

IN THE MATTER OF AN APPLICATION FOR A LICENCE TO TRAIN

CONCERNING MR PHILIP MITCHELL

**BEFORE THE LICENSING COMMITTEE OF THE BRITISH HORSERACING
AUTHORITY**

75, HIGH HOLBORN, LONDON, WC1V 6LS

WEDNESDAY, 1ST MARCH 2013

RICHARD RUSSELL ESQ.

STEPHEN BATE ESQ. (CHAIRMAN)

EDWARD DORRELL ESQ.

REASONS

1. On 1 March 2013 the Licensing Committee (“the Committee”) met and decided that a trainer’s licence should be granted to Mr Philip Mitchell (“Mr Mitchell”), subject to conditions. These are the reasons for that decision.
2. This hearing of the Committee was convened to consider the application of Mr Mitchell dated 1 December 2012 for a renewal of his 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 Authority”) pursuant to paragraph 30 of Schedule 9, General Manual (A) of the Rules of Racing.
3. Mr Mitchell attended the hearing with his wife, Mrs Patricia Mitchell (“Mrs Mitchell”).
4. The brief background to the matter was as follows. Mr Mitchell had trained under a Trainer’s licence since the 1970’s until he relinquished his licence on 6 November 2007. Total prize money for horses trained by him was £2,247,955. On 31 October 2007 an order of bankruptcy was made against him and he was discharged from his bankruptcy on 30 October 2008. On 26 November 2007 a company, Philip Mitchell Racing Ltd, was incorporated. It changed its name to Downs House Racing Ltd on 27 December 2007

and on 11 October 2012, it changed its name to Valley Racing Ltd (“VRL”). Mr Mitchell’s application for a licence is to train as an employee of VRL. The company was dormant until it started trading in about May 2012 and its sole director and shareholder is Mrs Mitchell. It has not yet filed accounts.

5. The application was referred to the Committee by the British Horseracing Authority’s (“the Authority”) letter of 20 February 2013, which raised a number of concerns, namely

5.1 Paragraph 34 of the Guidance Notes for trainers states, *“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”*. On 18 February 2013, Mrs Mitchell stated by email to the Authority that she would be *‘responsible for settling debts, managing the finances in general’*. No additional information had been submitted with respect to her business competence and capability. Moreover, although she had been a registered owner with the Authority since 1986, she had not had a runner under Rules since 18 October 2007 and had run up debts with the Authority in 2008, which were only paid after it instructed solicitors, and then not until 5 January 2010.

5.2 The Authority was also concerned as to the likely solvency and financial viability of the proposed training venture in view of paragraph 37 of the Guidance Notes and wanted further information as to the source of a recent injection of £32,000 into the company’s bank account, which had increased the sums standing to its credit to £43,950.

6. The letter of 20 February 2013 had been preceded by further correspondence passing between the Authority on the one hand and Mr and Mrs Mitchell on the other hand. That chain of correspondence commenced on 10 January 2013, with the Authority’s letter of that date in which it asked for various documents in response to Mr Mitchell’s licence application. As a result of that correspondence, a number of documents were produced concerning VRL. These included a cash flow forecast for the 12 month period to 31 January 2014, and a Financial Business Plan with projections of the monthly revenues, costs and anticipated profits of the business for the same period. A copy lease

dated 30 August 2012 was also produced, expressed to be made between Desmond Walker Browne as landlord and Mrs Mitchell as tenant. The lease had been produced in response to a request made in the Authority's letter of 10 January 2013.

7. A further point raised by the Authority (in an email dated 7 February 2013) was that the Authority's criteria for the licensing of trainers required there to be a minimum of 3 horses in training and it was not apparent that this was yet the case.
8. The Committee discussed with Mr and Mrs Mitchell the issues arising from the documents to which we have referred and also explored with Mr Mitchell the circumstances which had led to his bankruptcy. He informed the Committee that the problems had been twofold. First, he and his bookkeeper had miscalculated the amount of VAT which should have been set aside in the light of a 12 month dispensation, i.e. relief, granted in 2003 by HM Customs and Excise for those such as Mr Mitchell holding livestock and who had been adversely affected by the outbreak of Foot and Mouth disease. He found himself approximately £28,000 short of the money that was due and by the time of his bankruptcy, the figure owed was in the region of £40,000 with penalties and interest. Second, an owner had failed to pay him some £250,000 of fees and money due for horse purchases. There had been some PAYE owing but all trade creditors had been paid.
9. He and his wife had wanted to re-commence the training business by using a company as the trading vehicle, namely the company that later changed its name to VRL. The training establishment had been at Downs House, Epsom Downs, where they had lived for many years. There had been a real prospect of obtaining a new lease and keeping the business running from that premises, but their contact at the local authority had moved on. He had assured them that a new lease would be forthcoming, but his replacement refused to grant a new lease and this led to a conflict with the local authority which went on for several years, only ending in July 2012 when they finally left Downs House. Therefore, Mr Mitchell could not obtain the security of tenure he needed to obtain a fresh licence.
10. It was only now that Mr Mitchell considered that he was ready to resume as a trainer and wishes to do so on a modest scale, with 10 horses at the very most. The money, i.e. the £32,000, had been advanced to the company by a Mrs and Mrs Walton, who were

proposing to keep a number of horses in training with Mr Mitchell. The money was a loan, made on informal terms that VRL could have the money for as long as the company needed it, but also to be used in payment of the Waltons' training fees as and when they fell due. Mr and Mrs Mitchell had known the Waltons for 5 years. They had been loyal throughout the difficult years before the Mitchells had had to leave Down House and Mrs Walton in particular had been very upset for the Mitchells.

11. The Committee was told that the company had not needed an overdraft since it commenced trading in May 2012, a suggestion that was to some extent confirmed by the bank statements produced. Mrs Mitchell said that she now had a Sage software package, which she would be using to manage the company's finances. She had been involved in managing the training business, though she had not been party to the calculations that led to the difficulties over the VAT. The Committee also had regard to the letter of 26 February 2013 to Mr Mitchell from Braidwood & Company, Chartered Accountants. The letter stated that he or Mrs Mitchell would be emailing management figures which Braidwood & Company would be able to check so that any queries or discrepancies that might arise during the year could be brought to light and addressed, where necessary. Mrs Mitchell said that Mrs Braidwood of that firm would help them throughout the first year to provide a back-up to see that the finances were run properly. Mrs Mitchell said that the small scale of the training operation meant that the finances were not going to be complicated.
12. We return in more detail below to the Business Plan, which was prepared by accountants, we assume Braidwood & Company, on information given to them by Mr and Mrs Mitchell. Mr Mitchell said that the assumptions used in these projections, particularly as to costs, had been gone over with a 'fine toothcomb', using the methods he had been shown by the Insolvency Practitioner involved with his bankruptcy. Following questioning by the Committee, Mr Mitchell said that the company will not buy horses. Any syndication activities will be carried on outside the company, which will conduct the training business and be paid all training fees at the full rate.
13. The Committee considered Mrs Mitchell's responses to the very late settlement of her debts to the Authority. The main sums owing totalled £588, which sum was paid on 1 April 2008. The final amount due related to the Authority's lawyers' fees, which were not settled until 2010. Mrs Mitchell seemed to have some difficulty in explaining why it was

that these debts were not paid. This was surprising in view of the contents of the Authority's letter of 20 February 2013, which made it clear that this was an issue of concern. The position, as it emerged at the hearing, was that Mrs Mitchell's finances were in real difficulty in late 2007 and early 2008 at the time of Mr Mitchell's bankruptcy, when the large part of this comparatively small debt was run up. The failure to pay the Authority's solicitors' fees in 2010 was the likely result of an unwillingness on Mrs Mitchell's part to pay those fees in addition to the debt.

14. Mrs Mitchell challenged the suggestion of the Committee that her non-payment of these debts might be symptomatic of how VRL might treat creditors. She strongly disagreed. That was not how the training business had been run before Mr Mitchell's bankruptcy or the events leading to it and she appreciated, she said, the importance of prompt settlement of monies due to trade creditors of VRL. She also told the Committee that she had trained horses for Point-to-Point racing in the 4 years immediately before they had had to leave Downs House and had also undertaken horse rehabilitation work, which was to be continued at the new yard. There was a prospect of obtaining charitable status for the rehabilitation work. Mrs Mitchell also said that she had worked part-time in her husband's training business before his bankruptcy and had not been party to the calculations for VAT which had gone awry.
15. In the light of the information provided by Mr and Mrs Mitchell at and before the hearing, the Committee was able to draw the following conclusions.
16. The cash-flow forecast and Financial Business Plan contemplate up to 5 horses in training over the 12 month period ending on 31 January 2014. Although Mr Mitchell does not yet have all those horses, the Business Plan envisages that the number will reach 5 by June of this year. In view of Mr Mitchell's previous success as a trainer and the level of interest shown by Mr and Mrs Walton and what the Committee understands to be their considerable financial resources, this target is likely to be reached. More generally, the assumptions underlying the Business Plan and cash-flow forecast are prudent and reasonable.
17. The mistakes which led to Mr Mitchell's bankruptcy are unlikely to be repeated. There are sufficient financial and management structures in place for the business and it has the financial resources to render it a potentially viable business. Despite the previous

difficulties with the Authority over past payment, Mrs Mitchell is likely to see that the business pays its liabilities on time. She also has sufficient knowledge in equine matters. Although Mrs Mitchell is the sole director of the company, it is clear that Mr and Mrs Mitchell will both be running the business. The Committee suggested to them at the hearing that Mr Mitchell should consider becoming a director. The support of Mr and Mrs Walton as owners is essential to the business as it is now, but the Committee concludes that they are likely to continue to support the new venture by keeping horses in training with Mr Mitchell.

18. Taking all these matters into account, the Committee decided to grant Mr Mitchell a licence for the period to 31 January 2014 as an employee of VRL.
19. However, the licence was made subject to the following conditions –
 - 19.1 Mr Mitchell produce by 14 March 2013 satisfactory evidence that VRL has a legal right to occupy the premises leased to Mrs Mitchell by the lease dated 30 August 2012.
 - 19.2 That management accounts for the company, including a balance sheet, are provided for the periods ending 1 September 2013 and 31 December 2013, by 16 September 2013 and 15 January 2014 respectively.
 - 19.3 That there be a minimum of 3 horses in training throughout the period of the licence.
 - 19.4 In the event of a breach of any of the above conditions, Mr Mitchell shall show cause why the licence should not be suspended or withdrawn.

The lease is in the name of Mrs Mitchell. The Committee had been told that the landlord was aware that the company was going to be occupying the training premises and that his consent to a parting of possession by Mrs Mitchell would be forthcoming without difficulty. The Committee has imposed the requirements of management accounts so that an eye can be kept on the financial position of the company. The requirement as to the number of horses in training reflects the basic requirements in the Guidance Notes for trainers seeking licences.

Dated 25 March 2013

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

Stephen Bate

for the Licensing Committee