

Northern Territory Racing Commission

Reasons for Decision

Applicant:	Mr. A, Mr. M, Mr. D, Mr. I, Mr. H and Mr. N (the complainants)
Respondent:	Sportingbet.com Australia Pty Ltd
Proceedings:	Dispute Relating to Betting – Section 85 of the <i>Racing and Betting Act</i>
Heard Before:	Mr. David Brooker (Presiding Member)

Background to the complaint

1. Under section 17 (1) of the *Racing and Betting Act*, the Northern Territory Racing Commission is empowered to determine disputes between aggrieved clients and bookmakers licensed in the Northern Territory.
2. On the 1st of September 2012, Sportingbet were offering odds on The Gardens Race 5. The disputes, the subject of the decision that follows all arise as a result of the market that Sportingbet posted for this event. In particular it was the odds offered for Greyhound runner *Lochinvar Manolo* that precipitated the multiple matters before the Racing Commission at present.
3. The market posted by Sportingbet for the event listed *Lochinvar Manolo* at \$101 the Win and \$6.90 the Place. Several clients of Sportingbet took the opportunity to place wagers online. These wagers were cancelled by Sportingbet and were subjected to capped and reduced payouts. All disputes before the Racing Commission cascade from this action by Sportingbet: they claim that the odds offered constitute a manifest and obvious error.
4. That there are multiple complainants to this dispute complicates the decision-making process somewhat. That said, it is the singular conduct of Sportingbet in adjusting the wagers on the basis of the alleged manifest and obvious error that is really at the core of what the Racing Commission has been asked to adjudicate. Hence, in order to provide the most fulsome decision possible while avoiding the obvious repetition that would result where individual responses were prepared, the Commission is of the view that it will treat the matters raised in this instance as a class of complaints.
5. The Racing Commission proposes to address the singular and collective issues raised by all complainants.

The Approach of the Racing Commission in Determining this Dispute

6. At the outset the Racing Commission takes the opportunity to emphasize to the respective complainants that in determining this dispute it is the conduct of Sportingbet that is at the core of this inquiry. The analysis of the conduct of Sportingbet is, to a certain degree, given context by the narratives of the complainants, however, where application of a rule precipitates a dispute it is the conduct or misconduct of the bookmaker first and foremost that determines the

outcome. It is the unilateral right of the bookmaker to enforce or waive their terms and conditions.

7. It is worthy of note at this point, and should be kept in mind for the remainder of this decision, that the Racing Commission takes the view and has consistently applied, that where the bookmaker has waived the application of a particular rule, by either acting or omitting to act, the client of that bookmaker has a reasonable expectation that such waiver will be ongoing. The Commission is of the opinion it will only come to pass that such waiver will be deemed withdrawn where the client is expressly notified that circumstances have changed and such entitlement and expectation is no longer valid.
8. The complainants in this matter are:
 - Mr. D;
 - Mr. N;
 - Mr. A;
 - Mr. M;
 - Mr. I; and
 - Mr. H.
9. In addressing the matters in the format outlined above, the Racing Commission is not inclined to link the discrete issues raised below to specific individuals. Should any of those listed above feel aggrieved that their claim was not dealt with specifically the Racing Commission takes this opportunity to repeat that, as it is the conduct of Sportingbet that is at issue here it is sensible that all potential members of the class of complainants have access to the arguments, propositions, and opinions of all other co-complainants.
10. This is so because it need only be the argument, proposition, or opinion of one complainant that enlivens the prospect of success for all those with similar disputes before the Racing Commission. The application of a rule that relies on deeming something manifestly or obviously in error must, by definition, be so apparent that such conclusion would be inescapable. If the argument of one individual persuades the Racing Commission that Sportingbet should have not applied the Rule in this matter then it follows that all other claimants will benefit from such finding.
11. The factual matrix of this dispute is such that the only qualitative material difference between each of the complaints is the actual dollar amount of each of the wagers. As such, in light of the unique synchronicity of the complaints, the Racing Commission has determined that the course of action outlined and explained above is appropriate in all the circumstances.

The Manifest or Obvious Error Rule (Rule 13 – Sportingbet) and its Application

12. Before the appropriateness of the application of Rule 13 in the present matter is considered, the Racing Commission believes it reasonable and illuminating to articulate the import of such a Rule. That is, why do Sportingbet have such a Rule? Further, the Commission thinks it necessary to establish whether the subjective nature of the Rule could be better communicated so as to provide some clarity to clients who may be subject to its application.

13. Sportingbet claim relief to paying the dividends on the disputed bets under Rule 13. The Rule states that:

Notwithstanding anything contained elsewhere in these Rules, if Sportingbet publishes, posts or quotes any incorrect betting information for any sporting event, such as posting a wrong dividends or lines, then regardless of the cause or source of such error:

- a) If the error is identified prior to the commencement of the event and notified by Sportingbet to the most recent telephone or facsimile contact number or email address supplied by a Client, whose wager on that event has been accepted or confirmed by Sportingbet, such wagers will be void. If the wager is part of a multiple bet, the wager will then be recalculated without the team/competitor which had the error; or
- b) If the error is identified only after the commencement of an event or for any other reason not notified to the Client's point of contact prior to the commencement of the event, the wager on the event shall stand. The only exception to this is where Sportingbet can demonstrate that the error was manifest or obvious, or that the Client otherwise should reasonably have been aware of the error, when the wager was placed. If a Client has been paid winnings in error Sportingbet shall be entitled to issue the Client with an invoice demanding repayment. In such circumstances, the invoice shall be evidence that the amount is due and payable.

14. The operative section and subsection of the Sportingbet rules related to this dispute is section 13(b). The event had commenced before the incorrect posting of the odds was discovered and as such the requirement for Sportingbet to demonstrate that the error was manifest or obvious was triggered. The Racing Commission is loathe to enter the realm contemplated by the second predicate relating to a client being reasonably aware that an error had occurred prior to the placing of a wager. Fortunately on this occasion it has not been asked to do so; but is certain that Sportingbet realize the extraordinarily high bar that it would be required to surmount in that eventuality.
15. The Racing Commission considers that it best serves all parties to appreciate that the commercial efficacy of the bookmaker business model must have error limiting clauses such as Rule 13. In many other businesses error rectification procedures are in place. Such protocols anticipate errors and provide simple steps to undo or make good situations where errors have occurred. Such clauses are often utilized in financial markets, simple product purchases, and extend into grievance procedures rooted in Administrative Law.
16. Accepting that the use of the Rule on this occasion is consistent with what it was inserted to avoid: that is forcing a bookmaker to unjustly suffer a loss where a legitimate or innocent error had occurred it falls to the Racing Commission to determine whether the error was manifest or obvious. To do this the Commission chooses to rely on a commonsense and plain English definition of the operative words.
17. An obvious error is one that is easily seen, perceived, and recognized. It is apparent and self-explanatory and not one that could be deemed difficult to discern. The references to seeing and perception imply some sort of comparative basis for finding that something is obvious should be considered; this will be discussed below. If an error is manifest it is patently obvious and discernible. It is

received in the minds eye without any trauma and is at once perceived for what it is. The fine distinction between obvious and manifest is subtle but not without relevance when considering the application of Rule 13 in this instance.

The Claims Against the Application of the Rule

18. As stated above, it is the view of the Racing Commission that the claims against Sportingbet are best dealt with in composite and given collective or class regard. In concert with this it is only reasonable that the Commission states its view on the probative weight that submissions should be given. The submissions of the complainants will have effect only where they go to establishing that it was improper for Sportingbet to rely on Rule 13. The reasons why a client wagered on the event are immaterial in the mind of the Commission.
19. The Commission acknowledges that it may seem harsh that little probative weight is given to the submissions of some complainants, however, narratives and explanations that portend to demonstrate why a wager on Lochinvar Manolo was made have no effect on whether it was reasonable for Sportingbet to rely on Rule 13. Simply, an error is an error, and an error cannot be made correct by virtue of a back-story that explains why a wager was made that had no relationship to the odds offered.
20. Conversely, where a complainant can give the Racing Commission by way of their submissions, reason to question the appropriateness of Sportingbet relying on Rule 13 then such proposals go to the heart of the dispute and will be considered thoughtfully. The distinction is that it is not the state of mind or conduct of the client that makes the odds offered for *Locinvar Manolo* manifestly and obviously in error; it is up to Sportingbet to determine this, and for the Racing Commission to agree or disagree.
21. That said, it is proper that the Racing Commission address the various issues raised by the complainants for, as stated above, if a complainant can give the Commission reason to believe that Sportingbet erred in the application of the Rule then all complainants could stand to benefit.
22. When considering the complaints it is important to be aware that Sportingbet settled the wagers as placed and it was not until after funds had been deposited into accounts that the error as asserted by Sportingbet was discovered. This is a complicating factor, but again has no import as to whether or not the use of Rule 13 was appropriate.

Reversals that Placed Accounts in Debit

23. Several clients complain that the action of Sportingbet in relying on Rule 13 after their accounts had been settled is unreasonable due to the fact that the correcting entry or reversal had the effect of placing their accounts in debit. That this occurred is unfortunate, however, this has no import as to whether the reliance by Sportingbet on Rule 13 was reasonable in the circumstances.
24. It should be noted that the explanations of some of the complainants in withdrawing account winnings as soon as the winnings from the race in question were deposited could indicate that clients were in fact aware that the odds offered by Sportingbet were in error. In fact it is clear that at least one of the complainants took the unusual step of attempting a series of transfers that could only be designed to avoid any reversal by Sportingbet. The conduct of this

individual in transferring funds incrementally and then attempting to further split transfers evinces an intention to deprive Sportingbet of the opportunity to adjust the accounts upon discovery of the error.

25. With regard to the complaint that reversals should not have been permitted that placed client accounts in debit the Racing Commission believes that if Sportingbet are found to have legitimately applied Rule 13 then such adjustments to client accounts are legitimate and consistent with the intent of the Rule.

Greyhound Racing is not a 'Sporting Event' and thus not Covered by the Application of Rule 13

26. Some complainants submitted to the Racing Commission that the Sportingbet rules regarding Greyhound events and the application of Rule 13 were inconsistent and could not reasonably be relied upon by the Bookmaker. The suggestion by these complainants was that Rule 13 of the Sportingbet rules related to 'Sporting Events' and as such could not be relied upon because Greyhound Racing is specifically covered in another section of the rules and is not a 'Sporting Event'.
27. The *Racing and Betting Act* at section 4 declares that Greyhound Racing is a 'Sporting Event'. The Racing Commission defers to the Act and considers then that whether or not Rule 13 can be applied by Sportingbet to Greyhound Racing is settled in the affirmative; the result being that reliance on the Rule is permitted if found appropriate.

The Minimum Bet Rule and the Application of Rule 13

28. The Racing Commission acknowledges that where separate wagers are placed and subsequently fall within the application of a limiting rule or clause the Minimum Bet Rule is of limited utility at best and contradictory and difficult to reconcile at worst. As an apparatus to remedy instances where a client who submitted multiple wagers in good faith whose account was then subsequently adjusted the Minimum Bet Rule has marginal utility and limited success.
29. In the present circumstance the Racing Commission cannot see how a consistent application of the Minimum Bet Rule and the loss limiting scope of Rule 13 can be simultaneously applied. As a consequence, for the sake of consistency and in order to avoid the absurdity where the placing of multiple wagers over a period of time could result in a situation that compromises the business efficacy of the bookmaker model, the Minimum Bet Rule is considered of lesser import and disregarded for the purposes of this decision.
30. Where two rules collide the Racing Commission takes the view that the rule that results in a sensible and practical outcome in all the circumstances is the one to be applied. Therefore, should the Commission deem that the application of Rule 13 was appropriate in the circumstances complainants who placed multiple wagers will not receive multiple payouts of the \$500 Minimum Bet Rule requirement.
31. Finally, for the sake of clarity the above reasoning also applies to instances of each way bets. Each way betting cannot be severed into Win and Place bets to accommodate requests for multiple application of the Minimum Bet Rule.

The Meaning of Manifest or Obvious has not been Made Out

32. The Racing Commission has defined what it considers constitutes manifest and obvious above. Later in the decision the factual context of the wagers, event, and conduct of Sportingbet will be considered within the ambit of the definitions provided earlier. It is this exercise that will determine the success or failure of the complaints.

The Inequity of Sportingbet being able to Cancel Wagers at any Time While a Client Cannot

33. Some complainants raised the argument in their submissions to the Racing Commission that the unilateral conduct of Sportingbet in being able to cancel wagers at any time was inequitable with the position that the client could not. Such an assertion is wrong in fact and form. Put simply, Sportingbet cannot cancel wagers at any time.
34. Whether or not Sportingbet cancel wagers in their system remains contingent on the Racing Commission ultimately authorizing and authenticating such decision where a complaint against such conduct is lodged. Sportingbet will be directed to reverse all adjusting entries and settle (or re-settle) bets where the Commission takes the view, after receiving a complaint from an aggrieved customer of the bookmaker, that the cancellations were not lawful in the eyes of the Commission.
35. The Racing Commission is of the view that Sportingbet is entitled to cancel bets in situations where it applies rules such as Rule 13.

Relief Claimed by the Bookmaker

36. Sportingbet claim relief and protection from paying the amounts claimed by relying of Rule 13 of their Terms and Conditions. It falls to the Racing Commission to determine whether the use of the Rule was appropriate. More fulsomely, the Commission must be able to agree that the posting of the odds was an error so manifest or obvious that Sportingbet were entitled to cancel bets in their system and make adjustments to client accounts. Quite obviously there must be two limbs to the remedying effect of Rule 13. Sportingbet needs to be able to cancel the wagers and then be authorized to make the corrective adjustments.

The Proper Application of Rule 13

37. The Racing Commission must determine whether or not in all of the circumstances the odds offered by Sportingbet were such that on any reasonable assessment they would be considered a manifest or obvious error. Note that the Commission need only be satisfied that one limb can be sustained; either manifest or obvious.
38. The notion of obvious, as discussed briefly above, is largely subjective, however, by introducing objective measurements or reference points one is more able to crystalize a settled definition and application to the current matter that is defensible. In the present situation the Racing Commission has access to contemporaneous data from other bookmakers that is of great assistance.
39. A comparison of the odds offered by other agencies on the greyhound in question provides context to the claim of obvious error and assists in establishing

some orientation from which to assess whether in fact the odds offered by Sportingbet can be deemed obviously in error. *Lochinvar Manolo* was offered at \$1.40 the win and \$1.00 the place on the Victorian Totalisator; \$1.60 the win and \$1.60 the place on the New South Wales Totalisator; and \$1.60 the win and \$1.30 the place on Tattsbet.

40. The question then is whether the Commission can comfortably reconcile that the offering of odds in excess of 100 to 1 on a greyhound race was so outrageous that the error can be termed manifest. In the alternate can the Racing Commission rely on the comparative data to establish that the error was so obvious that the application of Rule 13 was appropriate in this matter.
41. Settling on whether the error was manifest is problematic. When accessing markets on-line for greyhound events it is not unreasonable to assume that some of those markets offer odds of 100 to 1. Hence, it is arguably not outrageous to see such odds and consequently the Racing Commission considers that the error does not meet its threshold requirement to uphold a finding of manifest error.
42. For guidance, it would be in an instance where a place dividend was displayed that was outrageously higher than the win dividend, or where odds were displayed that included a letter or other symbol, that the Racing Commission would consider an error approaches the threshold required to found as manifest. For an error to be manifest it should present as such in a discrete context and require no comparison with extrinsic material.
43. When compared with the odds of other bookmakers and totalisators it is at once evident that Sportingbet odds were an extreme outlier. The contextual data supports the contention that the error was obvious because it provides a perspective within which to view hitherto isolated and largely meaningless figures. The odds were obviously placed in error, and it follows that the error was obvious.
44. There are two further issues worthy of brief mention. The first concerns the pre-race and post-race conduct and behavior of complainants. Such conduct has had no bearing whatsoever on the decision-making processes of the Racing Commission. To emphasize; the reasons why clients placed their wager, such as it was a, 'a name bet', a 'hunch', or; 'I liked the color of the dog', are irrelevant in the all the circumstances.
45. Secondly, it is reasonable that clients of Sportingbet should be able to rely on the bookmaker to furnish, update, and correct information on the website and the Racing Commission takes the opportunity to remind Sportingbet that it must be vigilant in ensuring that proper and correct markets are posted and that where errors occur action is immediately taken to rectify the situation. It is the further expectation of the Racing Commission that where any bookmaker becomes aware of an manifest or obvious error after an event has commenced that all losing wagers are refunded. It cannot be fair for a bookmaker to publish odds on an event at which it is fielding and have the option of claiming a manifest or obvious error when the error results in a loss to the bookmaker while at the same time an error may have unjustly enriched the bookmaker by inducing parties to place wagers.
46. The Racing Commission will take a hard line with Licensees where errors, once discovered, are not treated similarly. That is, had the greyhound in question not

placed in the event then it would be the expectation of the Racing Commission that all bets on the runner that corresponded with the obvious error would have been refunded.

Decision

47. While plausible reasons for the placing of the wagers by all clients were offered, on balance there can be no doubt that the offering of odds of \$101 the win and \$6.90 the place was an obvious error thus enlivening the reasonable action by Sportingbet in relying on Rule 13 to adjust accounts where wagers had been placed on *Lochinvar Manolo*.
48. For the reasons above, the claims of Mr. A, Mr. M, Mr. D, Mr. I, Mr. H, and Mr. N must fail. The alterations made by Sportingbet to the accounts of the abovementioned under the manifest or obvious error requirements of Rule 13 were made consistent with the language of the rule and, as such, the Racing Commission has no reason to require any correcting adjustments.
49. Bookmakers must have some access to a corrective apparatus that assists in rectifying situations where human or other error occurs. Such use is of course subject to ultimate determination by the Racing Commission where a complaint is lodged.

David Brooker
Presiding Member

13 March 2013