BEFORE THE CALIFORNIA HORSE RACING BOARD

OF THE STATE OF CALIFORNIA

In the Matter of the Fitness for Licensure against: **Vichien Chattong** **Owner Applicant (#244901)**	Case No.: 23LA0006

DECISION

The attached Proposed Decision is hereby adopted by the California Horse Racing Board as its Decision in the above-entitled matter.

The Decision shall become effective on June 30, 2023.

IT IS SO ORDERED ON June 29, 2023.

CALIFORNIA HORSE RACING BOARD
Gregory L. Ferraro, DVM, Chairman

Scott Chaney (Jun 29, 2023 14:55 PDT)

Scott Chaney
Executive Director

MAURICE WUTSCHER LLP
Patrick J. Kane (SBN 273103)
440 Stevens Avenue, Suite 200
Solana Beach, California 92075
Tel. (858) 381-7860
Facsimile: (866) 581-9302

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of: **FITNESS FOR LICENSURE** **VICHIEN CHATTONG** **CHRB Owner's License No. 244901** **Appellant.**	Case No.: 23LA0006 **PROPOSED DECISION RE: VICHIEN CHATTONG'S FITNESS FOR LICENSURE** Hearing Date: March 20, 2023 Time: 10:00 a.m.

This matter came for hearing on March 20, 2023 at 10:15 a.m. and was conducted remotely via Microsoft Teams. Appellant Vichien Chattong ("Appellant") was present and represented by attorney Mark S. Rafferty. The California Horse Racing Board ("CHRB") was present and represented by attorney Robert Brodnik.

Pursuant to California Horse Racing Board Rule 1414, Hearing Officer Patrick J. Kane ("Officer") presided over this matter. Michelle Derieg recorded all testimony presented during the instant proceeding.

The instant matter's record closed at the conclusion of the proceedings on March 20, 2023 at 10:45 a.m.

I. EXHIBITS ADMITTED INTO EVIDENCE

A. Exhibits the CHRB Entered into Evidence.

The CHRB entered the following exhibits into evidence:

Exhibit "1" Appellant's Application for License Dated December 30, 2022;

Exhibit "2" The CHRB's Investigation File;

Exhibit "3" The Department of Justice Bureau of Criminal Information and Analysis Printout Relating to Appellant; and

Exhibit "4" The Notice of Hearing Dated March 2, 2023.

B. Exhibits Appellant Entered into Evidence.

Appellant did not enter any exhibits into evidence.

II. LIST OF TESTIFYING WITNESSES

A. Witnesses Testifying on Behalf of Appellant.

Appellant called the following the witnesses:

- Vichien Chattong.

B. Witnesses Testifying on Behalf of the CHRB.

The CHRB did not call any witnesses on its behalf in this matter.

III. FINDINGS OF FACT

After analyzing and admitting all exhibits into evidence, and admitting Appellant's testimony, this Officer makes the following findings of fact:

I.

On December 30, 2022, Appellant applied for a Groom's License by submitting an "Application for License (the "Groom Application")" to the CHRB's Los Alamitos office. (Ex. 1, Hearing Transcript ("H.T.") at p. 7-8.) In response to the Groom Application's question concerning whether Appellant had "ever been convicted of an offense by a court," Appellant, under the penalty of perjury, stated he had never been convicted of any crimes. (Ex. 1, H.T. at p. 8-9.) Based upon Appellant's representations, the CHRB issued Appellant a Groom's License, License No. 277854 ("Groom's License"), on or about December 31, 2022. (Ex. 1.)

II.

On January 19, 2023, Appellant applied for an Owner's License by submitting an "Application for License (the "Owner Application")" to the CHRB. (See Ex. 2.) In reviewing the Owner Application, the CHRB determined Appellant failed to disclose the following convictions in the Owner and Groom Applications:

- A 2005 conviction (the "2005 Conviction") for two counts of animal cruelty to horses resulting in a sentence of thirty days (30) in jail, sixty (60) hours of community service, and three (3) years of probation;

- A February 28, 2013 conviction (the "2013 Conviction") for five counts of violations of Cal. Penal Code § 597(b) resulting in a sentence of three (3) years of probation, thirty (30) days of community service, and sixteen (16) sessions of animal neglect counseling. Appellant was further ordered not to possess any dangerous weapons and not to own or possess any animals during the period of Appellant's probation; and

- An August 5, 2016 conviction (the "2016 Conviction") for misdemeanor possession of a firearm resulting in a sentence of four days (4) in jail and two (2) years of probation (collectively, with the 2005 and 2013 Convictions, referred as the "Convictions"). (See Exs. 2 and 3.)

III.

On January 19, 2023, the CHRB denied Appellant's Owner Application (the "Denial") for the following reasons:

> (1) You have been convicted of a crime punishable by imprisonment in the State or Federal prison, or have been convicted of a crime involving moral turpitude; (2) [y]ou have made material misrepresentation or false statement to the Board or its agents in your application for license, or have failed to answer any material question on an application for license; and (3) [y]ou have committed an act involving moral turpitude, or have committed intemperate acts which have exposed others to danger, or have committed acts in connection with horse racing and/or a legalized gaming business which were fraudulent or in violation of a trust or duty. (Ex. 2.)

The CHRB investigator separately recommended that Appellant's Groom's License be "terminated for falsification." (Id.) The record is unclear as to whether the CHRB ever revoked Appellant's Groom's License and said license is not at issue in this matter.

IV.

In addition to the Convictions, on or about June 15, 2021, the Arizona Department of Racing fined Appellant $262.50 for "conduct detrimental to racing" resulting from Appellant striking a horse "in the face" in the paddock on June 2, 2021 prior to the seventh race at Arizona Downs (the "Arizona Ruling"). (Ex. 2, H.T. at p. 19-20.) Appellant was allegedly a licensed trainer in Arizona at the time of the Arizona Ruling. (H.T. at p. 19.)

V.

On March 2, 2023, the CHRB set the instant action for hearing on March 20, 2023 to be conducted remotely via Microsoft Teams (the "Hearing"). (Ex. 4.)

IV. ISSUES ON APPEAL AND CONTROLLING LAW

When considering the denial of a license on the grounds that the applicant committed a "bad act" act or has been convicted of a crime, the following criteria are relevant in evaluating Appellant's rehabilitation and fitness for licensure:

> (1) The nature and severity of the act(s) and/or offense(s), including its relation to horse racing or pari-mutuel wagering and the protection of the public; (2) the total criminal record, including evidence of any act(s) and/or offense(s) committed subsequent to the act(s) or offense(s) under consideration as grounds for denial, suspension or revocation which also could be considered grounds for denial, suspension, or revocation under Business and Professions Code sections 480 or 490; (3) the time that has elapsed since commission of the act(s) or offense(s); (4) the extent to which the person seeking licensure or the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the person or licensee; (5) the credibility of the person seeking licensure or the licensee, and his or her acceptance of responsibility and remorse for the conduct; and (6) evidence, if any, of rehabilitation submitted by the person seeking licensure or by the licensee… (Cal. Code Regs. Tit. 4 § 1489.2(a)(1)-(6).)

Appellant must demonstrate, by a preponderance of the evidence, that he meets the necessary licensure requirements. (See, Cal. Code Regs. Tit. 4 § 1764 ["The burden shall be on the appellant to prove the facts necessary to sustain the appeal."], Cal. Evid. Code § 115, *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784, *Owen v. Sands* (2009)176 Cal.App.4th 985, 989.)

"Preponderance of the evidence means evidence that has more convincing force than that opposed to it." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324.) "Preponderance of the evidence means what it says, viz., that the evidence on one side outweighs, preponderates over, is more than, the evidence on the other side, *not necessarily in number of witnesses or quantity*, but in its effect on those to whom it is addressed." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325 [citations omitted].)

Because this action concerns the denial of a license due to previous "bad acts," Appellant must provide sufficient evidence of rehabilitation and overall fitness for licensure.

V. DISCUSSION

A. Appellant Neither Establishes Rehabilitation Nor Overall Fitness for Licensure.

Appellant fails to meet the rehabilitation criteria set forth in Cal. Code Regs. Tit. 4 § 1489.2(a)(1)-(6) ("Section 1489.2"), nor does Appellant provide any evidence demonstrating a

fitness for licensure. Thus, Appellant cannot make the necessary showing of "rehabilitation" to permit Appellant to be licensed as an owner in the State of California.

As discussed above, Section 1489.2 provides the following relevant criteria in evaluating Appellant's rehabilitation and fitness for licensure:

> (1) The nature and severity of the act(s) and/or offense(s), including its relation to horse racing or pari-mutuel wagering and the protection of the public; (2) the total criminal record, including evidence of any act(s) and/or offense(s) committed subsequent to the act(s) or offense(s) under consideration as grounds for denial...; (3) the time that has elapsed since commission of the act(s) or offense(s); (4) the extent to which the person seeking licensure or the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the person or licensee; (5) the credibility of the person seeking licensure or the licensee, and his or her acceptance of responsibility and remorse for the conduct; and (6) evidence, if any, of rehabilitation submitted by the person seeking licensure or by the licensee. (Cal. Code Regs. Tit. 4 § 1489.2(a)(1)-(6).)

Initially, this Officer notes Appellant admitted to failing to disclose the Convictions on all groom and owner applications he submitted to the CHRB since 2016, and which the CHRB relied upon in licensing Appellant on multiple occasions. (H.T. at p. 15.) Importantly, these applications are separate from the misrepresentations in the Groom and Owner Applications at issue in this action. (Id.) The fact that Appellant failed to disclose the Convictions on several separate occasions leads this Officer to believe Appellant willfully omitted the Convictions and would have continued to do so "but for" the Denial.

This Officer separately questions whether Appellant actually accepts responsibility for falsifying the Groom and Owner Applications, especially since Appellant had to be asked multiple times whether he was remorseful for his actions before accepting any responsibility. (H.T. at p. 10-11, 14.) To the extent Appellant claims he did not understand the Groom Application, it is belied by Appellant's admission of knowing of the Convictions at the time he submitted the Groom and Owner Applications knowing they contained material misrepresentations. (H.T. at p. 14-15.)

Moreover, the nature of the Convictions includes seven counts of animal cruelty as well as the Arizona Ruling where Appellant struck a horse in the face while saddling it in the paddock. (See Ex. 2, H.T. at p. 19-20.) Appellant failed to take responsibility for either the Arizona Ruling or the 2013 Conviction, instead choosing to place blame and responsibility on other unnamed

individuals. (H.T. at p. 15-16, 20.) Indeed, the 2013 Conviction for animal cruelty was so severe that Appellant was ordered to attend 16 separate sessions of animal neglect counseling and was separately barred from owning any animals for a ***period of three years***. (Ex. 2.) And, mere months after completing probation relating to the 2013 Conviction, Appellant was again arrested for allegedly possessing a firearm. (Id.)

The fact Appellant's disciplinary record contains multiple criminal convictions, including several animal cruelty convictions, as well as the Arizona Ruling, demonstrates Appellant's disregard for the welfare of the horse while simultaneously calling his character into serious question. In fact, Appellant appears to engage in a pattern of acts deemed to be cruel to animals in light of the Convictions and the Arizona Ruling. This Officer further notes that when collectively viewing the 2021 Arizona Ruling and the Convictions under Section 1489.2(a)(3), a short amount of time had passed before Appellant submitted the Groom and Owner Applications. This too weighs against Appellant meeting Section 1489.2's requirements.

Next, Appellant separately failed to provide any evidence of rehabilitation concerning the: (1) Convictions; (2) Arizona Ruling; or (3) material misrepresentations made in the Groom and Owner Applications.

Because Appellant's history of animal cruelty, and because Appellant knowingly made false statements to the CHRB on several separate occasions, and because Appellant failed to present any evidence of rehabilitation, Appellant cannot demonstrate the necessary fitness to be licensed as an owner in the state of California.

Accordingly, this Officer finds that Appellant falls short of meeting the rehabilitation criteria set forth in Cal. Code Regs. Tit. 4 § 1489.2.

VI. CONCLUSION

WHEREFORE, and for the reasons set forth above, it is hereby recommended that the CHRB deny Appellant's Owner Application.

Dated: May 31, 2023

Patrick J. Kane, Esq.
Hearing Officer