

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Licensee:	Betchoice Corporation Pty Ltd T/A Unibet
Proceedings:	Pursuant to Section 85(4) of the <i>Racing and Betting Act</i> – Referral of Dispute to Racing Commission for Determination
Heard Before:	Mr Richard O’Sullivan (Chairman) Mr Philip Timney Mr Andrew Maloney
Appearances:	Ms Jodi Truman instructed by Mr Jamie Nettleton for Betchoice Corporation Pty Ltd T/A Unibet Inspector Mark Wood for the Director of Licensing
By Telephone:	Mr D Bennett and Howroyd: Mr Richard Howroyd representing Mr D Addisons: Mr Jamie Nettleton, Counsel for Betchoice Corporation Pty Ltd T/A Unibet Mr Brian Lee and Mr Mark Morrissey, Betchoice Corporation Pty Ltd T/A Unibet
Date of Hearing:	11 February 2014
Date of Decision:	2 April 2014

BACKGROUND

- 1) In December 2012 Mr D filed a claim with the Magistrates Court of Tasmania for the recovery of monies and costs arising from what he claimed were unauthorised transactions of \$10,000 from his Commonwealth Bank NetBank bank account into a client account under his name with Betchoice Corporation Pty Ltd T/A Unibet (“Unibet”). Unibet has disputed that the transfers into the wagering account were unauthorised and has also disputed that the subsequent wagering activity in the client account of Mr D was unauthorised.
- 2) Unibet has sought and obtained a stay of proceedings in the Magistrates Court of Tasmania pending a decision by the Northern Territory Racing Commission (“the Commission”) of whether the bets were lawful. Subsequently Unibet referred the matter to the Commission to determine whether the bets placed using the Unibet client account in Mr D’s name were lawful pursuant to Section 85(4) of the *Racing and Betting Act* (“the Act”):

85 Legal proceedings in respect of bets

- (1A) *For the purposes of this section, a bet is not lawful if it is declared by the Commission, after an investigation in accordance with this section, to be not lawful.*
- (1) *Subject to this section, a person may take proceedings for the recovery of moneys payable on a winning lawful bet, or for the recovery of moneys payable by a bettor on account of a lawful bet made and accepted.*
- (2) *Where a dispute relating to lawful betting occurs between a bookmaker and a person, the dispute shall be referred by the bookmaker, and may be referred by the other party to the dispute, to the Commission.*
- (2A) *Where it appears to the Commission, on the complaint of a person or of its own motion, that a sporting event (other than a horse race, trotting race or greyhound race) may not have been fairly or lawfully conducted or for any other reason the result of the event, either generally or in relation to a particular bet or class of bets, is not what would be legitimately expected if all steps in the proceedings of the event or the declaration of its result were honestly and fairly conducted or declared, the Commission may declare the event to constitute a dispute for the purposes of this section and declare any person to be a party to the dispute.*
- (3) *Where a dispute has been referred under subsection (1) to the Commission or declared under subsection (2A), the Commission may:*
- (a) summon the parties to the dispute to appear and to give evidence before it;*
 - (b) take evidence relating to the dispute from other persons; and*
 - (c) require a party to the dispute to produce any books, accounts, tickets or other documents which, in the opinion of the Commission, ought to be examined in order to determine the dispute.*
- (4) *The Commission shall hear and determine all disputes referred to it under this section.*
- (5) *Where a party to a dispute who has been summoned to attend before the Commission fails without reasonable excuse to attend, the Commission shall determine the dispute in favour of the party who attends or, in the case of a dispute declared under subsection (2A), as it thinks fit, including declaring the event void.*
- (6) *The determination by the Commission of a dispute referred to it under subsection (1) shall be final and conclusive as to the matter in dispute.*

(7) *In determining a dispute under this section, the Commission shall not be bound by rules of procedure or evidence but may inform itself of the facts necessary to determine the dispute in such manner as it thinks fit.*

- 3) Following Unibet's referral of the dispute to the Commission, it was then determined to convene a Hearing.
- 4) The facts are that on 22 and 23 September 2012 two deposits of \$5,000 each were made from a Commonwealth Bank NetBank account of Mr D to a Westpac Bank account in the name of Unibet and a client wagering account opened on line in the name of Mr D. Thereafter wagers were placed through the account.

HEARING

- 5) Mr D initially appeared at the Hearing by telephone without his Counsel, Mr Howroyd. Following an adjournment, Mr Howroyd appeared on behalf of Mr D.
- 6) Ms Truman outlined the background as to why her client Unibet had referred the matter to the Commission and specifically that her client was bound to refer the matter under Section 85(2) of the Act and under the conditions of the Sports Bookmaker's Licence granted by the Commission.
- 7) Ms Truman outlined in essence that what her client was seeking was a ruling from the Commission that the account opening process, including the two deposits totalling \$10,000, was lawful and thereafter that the subsequent wagering actions were lawful bets or wagers placed via the Unibet client account in Mr D's name. Ms Truman further submitted that Unibet had complied with its licence conditions in opening the account and accepting wagers.
- 8) Mr D advised the Hearing that he had no knowledge or involvement in the transfer of two sums of \$5,000 in September 2012 into a Unibet client wagering account. He further stated that he had no knowledge or involvement with regard to the subsequent placement of wagers through that account.
- 9) Mr D referred the Commission to previous instances of allegedly unauthorised transactions where monies had been transferred from his bank account into Sports Bookmakers' accounts and where he submitted identity fraud had occurred. He advised the Commission that he had received a re-credit of these fraudulently transferred account monies from the Commonwealth Bank. He referred to a pattern of identity fraud where monies had been transferred into accounts with Sports Bookmakers following an opening of an account under his name and through which subsequent wagering activity had taken place.
- 10) Mr D repeated that he had no knowledge of these matters and had not been involved in any way in the placement of bets through these accounts. He specifically referred to a re-crediting of monies from a Unibet Malta account in March 2012 and of other returns to his Commonwealth bank account following unauthorised withdrawals from this bank account. In evidence he referred to a successful claim for a return of money placed in a Betezy account and added that

he had also lodged a claim in the Magistrates Court of Tasmania against Luxbet for a similar claim of unauthorised acceptance of money from his bank account.

- 11) Mr D submitted that he had been the victim of an identity takeover by person or persons who had been able to hack into this personal and bank account details, enabling both the withdrawal of funds from his accounts and for that person or persons to have sufficient identity information to enable the opening a Sports Bookmaker account in his name.
- 12) Following Mr D stating that he was unable to provide documentary evidence of settlement deeds or court determinations, the Commission adjourned to enable Mr D to produce the requested documentation and for him to be legally represented as initially advised to the Commission.
- 13) Following the adjournment Mr Howroyd advised he would appear for Mr D but that he was not fully prepared for the matter. Mr Howroyd also sought an adjournment of the matter to enable him to better prepare and familiarise himself with the substance of the dispute. The Commission, however, determined to proceed with the Hearing on the basis that adequate notice had been given of the Hearing to the parties and as Mr D had previously expressed concern over the time taken for the Hearing to be held. In refusing the request for an adjournment the Commission also noted that Mr D had previously been requested, on several occasions, to produce all documents and evidence on which he proposed to rely for the purpose of the Hearing before the Commission.
- 14) Mr Howroyd outlined that Mr D had a number of bank accounts, several of which had been subject to unauthorised funds transfers to Sports Bookmaker accounts. The Commission asked Mr Howroyd whether he could produce any relevant Court Orders where funds recovery action on the part of Mr D had been successful through the Courts and whether he could produce any related Deeds of Settlement, with banks or other parties, where they had re-credited his account, were available to the Commission to consider.
- 15) Mr Howroyd was unable to provide documentation but said he was satisfied there was enough evidence before the Commission to indicate that transaction fraud had occurred and therefore that the Commission should determine that the subsequent bets placed with Unibet with the use of this unauthorised transferred money were therefore unlawful.
- 16) Ms Truman submitted to the Commission that the accusations against her client were serious as they referred to unauthorised and fraudulent actions. She referred the Commission to claims by Mr D that he had previous bank agreements and Court Orders re-crediting unauthorised transaction amounts but that these documents had not been produced before the Commission despite requests that this occur. She also submitted that allegedly unauthorised transactions on Mr D's accounts by third parties had nothing to do with her client.
- 17) Ms Truman submitted that to find that Mr D with no involvement in the disputed transaction betting and activities involved in this dispute the Commission would need to find that Mr D's IP address had been hacked, his emails would have been hacked and the hacker would have had to have gained access to sufficient personal

information to establish a betting account. In assessing this probability the Commission could apply a “beyond reasonable doubt” test and discount Mr D’s claim.

- 18) Ms Truman referred to evidence in the Hearing Brief where in emails Mr D had referred to the bank being in error or at fault over the unauthorised transfers of money. Further, in other emails Mr D had referred to winning several other unauthorised transaction disputes with banks. Ms Truman advised that this indicated no unauthorised or fraudulent action by Sports Bookmakers in the past and this carried over to Unibet in the current matter and that Mr D had a history of blaming banks for allegedly fraudulent transactions on his accounts, but was now diverting blame to Sports Bookmakers.
- 19) Ms Truman submitted to the Commission that there is no evidence produced by Mr D to link Unibet to any unauthorised or fraudulent action with his Commonwealth Bank account. She submitted that previous reversals of transactions from Sports Bookmaker accounts into Mr D’s accounts had nothing to do with her client. She put to the Commission that as Mr D had failed to present any evidence in support of the claim against Unibet, the Commission should find the acceptance of money into a client account by Unibet and the acceptance of bets placed by this account through Unibet were lawful.
- 20) Ms Truman also submitted that the Commission should consider the following facts:
 - For Unibet to be at fault the Bookmaker would have had to arrange for the client wagering account to be opened in Mr D’s name.
 - The Bookmaker would have had to know and apply Mr D’s residential address, mobile telephone number, and date of birth and entered those details into the Unibet account from an IP address within the range of Mr D’s residential address.
 - The Bookmaker would have had to arrange the transfer of two \$5,000 amounts with the knowledge that Mr D had an account with CBA, known his account number, known his login and password and other details, and been able to transfer the money through a Poli payment.
- 21) She submitted to the Commission that it was beyond belief that a billion dollar company would risk its reputation and business to illegally take up to \$10,000 out of a person’s bank account.
- 22) Ms Truman summed up by stating that the transfer and betting engaged in through an account in the name of Mr D was lawful and authorised and that the complaint by Mr D against Unibet is unfounded.
- 23) Mr D reiterated that his bank accounts had been hacked and that he was at a loss to explain why this was occurring. When questioned on what benefit a hacker would derive from such activity, given that no monies had been taken from this Unibet account or other unlawfully opened accounts, Mr D stated he could not explain the motivation.
- 24) He repeated that he had a history of banks returning monies which had been unlawfully transferred into Bookmaker accounts and that this indicated a pattern of

identity fraud with regard to someone accessing his bank account and other personal details.

- 25) Mr D submitted to the Commission that he had reported matters to Police over this activity as he considered it was the right thing to do after he was being repeatedly subject to hacking and identity fraud. He advised that he had been to Police, Financial Ombudsman Service, the Privacy Commissioner and to the banks direct over bank account monies being transferred to Bookmaker's client accounts. Following questioning from the Commission over his claims against another NT licensed Sports Bookmaker, Luxbet, for the unauthorised acceptance of money from his bank account; Mr D conceded that this had resulted in Police lodging fraud charges against him.
- 26) Mr Wood, appearing on behalf of the Director of Licensing, advised the Commission that he concurred with the evidence provided in Ms Truman's submission.

CONSIDERATION OF THE ISSUES

- 27) The Commission has been asked by Unibet to determine whether a number of bets placed through a client wagering account in the name of Mr D are lawful.
- 28) The Commission has sighted documents evidencing that Mr D has in the past successfully undertaken action to have a reversal of funds which have been transferred from his bank account to a Bookmaker account. Before the Commission there is evidence that the Commonwealth Bank has refunded a number of transactions to Mr D, apparently on the basis of fraudulent transfers out of his account into Bookmaker wagering accounts. The Commission also accepts that Mr D successfully obtained a reversal of monies paid into a Unibet Malta account, a Bookmaker which was not and is not licensed in the Northern Territory.
- 29) The Commission is persuaded that this past history has little direct bearing on the current dispute before it where Mr D alleges fraudulent or unauthorised activity by Unibet. From evidence presented during the Hearing it appears that money has on several occasions been transferred from Mr D's bank accounts to various Sports Bookmakers in the account name of Mr D and that wagers have been placed through these accounts. However, there is no evidence before the Commission that in any of the instances referred to during the Hearing, has there been money taken from the Bookmaker accounts opened in Mr D's name. In this instance alleged hackers would appear to have obtained no financial benefit from their unlawful practices.
- 30) It begs the question to the Commission's mind as to what benefit a hacker or ID thief can gain from such activity.
- 31) The Commission, in considering the evidence before it, acknowledges that there have been withdrawals of monies from Mr D's bank accounts and transfers to wagering accounts, in this instance an account opened with Unibet. The opening of the account and the transactions on the account come from an IP address strongly indicating Mr D's involvement.

- 32) In the Commission's view none of the evidence points to Unibet being responsible for or having an involvement in channelling money from Mr D's bank into a client account, other than merely accepting the money (through Poli), accepting the identification details of the client and creating the client account as requested.
- 33) Unibet would have no reason to doubt the legitimacy of the deposit of money into a client account and the bona fides of a client who's ID would subsequently have to be vouched safe by the provision of necessary ID information or through a recognised ID agency such as VEDA. Therefore in accepting deposit moneys and in opening an account in the name of Mr D, Unibet has followed usual practices and procedures enabled through the Northern Territory Sports Bookmaker Licence and its Terms and Conditions as required by the Commission. All account opening and trading conditions required to be met by Unibet have been met. There has been no evidence or submission produced to the contrary.
- 34) In seeking redress from the Bookmaker, Mr D is altering his former practice of seeking redress through the banks. It may be that the banks have willingly complied with requests to have reversal of transfers and indeed there may be Court Orders to give effect to such reversals. However, no documentation of Orders or Deeds of Settlement has been provided to the Commission.
- 35) In seeking redress through the Courts from Unibet directly, Mr D attaches responsibility to Unibet for moneys leaving his account. The matter before the Commission is purely whether the bets placed were lawful. The Commission has no supporting information before it that the transfer of money into the Unibet Mr D client account and the subsequent wagering is unlawful or due to the capricious actions of Unibet.
- 36) The facts presented to the Commission and which the Commission must rely on in reaching its decision are:
- Unibet is lawfully licensed in the Northern Territory as a Sports Bookmaker pursuant to Section 90 of the Act.
 - The licence granted to Unibet authorises it to lawfully conduct wagering on racing and sports events.
 - Under its licence Unibet is authorised to accept wagers of the type made through an account opened in the name of Mr D.
 - The account opening procedures for this account met the requirements of the Licence Terms and Conditions approved by the Commission and of the Licensee (Unibet) rules governing the opening of an account.
 - Unibet legitimately satisfied itself that the person they were transacting with in opening the account, accepting account deposits and accepting wagers was Mr D.
 - Mr D has provided no documentary or compelling evidence that Unibet was in breach of its licence conditions, the Act, or its own rules in opening and conducting wagering transactions with the account.
 - In this instance Mr D has presented the Commission with no evidence whatsoever leading to a conclusion that any person, other than himself, opened

the wagering account with Unibet, despite numerous requests that he do so including during the course of the Hearing.

The Commission on consideration of all evidence and material before it determines that the bets placed with Unibet were lawful.

DECISION

37) The Commission finds that Unibet has adopted the required procedures in relation to the receipt of money into the client account in Mr D's name, the opening of that account and the wagers placed subsequent to that account opening. It therefore deems the wagering activity lawful pursuant to Section 85(1)(A) of the Act.

A handwritten signature in black ink, appearing to read 'Richard O'Sullivan', with a long horizontal line extending to the right.

Richard O'Sullivan

CHAIRMAN

2 April 2014