

IN THE MATTER OF AN APPLICATION FOR A LICENCE TO TRAIN

CONCERNING MR KARL BURKE

BEFORE THE LICENSING COMMITTEE OF THE BRITISH HORSERACING AUTHORITY

75, HIGH HOLBORN, LONDON, WC1V 6LS

WEDNESDAY, 10th JULY 2013

RICHARD RUSSELL ESQ.

STEPHEN BATE ESQ. (CHAIRMAN)

RUPERT SWEETING ESQ.

REASONS

1. On 10 July 2013 the Licensing Committee ("the Committee") met and decided that a Combined Trainer's Licence should be granted to Mr Karl Burke ("Mr Burke") as an employee of K.P.Spigot Ltd. from 25 August 2013 to 31 January 2014. These are the reasons for that decision.
2. By an application dated 18 January 2013 Mr Burke sought a Trainer's licence for the period 1 February 2013 to 31 January 2014. The application was referred to the Committee by the British Horseracing Authority ("the BHA") pursuant to the provisions of Schedule 9, General Manual (A) of the Rules of Racing.
3. The background to the application was a previous application that had been made by Mr Burke on 2 January 2012 for a Trainer's licence for the year to 31 January 2013. That application had been considered by the Committee as currently composed on 13 September 2012 following enquiries by the BHA as to Mr Burke's suitability to hold a licence. The hearing was attended by Mr Burke and by Mr Rory MacNeice, his solicitor. The hearing was adjourned for Mr Burke to provide further information that was necessary for the Committee to consider that application. That licence application was not pursued by Mr Burke. However, in making the present application Mr Burke sought to address the matters which had given rise to the adjournment of the previous application. Those matters are addressed in these Reasons, being material to the issue of Mr Burke's suitability.

4. Mr Burke held a Trainer's Licence from 1990 to 2009. In that time he had between 50 and 90 horses in training, predominantly for Flat Races, with a total of 6,984 runners in Flat Races, including 697 wins and 90 wins from 955 runners in National Hunt Races. On 29 July 2009 the Disciplinary Panel of the BHA found that Mr Burke had committed breaches of Rule 243 and a breach of Rule 220 (iv) arising out of the supply of Inside Information to Mr Miles Rodgers and associating in relation to horseracing with a Disqualified Person, namely Mr. Rodgers. Mr Burke had admitted these breaches for which the Disciplinary Panel imposed a 12 month period of disqualification expressed as a global penalty in respect of all breaches. He appealed against that penalty to the Appeal Board of the BHA and on 17 August 2009 his appeal was dismissed. He served the period of Disqualification.

5. The events to which the breaches of Rule 243 relate took place in the Summer of 2004, involving 6 occasions over a period of 5 weeks, 4 of those occasions involving use by Mr Burke of an unregistered mobile phone. Mr Rodgers was a principal investor in land for development at Lot 2, Spigot Lodge. In a document prepared for the hearing before the Disciplinary Panel it was stated that Mr Burke received no direct financial reward for the information. He needed a favour from Mr Rodgers, who was an investor in the land, and Mr Burke believed his investment in that land to be at risk unless he granted that favour to Mr Rodgers.

6. On finishing his period of Disqualification, Mr Burke was added to the Stable Employees Register by his wife, Elaine Burke ("Mrs Burke") in August 2010, when she was granted a Trainer's Licence to carry on the training operation previously carried on by Mr Burke before his Disqualification. The licence granted to Mrs Burke authorised her to train as an employee K.B. Spigot Ltd., of which she is the sole shareholder.

7. Following receipt of Mr Burke's licence application dated 2 January 2012, he was interviewed on 29 May 2012 by Mr Paul Beeby and Mr John Burgess, respectively the BHA's Head of Integrity Operations and an Investigating Officer of the BHA. As a result of the admissions made by Mr Burke before the Disciplinary Panel the BHA had never had an opportunity to investigate the truth of the written admissions made by Mr Burke for the hearing before the Disciplinary Panel. The interview gave the BHA that opportunity. Mr Beeby emailed Ms Jones of the BHA's Licensing Team on 9 July 2012, informing her that they had interviewed Mr Burke and were satisfied as to his integrity and saw no reason why his application should not proceed. That email attached a report of the interview produced by Mr Burgess. There was no recording made of the interview.

8. The Committee has considered that report and interviewed Mr Burke at the hearing of his first application on 13 September 2012 and again on 10 July 2013. It is satisfied that Mr Burke deeply regrets his misconduct, has insight into why his conduct was unacceptable and accepts that his misconduct was inexcusable. His interviewers were satisfied that the account he gave to them of his misconduct was full and accurate and the Committee sees no reason to go behind those conclusions. The Committee considers it unlikely that he would put his personal interests before the integrity of racing again. His experiences have made him wise to the appeal of Inside Information to unscrupulous gamblers and Mr Burke had not featured in any of the BHA's then investigations up to that date of Mr Burgess's report. The Committee has not been informed that he has featured in any investigations of the BHA since.
9. In reaching the conclusions set out in paragraph 8 above, the Committee has also had to consider the implications of an unheralded disclosure made by Mr Burke at the hearing on 13 September 2012. When questioned by the Committee as to whether there were any other matters that might affect his suitability as a person to be granted a Trainer's Licence, Mr Burke volunteered that he had been disqualified as a company director. Although he was not and is not a director of K.P.Spigot Ltd., the circumstances which had led to the disqualification were plainly material to his suitability to hold a licence. Accordingly, the hearing was adjourned to enable the Committee to be provided with relevant documents to the Committee on the circumstances leading to that disqualification. There were also issues about the separation of the activities of Mr Burke from the business of his employing company, which needed addressing.
10. The Committee reconvened on 10 July 2013 with Mr Burke, who was accompanied by Mrs Burke and by his daughter Ms. Kelly Burke, who is a director of K.P.Spigot Ltd and Mr MacNeice. Documents provided on behalf of Mr Burke included a written undertaking given to the Secretary of State for Business Innovation and Skills pursuant to the Company Directors Disqualification Act 1986 signed by Mr Burke on 27 July 2009 for a period of 4 years commencing on 24 August 2009. For that period he undertook not (among other things) "be a director of a company, or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company".
11. The undertaking was given in the light of concerns relating to the operations of K.R.B.Throughbreds Ltd, a company of which Mr Burke had been a director. Mr Burke had run his training business through that company and also a business for the purchase and sale of horses. A report written by The Focus Practice, Chartered Accountants and Business Advisers dated 15 October 2012 and addressed to the Licensing Committee

set out what were seen as mitigating factors surrounding the insolvent liquidation of that company. The Committee had been expecting to see correspondence on behalf of the Secretary of State explaining why it was considered that an undertaking was considered necessary. Mr Burke says that such documents are no longer in his possession or available to him.

12. It appears that the intervention of the Secretary of State was caused by the fact that Mr Burke was the director of a company, which had been continuing to trade whilst insolvent. That indication was given to the Committee by Mr Burke at the first hearing and Mr MacNeice agreed at the second hearing that this must have been the concern of the Secretary of State. Although his firm had not been acting for Mr Burke at the time, Mr MacNeice denied that there was any question of Mr Burke having been a director of the company at a time when he knew that it was trading insolvently.
13. Having considered the report of The Focus Practice, written submissions from Mr MacNeice and having discussed the matter with Mr Burke, the Committee has concluded that Mr Burke got out of his depth, running two substantial businesses within this company. Delays in collecting money owed by owners and delays in selling horses coupled with a fundamental misunderstanding about the right of the company to claim substantial VAT inputs in relation to transactions involving the purchase and sale of horses all combined to render the company insolvent. Having seen Mr Burke on two occasions and having considered the report of Mr Burgess, the Committee considers it unlikely on the available evidence that there are any lingering concerns about Mr Burke's probity arising out of the demise of K.R.B. Thoroughbreds Ltd.
14. The training operation has been run by K.P.Spigot Ltd since Mrs Burke first held the Trainer's Licence in August 2010. The Committee has considered the accounts of the business for each year since then and has discussed the operations of that company with Mrs Burke and Ms. Burke. The business is well-run and solvent. The Committee has no concerns about its financial viability or the competence of those running it.
15. The Committee was concerned that Mr Burke would not play any significant role which might lead him to be a director, whether a shadow director or *de facto* director, of K.P.Spigot Ltd. In view of the demise of K.R.B. Thoroughbreds Ltd and his involvement in it, it would not be appropriate for Mr Burke to act as a director of K.P.Spigot Ltd. It was clear from discussing the matter with Mr Burke, Mrs Burke and Ms. Burke that they were each keen to limit Mr Burke's activities to training and that they would be running the business and the company, not him. The Committee accepts that this is the intention and that it is unlikely to change.

16. There was one final matter, which concerned the effect of the undertaking, expiring on 24 August 2013. Mr MacNeice sought to persuade the Committee that the grant of a Trainer's Licence for a term that included the period before the expiry of the undertaking would not result in a breach of it, because Mr Burke would not be involved in the business activities of his employing company. The problem is illustrated by clause 11.1 of the standard agreement promulgated by the National Trainer's Federation, which provides that, -

“ Subject to such reasonable and legal orders and directions as may from time to time be given by the Employer ... the Trainer shall have general control and management of the Stables and all persons employed in and about the same including the power to engage and dismiss employees ...”

Mr Burke has entered into a written contract of employment with K.P.Spigot Ltd., which does not contain this provision and which obliges him to “comply with all laws, rules and regulations to which [he] is subject”: clause 3.2.3. Those “rules” would include the Rules of Racing.

17. The problem is that the Rules of Racing, so far as they affect Trainers, impose a number of particular obligations, compliance with which might cause Mr Burke to be concerned in the management of his employing company, so resulting in a breach of the undertaking. Clause 11.1 of the agreement referred to above to some extent reflects those regulatory obligations. Mr MacNeice was unable to persuade the Committee that there would be no breach of the undertaking if a licence were granted with immediate effect.
18. For the reasons set out above, the Committee decided that Mr Burke is a suitable person to hold a licence and that a Combined Trainer's Licence should be granted to him from 25 August 2013 to 31 January 2014.
19. Although the Committee has concluded that Mr Burke has demonstrated sufficient remorse and insight for his breaches of the Rules of Racing referred to elsewhere in these Reasons, he should understand that any further breaches by him of the Rules of Racing relating to integrity in particular could have very serious implications for his future in racing.

Dated 26 July 2013

A handwritten signature in black ink, consisting of several overlapping loops and a final horizontal stroke extending to the right.

Stephen Bate

for the Licensing Committee