



Your Ref:

Our Ref:

HAM:MQ:TP:CIRC011012

Level 5, 332 St. Kilda Road
Melbourne Victoria 3004

Correspondence to
PO Box 7420
St. Kilda Road Post Office
Melbourne 8004

CIRCULAR TO CREDITORS AND ACCOUNT HOLDERS

Telephone (03) 9645 7244
Facsimile (03) 9645 7266

Email: bc@bentcogle.com.au
Web: www.bentcogle.com.au
ACN 005 222 775
ABN 63 691 294 478

Dear Sir/Madam

RE: SPORTS ALIVE PTY LTD
(IN LIQUIDATION)
ACN 069 087 332 - ABN 49 069 087 332 (the company)
Formerly Trading At Level 1, Thoroughbred Park Canberra Racecourse,
Randwick Road, LYNEHAM ACT 2602, and
Level 1, 552 City Road, SOUTH MELBOURNE VIC 3205

I refer to my recent circulars dated 6 August and 4 September 2012.


As you will recall, I have issued an originating process in the Supreme Court of Victoria seeking directions in respect of funds held in various term deposit accounts.

The matter was listed for hearing before Justice Ferguson on 10 October 2012. I am now advised by the Court that the matter will be heard before Justice Robson, and a new hearing date is being scheduled. I will notify creditors of the new hearing date as soon as possible.

Please find attached copies of affidavits filed by the ACT Gambling and Racing Commission (GRC) with regards to this matter.

Please continue to monitor the website, www.bentcogle.com.au, for all future correspondence.

DATED this 1st day of October 2012.


HAMISH MacKINNON
LIQUIDATOR

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL & EQUITY DIVISION
COMMERCIAL COURT
CORPORATIONS LIST

IN THE MATTER OF SPORTS ALIVE PTY LTD
(ACN 069 087 332) (IN LIQUIDATION)

No. S CI 2012/04506

HAMISH ALAN MACKINNON and KEITH LAURENCE SUTHERLAND (in their
capacity as liquidators of SPORTS ALIVE PTY LTD
(ACN 069 087 332) (IN LIQUIDATION))

Plaintiffs

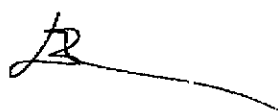
Date of Document 18 September 2012
Filed on behalf of: ACT Gambling and Racing Commission
Contradictor

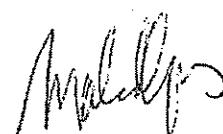
Prepared by:

ACT Government Solicitor DX 5602 CANBERRA
Level 5, 12 Moore Street Tel: (02) 6207 0634
CANBERRA ACT 2601 Fax: (02) 6207 0650
Per: Sky Sim Ref: 620368

On 18 September 2012, I, Malcolm Gray of Level 2, Canberra Nara Centre, 1 Constitution Ave, Canberra in the Australian Capital Territory solemnly affirm and say as follows:

1. I am the Chairperson of the ACT Gambling and Racing Commission (Commission), the contradictor in these proceedings.
2. The Commission was established under section 5 of the *Gambling and Racing Control Act 1999* (the Control Act).
3. The functions of the Commission, amongst other things, are to administer the gaming laws and to control, supervise and regulate gaming in the Australian Capital Territory (section 6(1)(a) and (b) of the Control Act).
4. The *Race and Sports Bookmaking Act 2001* (the RSB Act) is a "gaming law" under section 4 of the Control Act.

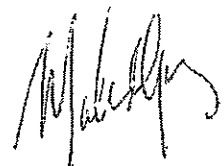


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5. The Commission, amongst other things, must issue a sports bookmaking licence under section 26 of the RSB Act upon being satisfied as to the matters prescribed in section 26(2) of the RSB Act and subject to any conditions which the Commission considers appropriate for the proper conduct of sports bookmaking and in the public interest pursuant to section 27 of the RSB Act.

Sports bookmaking licence

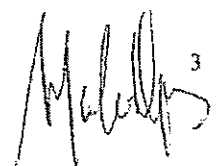
6. Under the *Bookmakers Act 1985* the Bookmakers Licensing Committee of the former ACT Bureau of Sport, Recreation and Racing issued a Sports Betting Bookmakers Licence to Sports Alive Pty Ltd (in liquidation) (**Sports Alive**) under its former name, City Index (Australia) Pty Ltd, for the period 9 March 1996 to 8 March 2011. A copy of that licence is **annexed and marked 'A'**.
7. In 2001 the *Bookmakers Act 1985* was repealed and replaced with the RSB Act.
8. Pursuant to s 99 (3) (now repealed) of the RSB Act, a licence in force under the *Bookmakers Act 1985* immediately before its repeal is taken to be an equivalent licence under the RSB Act (**equivalent licence**).
9. On 25 July 2002 the Commission issued an amended licence to Sports Alive to reflect a change of name to Sports Acumen Pty Ltd. A copy of that licence is **annexed and marked 'B'**.
10. On 21 April 2009 the Commission issued an amended licence to Sports Alive to reflect a further change of name to Sports Alive Pty Ltd. A copy of that licence is **annexed and marked 'C'**.
11. S 9 of the *Race and Sports Bookmaking Regulation 2001*, as in force on 7 September 2001 modified the RSB Act by inserting s 99A, which provided that an equivalent licence continues for 6 months after the repeal of the *Bookmakers Act 1985* (the **modifying regulation**).
12. S 201 of the RSB Act, as in force on 13 December 2011, provides that despite the modifying regulation, an equivalent licence continues in force for all purposes until the end of 7 March 2017 (the **amending legislation**).



13. Accordingly, pursuant to the amending legislation Sports Alive currently holds a sports bookmaking licence under the RSB Act which is in force until 7 March 2017, unless cancelled or surrendered earlier.
14. An ASIC extract of Sports Alive dated 26 September 2011 is **annexed and marked 'D'**.

Reporting and representations made by Sports Alive under the rules for sports bookmaking

15. As the holder of a sports bookmaking licence, Sports Alive was and is required to comply with the RSB Act and rules made under it including, relevantly, the rules with respect to record keeping and audit requirements made under the *Race and Sports Bookmaking (Rules for Sports Bookmaking) Determination 2005 (No 4)*, D12005 – 261 (**the Rules**).
16. In compliance with rule 4.3, by letter dated 6 June 2003, Sports Acumen as it was then, advised the Commission of two segregated accounts. NAB Account 66 126 9998 was their 'active Segregated Account' and NAB Account 47 241 6135 was their 'term deposit account'. A copy of this letter is **annexed and marked 'E'**.
17. In compliance with rule 2 of the Rules Sports Alive provided to the Commission financial reports and statements. Sports Alive also reported to the Commission "Change in Customer Balances" with respect to the total amount of "segregated funds" held in segregated banks accounts under rule 4 of the Rules and advised the Commission each calendar month of the total amount of segregated funds held by it in segregated bank accounts identified by Sports Alive in its reports. **Annexed and marked 'F'** are the financial reports for the 2010-2011 financial year.
18. In particular, Sports Alive reported to the Commission its financial statements as at 30 June 2011 being the last financial statements reported by it to the Commission. The "Change in Customer Account Balances" as at 30 June 2011 reported a total amount of segregated funds in the sum of \$1,178,935.10 held in the following segregated bank accounts:



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- a) Punters bank account 1 (NAB Account No. 87-198-5642)
- b) Punters bank account 2 (NAB Account No. 66-126-9998)
- c) Punters bank account 3 (NAB Account No. 82-752-2712)
- d) Punters bank account 4 (NAB Account No. 16-730-5455)
- e) Punters bank account 5 (NAB Account No. 17-292-2802)
- f) Term deposit (BOQ Account No. 2144-7944)
- g) Term Deposit (BOQ Account No. 2144-8895)
- h) Term Deposit (NAB Account No. 17-482-9249)
- i) Neteller (No account reference provided)
- j) Moneybookers 1 (Customer ID 6014250)
- k) Moneybookers 2 (Customer ID 6014340)

(the segregated bank accounts).

19. Details provided by Sports Alive to the Commission with respect to the segregated bank accounts included three term deposits being:

- a) a term deposit with the Bank of Queensland (BOQ), Account No. 21447944 in an amount of approximately \$250,000)
- b) a further term deposit with the BOQ, Account No. 21448895 in an amount of approximately \$300,000, and
- c) a third term deposit with the National Australia Bank (NAB), Account No. 17-482-9249 in an amount of approximately \$260,000 (the term deposits).

20. Sports Alive has acknowledged in an enquiry made to it by a customer of the requirement in Rule 4 to hold punters' betting money in segregated accounts and has described funds as "segregated funds". For example, annexed and marked 'G' is a copy of an email exchange between Sports Alive and a customer where,




in response to the question “do you maintain client funds in a separate trust account” the Sports Alive’s customer service representative states “Yes – we maintain a number of segregated funds accounts – including term deposits”.

Winding up of the Sports Alive

21. At a meeting of members of Sports Alive convened on 26 August 2011 it was resolved that Sports Alive be wound up voluntarily in accordance with the *Corporations Act 2001* (Cth) relating to a creditors’ voluntary winding up and that the Liquidators be appointed joint and several liquidators. A minute of that meeting is **annexed and marked ‘H’**.
22. On 1 September 2011, the Liquidators issued a ‘Notice to Account Holders’ indicating that funds held in ‘various term deposits’ had been pledged or claimed as security for various debts of Sports Alive. A copy of that notice is **annexed and marked ‘I’**.
23. On the same date the Liquidators issued a ‘form 509 – Summary of Affairs’ listing at part 2 ‘assets subject to specific charges’ in the amount of \$826,000. That form is **annexed and marked ‘J’**.

Correspondence regarding status of segregated funds

24. Correspondence between the Liquidator, the Commission and the relevant banks has been provided in the affidavit of Mr Hamish MacKinnon dated 6 August 2012.
25. Additional correspondence between the parties is **annexed and marked ‘K’**, including:
 - a) Letters from ACT Government Solicitor to Madgwicks, the BOQ and the NAB dated 23 September 2011;
 - b) Response from NAB to ACT Government Solicitor dated 23 September 2011;
 - c) Letter from ACT Government Solicitor to Madgwicks, the BOQ and the NAB dated 7 October 2011;



- d) Facsimile from the BOQ to ACT Government Solicitor dated 14 October 2011;
- e) Letter from BOQ to ACT Government Solicitor dated 21 December 2011;
- f) Facsimile from BOQ to ACT Government Solicitor dated 3 January 2012;
- g) Letter from ACT Government Solicitor to the BOQ dated 18 January 2012;
- h) Email from Madgwicks to ACT Government Solicitor dated 25 January 2012;
- i) Facsimile from ACT Government Solicitor to the BOQ dated 16 February 2012; and
- j) Letter from the NAB to ACT Government Solicitor dated 13 March 2012.


Public Examinations of Mr Stephen Chant, former Chief Operating Officer, Chief Financial Officer and Director of Sports Alive Pty Ltd (in liquidation)


- 26. On 31 April 2012 to 1 May 2012, Mr Stephen Chant was examined at public examinations conducted in the Supreme Court of Victoria – Commercial Court by the Counsel of the liquidator and the Commission.
- 27. Mr Chant was examined about the accounts listed in the monthly statements provided by Sports Alive to the Commission.
- 28. Mr Chant agreed that term deposits were used to lock away a portion of customer funds as the total of customer funds was not required for the day to day operation of the business. Customer funds required by the day to day demands of the company were covered by the money held in segregated accounts such as the ‘punters bank accounts’ represented in the monthly statements provided to the Commission. This evidence can be found on pages 116 to 120 of the Transcript which are **annexed and marked ‘L’**.
- 29. Pursuant to the clauses 4.9 and 4.10 of the Rules, interest can be earned on moneys placed in the segregated accounts and this interest would accrue to Sports Alive. Sports Alive’s use of term deposits did not breach its legislative requirements.



30. Based on the above evidence, I believe that the moneys contained in the term deposits are trust moneys and should be declared as such so that they may be properly distributed to the former customers of Sports Alive who are the beneficiaries of this trust.

AFFIRMED by Malcolm Gray)
at Canberra in the Australian Capital Territory)
this 18th day of September 2012)



Before me: 

Elizabeth Claire Bryce
Australian Capital Territory Government Solicitor
Level 5, 12 Moore Street, Canberra City ACT 2601
An Australian Legal Practitioner within the meaning
of the Legal Profession Act 2004

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL & EQUITY DIVISION
COMMERCIAL COURT
CORPORATIONS LIST

IN THE MATTER OF SPORTS ALIVE PTY LTD
(ACN 069 087 332) (IN LIQUIDATION)

No. S CI 2012/04506

HAMISH ALAN MACKINNON and KEITH LAURENCE SUTHERLAND (in their
capacity as liquidators of SPORTS ALIVE PTY LTD
(ACN 069 087 332) (IN LIQUIDATION))

Plaintiffs

Date of Document 18 September 2012
Filed on behalf of: ACT Gambling and Racing Commission
Contradictor

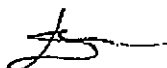
Prepared by:

ACT Government Solicitor
Level 5, 12 Moore Street
CANBERRA ACT 2601
Per: Sky Sim

DX 5602 CANBERRA
Tel: (02) 6207 0634
Fax: (02) 6207 0650
Ref: 620368

On 18 September 2012, I, Michael James Hines of Level 2, Canberra Nara Centre, 1
Constitution Ave, Canberra in the Australian Capital Territory solemnly affirm and say as
follows:

1. I am the Manager of Compliance and Investigations of the ACT Gambling and
Racing Commission (**Commission**), the contradictor in these proceedings.
2. On Friday 19 August 2011, I, along with Authorised Officers Mr Bruce Waugh
and Mr Andrew Nowlan, attended a meeting with the Chief Executive Officer of
Sports Alive Pty Ltd (in liquidation) (**Sports Alive**), Mr Stephen Chant, and
Financial Controller, Mr Lane Watson.



3. I have read my notes from this meeting and recall the information contained in this affidavit. A copy of handwritten notes I took during and shortly after the meeting is **annexed and marked 'A'**. A copy of typed notes created within the month following the meeting which summarise the meeting and are based on the recollections of Mr Waugh, Mr Nowlan and me are **annexed and marked 'B'**.
4. The meeting commenced at approximately 11:45 and concluded at around 4.00pm with a short break for lunch. After the meeting concluded, Mr Chant had a short meeting with Commission Chief Executive Officer Mr Greg Jones.
5. The meeting was held at my request to discuss ongoing patron complaints relating to the slow payment of client withdrawals and matters relating to the operation of the Sports Alive segregated betting accounts.
6. Mr Chant provided background information regarding the licensee's ownership, history and operations in Canberra. He explained how Sports Alive's "white label" betting websites were setup and operated and discussed the relationship with Tote Tasmania.
7. Mr Chant drew and referred to a detailed diagram to illustrate the different deposit methods accepted by Sports Alive, cash flow through the company and the operation of various accounts relating to the sports bookmaking business. A copy of this diagram is **annexed and marked 'C'**.
8. Mr Chant explained the deposit and verification process and illustrated the money flow within the company in some detail, including methods of deposit accepted (cheque, credit card, direct deposit, e-wallets, poli) and how each of these funds types were recorded and processed by the Wager Player betting software.
9. My colleagues and I asked Mr Chant and Mr Lane about the mechanics of the money flow as we were concerned as they appeared overly complicated and difficult to account for, particularly in relation to third party verification of deposits and the use of third party payment gateways. We were concerned that the payment and accounting processes as described by Mr Chant did not appear to be consistent with legislative requirements including the determined rules for sports bookmaking.



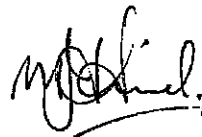
10. In response, Mr Chant said that Sports Alive operated several segregated accounts for holding patron funds including the main betting account. He said that Sports Alive maintained four separate accounts exclusively for patron funds that related to each of the betting system "front end" pages. He also said that there were two term deposits containing patron funds on deposit. Mr Chant said that the term deposits locked away a portion of patron funds that were not required for day to day operations and that all patron deposits and withdrawals were done from the various transaction accounts.
11. Mr Nowlan asked why on the June return there was a negative balance recorded for one of the patron accounts, which should always show a positive balance.
12. In response, Mr Watson said that the bank may have processed a batch of withdrawals as there is no overdraft facility for the relevant account. He said that he believed approximately \$80,000 in deposits may have been processed by the bank after closing the accounts for the day. Mr Watson said that funds would ordinarily be transferred from one patron account to another to ensure that positive balances were maintained. He further said that funds were not transferred or settled between the patron accounts every day. He said that all plus and minus amounts were calculated for net profit for that month and that net winnings (that is Sports Alive's) were then transferred out of one of the accounts to the company's account. Mr Watson said that moneys were transferred between the patron accounts as required to ensure that the collective amount of the patron accounts always satisfied the minimum coverage requirements.
13. My colleagues and I asked whether patron accounts at all times would have contained sufficient funds to cover and pay out all patron commitments. Mr Chant said that was correct using transactional funds and (if necessary) breaking the term deposits. Mr Chant said that the term deposit money could be accessed "straight away" if required.
14. Mr Chant said that patron funds and Sports Alive funds were separate "pots of money."
15. Mr Chant told my colleagues and me that the total patron obligations for Sports Alive hovered around the \$1.1 – 1.4 million mark. He said that if all patrons

requested refunds or withdrawal of their funds it would amount to around \$1.2 - \$1.4 million. He said that this amount was covered by the patron funds held by Sports Alive in the various segregated accounts. He further said that it was probable that all accounts would be amalgamated into one and all patrons would then be paid out of that amalgamated amount.

16. My colleagues and I asked about the extent the segregated accounts complied with the requirements of the *Race and Sports Bookmaking (Rules for Sports Bookmaking) Determination 2005 (No 4)*, D12005 – 261 (**the Rules**). We were concerned about the naming of accounts, timing of transfers and the proper separation of funds.
17. After I read the relevant sections of the rules to Mr Chant, he asked whether the rules had kept pace with the way sports bookmaking businesses were run today and whether they needed to be reviewed. He asked whether the identified areas of non-compliance were "strict" or "grey" and whether that had just crept in over time due to other factors such as business practices, payment options and limitations and requirements of the approved betting system.
18. I said to Mr Chant that there may be scope to review the rules, however the basic player protection principle of separating or insulating client funds from the company's funds would not change.

AFFIRMED by Michael James Hines)
at Canberra in the Australian Capital Territory)
this 18th day of September 2012)



Before me: 

Elizabeth Claire Bryce
Australian Capital Territory Government Solicitor
Level 5, 12 Moore Street, Canberra City ACT 2601
An Australian Legal Practitioner within the meaning
of the Legal Profession Act 2004