

Northern Territory Racing Commission

Reasons for Decision

Licensee:	Sportsbet Pty Ltd
Complainant:	Mr L
Proceedings:	Dispute Relating to Betting – Section 85 of the <i>Racing and Betting Act</i>
Commission:	Mr Richard O’Sullivan (Chairman)

Background

1. Mr L, an account holder with licensed Sports Bookmaker Sportsbet Pty Ltd ('Sportsbet'), on 17 July 2012 lodged a complaint against Sportsbet in relation to payment of a winning quadrella and the subsequent reclaim of monies from his account.
2. On 16 July 2012 Mr L placed numerous bets through his Sportsbet account, including an outlay of \$108.00 on a quadrella at the thoroughbred races at Queanbeyan. This quadrella covered races 4, 5, 6 and 7 of the racing program.
3. Mr L had included all four winners (horse numbers 4, 10, 12 and 4) in his combinations for which he outlaid \$108.00. His outlay was for one unit of the quadrella given the number of combinations placed. Sportsbet announced a dividend of \$10,451.40 for a winning unit on the quadrella. It is evident, however, that rather than the \$10,451.40 being placed into Mr L's account, Sportsbet entered a dividend of \$22,174.74, ie an amount of \$11,615.34 greater than the stated odds.
4. Mr L's complaint is that when his account was credited with the \$22,174.74, he reacted by placing larger wagers than he would have placed if it were not for the large sum added to his account. Sportsbet subsequently readjusted his balance cancelling what was evidently an overpayment and allowing only the official quadrella return amount of \$10,451.40 to remain in his account. At the time the re-adjustment was made, the reduction to the winning quadrella payment put Mr L's account into a deficit of \$1,261.42. Mr L's claim is that the additional amount paid into his account in error resulted in his wagering and losing higher amounts than he would have otherwise wagered, thereby compounding wagering losses for the remaining bets on 16 July 2012 and 17 July 2012.
5. In response Sportsbet claim that Mr L was paid double the quadrella dividend '*due to a manual operator error*'. Sportsbet also states that Mr L increased wagers following the larger payment for the winning quadrella in some way is evidence that Mr L was aware that the monies paid in were in error.
6. Sportsbet also advised of the following rule (Rule 25.1) which they submit is relevant to the complaint under consideration. '*Sportsbet reserves the right to resettle an event where an error has occurred with the resulting process or the dividends declared. Where the resettlement is carried out 12 hours or more after the initial settlement, customers will be notified by email.*' This Rule was operative

at the time and has since been replaced on 1 October 2012 by Rules 69 – 72 as follows:

69 Sportsbet makes every effort to ensure that no errors are made in prices offered or bets accepted on an Account. However, we reserve the right to correct any obvious errors and to void any bets where such has occurred. Should this occur, Sportsbet will endeavour to contact the Member by email or telephone.

70 If the Website erroneously allows a Member to place a bet after a sports or racing event has commenced or been completed, the Member agrees that Sportsbet may retrospectively void the bet and demand repayment where any winnings from the void bet have been withdrawn from the Member's Account. In such an instance, a Member agrees that Sportsbet is entitled to issue the Member with an invoice in respect of the amount of the winnings paid in error, and that the invoice shall be evidence that the amount is immediately due and payable. Sportsbet may request documents from a Member to assist in investigating such errors.

71 If a Member has been paid winnings in error, the Member agrees that Sportsbet will issue the Member with an invoice in respect of the winnings paid in error, and that the invoice shall be evidence that the amount is immediately due and payable.

72 Sportsbet reserves the right to cancel, or recalculate a bet made by a Member at any time without notice where a Member has received funds in error and invested those funds on a bet or multiple bets for an event or multiple events yet to commence. In circumstances where a Member has invested an amount of money on a bet that is greater than the total amount of money owing to Sportsbet for an event or multiple events yet to commence, cancellation arrangements prior to the event(s) commencing. If Sportsbet cannot contact the Member prior to the commencement of the event(s), Sportsbet may at its discretion let the bet stand, or cancel the bet and/or recalculate the stake investment of a bet or multiple bets to recover funds paid in error.

7. To mitigate the losses incurred by Mr L after the over payment of his winning quadrella, Sportsbet advised they reversed a debt of \$1,261.42 in Mr L's account and subsequently as a goodwill gesture provided five free bets of \$250.00 each 'in apology for the late resettlement, all of which Mr L has redeemed / used'. Subsequently, following further investigation by the Commission into whether they constituted settlement or a settlement after Sportsbet advised the five bet sums were only \$50.00 each, totalling \$250.00. Further, Sportsbet advised that the \$250.00 would have been indicated as a free bet(s) on Mr L's internet site account somewhere to the top right hand side of the screen.

Consideration of the complaint issues

8. Although not strictly a wagering dispute, the Commission has nonetheless determined to investigate the matter and frame a Decision in the interest of providing guidance should similar complaints arise or be lodged in the future.
9. Mr L has presented his view of the events through an email to the Gambling Disputes email address of the Office of the Manager Racing. His claim is that as a dividend of \$22,174.74 appeared in his account on the afternoon of 16 July 2012, he continued to bet on line that evening and the following morning. He became aware that Sportsbet had redeemed, what can be termed an overpayment for the

quadrella, on 17 July 2012 when he was evidently paid short on a winning bet and he then contacted Sportsbet by telephone and was informed he would get a return call.

10. He claims his account around this time went from around \$12,000.00 in credit to approximately \$1,200.00 in arrears. He was informed in this return telephone call that Sportsbet had made a mistake the day before and had just readjusted the amount prior to this return call.
11. Mr L's claim is that he would not have placed the bets he did and for the amounts he wagered if he had known the money was not his. He has stated in the email of 17 July 2012 *'the end result is today I am done \$10,000.00 on money that I would not normally have spent if I had known it was not mine'*.
12. Sportsbet have responded by stating that their rules for account holders provide for resettlement of accounts where overpayments have been made. However, attached to that rule is the condition where such an adjustment is made twelve or more hours after the erroneous payment, that customers will be notified by email.
13. Mr L was not contacted by email but rather he initiated contact with Sportsbet through a telephone call more than the twelve hours after the initial incorrect payment.
14. Sportsbet have claimed that Mr L was paid double the quadrella dividend due to a manual operator error. This statement is not entirely correct as a doubling of the dividend payment of \$10,559.40 would have yielded \$21,118.80 into Mr L's account, whereas he received the sum of \$22,174.40.
15. In relation to the increased wagering activity and, on average, larger amounts by Mr L following the deposit of the windfall amount into his account, Sportsbet attribute this to Mr L realising the error and taking advantage. This is not necessarily a fair portrayal of someone who has increased their betting activity as they have more money to play with through their account. What is not known is whether Mr L was aware that the amount paid into his account for the winning quadrella was an overpayment to which he was not entitled, ie that the payment of \$22,174.74 was an error and therefore Sportsbet would seek to rebalance his account to redeem the overpayment.
16. The Commission has been provided with the Client Betting Statement for Mr L covering his transactions on 16 and 17 July 2012 and also provided with what appears to be a betting chronology for Mr L for 15 and 16 July 2012. It is evident that the Client Betting Statement provided is not a contemporaneous listing of the client's wagering activity and it appears the statement has been adjusted following events to only reflect the correct dividend payment, not on 16 July 2012 when the wager was placed, but it is shown as a lodged bet with the correct (and adjusted) winning amount on 17 July 2012. This Statement contains no record of the overpayment which is the subject of this complaint before the Commission. A separate betting chronology does show the wager and winnings on 16 July 2012 at 4.41pm, however this Statement does not clearly indicate the inclusion of the overpayment of the winning quadrella on which \$22,174.74 was originally paid.
17. This matter presents the Commission with two major issues to resolve: firstly the client complaint over the reclaim of the overpayment and secondly the compliance issues directed to Sportsbet where procedures of notification under their rules were

not followed and also whether proper keeping of an audit log referred to as Client Betting Statement has been carried out.

18. In relation to the overpayment it is generally accepted that where funds are unearned or wrongly deposited, the paying authority has an entitlement to redeem such erroneously paid monies. It can be considered that Mr L was unjustly enriched and therefore the payer is entitled to restitution resulting in Mr L giving up his gain. It is clear to the Commission that the payment of \$22,174.74 was a mistaken payment entitling Sportsbet to undertake recovery action.
19. The Melbourne University Law Review *Birks; Peter -'Equity, Conscience, and Unjust Enrichment [1999]'* discusses the topic of unjust enrichment and restitution:

'A central example is a mistaken payment. Suppose that I pay you \$1,000 in the mistaken payment. Suppose that I pay you \$1,000 in the mistaken belief that I owe it to you. Provided that my claim does not get caught up in the finer tuning, I will be entitled to restitution from you. You have been enriched at my expense, and there is, in the mistake, an 'unjust factor', a factual reason why you should make restitution.'

'For example, if money is paid over on a specified basis, and the basis fails, restitution must likewise follow.'

'The literature has in turn produced the cases, and one court after another has accepted that the common law does indeed have a law of restitution of unjust enrichment.'

20. Sportsbet are therefore entitled to reclaim the overpayment of monies. Sportsbet's rule operating at the time (Rule 25.1). *'Sportsbet reserves the right to resettle an event where an error has occurred with the resulting process or the dividends declared. Where the resettlement is carried out 12 hours or more after the initial settlement, customers will be notified by email.'* However, Sportsbet did not notify Mr L by email despite readjustment being made more than twelve hours after the winning payment. It appears Mr L became aware that something was amiss when he noticed short payment of a winning bet on 17 July 2012 and telephoned Sportsbet. In a return telephone call Sportsbet then advised Mr L of the overpayment and on the evidence presented monies were then taken out of his account leaving his balance in deficit.
21. Sometime on 17 July 2012 when the balance readjustment for the overpayment of the winning quadrella at Queanbeyan was made, Mr L's account was in deficit to the tune of \$1,261.42. Mr L became aware of this deficit at or around the time of a return telephone call from Sportsbet over the error. Mr L has complained that his wagering activity and the amounts wagered for the preceding period (over approximately twenty-four hours) was based on the premise of having adequate funds in his account. He therefore claims he has incurred undue betting losses.
22. Sportsbet have offered some recompense or mitigation in acknowledgement of these losses, to a degree, through rebalancing his account and eliminating the \$1,261.42 deficit and by providing him with a number of free bets to the sum of \$250.00. The Commission is advised that Mr L has utilised or redeemed these free bets. However, it is not clear whether these free bets were offered in settlement or accepted by Mr L as a settlement for his claim. Clients of bookmakers regularly receive free bets of around \$50.00 in value and the offer of a total of \$250.00 might not be considered unusual.

23. Regardless of the status of the free bets, it is the Commission's view that Mr L is not entitled to any further benefit from Sportsbet following its redemption of the overpaid winnings.
24. However, the whole notification process and record keeping process of Sportsbet in this instance gives rise to serious concerns. The Commission has attempted to retrace the wagers and count balances through, in particular, the Client Betting Statement. This Statement does not identify the placement of or the payment for the winning quadrella on the day it occurred but rather presents the quadrella bet and correct payment (albeit an adjusted payment) in the Statement account of 17 July 2012.
25. This brings to question the account maintenance and audit log procedures of Sportsbet.

Decision

26. The Commission determines that Mr L received monies for a winning quadrella at the Queanbeyan Races on 16 July 2012 and that he was not entitled to the overpayment and that Sportsbet has a legal right to recover the value of the mistaken payment.
27. The Commission expresses concern that the procedures to be followed under former Rule 25.1 in this instance were not followed with notification by email (or other means) to a client who had received payment in error. Additionally the Commission expresses concern over the lack of contemporaneous record keeping over the transactions made by Mr L in his account during the period 16 and 17 July 2012.
28. The Commission puts Sportsbet on notice that it intends to further investigate compliance anomalies with regard to adherence to its rules and with regard to a cogent, contemporaneous and accurate audit trail of client betting activity.

Richard O'Sullivan
Chairman

12 December 2012