

# NORTHERN TERRITORY RACING COMMISSION

## Reasons for Decision

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<b>Complainant:</b>	Mr X
<b>Licensee:</b>	Hillside (Australia New Media) Pty Ltd Trading as Bet365
<b>Proceedings:</b>	Pursuant to Section 85(4) of the Racing and Betting Act – Referral of Dispute to Racing Commission for Determination
<b>Heard Before: (on papers)</b>	Mr John Boneham (Presiding Member) Mr John McBride Mr Andrew Maloney
<b>Date of Decision:</b>	15 March 2016

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### Background

- 1) On 19 February 2015, Mr X lodged a gambling dispute against Hillside Australia Pty Ltd Trading As BET365 (“the Bookmaker”) in which he alleged the Bookmaker was withholding funds held in his account.
- 2) Mr X alleges that at the time his account balance was \$110,000 and was suspended by the Bookmaker (late on 11 February 2015).
- 3) The Bookmaker confirms they suspended the account as they were conducting an investigation into a deposit amount of \$87,540 made on 10 February 2015.
- 4) A total of approximately 200 wagers were then made using the telephone betting service over a period of the next 14 hours.
- 5) A number of these wagers were successful, however as a result of the suspension of Mr X’s account the funds are still held by the Bookmaker.
- 6) As a result of Mr X’s lodging of a dispute the Racing Commission (“the Commission”) decided to convene a hearing to be held in Darwin on 29 October 2015. There was some difficulty in both parties attending, so a decision was taken by the Commission to reschedule the hearing to 29 January 2016.
- 7) The Commission was subsequently advised by the Bookmaker that this date also presented some logistical problems for them.
- 8) Given the ongoing difficulties with suitable dates and the fact that this was now becoming a very protracted matter, the Commission decided at its January 2016 meeting to vacate the hearing and decide the matter on papers.
- 9) All parties to the dispute and any witnesses were advised of this decision on 19 January 2016.
- 10) The following Commission Members being appointed to conduct the Investigation by acting on substantial information gleaned by the Commission’s investigative staff:

- Mr John Boneham (Presiding Member)
- Mr John McBride (Commission Chairman)
- Mr Andrew Maloney

## **Facts of the Matter**

- 11) Central to this whole dispute is the lodgement of the amount of \$87,540 by Mr X on 10 February 2015
- 12) With winning wagers, subsequently made in the next 14 hour period, his balance had grown to \$110,000.
- 13) The disputed lodgement was made by Mr X from his St George Bank Visa Debit Card which ordinarily could only be used to withdraw funds held in credit on the Visa Debit Card account.
- 14) This problem in this instance is that, as a result of a major technical systems fault, Mr X was able to overdraw his Visa facility (which he did to the amount of \$87,540).
- 15) Westpac acting as the parent company of St George Bank advised the Bookmaker of the error on 11 February 2015, leading to the Bookmakers' suspension of Mr X's account.
- 16) The Commission expresses concern given the nature of this matter that from inception it was not brought to its attention, even as a developing report, immediately it became known.
- 17) Mr X has attempted to legitimise the transactions and alleges it is a simple case of him winning money and the bookmaker refusing to pay. He also maintains his position that the bank authorised his overdrawing of his account by virtue of the fact it happened and was not prevented.
- 18) Both Westpac and the Bookmaker claim that the deposit monies were fraudulently obtained by Mr X and as such Mr X's subsequent winnings were as a result, to use the legal definition, "Unjust Enrichment".
- 19) The Bookmaker in its submissions to the Commission has requested it be authorised to cancel all wagers made from the date of acceptance of the disputed \$87,540 deposit (10 February 2015) and return the disputed deposit monies to Westpac/St George from Mr X's account with them.
- 20) Of significant note is that as a result of subsequent negotiations between Mr X and St George Bank, the debt on his Visa Debit Card, has been subject to interest being charged on the outstanding balance. The question then arises, does this action indeed legitimise the transaction, therefore negating St George Bank's allegation of fraudulently obtained funds.
- 21) As mentioned earlier Mr X's submission is rather simple in nature. He claims that the deposited money into his account with BET365, placed wagers that were accepted and settled. As a result of this, he seeks to withdraw his funds, take his winnings and repay his debt to St George Bank.

- 22) It should be noted that Mr X was requested by Commission staff to provide documentation from the bank, around approval by the bank of such an overdraft facility, but was not able to do so.
- 23) It is open to suggest that Mr X does not come to the Commission “with clean hands”. He would have been well aware of the banks systems error, sought to take advantage of it and as a result won a substantial amount from BET365.
- 24) On the other hand neither the bank nor the Bookmaker, have to date indicated a desire to pursue this through the judicial system, rather looking to rely on the Commission to determine the matter.

## **Consideration of the Issues**

- 25) The first issue to be considered is whether this is a civil dispute or a matter for consideration by the Commission.
- 26) The fact that the bank has been charging Mr X interest on the overdrawn account would suggest this is a civil matter.
- 27) Civil matters such as debts between bookmakers and their clients are able to be placed before the Commission for consideration. Invariably this is a result of the client disputing the debt exists or that the wagers were valid. That is not the case in this matter, neither party disputes the wagers or their settlement.
- 28) The Bookmaker disputes the legitimacy of the deposit, as a result of the bank contacting them and alleging fraud by Mr X. Despite this there is no evidence to suggest the bank has taken any action against Mr X at this time.
- 29) On the contrary it would appear the bank has legitimised the transaction by agreeing to implement a repayment program and charge interest on outstanding monies.
- 30) For the Bookmakers part it seeks to gain relief from any liability to honour winning wagers placed by Mr X, under Section C1 of its Terms and Conditions which is detailed as follows:

### *“C. Your Finances*

#### *1. Deposits and Wagers*

*1.1 You may only bet/wager with the amount of cleared funds held in your account. Accordingly, if you want to place bets you must deposit monies into your account. Further details of how to deposit, withdraw and transfer funds can be found at Deposits/Withdrawals.”*

- 31) The Bookmaker is arguing that these were indeed uncleared funds by virtue of the manner in which they were obtained (ie alleged fraud).
- 32) Furthermore it is seeking to invoke Rule 3.1 from its Terms and Conditions which reads as follows:

### *“3. Other*

3.1. *If we incur any chargebacks, reversals or other charges in respect of your account, we reserve the right to charge you for the relevant amounts incurred*

33) The Bookmaker has also sought to invoke Rule 2.4 Betting Procedures in support of its application to avoid payment of the disputed winning wagers.

34) Rule 2.4 reads as follows:

*“2.4 Notwithstanding the above, if bets/wagers are placed via a credit or debit card they are not valid until we have received payment in full. The bet/wager will be automatically void if we have not received the payment prior to the relevant event commencing.”*

35) This is a complex matter which revolves around two central issues:

- a. The bookmakers right to return the disputed deposit monies to Westpac
- b. The bookmakers’ right to void all wagers made from the time of receiving the disputed deposit funds until time of suspension of Mr X’s account with them.

36) In making its decision, the Commission has taken into account all claims for non-payment of winnings made by BET365 and the nature and source of the disputed deposit amount of \$87,540.

37) The Commission has also made extensive enquiry with both its legal advisors and the NT Police, as to whether any criminal offence may have been committed by Mr X.

38) NT Police advice is as follows:

*“We have not received a formal complaint from any financial institutions and are currently not authorised to conduct a criminal investigation into Mr X. If St George should wish to pursue a complaint in the future we will reassess, with a view to conducting an investigation.”*

39) The Commission has also considered St George Bank’s action in putting the debt on a fixed repayment arrangement and charging interest on the outstanding balance.

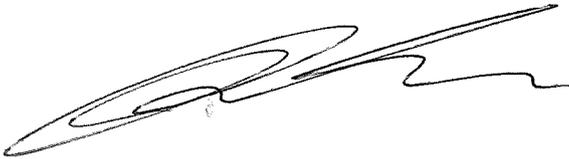
## **Decision**

40) With the police advice in mind and given St George’s action in effectively legitimising the transaction by placing the debt on an interest/repayment basis, the Commission makes the following determination.

41) The Commission finds that the amounts overdrawn by Mr X from his St George Visa account to be legitimately lodged.

42) Further it finds that BET365’s claim of the monies being uncleared funds and subject to chargeback provisions (Rule 3.1 of BET365 Terms and Conditions) is not made out.

- 43) BET365's claim of relief under Rule 2.4 of "Bets not being valid until payment is received in full" is also not made out.
- 44) It is a known fact that the subject monies were cleared funds, duly processed by the bank (albeit in error at the time) and therefore not subject to any chargeback provisions by the bookmaker or the bank.
- 45) Accordingly the Commission finds that although Mr X was most likely aware of the bank's error, by lodgement of the monies to his BET365 account he has not contravened any of BET365's Terms and Conditions.
- 46) The Commission orders BET365 to honour all wagers made by Mr X and to make available to him the full balance of his account immediately.
- 47) It will then be up to Mr X to liaise with St George Bank regarding full payment of his debt to them.



John Boneham  
Presiding Member

15 March 2016