

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Licensee:	William Hill Australia Wagering Pty Ltd
Proceedings:	Dispute Relating to Betting - Section 85 of the <i>Racing and Betting Act</i>
Heard Before: (on papers)	Mr Andrew Maloney (Presiding Member) Ms Cindy Bravos Mr Jim McNally
Date of Decision:	10 April 2018

Background

1. William Hill Wagering Pty Ltd (William Hill) is the holder of licence issued by the Northern Territory Racing Commission (the Commission) to conduct the business of a sports bookmaker in the Northern Territory.
2. On 3 April 2017, Mr Mark Pinfold, Client Account Manager for William Hill wrote to the Commission advising that William Hill is currently in dispute with Mr B. William Hill advise that they are seeking payment of outstanding wagering debts alleged to have been incurred by Mr B in the amount of \$39,000.
3. William Hill further advised that Mr B is disputing the outstanding amount of his account on the basis that he did not enter into a contract with William Hill for wagering purposes and therefore the bets are not lawful.
4. William Hill advise that they are seeking a determination from the Commission that:
 - a. Mr B's wagers are lawful and that the amount asserted is due and payable; and
 - b. William Hill may take proceedings for recovery of moneys payable by Mr B on account of the lawful bets made and accepted by William Hill.
5. Pursuant to section 85(1) of the *Racing and Betting Act* (the Act), a bookmaker may take proceedings for the recovery of moneys payable by a bettor on account of a lawful bet made and accepted. Whilst legal action may be taken, it is expressed to be subject to section 85 of the Act and as such the provisions of section 85 create a pre-requisite to the pursuit of legal action.
6. As mandated by the Act, given that William Hill is seeking recovery of money payable by Mr B, the dispute has been referred to the Commission to hear and determine the dispute. Pursuant to section 85(6) of the Act, the Commission's determination shall be final and conclusive as to the matter in dispute.
7. For the purposes of section 85 of the Act, a bet is not lawful if following an investigation the Commission declares the bet to be not lawful. In order for the Commission to make a determination in this respect, the Commission must look to amongst other things, the substance of the betting transaction and whether it should

be enforced or not. In doing so, the Commission must look at the fundamental qualities of the betting transaction itself including examining whether the bet is one which is permitted by the Act and the terms and conditions of the bookmaker's licence which include the terms and conditions of agreements entered into between bookmakers and their customers.

8. Where it is the view of the Commission that a contravention of a condition of licence may be regarded as so serious as to undermine the integrity of the betting transaction itself, it is open to the Commission to conclude that the betting transaction was not lawful.

Consideration of the Issues

9. William Hill assert that on 29 March 2011, Sportingbet Australia Pty Ltd (Sportingbet) agreed to provide Mr B with a betting account following Mr B's agreement to abide by the terms and conditions as set out in Sportingbet's 'The Rules' as they existed at that time. It is relevant to note for the purposes of considering this dispute that Sportingbet sold its business assets and property to William Hill on 10 September 2015.
10. Mr B asserts in both correspondence sighted by the Commission to William Hill and to officers within Licensing NT that he did not enter into any agreement for a 'line of credit' with either Sportingbet or William Hill.
11. William Hill have advised the Commission that their records show that on 29 March 2011, Mr B had a conversation with Mr Wally Fullerton-Smith (a representative of Sportingbet) during which:

"Mr B was offered the choice of having his account operate on a 'cash-in' basis or a 'deferred settlement facility' (DSF) basis. Mr B requested a DSF with a Maximum Debit Limit (MDL) of \$2,000 be granted on his betting account."
12. Sports bookmakers licensed in the Northern Territory have a comprehensive suite of terms and conditions that customers are deemed to be familiar with prior to opening and operating an account with the bookmaker. These terms and conditions are most often referred to as 'The Rules' and operate to ensure the commercial efficacy of the business model of a bookmaker.
13. William Hill further assert that following Mr B's acceptance of 'The Rules', Mr B's account was initially established with a \$2 000 deferred settlement facility which Mr B then went on to access for the purpose of placing bets.
14. The betting records held by William Hill that relate to Mr B's account show that on 8 April 2011, Mr B placed a \$300 losing bet on the outcome of a rugby league match. On 9 April 2011, Mr B went on to place a further 9 losing bets totalling \$1 699 which brought his account into a total deficit amount of \$1 999.
15. On 11 April 2011, a BPay deposit of \$2 000 was made to Mr B's account after which numerous winning and losing bets were placed through to 10 September 2015 (the time of the sale of Sportingbet to William Hill) at which time Mr B had an account balance deficit of \$16 500. During this period, Mr B's account balance ranged from a deficit of \$41 999.99 through to a positive account balance of \$40 000. Mr B also made numerous deposits into the account during this period as well as 20 withdrawals with these withdrawals totalling an amount of \$177 925.

16. As indicated in the preceding paragraph, at the time of the sale of Sportingbet to William Hill, Mr B had a deficit account balance of \$16 500. Mr B's betting activity continued on over the next 2 months until 8 November 2015 with numerous bets being made, numerous deposits into the account being made and a withdrawal of \$16 500. Mr B's account oscillated significantly again during this period ranging from a negative account balance of \$44 700 through to a positive account balance of \$34 500.
17. The last wager accepted by William Hill on Mr B's account was on 8 November 2015. On the same day, Mr B made several deposits amounting to \$4 700.
18. A further deposit of \$1 000 was made on 15 December 2015 which reduced Mr B's account balance from a deficit of \$40 000 to \$39 000, the amount William Hill are now seeking to recover as an outstanding debt.
19. William Hill have advised the Commission that Mr B's account was stopped from accepting wagers on 28 June 2016 after Mr B *"failed to honour several promises to make a payment on his account."*
20. As discussed earlier, in order for the Commission to determine whether the bets made were lawful or not lawful, it is necessary to examine the substance of the betting transactions including whether the bets were ones permitted by the Act and the terms and conditions of the bookmaker's licence which include the terms and conditions of agreements entered into between bookmakers and their customers.
21. Whilst the now revoked 'Mandatory code of practice for sports bookmakers: deferred settlement facilities' came into effect on 1 November 2015, it cannot be relied upon to assist the Commission in determining this matter as it contained a grandfather clause which had the effect of the code not applying to existing deferred settlement facility holders.
22. What can be relied upon to assist the Commission however, is the terms and conditions contained within 'The Rules' that Sportingbet had in place when Mr B's account was opened.
23. It is generally accepted by the Commission that in opening an account, a customer agrees to abide by 'The Rules' provided by the relevant sports bookmaker with whom the client is opening an account. The Commission also accepts that this applies equally to the sports bookmaker in that they must also abide by 'The Rules' in their transactions with the customer.
24. 'The Rules' that Sportingbet had in place at the time of the opening of Mr B's account state, *inter alia*:

2....To open a Sportingbet Betting Account, persons either must go through a funding process and deposit money with Sportingbet or be granted a Maximum Debit Limit in accordance with these Rules.
25. It is evident as detailed above that Mr B opened an account with Sportingbet with a deferred settlement facility of \$2 000 which he then went on to utilise through the making of a number of losing wagers before making a deposit to the account. On this basis, the Commission is satisfied that Mr B agreed to abide by 'The Rules' as in place at the time of the opening of his account.
26. In this respect, the following rules are relevant:

4. *Clients will be responsible for all wagers ...for any activity on their Sportingbet Account;*
42. *For Client Accounts:*
- (a) *each Client will be issued an (sic) Sportingbet Betting Account before wagers are accepted;*
- (b) *with the approval of Sportingbet a Client's Betting Account will be granted a Maximum Debit Limit;*
45. *Where a Client has been granted a Maximum Debit Limit in accordance with Rule (b) above, the Client may be refused wagers by Sportingbet if their Account Balance at any time exceeds their Maximum Debit Limit...If Sportingbet, in its discretion, allows a Client to wager even though the Maximum Debit Limit may be exceeded, the Client shall settle his/her resultant Account Balance when next notified by Sportingbet.*
46. *For the avoidance of doubt, it is the Client's responsibility to monitor the balance of his/her Betting Account and if, for whatever reason, the Account Balance exceeds its Maximum Debit Limit it is the Client's responsibility to ensure that all amounts of the Debit Balance are settled in accordance with these Rules.*
27. As detailed earlier, following the opening of the account Mr B went on to place numerous winning and losing bets over a period of four years. Whilst Mr B was initially provided with a deferred settlement facility of \$2 000, it is evident from Mr B's betting account records that in accordance with Rule 45 of 'The Rules', Sportingbet in its discretion allowed Mr B to exceed the deferred settlement facility amount of \$2 000 on numerous occasions.
28. On examining Mr B's betting history, it is also the view of the Commission that Mr B also accepted on many occasions that his account may exceed the original deferred settlement facility amount of \$2 000.
29. Following the sale of Sportingbet to William Hill in September 2015, Mr B continued to utilise his betting account as detailed at paragraph 16. The William Hill 'The Rules' contain similar terms and conditions as the Sportingbet 'The Rules'.
30. In particular, Rule 13 states that a client is deemed to have accepted 'The Rules' if he places a wager with William Hill. Rule 53 is similar to that of Sportingbet in that it states that:
53. *Where a Client has been granted a William Hill Facility...If William Hill, in its discretion, allows a Client to make a wager even though the William Hill Facility may be exceeded, the Client shall pay his/her resultant Account Balance when due.*
31. It is clearly evident from the pattern of Mr B's betting history that he continued to use his betting account following the sale to William Hill in a similar manner as he had when the account was operated by Sportingbet. On this basis, it is again the view of the Commission that Mr B continued to accept that his account may exceed the original deferred settlement facility amount.

Decision

32. In order for the Commission to determine whether the bets made were lawful, the Commission must look at the fundamental qualities of the betting transaction itself including examining whether the bet is one which is permitted by the Act and the terms and conditions of the bookmaker's licence which include the terms and conditions of agreements entered into between bookmakers and their customers.
33. Having reviewed the betting account of Mr B, it is the Commission's view that each of the bets made were ones permitted by the Act.
34. In addition, whilst Mr B's betting account often exceeded the initial deferred settlement facility amount, this was permitted by Rule 45 and 46 of Sportingbet's 'The Rules' and by Rule 53 of the William Hill 'The Rules'.
35. As a result and in accordance with section 85(1A) of the Act and for the reasons set out above, the Commission has determined that the bets are lawful.
36. It is the view of the Commission that pursuant to section 85(1) of the Act, William Hill may take proceedings for the recovery of moneys payable by Mr B on account of the lawful bets made and accepted.

Review of Decision

37. Section 85(6) of the Act provides that a determination by the Commission of a dispute referred to it under subsection (1) shall be final and conclusive as to the matter in dispute.



Andrew Maloney
Presiding Member

10 April 2018