

IN THE MATTER OF AN APPLICATION FOR A LICENCE TO TRAIN

CONCERNING MR KEVIN ALAN MORGAN

BEFORE THE LICENSING COMMITTEE OF THE BRITISH HORSERACING AUTHORITY

75, HIGH HOLBORN, LONDON, WC1V 6LS

10th DECEMBER 2012

RICHARD RUSSELL ESQ.

STEPHEN BATE ESQ. (CHAIRMAN)

EDWARD DORRELL ESQ.

REASONS

1. On Monday 10 December 2012 the Licensing Committee adjourned the application of Mr Kevin Alan Morgan ("Mr Morgan") to continue as a licensed Trainer as an employee of K & C Racing Ltd (K&C). It did so for the following reasons.
2. Mr Morgan held a Trainer's licence for the year ending 31 January 2013. On 31 August 2012 an order of bankruptcy was made against him. On 6 September 2012 the Official Receiver confirmed to the British Horseracing Authority ("the Authority") that Mr Morgan was unable to continue to trade (i.e. lawfully) as a result of his bankruptcy. In order to train under a licence from the Authority, Mr Morgan required the consent of the Authority to his training as an employee of K&C¹.

¹ Although Mr Morgan's has not produced a copy of his licence (the Authority does not keep copies), the standard form Trainer's licence provides that the licensee will train as a self-employed person/employee of x and that in the event of the trainer ceasing to train as a self-employed person/employee as applicable the licence 'will terminate and be of no further effect unless prior to such change of status the [Authority has] been notified of it and given its express approval in writing'. The licence application for 2012/13 makes clear that Mr Morgan intended to train as a self-employed trainer and the inference is that a licence was granted accordingly. Mr Morgan's present application does not specify a period for the proposed licence. If the application could not result in continuation of the 2012/13

3. It seems from what follows that he intimated to the Authority that he informed it that he wished to continue as the employee of a company.
4. On 7 September 2012 the Authority wrote to Mr Morgan advising him of the matters that would be required if the Authority was to change his 'employment status'. He was asked to, -
 - give an explanation for his bankruptcy and details of the creditors, with reasons for the non-payment of any unpaid debts, and details of 'what is happening in the bankruptcy';
 - provide an explanation as to why a licence should be granted to him, a bankrupt, in view of the wider racing interests at stake;
 - provide details of the employing company proposed including its directors and shareholders, with a business plan for the company, including details of the proposed management structure and business arrangements so as to ensure that it would be able to trade solvently; and a bank reference showing that the company had in the region of £40,000 in available working capital or overdraft facilities.
5. In response to that letter Mr Morgan made an undated written application to continue as a licensed Trainer as an employee of K & C Racing Ltd. He explained that he had been unable to pay HMRC £50,000 and there were two other debts totalling £6,000. He had been owed a total of £98,000 by one owner, which had not been paid and another business owed £22,000, which had been written off. There had been an earlier debt of £32,000, which had not been recovered because the company had gone into receivership. He pointed out that most of the long-standing suppliers, including farriers, vets and hay and straw suppliers were still supplying his yard. He said that 'the new company director has five horses in training with me at present and intends to increase his interest and with a very successful business himself his intentions are to involve some of his business associates in future ownership'.
6. Mr Morgan provided details in writing of the directors and proposed shareholders, the names of the directors being Catherine Peck ("Ms. Peck"), his wife and a Mr Richard Simcox, with the former to hold 80% of the shares and Mr Simcox the remaining 20%. As for the business plan, Mr Morgan wrote stating as it was a new company, 'we can only do

licence until 31 January 2013 because the licence has terminated as a matter of law, there is no reason why the application could not relate to a Temporary licence for that period.

a projected plan depending on increase of horses, etc, which our accountant can forward to you if necessary'.

7. On 24 September 2012 the Authority emailed Mr Morgan pointing out that it had not received a number of documents that had been requested, including the business plan.
8. The Memorandum and Articles of Association were provided, with a Certificate of Incorporation, showing that K&C had been incorporated on 12 May 2011, the subscribers being Ms. Peck and Mr Morgan, each having agreed to become a member of the company and to take at least one share each in the company. A cash flow forecast was provided and a contract of employment.
9. On 6 November 2012 the Authority emailed Mr Morgan again in the light of the further documents provided, advising him that the Authority had not approved his application in view of his failure to provide a sufficient explanation of the bankruptcy as had been requested in the letter of 7 September 2012 or the requested explanation as to why a licence should be granted to him in view of the wider racing interests at stake. It was also pointed out that the cash flow forecast that had been produced (showing a loss of approximately £5,000 in the first year of trading) did not of itself amount to a business plan and no details of the management structure (i.e. who would be responsible for managing the finances of the business) and business arrangements had been provided. Further, the cash flow forecast had not been accompanied by the assumptions on which it was based.
10. The email concluded by stating that Mr Morgan and his potential employer needed to satisfy the Authority that the criteria in the Guidance Notes for applications for a Trainer's licence regarding business competence and capability, as well as financial soundness, would be met.
11. On 12 November 2012 the Authority received an email from Ms. Peck, enclosing 'the full details of all the items you requested', which consisted of a two page typed document. Some basic assumptions underlying the cash-flow forecast were provided with some information about other income from sub-letting (as it was explained at the hearing) and horse transport in particular. The reasons behind the bankruptcy were further explained. As for the areas of business competence and capability and solvency, Mr Morgan stated the company was financially sound, 'with investment from Mr Richard Simcox, a very

successful businessman', who 'saw the potential of investing his capital in the new venture' and that 'with the capital backing of Richard Simcox and the knowledge of Kevin Morgan we feel [K&C] can go forward.'

12. The hearing took place on 10 December 2012. Mr Morgan attended with Ms. Peck. The Committee was passed two further documents, a short email from Mr Simcox dated 8 December 2012 and a positive reference from a Mr John Duckworth, an owner and breeder. Mr Simcox was writing from Florida and the Committee was advised that he would be returning to the United Kingdom on 17 December 2012.
13. The Committee informed Mr Morgan that it was concerned as to whether or not he was a suitable person to hold a licence as an employee of K&C, having regard to the criteria of business competence and capability and financial solvency in particular. It also raised with him the wider question of whether his holding of a licence was consistent with the wider interests of racing. He was invited to produce any further documentary evidence and call any oral evidence he wished. Mr Morgan told the Committee why it was appropriate to authorise a change of his employed status to enable him to continue to train under his current licence.
14. Mr Morgan was asked by the Committee about the cash flow forecast and the assumptions underlying it. He said that it had been prepared by his accountant incorrectly, using past figures. In other words, it was not accurate assessment of the trading prospects of the company. Further, neither he nor Ms. Peck, who joined in the discussion with the Committee, could explain the monthly payments out of the company of £1,000 expressed as 'Owner's Withdrawal'. The forecast does not include the additional income said to be available from sub-letting and other activities and shows a loss after 12 months of £5,000.
15. In his email Mr Simcox stated that he would see that the reasons why Mr Morgan's business had failed would not happen again, and that credit terms would be strictly adhered to. He confirmed that he plans to keep several horses in training under the new company. He stated that he owns 50% of a company called Roemex Ltd, which carries on business in the field of chemical services, which he started in 1986 and is now worth well over £12M. His support for K&C would be 'ongoing with horseracing being my favourite sport'.

16. The Committee took into account all that it was told by Mr Morgan and Ms. Peck but considered that the information and documents provided to it were inadequate with respect to those aspects of suitability concerned with business competence and capability and solvency of the new venture, and that before it considered the application further, it required further information and documents. The reasons were as follows.
17. The information and documents provided did not amount to a satisfactory business plan. The cash flow forecast provided was unsatisfactory, as Mr Morgan acknowledged. Despite hearing from Ms. Peck, a director of the company, the Committee had no real insight into how the company would be run or managed, except for a generalised indication from Mr Simcox's email that credit controls would be adhered to and that he or his accountants would keep an eye on the finances. No sufficient details of the management structure and business arrangements had been provided. For example, there was no indication of any internal financial controls for ensuring that the business would be operated solvently.
18. It is often essential in cases such as the present, where a trainer has been declared bankrupt and wishes to carry on training as an employee of a company, that the trainer is separate from the management of the business and does not act as a director. Indeed, so much is required by law, which renders it a criminal offence for an undischarged bankrupt to act as a director of a company or be concerned in its management without the permission of the court².
19. In the present context, the interests of racing require that a training business is run prudently and solvently. The Committee would need to be satisfied that the new business would be run with reasonable care and skill and so far as it can judge, solvently. In view of the demise of Mr Morgan's previous training business, this is particularly important.
20. The Committee was left with no clear impression of how Mr Simcox would be involved in the management of the company and what management role in particular would be played by Ms. Peck. Mr Morgan suggested that financial matters might be put into the hands of Mr Simcox's accountants. The position was made no clearer by the written terms of Mr Morgan's employment, clause 6.1 of which conferred on him 'general control and management of the Stables and all persons employed in or about the same including the power to engage and dismiss employees in the Stables'. The term 'Stables' was left

² Section 11(a) Company Directors Disqualification Act 1986.

undefined and clause 6.1 as a whole conveyed the impression that no clear thought had been given to separating Mr Morgan from the management of the business; particularly in view of the fact that Mrs Peck and Mr Simcox are to be the only directors of the company.

21. The Committee is particularly keen to see that there is a separation of the trainer from the management of the company where, as in this case, a husband and wife are involved in the training operation and one of them (in this case Ms. Peck) is to be a director, and the other (here Mr Morgan) is the bankrupt who formerly carried on the trading business.
22. In cases such as the present, it is particularly important that the Committee hears in person from at least one of the new individuals who are to be involved in the new company; to satisfy itself that there is real substance to the business proposals of the new venture. Unfortunately, Mr Simcox was not available to attend and perhaps clarify a number of the reservations held by the Committee.
23. Rather than dismiss the application, it was considered that the appropriate course was to adjourn it, giving Mr Morgan the opportunity to renew the application if and when Mr Simcox is available to attend. The Committee wishes to give Mr Morgan a full opportunity to pursue his application to its conclusion. With that in mind, the Committee concluded the hearing by informing Mr Morgan of its decision to adjourn his application and informed him of the further matters it needed before it could make a decision.
24. In substance, these were as subsequently confirmed to him by letter dated 13 December 2012, as follows -

"In order for the Committee to consider the application further, it requires the following:

- i) An up-to-date business plan with accurate information, accompanied by a narrative explaining the underlying assumptions in the plan;
- ii) Full details of the management structure and business arrangements for the company, including financial and credit controls;
- iii) The Committee wishes to see Mr Simcox to ask him (with you and Mrs Peck) about the proposed arrangements and to ask him about his role in

the running and management of the company, or otherwise in relation to it, and that of any accountants instructed by him;

- iv) As to points ii) and iii), the Committee needs to be satisfied that there is a complete separation between your activities as the Trainer on the one hand and the management of the company and the running of the business on the other. You need to satisfy the Committee that this business will be run properly."

..... No time limit has been proposed by the Licensing Committee in adjourning this application, but leaves it to you to inform the Licensing Team when you have the necessary information to hand and when you, Mrs Peck and Mr Simcox are available to meet with the Committee again."

Dated 18 December 2012



Stephen Bate

for the Licensing Committee