

TASMANIAN RACING APPEAL BOARD

Appeal No 14 of 2007/08

Panel: Mr R Pearce (Chairman) **Appellant:** Mr B Hill
Mr L Sealy
Ms P Murphy

Appearances: Mr B Hill
Mr N Males

Heard at: Hobart **Date:** 24 January 2008

REASONS FOR DECISION

Section 28 (1) (a) of the *Racing Regulation Act 2004* (“the Act”) provides that a person may appeal to this Board if the person is “...*in dispute with a bookmaker regarding the placement, acceptance, payment, non-payment or amount of a bet.*”

On 1 January this year the appellant, Mr Barry Hill, attended a pacing meeting conducted by the St Mary’s Pacing Club at St Mary’s. The respondent, Mr Nigel Males, who is a registered bookmaker, was present and was lawfully fielding at that meeting. He was also lawfully fielding on at least two other race meetings being held interstate. One of those meetings was being held at Morphettville in South Australia. It is common ground that Mr Hill placed, and that Mr Males accepted, a win bet in an amount of \$200 at odds of 5 to 1 on a horse in race number 7 at Morphettville (“Race 7”). The horse was, appropriately enough, called “Under the Radar”.

There is no dispute that “Under the Radar” was the winner of Race 7. However, Mr Males has refused to pay out on the bet because he contends that, at the time at which the bet was made, Race 7 had finished. Mr Males has offered to refund Mr Hill’s stake of \$200 but Mr Hill has not accepted that offer and has appealed to this Board.

In taking the position which he does, Mr Males relies upon regulation 10 of the *Racing (Bookmaker Betting) Regulations 2004* (“the Regulations”). That regulation relevantly provides as follows;

“A bet is void if –
(a) ...
(b) it is made after the relevant race has been run...”

According to regulation 4 of the Regulations, the term “made”, when used in relation to a bet means “*the placement of a bet by the bettor and the acceptance of the bet by a bookmaker.*” Neither the Act nor the Regulations define when a race “has been run”, but giving those words their ordinary and natural meaning, we conclude that, for the purposes of regulation 10 (b) a race has been run when any competitor to which the bet in question relates has passed the winning post.

In our view therefore, a bet is void by reason of regulation 10(b) if that bet is accepted by a bookmaker at any time after the time when any competitor to which that bet relates has passed the winning post.

That being so, the only question for this Board on this appeal is: *Had "Under the Radar" passed the winning post when Mr Males accepted Mr Hill's bet?*

It is apparent that the answer to that question need not depend on the state of knowledge of either Mr Males or Mr Hill. Clearly if either man "knew" the result of the race in question when the bet was accepted, it would necessarily be the case that the race must have been run and the bet would be void. Equally, if the race had in fact been run before the bet was accepted but both men were unaware of that fact, the bet would, by virtue of regulation 10(b), nevertheless, be void.

The following matters are either common ground between the parties or are not disputed:

- a) During the course of the afternoon descriptions of interstate races, including those at Morphettville, were broadcast at the St Mary's meeting over the public address system. However, as there was a race in progress at St Mary's at around the same time as Race 7 was being run, no description of Race 7 was publicly broadcast at the St Mary's meeting.
- b) On a number of occasions during the course of the afternoon Mr Males accepted bets from Mr Hill and from others after the commencement of the race to which those bets related.
- c) Race 7 was due to start at ten minutes past five o'clock in the afternoon (AEDT). In fact, the race commenced thirteen seconds after that time.
- d) Race 7 was run over a distance of 1050 metres in a time of one minute and two tenths of a second and "*Under the Radar*" finished in first place.
- e) The betting ticket issued to Mr Hill in respect of the disputed bet bears the time stamp "17:10:56" or ten minutes and 56 seconds past five o'clock in the afternoon and was the second-last betting ticket issued by Mr Males in respect of Race 7.
- f) The last betting ticket issued by Mr Males on Race 7 was in respect of a win bet on "*Under the Radar*" in an amount of \$10 and bears the time "17:11:08" or eleven minutes and eight seconds past five o'clock in the afternoon.

It may be deduced from paragraphs c) and d) above that "*Under the Radar*" passed the winning post in Race 7 at eleven minutes, thirteen and two tenths of a second past five o'clock in the afternoon. Thus, if the time stamps are correct, the betting ticket issued to Mr Hill was issued 17.2 seconds before the race was run and the last betting ticket issued by Mr Males on Race 7 was issued 5.2 seconds before the race was run.

If that were the whole of the evidence it would follow that the disputed bet would not be void by reason of regulation 10 (b).

However, that is not the whole of the evidence. In particular, Mr Males contended and sought to establish that the time stamp shown on all betting tickets issued by him that day were inaccurate in that the computer-controlled clock which generates the time stamps was about two minutes and nineteen seconds behind Eastern Standard Daylight Time. Clearly, if that contention were correct, it would follow that the betting ticket issued to Mr Hill in respect of the disputed bet was issued about two minutes and nineteen seconds after the time indicated by the time stamp; that is, at approximately 13 minutes and 15 seconds after five o'clock - or just over two minutes after Race 7 had been run.

It is therefore necessary to consider the evidence in support of the contention that the time stamps shown on betting tickets issued by Mr Males on that day were inaccurate together with other evidence which bears more generally upon the question of the time at which the disputed bet was made.

Mr Hill gave evidence that he had travelled to the meeting at St Mary's by bus together with a number of other persons, some of whom were known to him. He and a group of friends had stationed themselves about ten metres from Mr Males' betting stand. During the course of the afternoon Mr Hill said he made a number of bets with Mr Males on both local and interstate races, mostly in amounts of \$50 and possibly, in one or two cases, in an amount of \$100. Mr Hill says that he listened to a description of the commencement of Race 7 on a portable radio which someone in his group had brought to the meeting. He said that he had been following "*Under the Radar*" for some time and knew it to be a poor starter. He says that having heard that "*Under the Radar*" had made a good start, he walked the approximately ten metres over to Mr Males stand, checked the odds and decided to place the disputed bet. He was duly issued with a betting ticket. He then walked back to his friends and, he says, listened to the concluding stages of the description of the race on the radio. Mr Hill says that while he was waiting for confirmation of "correct weight" one of Mr Males' employees approached him and said to him "*He's not paying you*". After confirmation of 'correct weight' Mr Hill returned to Mr Males' stand to collect his winnings but was told that the bet would not be paid because it had been made after the race was over. Mr Hill disputed this. Mr Hill denied knowing anything about the final bet on Race 7 which was placed about 12 seconds after his own and about the identity of the person who placed that final bet.

Mr Hill also called evidence from a Mr Ross Ayres. The general burden of Mr Ayres' evidence was that he considered that Mr Males' bookmaking operations at the St Mary's meeting to have been badly run. We did not find his evidence to be of any assistance in resolving the appeal.

Mr Males' evidence was that he was in the Secretary's room "getting places" from the Tote website when the result of Race 7 appeared on the screen of the computer he was then using. He says that prior to that time he was unaware that Race 7 had even commenced as throughout the day he had been relying on the on-course broadcasts of race descriptions for such information. As noted earlier, no description of Race 7 was publicly broadcast at the St Mary's meeting and Mr Males did not have access to a radio or television broadcast of the race. Mr Males says that he immediately left the Secretary's room and hurried towards his betting stand which was about thirty metres away. His intention was to inform his employees that Race 7 had been run. As he approached his stand he says that he saw two men apparently in the process of placing bets. He attempted unsuccessfully to attract the attention of his staff and by the time he arrived at his stand the two men were walking away. Having established

that both men had just placed bets on Race 7 Mr Males says he called out to them that they were “not on” but got no response.

(We should say at this point that Mr Males gave evidence that he believed that one of the two men whom he saw walking away from his stand was Mr Hill. If that were the only evidence of that fact we would be reluctant to make a positive finding about that. However, Mr Males’ betting sheets clearly demonstrate that Mr Hill’s disputed bet was the second last made with Mr Males on Race 7. The last bet, a win bet in an amount of \$10, was made twelve seconds later. In all of the circumstances, we are satisfied that Mr Hill was one of the two men seen by Mr Males walking away from his stand.)

Mr Males then went to the Stewards’ office and informed the Stewards of his intention not to honour either of the bets in question. Having done so, he returned to his stand. Shortly afterwards and following the declaration of ‘correct weight’ two men approached Mr Males’ stand to claim their winnings. Mr Males informed both men that he would not honour either bet because the race was over when the bets were placed. According to Mr Males, one of the men who had bet \$200 (and must have been Mr Hill) disputed this. It is not clear what if anything was said by the other man at that time but, according to Mr Males, he later “admitted” to Mr Males that he had known the result of Race 7 at the time that he had placed the bet and accepted a refund of his \$10 stake.

Mr Males also called Mr Terry Collins to give evidence. On the day in question Mr Collins was employed by Mr Males and was “in charge of mainland races”. Apart from corroborating a number of uncontentious matters, Mr Collins said that he remembered Mr Males approaching him and telling him that Race 7 was over. Mr Collins told us that he was until then unaware of that fact. He said that he told Mr Males “*I just took two bets.*” He said that he then went and found Mr Hill and told him that his bet was ‘not on’, to which Mr Hill replied, “*We will see about that*”.

Mr Males also sought to tender a letter from a Mr David Woods but was not in a position to make Mr Woods available for cross-examination. The Board advised Mr Hill that in those circumstances he was not obliged to consent to the letter being tendered to us. After some discussions between the parties, Mr Hill agreed to the tender of the letter on the basis that a part of it was expunged. An amended document was prepared and tendered by consent. The relevant part of the letter, as amended, is in the following terms;

“I was employed as a staff member by Nigel Males and my primary task was to undertake and facilitate bets from the general public on the mainland meetings held on 01 Jan 08. Towards the end of the day’s proceedings, I noticed a gentleman hurrying towards our general direction and place a \$200 wager on a horse (Under the Radar) that was running in race 7 at Morphettville. Although I did not facilitate this wager, the gentleman was familiar with myself and other staff members as he had previously wagered with us and to my memory in \$50.00 amounts on various races throughout the day. In addition another gentleman placed a smaller \$10.00 wager with me on the same horse (Under the Radar) at approximately the same time. The two punters appeared to be together.

As this wager was being made, I noticed Mr Males move quickly towards our location and inform us that race 7 at Morphettville was over....”

In several important respects, the above accounts appear to be irreconcilable.

If Mr Males' evidence that he saw the result of Race 7 on a computer in the Secretary's office is correct, then it must be the case that, at that time, Race 7 had been run. It necessarily follows that if Mr Males saw Mr Hill and the other unknown punter in the act of placing their bets as Mr Males made his way to his betting stand, those bets must have been made after Race 7 had been run. The contents of Mr Woods' letter, although perhaps a little imprecise and not tested by cross-examination, tend to confirm that the disputed bet was made while Mr Males was making his way from the Secretary's office.

On the other hand, if Mr Hill is correct and he was able to listen to the radio broadcast of the description of the closing stages of Race 7 after he had made the disputed bet, then the disputed bet must have been made before Race 7 had been run. But that would only necessarily be so if the broadcast of the description of race 7 which Mr Hill heard was "live". If, for example, the broadcast of Race 7 from Morphetville was not live but was delayed, the accounts given by all witnesses might possibly be reconciled with each other.

With this in mind, the Board caused enquiries to be made of TOTE Sport Radio. TOTE Sport Radio is owned and operated by TOTE Tasmania and broadcasts radio descriptions of racing events throughout Tasmania. Apparently, as a matter of course, TOTE Sport Radio retains recordings of its broadcasts and was able to provide the Board with a recording of part of its broadcast on the day in question. The parties were advised that the Board had obtained a copy of the recording and were given an opportunity to make submissions about its contents.

The recording reveals that while a live description of race 7 at St Mary's was being broadcast, a male voice interjects to say, "*racing Morphetville*". At the conclusion of the description of race 7 from St Mary's another voice is heard to say, "*Check those shortly. Here's the replay in Adelaide.*" Then follows a description of Race 7.

The elapsed time between the interjection, "*racing Morphetville*" and the commencement of the replay of the description of Race 7 is approximately 35 seconds. Thus, and assuming the words "*racing Morphetville*" were broadcast at or about the time of the actual commencement of Race 7, it would appear that the description of Race 7 which was heard by Mr Hill, was not 'live' but was delayed by about 35 seconds.

What is more, the description of Race 7 makes no mention of "*Under the Radar*" until at least 20 seconds after the commencement of the race at which time its position in the field was about third from last.

If, as he says, Mr Hill listened to the commencement of the broadcast of the description of Race 7 and satisfied himself that "*Under the Radar*" had made a good start before he decided to place the disputed bet, then, allowing for the approximately 35 second delay in the broadcast and the 20 second delay from the commencement of the race until the first mention of "*Under the Radar*", Mr Hill would have had about five and at best, no more than about ten seconds within which to walk the ten metres to Mr Males' stand, check the odds and place his bet before Race 7 had in fact been run.

Given these circumstances and the evidence of the other witnesses which is referred to earlier in these reasons, we consider that it is most unlikely that, as a matter of fact, Mr Males had accepted the disputed bet before Race 7 had been run. That of course is not to say that Mr Hill

knew the result of Race 7 when he placed the disputed bet. As we explained earlier, Mr Hill's (and for that matter, Mr Males') knowledge about that matter is largely irrelevant. The only relevant issue is whether Race 7 had in fact been run at the time at which the disputed bet was accepted by Mr Males. We are satisfied that it had.

Accordingly, we find that by virtue of regulation 10 of the *Racing (Bookmaker Betting) Regulations 2004*, the disputed bet is void.

We should also add that after the conclusion of the hearing of oral evidence we called for and received written submissions from the parties concerning certain calculations in relation to the actual starting and finishing times of various races on which Mr Males was fielding on 1 January 2008. We did this because, as noted earlier, Mr Males had asserted that the clock in his computer system was slow by over two minutes. In his written submissions to the Board Mr Males purported to demonstrate that his assertion was correct by making comparisons between the times recorded by his computer as being the time at which the last bets on various different races was recorded as having been made. However, those comparisons appeared to us, in many instances, to depend largely upon an assumption those last bets were accepted at (or in some cases after) the actual start time of the races in question.

Having considered those submissions carefully, we record that we were unable to make any finding about the accuracy or otherwise of the clock in Mr Males computer. In the event however, we have not found it necessary to make any such finding. But we would venture to suggest that Mr Males and other bookmakers take steps to ensure the accuracy of the times shown on betting tickets provided to punters and on the betting sheets provided to stewards. The reason for this, as this case demonstrates, is obvious.

We also record that at the conclusion of the hearing on Thursday 24 January 2008, Mr Males, in our presence, paid \$200 to Mr Hill as a refund of the stake for the disputed bet. Accordingly, there is no need for us to make any direction in that regard.

We direct that Mr Hill's deposit be refunded to him in full.

DATED: 28 February 2008.