

BEFORE THE LICENSING COMMITTEE OF THE BRITISH HORSERACING AUTHORITY

RE: MATTHEW JAMES SALAMAN

APPLICATION FOR A TRAINER'S LICENCE 1 FEBRUARY 2013 - 31 JANUARY 2014

Hearing Dates: 20 MAY and 31 MAY 2013

Committee Members:

RICHARD RUSSELL ESQ. (Chairman)

EDWARD DORRELL ESQ.

SEBASTIAN PRENTIS ESQ.

REASONS

1. Following the adjourned hearing of 31 May 2013 the Committee decided to grant Matthew James Salaman a licence to train for the period 1 February 2013- 31 January 2014 subject to conditions. These are the reasons for that decision.

Mr Salaman's application

2. Mr Salaman has held a trainer's licence since 27 August 2009. He has had 307 runners in the period gaining £101,299 in prize money.
3. Mr Salaman's previous licence was automatically terminated with effect from 21 December 2012. On that date he moved training premises without having notified the BHA. He was therefore also fined £700 by the BHA's Disciplinary Panel for running Fred Kennet at Uttoxeter on New Year's Eve without having held a licence for the previous 14 days. Mr Salaman told the Committee that he had had to move quickly and that while he had asked his father, Mr Marshalla Salaman (commonly known as 'Taffy'), to notify the BHA his father had failed to do so.
4. Mr Salaman's present application is dated 20 February 2013. It was completed by his father but signed by him, Mr Salaman thereby declaring the application to the best of his knowledge and belief accurate and true. An unpaid debt of £730.25 owed to the BHA under a County Court judgment of 31 December 2012 was attributed to 'an administration error' and 'will be resolved immediately'.

5. The application was originally on the basis that Mr Salaman would be an employee of Qualmech Limited ('Qualmech'), and it was accompanied by an employment contract dated 14 February 2013 between Qualmech and Mr Salaman.
6. On 14 March 2013 the BHA wrote to Mr Salaman seeking, among other things, a business plan, cash flow forecast and profit and loss for the first 12 months trading of the new enterprise; and details of the creditors of his previous employer, Oaktree Racing Limited ('Oaktree'). One such creditor, Whitfield Horse Transport Limited ('Whitfield') had already been in contact with the BHA concerning a claimed debt of £13,656 accruing since February 2010.
7. In his response Mr Salaman said that he had been an employee of Oaktree which was 'a family business run by my father... As my father ran the business I was unaware of the situation regarding the B.H.A. action against me till late on and he has enclosed a letter... of explanation regarding that and the issue of Whitfield...'. Marshalla Salaman's letter stated that he thought the judgment debt had been met by direct payment from an Oaktree debtor and invited the BHA to note that Whitfield's account was 'made out to Oaktree Racing and not Oaktree Racing Ltd', adding that 'Matthew is in no way responsible for the debt'. The letter also indicated that Marshalla Salaman would ensure that Oaktree's debts would be cleared.
8. Mr Salaman's response also stated that 'I have now set up my own company with some experienced businessmen as directors/ shareholders'. He forwarded to the BHA a new employment contract between himself and 'M.J.Salaman Ltd', signed off on behalf of the company by its directors, himself, Trevor Tinson and Alan Kembrey; a lease for his stables between the landlord and 'Matthew Salaman Ltd'; and a list of the new company's directors and shareholders, including Mr Tinson (described as 'Tinsett').
9. Following consideration and further investigations, on 9 April 2013 the BHA wrote to Mr Salaman raising a number of issues, including the following.
 - 9.1 In light of his protestations as to lack of knowledge of Oaktree's affairs, it was concerned that Mr Salaman did not appreciate the duties of a company director, he being registered as one of its directors. It therefore wanted comfort that Mr Salaman was aware of his obligations.
 - 9.2 It wanted confirmation as to the directors and shareholders of Matthew Salaman Racing Limited ('MSRL'), the details given by Mr Salaman differing from those at

Companies House which showed him as sole director and his father rather than Qualmech as 25% shareholder.

9.3 It wanted a business plan for the new company, cash flow forecast and profit and loss for its first 12 months of trading. It may be noted that these had not been produced following the 14 March letter.

9.4 It wanted evidence that MSRL 'has in the region of £40,000 in available working capital or overdraft facilities', and in that regard that Marshalla Salaman had the right to transfer to MSRL promised tack and bloodstock.

The letter ended with a note that Mr Salaman's case might be referred to the Committee.

10. Mr Salaman's reply addressed in brief some of those issues. He did not provide any forecasts beyond a cashflow forecast, neither did he evidence the capital requirement; indeed, he forwarded to the BHA a letter from his father which, while addressing the tack and bloodstock, went on to question the need for £40,000. Mr Salaman also remarked that in obtaining the judgment against him, the BHA had 'showed undue haste'. He referred for the first time to a Reg Brookes who would be company secretary and deal with the day to day running of MSRL's accounts while Mr Salaman would, with others, deal with the day to day running of the stables.

11. In its letter of 23 April the BHA noted that Mr Salaman had first been sent a letter concerning the debt which became the judgment debt on 15 February 2012. It also said that as it could not satisfy itself as to MSRL's financial soundness it had referred the application to the Committee.

12. By e-mail of 30 April Mr Salaman again took issue with the £40,000 requirement, and stated that the BHA should be aware that delaying 'the process of [my] application would cause not only a restraint of trade but financial loss and damage to my reputation'. Mr Salaman ought to have reflected that the BHA was simply putting in train a process pursuant to the General Manual, which process would have been concluded more speedily had he (a) made his application, as recommended by paragraph 3 of the Guidance Notes, at least one month before commencement of the licence period rather than three weeks after it, and (b) provided speedily the documents and information for which he was asked.

13. On 14 May the BHA confirmed the meeting date and that the Committee had been asked to consider the application 'with specific regard to business competence and financial

soundness'. It noted that while the Committee had requested the attendance of Mr Tinson and Mr Kembrey, Mr Brookes would be attending with Mr Salaman instead. It also stated that if, as he had indicated, Mr Salaman wished his father to attend the meeting then that would need referring to the Committee, his father being proposed neither as director nor shareholder of MSRL.

14. In the event Mr Salaman did not seek his father's attendance and on both days he chose to attend with Mr Brookes.

15. At the end of the first hearing, held on 20 May, the Committee decided that before making any decision it required further documents including:

- 15.1 a profit and loss and revised cashflow for MSRL, a number of issues having been raised with the initial draft of the cashflow;
- 15.2 confirmation as to how the £40,000 funding requirement was to be met;
- 15.3 written confirmation from Marshalla Salaman as to the ownership of the tack and bloodstock;
- 15.4 details of Oaktree's creditors and debtors;
- 15.5 copies of the bank statements in Mr Salaman's name but used by MSRL;
- 15.6 confirmation that the debts owed to the BHA had been paid.

The Committee also recommended that Mr Salaman consider appointing Mr Brookes as a director of MSRL.

16. Those documents were provided. It was Marshalla Salaman who gave the details of the state of Oaktree. He chose to include in his letter of 23 May the statement that 'I cannot escape the feeling that the licensing dept has a hidden agenda in dealing with this application'.

17. As mentioned, following the adjourned meeting held on 31 May the Committee granted Mr Salaman a licence subject to conditions.

The General Manual and the Guidance Notes

18. By paragraph 3 of Part 1 to Schedule 9 of the General Manual

'An applicant for the grant or renewal of a licence, permit or registration is required to satisfy the Authority that he meets all the criteria contained within the guidance notes which accompany the prescribed form.'

19. The Guidance Notes were sent to Mr Salaman together with his renewal form. The following are of particular relevance.

*'4. Applicants are required to demonstrate or confirm that...
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').
...'*

General Suitability ('Fit and Proper')

26. 'In considering any application, the BHA must also be satisfied, taking into account any fact or matter that it considers appropriate, that the applicant is suitable to hold a licence. Relevant considerations include the applicant's honesty and integrity, business competence and capability and financial soundness.

27. In relation to each section below, the BHA expects full and frank disclosure from the applicant... Failure to do so will be a relevant factor in the assessment as to an applicant's competence, honesty and integrity.'

...

Business competence and capability

34. 'The applicant must also demonstrate his/ her competence and capability to run the proposed training business or where the business is to be carried on in whole or in part by another person, the competence and capability of the person(s) concerned to run the business. The Rules of Racing require that the training business to which the licence relates must be carried on with reasonable care and skill...'

...

Financial Soundness

37. *The BHA 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. First time applicants will be required to satisfy all relevant factors (listed below) however, applicants applying for a renewal of a licence to train may be required to produce documents only upon request.*

38. *Relevant factors include:*

38.1 *Whether the applicant has been the subject of any judgement debt or award in Great Britain... which remains unpaid or was not satisfied within a reasonable period...*

38.4 *That the training business to which the application relates is solvent and able to pay debts as they fall due.*

38.5.1 *Whether the training business to which the application relates is likely to be financially sound, taking into account all relevant matters, including the information that the applicant is required to furnish in support of his application, namely:*

38.5.1 *A financial reference from a satisfactory source indicating that the applicant or the person(s) who own the training business have available working capital or overdraft facilities of not less than £40,000 or such other amount as may be requested on behalf of the BHA having regard to the circumstances of the application...*

38.5.2 *Projected profit and loss accounts...*

38.5.3 *A cash flow projection...*

38.5.4 *Accounts and balance sheets...'*

20. Given the tone of some of the correspondence it is worth emphasising that the burden of showing that he is a fit and proper person to be granted a renewed licence is on Mr Salaman himself. He is expected to provide full and frank disclosure in support of his application. He is also required to demonstrate that MSRL's business is likely to be financially sound over the year; to trade solvently, paying its debts as they fall due; and to be properly managed. By paragraph 22 to Schedule 9 the standard of proof is the balance of probabilities.

Reasons

21. The Committee was particularly concerned about the prospects of MSRL in light of the chaotic management both of it and of Oaktree.
22. In respect of Oaktree, and as already mentioned, although Mr Salaman described himself just as its 'employee', he was actually a registered director as well. The other director was his father, and they were also the 50:50 shareholders. Despite that, Mr Salaman's knowledge of Oaktree's affairs appeared slight. He acknowledged that formal directors' meetings were never held and at least until recently he had left the management to his father.
23. Marshalla Salaman began his letter of 23 May to the Committee as follows: 'For your information Matthew Salaman resigned as a director in October 2012...'. When asked about that at the adjourned meeting Mr Salaman did not appear particularly surprised. However, it came as a surprise both to the Committee and to Mr Brookes, nothing previously, including Mr Salaman's evidence at the earlier meeting, having indicated that he was no longer a director. If he had resigned then he and his father were at fault in not informing Companies House (although Mr Salaman placed the blame with his father). Even without that apparent failing, Oaktree's file at Companies House is dismal: it is subject to a proposal to be struck off the register, probably because its annual return has been overdue since 31 December 2011 and its accounts since 31 January 2012. Responsibility for those failures lies with the directors including Mr Salaman.
24. MSRL was incorporated on 30 January 2013. Even in its brief existence, and even without the formal influence of Marshalla Salaman, its management has not been a marked improvement over Oaktree's. As set out above, it has been persistently misnamed in its own documents. There has also been confusion over its directors.
- 24.1 As mentioned, there is an employment contract between it and Mr Salaman apparently signed off by its three directors.
- 24.1 At the first meeting Mr Salaman handed the Committee a copy of a resolution headed 'Board meeting Matthew Salaman Racing Ltd' recording that at a meeting held on 11 May 2013 the directors, Mr Salaman, Mr Tinson and Mr Kembrey, who were all in attendance, 'would transfer their directorial duties to Mr R. Brookes'.

24.3 Mr Salaman explained that that resolution had been 'written wrong' and that actually it was intended to reflect accounting matters rather than directorial matters. Mr Brookes, who at the first meeting was evincing no desire to become a director, concurred.

24.4 So the position appeared to be that despite Mr Salaman being the sole director registered at Companies House, Mr Tinson and Mr Kembrey either were formally already directors, or at least were acting as such.

24.5 However, at the second meeting Mr Salaman advised the Committee that his accountants had reviewed the file and found that Mr Tinson and Mr Kembrey had never formally been appointed.

24.6 It also emerged at the first meeting that while in his correspondence with the Authority Mr Salaman had described Mr Tinson and Mr Kembrey as 'experienced businessmen', he did not think that they had any directorial experience at all.

25. Given its lack of accounting records and the proposal to strike it off the register, the Committee also probed so far as it could the financial state of Oaktree. Marshalla Salaman has in his letter of 23 May confirmed that Whitfield is the sole creditor with a debt of a few thousand pounds. He also identifies certain debtors in excess of that sum from whom monies may be received.

26. What have not yet been drawn up are any final accounts for Oaktree, although Mr Salaman told the Committee that he was in the process of doing this. Their significance lies not just in being a demonstration of Mr Salaman's acting responsibly towards Oaktree. The Committee became deeply concerned by what it was told about the transactions passing through the business account held in Mr Salaman's name.

26.1 At the first meeting copies of statements for this account were not available, even though by its letter of 23 April the BHA had indicated that they would be of assistance. Mr Salaman was therefore relying on his memory when asked questions. Despite that, his evidence was in the end absolutely clear.

26.2 He described how this account had been set up about a year before (he was almost exactly right: it was 21 May 2012), in his own name.

26.3 He said it had never been overdrawn.

26.4 He said that it had been used as MSRL's account, MSRL not having any other account.

26.5 On being asked whether in the period before MSRL had been incorporated the account had collected monies under invoices which Oaktree had sent out, Mr Salaman said no, and that the only transactions had been personal.

26.6 One of the items of information which the Committee sought after the first meeting were copies of the bank statements, which were duly sent.

26.7 These showed that on a few occasions the account had slipped into a small debit, the most being of £175.

26.8 On one occasion, though, the debit balance was £1,096. In fact that was not an end of day figure, but represented the carry-over figure between two pages of the statements recording transactions occurring on a single day. However, it is notable that the cheque of £2,400 which caused this temporary negative was returned that same day because while Mr Salaman had signed the cheque (as he had to being the sole signatory on the account), his father had filled in the details with a 2012 date rather than 2013.

26.9 Much more significantly, the statements showed, and Mr Salaman accepted, that contrary to what he had told the Committee on 20 May this account was receiving monies which were Oaktree's and ought to have been paid to Oaktree. Mr Salaman explained his earlier representations by saying he was nervous. The Committee does not accept that explanation: Mr Salaman gave clear answers, some considerable way into the meeting, and indeed some considerable way into questions about the account, and he gave no indication of being overly nervous.

27. Among the other documents provided for the second meeting Mr Salaman revised his cashflow forecasts to take account of observations made on his first version; and he evidenced investment into MSRL of £38,000. After close questioning of Mr Salaman, the Committee concludes from the face of those documents that MSRL is likely to be financially sound.

28. Having heard from Mr Salaman at both meetings the Committee also concludes that, despite contra-indications such as the filling out of the cheque, Mr Salaman is genuine in saying that MSRL was incorporated not because he wanted to avoid Oaktree's debts, but because he

wanted to strike out on his own, away from his father and his controlling management style. It was to Mr Salaman's credit that when questioned about his father's more intemperate and misguided remarks he distanced himself from them immediately and was obviously embarrassed by them.

29. However, having heard Mr Salaman, and given the reasons above, the Committee is unable to conclude that Mr Salaman satisfies the business competence requirement, at least if acting as sole director of MSRL. That conclusion also leads to doubt about the attainability in practice of the projected figures supporting the financial soundness requirement.

30. As mentioned, at the conclusion of the first meeting the Committee suggested that it might benefit MSRL were Mr Brookes to be appointed a director. Mr Brookes is a retired businessman who has knowledge of the horseracing industry, an ability to deal with finances, and a willingness to assist Mr Salaman. The Committee was impressed by him, and by the way that he recognised the difficulties Mr Salaman had had and how they needed to be addressed. Happily, Mr Brookes' reluctance at the first meeting to taking up a formal position as director of MSRL had receded by the second meeting when, having very responsibly taken professional advice in the interim, he confirmed himself willing to be appointed.

31. On that basis the Committee concludes that it is appropriate to grant Mr Salaman his trainer's licence as an employee of MSRL for the period to 31 January 2014. The licence will be subject to the following conditions of which Mr Salaman was informed after the second meeting, and as are set out in the letter from the BHA dated 4 June 2013.

- i) That Mr Reg Brookes is appointed a Director of the company by no later than 14th June 2013;
- ii) Should Mr Brookes' appointment be discontinued at any stage and for any reason, the British Horseracing Authority (BHA) be notified immediately by Mr Brookes and Mr Salaman, each giving reasons why he has ceased to act;
- iii) A new bank account should be opened for the company and in the name of Matthew Salaman Racing Limited, to be used solely for the company, by 30th June 2013;

- iv) Confirmation that the two horses sales amounting to £23,000 have been concluded and the proceeds have been put into the company bank account, by 30th June 2013;
- v) Quarterly management accounts including a profit and loss projection, cash flow forecast, balance sheet and bank statements to be submitted to the BHA within one month of the end of each quarter, with the first quarter commencing on 1st June 2013;
- vi) The final accounts for Oaktree Racing Limited as of the date that the company ceased trading, together with confirmation of its outstanding creditors and debtors to be provided to the BHA by 30th September 2013.

32. In the event that there is any breach of a condition, Mr Salaman is to show cause why his licence should not be suspended or withdrawn.

Dated: *28th June 2013*

Signed for the Committee:

Richard G. Lunn