

# NORTHERN TERRITORY RACING COMMISSION

## Reasons for Decision

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<b>Licensee:</b>	Tom Waterhouse (NT) Pty Ltd
<b>Proceedings:</b>	Pursuant to Section 85(4) of the <i>Racing and Betting Act</i> – Referral of Dispute to Racing Commission for Determination
<b>Heard Before:</b>	Mr Richard O’Sullivan (Chairman) Mr Philip Timney Mr Andrew Maloney
<b>Appearances:</b>	Ms Jodi Truman instructed by Mr Jamie Nettleton for Tom Waterhouse (NT) Pty Ltd  Inspector Mark Wood for the Director of Licensing
<b>By Telephone:</b>	Mr D, representing himself  Addisons: Mr Jamie Nettleton, Counsel for Tom Waterhouse (NT) Pty Ltd  Mr Anthony Waller, Tom Waterhouse (NT) Pty Ltd
<b>Date of Hearing:</b>	11 February 2014
<b>Date of Decision:</b>	2 April 2014

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## BACKGROUND

- 1) In August 2013 Mr Anthony Waller, Chief Operating Officer, Sportingbet referred a dispute to the Northern Territory Racing Commission (“the Commission”) on behalf of a subsidiary company, Tom Waterhouse (NT) Pty Ltd trading as TomWaterhouse.com (“Waterhouse”), relating to lodgement of proceedings in the Magistrates Court of Tasmania (“the Court”) by Mr D for the recovery of \$3,000.
- 2) In August 2013 Mr D had lodged in the Court a claim for a refund of an alleged unauthorised transaction plus costs against Waterhouse. The claim alleges that Mr D did not authorise the transfer of monies from his Suncorp bank account on 19 June 2013 into a client account opened in his name with Waterhouse.
- 3) Waterhouse subsequently in October 2013 lodged an application for a stay on the proceeding as a dispute over the matter had been referred to the Commission for adjudication. The stay was granted with the consent of Mr D who evidently agreed on the basis that the Commission could deal with the dispute promptly.
- 4) The matter is based on the transfer of \$3,000 from Mr D’s Suncorp account into a client account with Waterhouse. Mr D claims he did not authorise nor had any knowledge of this bank transfer which was through a BPay deposit on 19 June 2013. Bets were placed through the account from 21 June 2013 and

27 June 2013, with \$24.25 being the final account balance. Mr D claims that he has no knowledge of and did not authorise the opening of the account or the wagering activity which followed.

- 5) Following the matter being referred to the Commission for resolution by Mr Waller on behalf of Waterhouse, the Commission determined to conduct a Hearing into the matter.
- 6) Pursuant to Section 85 of the *Racing and Betting Act* ("the Act") a Bookmaker is able to refer a betting dispute to the Commission:

**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.*

## HEARING

- 7) In her opening address Ms Truman submitted to the Hearing that Mr D should be called upon to provide evidence that the disputed transaction, the transfer of \$3,000, from Mr D's Suncorp account into a betting account with Waterhouse and the subsequent betting on that account were unauthorised and fraudulent. She submitted that the allegations of Mr D were unproven and therefore the Commission should rule the transactions and bets were lawful.
- 8) Ms Truman advised that her client had sought and been granted a stay of proceedings in relation to a claim lodged in the Court for the reimbursement of \$3,000 plus costs against Waterhouse by Mr D.
- 9) Mr D responded by submitting to the Commission that he had undertaken action in the past to have unauthorised transfers of money from his bank accounts into Sports Bookmaker accounts reversed. He stated that this had occurred through the Commonwealth Bank and this was based on acceptance of information that he had suffered a takeover of his ID by person or persons unknown. He advised the Hearing that his website and his emails had been hacked.
- 10) Mr D informed the Commission that he could not submit documents to support that investigations had been carried out and banks had recognised that fraudulent transfers had occurred and therefore had re-credited his bank accounts for sums involved. He referred to specific instances contained in the Hearing Brief, supported by bank statements, of the Commonwealth Bank re-crediting his account following fraudulent transfers.
- 11) He submitted that Bookmakers may have acquired his identity details either directly or through a third party to enable this practice to occur.
- 12) It was also submitted during the Hearing that Mr D had lodged a claim against Tabcorp / Luxbet which was contested resulting in Police laying charges against Mr D for alleged fraudulent activity. Mr D had also successfully lodged a claim against Betezy in the Court for the return of \$5,000. He obtained orders for default judgement against Betezy who failed to appear in court and contest the matter.
- 13) Mr D advised that he was unable to provide documents from his banks, in this instance Suncorp, over his contact with them and whether they had advised of a

likely re-credit to his account or whether their advice was to pursue the merchant, i.e. Waterhouse. Mr D was queried over why he had not also dealt with Sports Bookmakers direct over his claims against them and he advised the Commission that he did not contact Bookmakers based on legal advice. He cited Legal Aid as providing the advice in relation to the Suncorp matter but was unable to provide any evidence of this advice when requested by the Commission to do so.

- 14) Ms Truman queried why relevant documentation, in support of past transactions and settlements with banks over what Mr D claimed were fraudulent and unauthorised transfers and activities in his name, was not able to be submitted before the Commission. Ms Truman submitted that the Commission in this instance should consider the testimony of Mr D as unpersuasive. She stated that at its heart Mr D's claims are founded on alleged unauthorised transactions from his accounts and the use of this money for the opening of an account with Northern Territory licensed Sports Bookmakers. In her submission Mr D had provided no link with this allegedly fraudulent activity to her client.
- 15) Ms Truman submitted that while Mr D had mentioned and provided some evidence of previous funds reversals, he had provided little or no details of how these matters were settled with no Deeds of Settlement or Court Orders provided. Additionally she submitted Mr D had provided no records of his contact with the bank and the outcome of their investigations. She queried the credibility of the claims that Mr D had sought documents from his bank (Suncorp) which were his documents from his account and which he claimed could not be obtained.
- 16) Ms Truman submitted that for the fraudulent activities to continue against Mr D's bank accounts, the account number, knowledge of the bank, personal details, login and password and other details would be needed to enable a transfer of money through BPay. She queried how numerous and unauthorised wagers took place and yet no money had been taken out of these Bookmaker accounts. Another coincidence she submitted was that the account opening and all wagers were conducted with the same IP address.
- 17) Ms Truman submitted that Waterhouse, her client, had no previous dealings with Mr D and there was no evidence before the Commission to link her client with knowingly being involved in fraudulent or unauthorised activity or setting up the accounts, depositing funds or placing bets. She added that all activity of Waterhouse was consistent with its licence obligations and relevant legislation.
- 18) Ms Truman advised that in opening Mr D's account the ID requirements had been met through ID identification being lodged through a VEDA verification system, adding credibility to the establishment of true client identity. Waterhouse was dealing with a bona fide account holder whose ID was established.
- 19) In closing she sought that the Commission determined that the transactions and bets placed were lawful and authorised and that her client did nothing wrong in accepting a deposit, opening an account and conducting activity through acceptance of bets with that account.
- 20) Mr D outlined to the Commission that someone must have been able to get onto the internet at the IP address in Hobart to undertake the activity, including the

transaction of bets. He indicated that the IP address in Hobart was the Tasmania Travel and Information Centre and he had not conducted activities from this site and had no knowledge of the transactions in question.

- 21) He advised the Commission that his concerns over the hacking of his accounts had resulted in his making contact with the Financial Ombudsman Service.
- 22) He admitted that in relation to action he has taken to recover monies from Luxbet that he had been charged by Police for alleged fraud over claims against Luxbet.

## **CONSIDERATION OF THE ISSUES**

- 23) The Commission has been asked by Waterhouse to determine whether bets placed on an account opened in the name of Mr D were lawful. Commissioners heard that there has been a history of claims by Mr D that due to the hacking of his personal details and bank accounts, money has been transferred from his accounts into client betting accounts with Sports Bookmakers.
- 24) Commissioners heard that in a number of these instances Mr D was able to secure a re-credit of the amounts from banks, specifically the Commonwealth Bank, after the betting activity had depleted the account balances.
- 25) On the day of this Hearing the Commission also heard a separate matter of a dispute between Mr D and Betchoice Pty Ltd T/A Unibet. It appears therefore that a pattern is emerging with Mr D lodging claims in the Courts in relation to what has become a history of alleged fraudulent and unauthorised transactions from his account into Sports Bookmaker accounts in his name.
- 26) Ms Truman has submitted that the chain of events leading to wagering with her client was enabled through Waterhouse following the normal procedures with the opening of an account. Money was transferred through BPay, ID was established through VEDA identification systems and wagering took place with the bets accepted by Waterhouse. The use of common IP address for these wagers and transactions would give added assurance to a Bookmaker that they were dealing with a singular and legitimate account holder.
- 27) In advising of and submitting the dispute to the Commission, Waterhouse is following the requirements of its Northern Territory Sports Bookmaker Licence Conditions where it bound to advise the Commission of legal action commenced against it for the recovery of monies and where the Act specifically provides for the lodgement of disputes with the Commission under Section 85 of the Act.
- 28) The creditability of Mr D's evidence is questioned, particularly where he has advised the Commission of reasons for not being able to provide relevant documentation. His reference to obtaining advice from Legal Aid in respect to contact with Sports Bookmakers and how to go about seeking recoveries of unauthorised transfers from his accounts, has also added to queries over the creditability of Mr D's evidence.
- 29) Commissioner Timney pointed out during Hearing that Legal Aid does not normally have the charter to provide advice on such matters and as no further supporting

evidence was provided to support Mr D's claim, the Commission is not confident that such advice was provided by Legal Aid in Tasmania.

- 30) The connection of Waterhouse with a series of allegedly fraudulent transactions is tenuous and indeed Mr D has referred to the possibility of the Bookmaker's involvement being conducted through a third party. The Commission attaches no credibility to this likelihood.
- 31) Waterhouse 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 has been verified through meeting VEDA identification requirements. The payment of the account deposit through BPay would be a regular practice with the opening of such accounts.
- 32) It is noted that the transactions in the account resulted in losses to the point where the account balances, which grew at one point to over \$7,000, had been whittled away through betting activity to \$24.25. At no time was there an attempt to transfer monies out of the wagering account to take advantage of winnings, particular when the account balance stood at over \$7,000. A hacker or fraudster would normally seek to gain financial advantage through their activity and in this case and in others cited throughout the Hearing, no monies had been withdrawn from the Bookmakers' accounts to fill the pockets of the alleged fraudster.
- 33) Mr D has sought to address the loss of money through lodging a claim in the Courts. The matter has been referred to the Commission to determine if the transactions and bets were lawful. The Commission has no supporting information or evidence before it indicating that the transfer of money from Mr D's Suncorp account into the Waterhouse client (Dimech) account and the subsequent wagering is unlawful or due to the improper actions of Waterhouse. Despite repeated requests that he do so, Mr D did not present any documents or evidence supporting his claim against Waterhouse or the allegation that Waterhouse had illegally accessed his account and transferred funds to the wagering account.
- 34) After detailed consideration of its own records, material contained in the Hearing Brief and evidence presented at the Hearing, the Commission is able to establish that:
  - Waterhouse is lawfully licensed in the Northern Territory as a Sports Bookmaker pursuant to Section 90 of the Act.
  - Through its licence Waterhouse is authorised to lawfully conduct wagering on racing and sports events.
  - The licence issued to Waterhouse authorises it to accept wagers of the type placed through the account of Mr D.
  - The account opening procedures and know your client requirements of the Licence Terms and Conditions approved by the Commission and the Rules and Regulations (also approved by the Commission) offered by Waterhouse have been complied with.
  - Through VEDA ID identification Waterhouse satisfied itself that it was transacting with Mr D.

- Mr D provided no substantive evidence that Waterhouse breached its licence conditions, the Act or its own Rules and Regulations in opening or conducting wagering transactions with the account.

In consideration of these facts the Commission determines that the bets placed by Dimech with Waterhouse were lawful.

## **DECISION**

35) The Commission finds that Waterhouse has adopted the required procedures in relation to the receipt of money into client accounts, the opening of that account and the wagers placed subsequent to that account opening. It therefore deems the wagering activity in the name of Mr D between the dates of 21 June 2013 and 27 June 2013 to be lawful pursuant to Section 85(1)(A) of the Act.



Richard O'Sullivan  
CHAIRMAN

2 April 2014