

BEFORE THE LICENSING COMMITTEE OF THE BRITISH HORSERACING  
COMMITTEE

IN THE MATTER OF Mr ANDREW HAYNES

APPLICATION FOR A LICENCE 1 FEBRUARY 2011 – 31 JANUARY 2012

HEARING DATE: 8 March 2011

Committee Members:

RICHARD RUSSELL ESQ  
CLIVE H. JONES ESQ (Chairman)  
RUPERT SWEETING ESQ

DECISION AND REASONS OF THE LICENSING COMMITTEE

Introduction

1. By an application form dated 12 January 2011 Mr Haynes applied for the renewal of a combined trainer's licence until 31 January 2012 on the basis that he will be an employee of Haynes Training Limited ("the Company").
2. It is for Mr Haynes to satisfy us he is a suitable person and meets all the criteria contained within the guidance notes which accompany each application form. We refer to **Schedule 9 to the General Manual (A) of the Rules of Racing**.
3. The **Guidance Notes** provide that:
  - Applicants are required to demonstrate or confirm that:
    - They have the competence and capability to train;
    - They have access to appropriate training facilities;
    - They have security of tenure for the premises from which they wish to train;
    - They have a minimum of 3 horses in training;
    - They comply with relevant Health and Safety responsibilities;
    - They provide full details of their employment status;
    - They comply with all relevant employment responsibilities;
    - They have appropriate Public Liability Insurance and, where appropriate, Employers' Liability Insurance;
    - The necessary financial resources are available to the training business; and
    - They are otherwise in all the circumstances suitable to hold a licence (i.e. that they are 'fit and proper')."
4. The hearing before the Committee on 8 February 2011 took place because of concerns over the "Financial Soundness" of the Company. The other requirements were satisfied. We note that the Guidelines provide at **paragraph 31:-**

"The Licensing Committee will take into account the financial track record of an applicant and (whether or not the business is owned by the applicant) all the relevant circumstances in assessing the likely financial soundness of the proposed training business."

### **Financial Soundness**

5. We emphasise that the Authority does not and is not required to warrant the future solvency of a business and that creditors or future creditors and/or investors are not to rely upon its decision to grant a licence as a mark of solvency. The Authority is concerned with suitability for a licence.
6. However, financial soundness including the financial track record of the applicant or the proposed training business is clearly important in assessing whether the applicant is a fit and proper person to hold the licence to train for his or that business. It is also important when assessing whether the grant of a licence to the applicant concerned will be prejudicial to the reputation of, and public confidence in, horseracing in this country. An applicant may be a good trainer but that is not sufficient if the business concerned can not be run as a solvent business or otherwise in accordance with good business practice. The Authority has particular concerns when there are unpaid creditors or the risk of that situation arising.
7. We wish also to emphasise that where concerns arise concerning financial soundness, the applicant in accordance with the need to satisfy the Authority that he is a suitable person will need to provide detailed and satisfactory information and be prepared to explain, expand upon and substantiate that information.

### **The Issues Considered**

8. The issues which were relevant to this application may be summarised as follows:-
  - 8.1. A past history of 2 companies for whom Mr Haynes trained and in which he had shareholdings which had a history of insolvency.
  - 8.2. Losses within the accounts of the Company for the year ending 30 September 2010.
  - 8.3. The existence of County Court judgments.
  - 8.4. How the Company would pay creditors old and new over the period of the licence applied for and trade as a solvent business.

8.5. Certain specific disputes concerning third parties.

## **Considerations**

9. We wish to stress that the matters summarised above were each considered to be important issues for our decision and cumulatively meant that Mr Haynes had to provide a significant amount of information and documents to the Licensing Committee to enable the Committee to effectively determine the issues relevant to the application.
10. In cases such as this and as applied to Mr Haynes, we consider it important that the applicant:-
  - 10.1. Recognises, acknowledges and is realistic about the past, current and future financial position of the business concerned.
  - 10.2. Provides sound, reliable financial information including past and current profit and loss accounts and balance sheets with a cash flow for the future. It is important that those records are verified (for example by an accountant) and that questions concerning the financial records and forecasts can be answered.
  - 10.3. When there are or have been judgments and/or other unpaid creditors, provides explanations and can show they will be paid if they are currently extant.
  - 10.4. Is able to establish solvency and to demonstrate that the business has sufficient capital.
  - 10.5. Demonstrates whether by himself or (more likely) through the existence of a team, that there is sufficient and proper management and control of the business combined with good business practice.

## **Decision and Reasons**

11. The information of the Company provided by Mr Haynes concerning accounts and business methods was sensitive information confidential to the Company and (as it is likely to be) which it would be inappropriate to publish in these reasons.
12. However we consider that the following matters identify the reasons for our decision without having to impart such information:-
  - 12.1. During a lengthy hearing the Committee was impressed by the candour of Mr Haynes and his partner Miss Berry who is also a shareholder and has an active involvement in the business being a director of the Company. We received a letter acknowledging the

problems of the past and not seeking to excuse themselves from the criticisms that those problems gave rise to.

- 12.2. We took account of the extent of the financial information provided and the fact that they had retained a new accountant, Mr Frankland through AWA Bloodstock Limited, who verified it including the figures for future cash flow. We noted that Mr Frankland had first been involved when he acted for the landlord of the premises where the business is carried on in order to advise him whether to grant a new lease to the Company. The fact that a new lease was granted indicated faith in the Company as managed by Mr Haynes and Miss Berry. The fact that Mr Frankland decided to and is willing to remain the Company's accountant is also noted and taken into account.
- 12.3. The existence and future payment of judgment debts has been covered by the information provided.
- 12.4. Mr Haynes recognised that the future solvency of the Company was dependent upon a capital injection. This was being provided in 2 forms. First an injection of £45,000 by a loan from Mr Haynes upon terms that he will not be repaid the loan ahead of unsecured creditors. Second a guarantee of the Company's liabilities up to £35,000 to be provided by Mr Fuller. There are also indications of further support from the party who lent Mr Haynes the £45,000.
- 12.5. On the information provided, the advice and verification of Mr Frankland and the fact of the capital being injected, we conclude that there is a reasonable prospect of the Company being able to trade as a solvent business for the purposes of applying a test of suitability.
- 12.6. In reaching that conclusion we have taken into account the fact that Mr Haynes, Miss Berry and their team have put in place controls for the proper management of the Company in the future. We take account of the role of Mr Frankland. We also bear in mind that Mr Fuller intends to actively monitor and assist their progress. Mr Fuller has considerable experience as a successful businessman, albeit in the different field of the employment industry, and we anticipate that such experience will be of great assistance to Mr Haynes and Miss Berry in their management of the Company.
- 12.7. It is also relevant to take account of the past history of training success of Mr Haynes which should encourage new owners to seek those training skills. We anticipate in this context that Miss Berry's commitment and enthusiasm should be a positive

advantage in particular when combined with the skills of a marketing employee.

13. That said, in particular in view of the past history, we do not consider it right either to grant an unconditional licence or to grant one for longer than 31 October 2011. We hope that at the end of that period it will be apparent that the reasonable prospect of the Company being able to trade as a solvent business will have reached fruition as a result of the energy and hard work which we anticipate Mr Haynes and Miss Berry will put into the business of the Company.
14. In reaching our decision we have read correspondence concerning disputes with specific third parties. We have heard from Mr Haynes and Miss Berry in respect of those disputes. We can and do make no decision in respect of them except that we are satisfied that they should not cause us to decide that Mr Haynes is unsuitable for the grant of a licence.
15. Our decision is to grant a licence upon the following terms and conditions:-
  1. Accounts of Haynes Training Limited for the period 1<sup>st</sup> October 2010 to 31<sup>st</sup> October 2011 are to be received at these offices by 30<sup>th</sup> September 2011.
  2. During October 2011 on a date to be arranged there will be a meeting of the Licensing Committee to decide whether to extend the licence (unless a decision is reached that the licence may be extended without a further meeting).
  3. The conditions of the Licence are:-
    - 3.1 By 31<sup>st</sup> March 2011 Mr Haynes shall lend to Haynes Training Limited the sum of £45,000, upon terms that he will not be repaid the loan ahead of unsecured creditors (which he offered and as he has represented he will do);
    - 3.2 By 31<sup>st</sup> March 2011 Mr Fuller shall have entered into a legally binding guarantee of the liabilities of Haynes Training Ltd to its creditors limited to £35,000 (which he offered and represented he will do);
    - 3.3 Mr Haynes will provide written evidence of compliance with sub-paragraphs 3.1 & 3.2 to the Authority by 4.30pm on 14<sup>th</sup> April 2011;
    - 3.4 Mr Frank Frankland through AWA Bloodstock Ltd will continue to be retained by Haynes Training Ltd as its accountant (or another suitable person will be in his place with the same or similar scope of duties providing Mr

Haynes notifies the Authority in writing of any change of the party so retained within 14 days of that change);

3.5 Haynes Training Ltd by Mr Frankland shall report to the Authority (either directly or through Mr Haynes);-

a) any Court judgment entered against it;

b) should it be unable to pay its debts as they fall due

and shall do so in writing forthwith upon that event occurring.

3.6. In the event of any condition not being fulfilled or of the events identified within sub-paragraph 3.5 above occurring, the Authority may revoke the licence without any further hearing or make such other decision as it thinks fit in its discretion.

We also confirm that it is recommended (but not a requirement) that Mr Fuller becomes a director of the Company.

Signed: 

For the Committee