based company SLS Capital SA and, subsequently, a company called Lifemark SA that was set up in Ford's own name.

However, the FCA found that Keydata failed to carry out proper due diligence in respect of the viability of the financial model, or the third parties involved, and produced misleading brochures.

Amongst a myriad of other issues and advice that was ignored, the FCA said that Keydata had incorrectly stated that the investment product could be held in a tax-free ISA. When it was discovered that the products were not eligible for ISA status, Keydata was put into administration on the basis it faced a huge tax liability. It was unable to pay the subsequent claims made against it.

FCA findings

The FCA found that Mr Ford had extracted exorbitant fees of £73.3m but concealed this from Lifemark's compliance officer, the regulator, investors and IFAs. This crippled the Lifemark investment structure.

In addition, the FCA decidedd that Mr Ford was aware of multiple issues with the products, even before he set up Lifemark. However, he carried on regardless and failed to disclose any of the issues to the investors or the FCA.

Upper Tribunal decision

The Tribunal found that Ford's fees of £73.3m "*could not be justified commercially*". In addition, the "*litany of misconduct*" by Ford demonstrated, "*a consistent failure by him to act with integrity*".

The Tribunal also found that "*a constant theme is the deliberate and calculated concealment by Mr Ford"* and that, "*Mr Ford failed to deal with the Authority in an open and cooperative way*". More specifically, this included making false statements to the FCA in a compelled interview and failing to instruct Keydata's compliance officer not to mislead the FCA.

The Tribunal noted that Ford had a "*misplaced conviction that it was a matter for him to resolve any problems that arose and that those issues were not something that should be disclosed to those with a material interest… It was* *inconsistent with the conduct expected of a regulated person*".

Financial penalty and ban

The FCA fine was calculated by reference to the fees extracted by Ford with an additional element to reflect the seriousness of his misconduct. An aggravating factor was the level of consumer detriment caused by Ford's misconduct.

Conclusion

The Tribunal's decision marks the latest development in a long-running legal battle between Keydata, its executives and the FCA. It also follows the longest-ever contested hearing of 6 weeks in the Tribunal.

In a statement, Ford has said, "*In a much larger sense, the trust formerly placed in me by Keydata investors demands that I immediately address the Upper Tribunal's Decision*".

The Tribunal has given Ford 28 days within which to appeal to the Cpurt of Appeal. There may yet be another instalment in this long running saga yet to come.

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