

BEFORE THE LICENSING COMMITTEE OF THE BRITISH HORSERACING AUTHORITY

RE: ALAN WARWICK BERRY

APPLICATION FOR A TRAINER'S LICENCE

Hearing Date: 5 SEPTEMBER 2017

Committee Members:

SEBASTIAN PRENTIS ESQ. (Chairman)

EDWARD DORRELL ESQ.

GARDIE GRISELLE ESQ.

REASONS

1. Mr Alan Berry appeared before the Licensing Committee on 23 and 24 August, and 5 December 2016. At that last hearing the Committee determined that he was a suitable person to hold a trainer's licence, subject to conditions (the "Conditions"). The Reasons for that decision are dated 6 January 2017 (the "Earlier Reasons").
2. No licence has since been issued to Mr Berry. On 5 April 2017 he lodged his licence application in the usual form, but addressing additionally the Conditions (the "Application"). By letter of 24 May 2017 the BHA referred the Application to the Licensing Committee pursuant to Paragraph 2.1.3 of Schedule (A)9 to the General Manual. While not formally opposing the Application, in light of the Earlier Reasons the BHA considered that there were matters which rendered the licensing decision more appropriately made by this Committee.
3. Before us the BHA has been represented by Mr Tim Naylor, Head of Regulation. Mr Berry has represented himself.
4. As announced at the hearing, we have concluded that Mr Berry is a suitable person to hold a licence, subject to the Conditions; and, the Conditions being currently met, have directed that his licence should run from the hearing date. These are the Reasons for our decision. They are additional to the Earlier Reasons, which we will treat as being read and, save as necessary, will not repeat. That approach reflects the way in which Mr Naylor suggested we carry out our task, being to assess Mr Berry's suitability as at today's date, bearing in mind our Earlier Reasons and the new matters to which he has drawn our attention.

5. We record our gratitude to Mr Naylor for the fair and balanced way in which he presented the BHA's position, especially as Mr Berry was without professional representation.

Horseboxes

6. The first new matter relates to Mr Berry's green Renault horsebox PG51FTA (the "Horsebox").
7. In August 2016 Mr John Murray moved into a house at Mr Berry's yard, initially to help Mr Berry with the horses. At that time Ms Juliette Edmondson, Mr Berry's partner, told Mr Murray not to use another horsebox at the yard, an Iveco registration WA56BBX (the "Iveco"), because it had no MOT, but to use the Horsebox instead.
8. Mr Murray understandably took this to mean that the Horsebox did have an MOT. He therefore used it daily to drive horses to the beach for training and, after he received his own licence on 21 November 2016, to drive to races.
9. On 11 January 2017, though, when Mr Murray and Ms Faye McManoman were driving KING OF CASTILLA to Newcastle races, the Horsebox's engine blew up short of Carlisle. Mr Berry arranged for the horse to be taken by Mr Jonathan Haynes, whose yard was nearby, and Ms Edmondson reported it as a non-runner. While waiting with Mr Murray for recovery of the Horsebox, Ms McManoman found an old MOT certificate in its glove box. She went to the DVLA's website and discovered that the Horsebox had been untaxed since 1 May 2015, and had had no MOT since 16 August 2016. Mr Haynes now came to rescue her and Mr Murray.
10. Although he gave a witness statement to the BHA, the final version of which was dated 17 May 2017, Mr Murray refused to come to give evidence before the Committee because he wanted no further involvement with these matters, and as he now had a job at York Racecourse he no longer needed to be part of the BHA's licensing regime. In relation to the Horsebox that has not hampered us. Ms Edmondson agrees that when she told him to use the Horsebox back in August, she thought that it was taxed and MOT'd; and she agrees with Mr Murray's statement as to what happened the morning after the breakdown: "The next morning Juliette was there and I questioned her as to why she had let us use a horsebox with no MOT or tax. All she said was 'please don't tell Alan'".
11. Ms Edmondson explained to us that the Horsebox had been SORN'd, and she had therefore had no reminders to tax. As to the MOT, she thought that it had been carried out because in July 2016 the Horsebox had had extensive work. As is implicit in her remark

to Mr Murray, while the ultimate responsibility for this mess was Mr Berry's, the immediate responsibility was hers.

12. There is more. Having learned of the breakdown of the Horsebox, on the same date the Iveco was entered for an MOT which, not surprisingly, it failed. Ms Edmondson and Mr Berry both told us that so far as they remembered, the Iveco had then remained at the repairing garage until it passed its MOT on 17 January 2017. That, though, is not right. On 11 January the Iveco's odometer reading, recorded for the MOT test, was 207,422 miles. On 17 January it was 207,866. So, despite knowing of the Iveco's MOT failure, Mr Berry caused or allowed it to be driven on the roads for at least 400 miles; and that was also despite knowledge of the Horsebox's failure and the consequences of that for Mr Murray, Ms McManoman, KING OF CASTILLA and its owners and backers.
13. While not wishing to over-emphasise either the risks or the breaches, because neither individually nor collectively do we consider them egregious, this is plainly conduct inconsistent with Guidance Notes 36.1 and 36.2, by which matters relevant to the assessment of an applicant's suitability for a licence include "whether the business will have a competent and prudent management structure" and its affairs "conducted with reasonable care, skill and diligence".
14. Having heard from Mr Berry we are satisfied, though, that he was not using the Horsebox or the Iveco to transport horses for others, as had been raised in the BHA's letter of 24 May 2017.

Stable inspection

15. On 2 May 2017 Mr Streeter visited Mr Berry's yard at Cockerham (the "Yard") for an updated inspection. We have read his report although this time not heard from him directly.
16. The BHA draws our attention to three items in particular.
 - 16.1 There was "significant evidence of vermin activity" in box 1.
 - 16.2 There were "sub-standard patching repairs" in box 2.
 - 16.3 Despite nine previous warnings, an old design skull cap (EN 1384:2012) was found.
17. None of these seem to the Committee unduly troublesome.
 - 17.1 The vermin activity was very isolated, being in one box out of twenty-nine. The evidence was that the Yard had eight routine visits from the pest controller per annum, plus other visits as and when required.

17.2 As Mr Berry said, the same repairs had not been objected to on previous visits; and these repairs were put right after this inspection.

17.3 The skull cap was a child's size, and was in fact used by one of Mr Berry's and Ms Edmondson's children.

18. As it has observed before, neither does the Committee think that there is anything in the point that the Yard is not meeting the minimum standards by very much. It is meeting those standards, set by the BHA.

19. The wider point which may be coupled with the last, that the standard of the Yard demonstrates Mr Berry's continued disengagement, is one which we shall address below.

Other matters

20. On 5 December 2016 this Committee sought Mr Berry's explicit confirmation that he would read the Earlier Reasons (as it has done for these Reasons, as well). Despite his affirmation, he told Mr Streeter during the inspection that he had not read them. Among the correspondence from the National Trainers Federation (the "NTF") which we have seen, there is a confused response to this point, including the erroneous averral that the Earlier Reasons were never passed on to Mr Berry. As it is, we accept his evidence before us that he did read them as soon as he had received them: he recollected that he had contacted the NTF immediately because he was upset about a particular epithet we had used. We also regard it as in character for Mr Berry to deny having read them, just to try to irk Mr Streeter with whom he has had a strained relationship.

21. That leads to a second, more serious, point which came out of the hearing. Mr Berry apparently continues to believe that his not holding a licence is not his fault but the BHA's. Broken down, despite what we said in our Earlier Reasons, he has no faith that Mr Streeter is trying to help him; and, as he said during the diatribe directed at the BHA at the beginning of this hearing, he believes that he has not had a licence since the last hearing because the BHA is trying to bankrupt him. We would observe of Mr Berry's diatribe that it was the only time over four days of hearings that he has been anything other than passive or defensive. It was a pity, then, that it was not only utterly misconceived, but causes us grave concern when assessing suitability because it betrays a continued inability to see what has gone wrong, and therefore an imperfect ability to put things right. After the last hearing Mr Berry could not receive a licence until a further yard visit, and until he had demonstrated that he was complying with the Conditions. The inspection was not until 2 May, probably because it was not until 5 April that Mr Berry lodged his licence application. The licence application presumably had to wait until then because it was not until Mr John

Quinn was hired as assistant trainer at the beginning of April 2017 that the first Condition, let alone the others, could be met: on about 16 January 2017, when he handed in his licence, Mr Murray had walked out on Mr Berry.

22. We record that at the hearing we formally told Mr Berry that the BHA and Mr Streeter were there to assist him in meeting the requisite standards, and that as a suitable person he would be bound to listen to and consider their advice in that light.
23. The third matter, which was potentially extremely serious, was whether Mr Berry's evidence at the earlier hearings had been correct in describing the conversations he had had with Mr Murray and the basis on which Mr Murray was at the Yard. He had told this Committee that he had talked to Mr Murray about the possibility of his training in his own name from some boxes at the Yard, but that Mr Murray would "be 100%" about "stepping back from having his name on his own licence and working as [Mr Berry's] assistant". It was, of course, Mr Murray who in December was proposed as the likely person to fulfil the first Condition, that of a suitably-qualified assistant trainer.
24. In those circumstances this Committee was astonished by what Mr Berry told it at this hearing, that when he returned to Cockerham after 5 December 2016 he did not tell Mr Murray what had happened, either immediately or at all. Mr Murray too says in his statement that he left the Yard when he "read in the paper Alan was free to apply for his licence... I knew there would be no need for me if Alan was granted a training licence". That must have been in the second or third week of January. There was, as we have observed, every need for Mr Murray's continued presence, first because it was Mr Murray who was keeping the horses going until such time as Mr Berry was actually granted a licence, secondly because it was his presence which would allow the licence to be granted through fulfilment of the first Condition.
25. We have no doubt that something has been concealed, whether at this hearing or the previous hearing. We note that in his statement Mr Murray says he left "among other things" because he learned in the press that Mr Berry could apply for his licence; and that following the breakdown of the Horsebox and Mr Murray's tackling of Ms Edmondson the next morning, he has "not spoken to Alan since". Yet Mr Berry denied that there had been a falling out.
26. As it is, without having heard from Mr Murray it is very difficult for this Committee to make any precise determination of the position; and on consideration it has not felt it necessary

to take the matter further at this stage. We would just add that Mr Berry assured us that he had no idea why Mr Murray was so reluctant to give evidence.

27. Finally under this section we note that it was a feature of the hearing that it was Ms Edmondson, and not Mr Berry, who would answer many of the questions and who gave a closing address; she it also was who sought to keep Mr Berry on track when his answers veered off into private grievances or irrelevancies.

Conclusions

28. We have outlined above a number of negatives, of varying weight. What we have not yet addressed is what seems to us the large and, in the event, overwhelming positive: that despite not being licensed since 15 February 2016 Mr Berry has kept his training operation running, so far as he can, at great personal stress and at great personal expense. Even more than the programme to paint and tidy the Yard, it is that which demonstrates to us Mr Berry's continued desire to be engaged with his profession. To keep it all going despite the obstacles seems to us admirable, and a hallmark of a suitable person. Mr Berry's training ability is, of course, undisputed.
29. We therefore think that Mr Berry should be given the opportunity to train again. Plainly, that must be subject to the Conditions which, we say by way of reminder, are "intended to be permanent or continue until a date that the BHA or Licensing Committee chooses to either vary or remove them". We have considered at this hearing whether to vary the Conditions, but can see no useful way to do so.
30. The BHA having accepted that the Conditions are currently met, it follows that Mr Berry's licence should run from the hearing date. For the avoidance of any doubt, it will run for the period of one year, and be renewable in the ordinary way.
31. At paragraph 66 of the Earlier Reasons we said this:
"It was Mr Moore's submission that in being deprived of his licence Mr Berry has learned his lesson. For most individuals one could take that as read. Whether it is true of Mr Berry, time will tell".
32. We can but echo that remark.

Sebastian Prentis
For the Licensing Committee
13 September 2017.