

BEFORE THE LICENSING COMMITTEE
OF THE BRITISH HORSERACING AUTHORITY.

RE: **MR YUE TIN HOWARD CHENG**

APPLICATION FOR A FLAT JOCKEY LICENCE
JULY 4TH 2019.

COMMITTEE MEMBERS;

HIS HONOUR BRIAN BARKER CBE QC (CHAIRMAN)
ANTHONY CONNELL, ESQ
LYN GRIFFITHS, ESQ

DECISION

1. Following the conclusion of the hearing on 4th July 2019, the Committee informed Mr Cheng that it would grant him a Flat Jockey Licence subject to a number of conditions

BACKGROUND

2. Mr. Cheng (the applicant) is now 38 and has had an 18-year successful racing career in Hong Kong. He gained his apprentice licence in February 1999 and was Champion Apprentice 2000-2001. He was granted his Freelance Jockey's licence in June 2001 and went on to ride 436 winners in Hong Kong from a total of 6909 starts and amassing \$372,488,780.00 in prize money. He has also ridden 2 winners in Australia and 2 in Macau. His last race, however, was at the Happy Valley meeting on 12th October 2016, and on 3rd April 2017 the Hong Kong Jockey Club (HKJC) withdrew his licence on the grounds of his disciplinary record, his suspensions (below) having been served.
3. The HKJC have provided us with Mr Cheng's disciplinary record and details of the 232 appearances before the Stewards since 1999. There have been 20 careless riding offences and he has been found guilty of a number of running and riding offences over the years the most recent resulting in a 25 fixture suspension in October 2016. (Fourth career offence under this rule). Additionally, Mr Cheng pleaded guilty to a breach of the HKJC's Rule 12(33) in October 2016 for failing to cooperate with their inquiries resulting in a six-month ban, and in November 2016 pleaded guilty to breaching insider information rules Rule 59 resulting in a two month ban to be served concurrently.
4. It has been recently confirmed by the HKJC that the suspensions have been deemed to have been served and that there are no disciplinary matters that remain outstanding.

APPLICATION HISTORY

5. Comprehensive guidance notes are provided by the BHA to all prospective applicants, and on 1st February 2018 Mr Cheng submitted an on line application under Rule 5 to the BHA for a Professional Flat Jockey's Licence.

6. The applicant consented to the HKJC providing his racing and disciplinary history to the BHA, which was provided. This was reviewed and the BHA replied on 2nd May 2018 expressing concerns in three areas namely: that his HKJC licence had been withdrawn because of his disciplinary record, that he had pleaded guilty to the two breaches in 2016 and that over his career he had been found guilty of multiple running and riding offences, and that further he has answered 'no' to the question:

'have you had any suspension of a riding licence imposed upon you by a Turf Authority or any other disqualification or disabilities imposed upon you in connection with Horseracing'

giving a concern as to whether the applicant was being 'candid and truthful' – a consideration indicated in Section G of the Guidance Notes.

7. In view of these matters the BHA required the applicant to be interviewed by members of the Integrity and Licensing Teams in accordance with Rules (A)23.2 and (A)23.4 to further consider the application.

8. The interview took place at the British Racing School Newmarket on 14th May 2018. In response the applicant stated

- That through a friend he had gained an introduction and had been working full time at the stable of William Haggas, with no promises, since July 2017 in order to learn more about British racing
- His family had arrived and he was renting nearby
- He explained that he had been suspended as he thought that handing over his phone and bank details as requested was an invasion of privacy
- The Stewards did check his WhatsApp the next day and found tips about the performance of horses 'with no mention of money'
- He described these actions as 'social tips' for which he received no benefit; he would copy and paste the information to anyone who asked
- He said that he was not the only one giving these sort of tips
- The owner would be interested in the chances of other horses and a jockey needed to keep a good relationship to get rides
- They wanted to know if he had rung anyone at race time which he showed them that he had not, but they did not tell him they wanted to keep his phone in private
- In his mind the Stewards were cheating him. He thought it was illegal for them to check his phone
- If he had been approached in the proper way, or the police had asked, he would have passed over his banking details
- He had now closed his account in Hong Kong and sold his house
- He was not happy with what the HKJC were trying to do so he moved to England because he wanted to be back on horses and riding.
- He had made no prior arrangements and went to his nephew in Lancaster before going to Newmarket after a month
- He accepted that his disciplinary record was not very good
- He thought overall the Stewards did not want him on horses anymore
- He was not interested in betting on the Haggas horses and only bet on casino slot machines and playing poker on line
- Has not opened an account with Betfair

- He felt that he had a misunderstanding when completing the application form as he had finished his suspension and was not licensed being just a riding lad. 'as I am nothing I put no'
 - 'I didn't have a licence, I just misunderstood'
 - (Q: what about the articles on the media?) 'I would be very careful this time. I want to build up my career again'
 - 'I won't do this again. Before from my point of view, it's just social tips. It's very normal for every trainer, jockeys in Hong Kong. It's very popular. They just only pick me.'
 - He was willing to provide present accounts but didn't think he had the Hong Kong accounts as they were closed
 - He had not cheated. If there were problems the HKJC could have rung the police and obtained the information without his permission
 - John Egan and Jimmy Quinn have supported my son's application for a passport
9. Fulsome references supporting the application were received from Mr William Haggas on 26th February 2018, 25th October 2018 with a follow up on 19th February 2019. Mr Haggas said he was a very good rider and had been an exemplary employee so far. He 'would do his very best to resurrect his career in the UK if a licence is granted.' An e-mail from Mohammed Mourbarak offered rides on 10% of his annual runners. A supporting letter was also received from Peter Chapple-Hyam

THE BHA POSITION

10. On 18th August 2018 the BHA wrote to Mr Cheng saying that they did not consider that he was a 'suitable' person to hold a licence under Rule (D)73 and that they were minded to refer his application to the Licensing Committee. Assuming that he met the mandatory requirements under Part H and C of the Guidance Notes (showing that the applicant would derive a reasonable portion of income from race-riding and showing that there was a reasonable demand for services (normally a minimum of 25 rides per season), they were of the view that it was in the interest of racing that the application be refused as if granted *'the applicant would pose a risk to the integrity of horseracing in Great Britain'*
11. In particular they pointed to:
- Failure to provide 'full and frank disclosure' in the initial application (Paragraph 25 of Guidance Notes)
 - His overall record of compliance with the HKJC (Para 29.4)
 - He had not been 'candid, open and truthful' in his application (Para 29.5)
 - His record (and interview) showed that he was likely or may engage in conduct which may render him susceptible to pressure from those seeking to corrupt horseracing. (Para 29.8)

THE HEARING

12. Mr Tim Naylor, Director of Integrity and Regulation and Mr Andrew Howell, Head of Regulation appeared on behalf of the Authority. Mr Cheng appeared unrepresented, and there was no objection to the Panel. The Panel satisfied itself that Mr Cheng's command of English was sufficient to understand the allegations and to enable him to follow the hearing.

13. The Hearing was conducted following the guidance in Schedule (A)9 of the General Manual; and within the framework of the Guidance Notes on licence application and in particular to decide under point 4 sub point 4 whether the applicant demonstrates or confirms that *'in all the circumstances they are suitable to hold a licence (i.e. that they are fit and proper)'*
14. Mr Naylor outlined the position of the Authority which were fully set out in the letter sent to Mr. Cheng dated 18th August 2018.
15. Under [i] 'full and frank disclosure' the Authority pointed to the answer 'no' to a question asking about any suspension or other disqualifications imposed by a Turf Authority.
His record [ii] revealed four breaches of HKJC Rule 99 (not riding to achieve the best possible place) on four occasions: January 2009 (9 days), May 2012 (17 days), October 2014 (18 days) and October 2016 (25 days); in October 2016 a six month suspension for not providing his financial records between January 2013 and September 2016; and in November 2016 admitted breaching the 'insider information rules' receiving a two month suspension.
His failure [iii] to disclose in his application his last suspension and licence withdrawal was not being 'candid, open and truthful.'
His passing of information [iv] on the phone would make him susceptible to corruption in the UK.
16. The Applicant in relation to [i] explained that he understood the question related to activities in the UK where he held no licence and was a misunderstanding. In the cases under [ii] he had pleaded not guilty as the events complained of occurred outside his control. He was not prepared to hand over his banking details unless it was the police who were asking for them [iii]. The WhatsApp messages [iv] found on his phone did not relate to races where he had a ride, had no mention of money and were one sentence opinions of the fitness of horses that he was asked about – described as 'social tips'.
17. He felt that overall the Stewards were not fair to him as he was one the leading local jockeys and that in the course of the hearings in the autumn of 2016 they were trying to trick him. He also felt that he had no future in HK and that the only way in which he could make a living with horses and provide for his family was to come to the UK. He was prepared to start at the bottom to learn about British racing and to understand what was required of him. He had explained to Mr Haggas why he had lost his licence and was prepared to work hard and take advantage of the opportunity. He had made progress, made new friends and he was concentrating on doing his best. He saw Mr Haggis each day as rode out.

CONSIDERATIONS

18. The Panel had very much in mind the high standards expected and the necessity of maintaining the confidence of the sport in the licensing system. It recognised the force of the arguments put forward on behalf of the Authority. It gave anxious consideration to the points made, and took the opportunity of carefully assessing Mr Cheng while he gave his account and under questioning.
19. In relation to [i] 'full and frank disclosure', it was noted that on the same page of the application form the applicant had set out clearly his connection with the HKJC and racing experience. We accepted that he was not seeking to hide his overall record and that he had misunderstood the question.

20. As to [ii] his breaches of Rule 99, these were not allegations of dishonest riding, we took into account his explanations and also noted the context of nearly 7000 rides during his career. Our view was that [iii] not 'candid, open and truthful' had much overlap with [i], and that he had given his permission for his disciplinary record to be obtained from the HKJC
21. The area covered by point [iv] gave the Panel most cause for concern. His explanation that the providing of one sentence 'tips/observations' merely as to the fitness of a horse was common and expected might easily lead to outside pressure and corruption. Mr Cheng said that since arriving he had 'put any bad habits behind him' and would comply with all UK requirements.
22. On the positive side the Panel gave considerable weight to the successive communications from Mr. William Haggas. He used expression such as 'he is a very good rider and a very astute judge', 'he has been a model pupil', 'he has not put a foot wrong since he arrived', 'I will do everything I can to support him as much as possible and he deserves a chance.' Furthermore, 'I have loads of horses for him to ride,' 'although it will take time to encourage his owners to use him'.
23. Two other areas of support and more limited potential for rides were also forthcoming.

CONCLUSION

24. The potential of risk to the integrity of racing by the granting of a licence to Mr Cheng required careful consideration. The Panel have viewed the whole picture and taken into account the passing of time. Our conclusion is that despite his problems with the HKJC, the applicant subsequently has made every effort to learn and understand the system of the sport in the UK. He has taken full advantage of the opportunities that have been given to him so far and has earned the respect and encouragement of a senior trainer.
25. He remains under the watchful eye of Mr Haggas, and in our view has demonstrated in a somewhat unusual case that he is a 'suitable' person to hold a jockey's licence. Subject to the agreement to, and fulfillment of, the following conditions (created with the assistance of the BHA), we grant the application.
26. The conditions are:
 - A. Passing the recognised fitness and simulator assessment with a recognised training provider (NRC or BRS);
 - B. Attending the following educational sessions and pass assessment, as approved by the BHA, in relation to BHA Rules, Regulations and procedures:
 1. Rules and Regulations;
 2. Inside Information; and
 3. Safeguarding.
 - C. Providing details of his mobile phone service provider and confirmation of the availability of itemised telephone billings.

Once completed, a Flat Jockey's Licence may be issued with the following conditions attached:

1. Mr Cheng shall produce a written communication which summarises his licensing and disciplinary history with the Hong Kong Jockey Club and the basis upon which his BHA licence has been granted and the conditions attached to it (the substance of this communication is to be seen and agreed by the BHA in advance). The document shall be provided to Mr Cheng's Agent and all Trainers and Owners, prior to him being booked to race ride for them;
2. Mr Cheng may only use his Flat Jockey's Licence to ride in races under BHA jurisdiction;
3. Mr Cheng must retain statements (electronic or hard copy) relating to any and all bank accounts that he has access to for the duration of his licence. These statements must be supplied to the BHA upon request;
4. Mr Cheng may only communicate with 3rd parties in connection with horseracing on his BHA registered device;
5. No communications or call history may be deleted from Mr Cheng's registered mobile device for the duration of his licence;
6. Mr Cheng must permit the BHA, upon request, to download any text messages, call records or any other form of communication data from any communication device;
7. Should Mr Cheng's registered mobile phone become lost or damaged he must advise the BHA in writing within 24 hours of an alternative device;
8. The BHA and/or Mr Cheng may apply to the Licensing Committee for the addition, revision, and/or amendment to these conditions during the currency of the licence, if good cause be shown.
9. Mr Cheng's suitability to hold a Flat Jockey's Licence will be subject to review by the Licensing Committee 12 months from the date that the licence is effective, or sooner if good cause is shown.

His Honour Brian Barker CBE, QC
Anthony Connell
Lyn Griffiths

29th July 2019.