

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

MASSACHUSETTS GAMING COMMISSION

In the Matter of:)
)
)
 Encore Boston Harbor Potential Noncompliance)
 Incident)
)
)

DECISION

This matter came before the Massachusetts Gaming Commission (hereinafter, “Commission”) for a determination as to whether Category 1 Sports Wagering Operator Encore Boston Harbor’s (hereinafter “Encore”) actions violated G.L. c. 23N, § 3; 205 CMR 247.01(2)(a)(2); and/or the Massachusetts Sports Wagering Catalog. Encore was alleged to have offered wagering on unauthorized events involving a Massachusetts collegiate team that was not involved in a collegiate tournament, specifically the February 12, 2023, Boston College v. University of North Carolina women’s basketball game and the February 19, 2023, Boston College v. University of Louisville women’s basketball game (hereinafter “noncompliance incident”). This decision results from the adjudicatory proceeding conducted by the Commission on April 14, 2023, via remote collaboration technology. At the direction of the Chair, the entire Commission presided over the matter. For the reasons set forth below, the Commission finds that Encore violated G.L. c. 23N, § 3; 205 CMR 247.01(2)(a)(2); and the Massachusetts Sports Wagering Catalog. As a result, the Commission hereby issues a \$40,000 fine on Encore.

I. Background

On February 21, 2023, Encore Senior Vice President and General Counsel, Jacqui Krum, notified the Commission’s Sports Wagering Director Bruce Band by phone, and subsequent email, that Encore offered wagering on two unauthorized events. Based on this self-report, the Commission’s Investigations and Enforcement Bureau (hereinafter, “IEB”) conducted a review of the noncompliance incident and issued a Sports Wagering Noncompliance Incident Review Report dated March 8, 2023, (hereinafter “Report”). The Report was provided to the Commission and the Commission subsequently initiated this adjudicatory proceeding pursuant to G.L. c. 23N, §§ 4, 16 and 205 CMR 232.

A copy of the Report was provided to Encore along with a notice of this adjudicatory proceeding. IEB Director Loretta Lillios and IEB Enforcement Counsel Zachary Mercer appeared and testified credibly at the hearing on behalf of the IEB. Encore Senior Vice President and General Counsel, Jacqui Krum; WynnBET Vice President and General Counsel, Jennifer Roberts; WynnBET Sports Book Operations Manager, Max Berlin; and GAN Nevada Vice President, North America Sportsbook Sales & Operations, Rob Lekites also testified extensively and were found to be credible.

II. Exhibits

The exhibits identified below were admitted into evidence at the proceeding without objection. The Commission considered all exhibits, in conjunction with witness testimony, in reaching the final decision.

Exhibit 1: Investigations and Enforcement Bureau Sports Wagering Noncompliance Incident Review Report, dated March 8, 2023

Exhibit 2: Notice of April 14, 2023, Hearing

At the request of the Commission, Encore also provided responses to specific questions related to the facts of the noncompliance incident.

III. Analysis

Per statute, regulation, and the Massachusetts Sports Wagering Catalog, Operators may not offer wagers on any collegiate sport or athletic event involving any collegiate teams from the Commonwealth unless the teams are involved in a collegiate tournament. G.L. c. 23N, § 3 (defining the terms “[s]ports event” and “sporting event” and stating that they “shall not include...a collegiate sport or athletic event involving 1 or more collegiate teams from the commonwealth unless they are involved in a collegiate tournament”); 205 CMR 247.01(2)(a)(2) (“[a]n Operator shall not offer Sports Wagering on...Any Collegiate Sport or Athletic Event...Involving any collegiate teams from the Commonwealth, unless the teams are involved in a Collegiate Tournament); Massachusetts Sports Wagering Catalog (“Wagering on Massachusetts’ collegiate teams is not allowed unless it is involved in a tournament format event.”).

A. February 2, 2023, Incident

Prior to the noncompliance incident in question, on February 2, 2023, Encore offered wagering on the regular season Boston College v. Notre Dame women’s basketball game (hereinafter, “February 2, 2023, incident”). The Commission held an adjudicatory hearing regarding the February 2, 2023, incident and found that Encore violated G.L. c. 23N, § 3; 205 CMR 247.01(2)(a)(2); and the Massachusetts Sports Wagering Catalog. In the Matter of Encore Boston Harbor Potential Noncompliance Incident, July 21, 2023. As a result, the Commission issued a \$10,000 fine on Encore. *Id.*

The Commission’s decision regarding the February 2, 2023, incident was based on a number of findings of fact that are relevant to the present matter. First, the Commission found that wagering was allowed on the February 2, 2023, game because GAN Nevada, a technology platform that provides event management and other services to Encore and WynnBET (hereinafter, “GAN”) had not included the Boston College women’s basketball team on the “blacklist” of teams upon which wagering is not allowed.¹ Specifically, the team had two names

¹ GAN serves as a vendor to Encore and holds a temporary vendor license. For the purposes of the noncompliance incident, WynnBET serves as a vendor to Encore and holds a temporary

in the system and one of the two names was not included on the “blacklist.” Second, after correcting the specific error in question, Encore instituted twice-daily morning and evening audits of Massachusetts college sports offerings to confirm that no Massachusetts regular season collegiate games are offered for wagering.

B. Findings of Fact

Encore stipulated to the contents of Exhibit 1, the Report. The Commission adopts the findings of fact contained in the Report and finds that the evidence presented at and subsequent to the adjudicatory proceeding, as described above, collectively demonstrates that by allowing wagers on the February 12, 2023, and February 19, 2023, Boston College women’s basketball games, Encore violated G.L. c. 23N, § 3; 205 CMR 247.01(2)(a)(2); and the Massachusetts Sports Wagering Catalog.

The facts of the noncompliance incident are as follows. On February 12, 2023, Encore offered wagering on the regular season Boston College v. University of North Carolina women’s basketball game. The game in question involved a Massachusetts collegiate team (Boston College) and was not part of a collegiate tournament. Wagering was offered for approximately 4 hours. Three wagers were placed on the game and the total amount wagered was \$163.00. The wagers were each placed at a kiosk. There was one winning wager, which was part of a parlay, resulting in \$53.00 in total winnings. The winning wager was redeemed on February 13, 2023.

On February 15, 2023, during an audit of Massachusetts wagering offerings, WynnBET identified that collegiate women’s basketball games involving Massachusetts teams had been uploaded for future game offerings but had not been activated for wagering. WynnBET manually disabled the games and notified GAN. The fact that wagering had been offered on the February 12, 2023, game was not identified at that time.

Despite manually disabling the offerings, the unauthorized events did not remain disabled. Four days later, on February 19, 2023, Encore offered wagering on the regular season Boston College v. University of Louisville women’s basketball game. The game in question also involved a Massachusetts collegiate team (Boston College) and was not part of a collegiate tournament. Wagering was offered for two hours and thirteen minutes. Four wagers were placed on the game and the total amount wagered was \$50.00. The wagers were each placed at a kiosk. There was one winning wager resulting in \$9.09 in total winnings. The winning wager was redeemed on February 19, 2023.

Later in the day on February 19, 2023, a trader from the WynnBET overnight team discovered that the February 19, 2023, Boston College women’s basketball game had not remained properly disabled and wagering had been allowed on the game.

Upon learning of this incident, WynnBET conducted a further review on February 20, 2023, and discovered that wagering had also been allowed on the February 12, 2023, Boston College women’s basketball game.

vendor license. WynnBET is separately licensed as a tethered Category 3 Sports Wagering Operator. It is tethered to Category 1 Operator Encore.

Ms. Krum notified Director Band of the noncompliance incident on the morning of February 21, 2023.

As was the case with the February 2, 2023, noncompliance incident, wagering was allowed on the February 12, 2023, and February 19, 2023, unauthorized events because multiple identification names/numbers for the Boston College women's basketball team appeared in GAN's system and not all were placed on the "blacklist" of teams upon which wagering is not allowed in the Commonwealth. Because of this discrepancy, events utilizing an identification number for Boston College that was not on the "blacklist" was enabled for wagering.

After the February 2, 2023, incident, Encore had instituted twice-daily morning and evening audits of Massachusetts college sports offering to confirm that no Massachusetts regular season collegiate games were offered for wagering. While those audits were conducted, they did not identify that wagering was going to be allowed on the February 12, 2023, or February 19, 2023, games because the games were only uploaded to the system for wagering approximately thirty minutes prior to the start of the events. Because the audits were forward-looking and the games were uploaded for wagering and wagered on between the two audits, the audits did not identify the unauthorized events.

Encore continues to conduct twice-daily audits. It has also instituted a process whereby WynnBET reviews any new identification numbers that are published in the GAN system. WynnBET has represented that if an identification number is created for a prohibited team, WynnBET will immediately notify GAN to disable the identification number and WynnBET will monitor and disable events related to that number. Additionally, all new identification numbers will be automatically disabled until specifically enabled following a review by both GAN and WynnBET.

C. Determination

Per G.L. c. 23N, §§ 4, 16 and 205 CMR 232, and upon finding the violations described above, the Commission may issue a civil administrative penalty, impose conditions on Encore's license, suspend Encore's license, revoke Encore's license, reprimand Encore, and/or assess a fine on Encore.

After consideration of the law and facts, the Commission has determined that Encore is to be assessed a fine of \$40,000. G.L. c. 23N, § 16(i)(ii) and (vii). The Commission finds that Encore was not in compliance with sports wagering regulations promulgated pursuant to G.L. c. 23N and that the business practices that led to the noncompliance incident were injurious to the policy objectives of G.L. c. 23N. *See id.* The purpose of the fine is two-fold, serving both as a consequence for violating statute, regulation, and the Massachusetts Sports Wagering Catalog and as a deterrent from letting the same or similar violations occur again.

The Commission has determined that the amount of the fine is appropriate in light of the following considerations. First, the Commission appreciates that upon identifying the noncompliance incident, it self-reported to the Commission in a timely fashion. Further, at the hearing, Ms. Krum took responsibility for the noncompliance incident on behalf of Encore. Additionally, a total of 7 wagers were placed on the two games with a total amount wagered of \$213.00. All wagers were placed at kiosks. Encore also continues its twice-daily audits and, after

the hearing, instituted a process for reviewing new identification numbers published in the GAN system in an attempt to prevent similar noncompliance events from happening in the future.

The noncompliance incident was, however, a serious violation of statute, regulation, and the Massachusetts Sports Wagering Catalog. First, in enacting chapter 23N, the legislature made clear that wagers on Massachusetts collegiate teams not involved in a collegiate tournament are prohibited. That prohibition was in place the day the statute was enacted. Regardless, the noncompliance incident was Encore's second violation of the same statutory provision in a period of weeks. Despite identifying the first noncompliance incident, Encore failed to resolve the underlying issue or put adequate guardrails in place, resulting in its immediate repetition. Second, neither Encore nor its vendors were prepared for the adjudicatory hearing, which featured confusion and miscommunication from Encore, WynnBET, and GAN.² This was especially troubling given the same communication issues in the adjudicatory hearing regarding the February 2, 2023, incident. Only after the Commission requested additional information from Encore was a cogent explanation and solve for the noncompliance event provided. Despite this being the second adjudicatory hearing on the same type of noncompliance event, Encore did not demonstrate that it had its vendors under control, or that it had even coordinated with them in preparation for the hearing. The Commission expects more of its Operators and licensees. Finally, Encore's initial solution to the noncompliance incident was to remove women's collegiate basketball entirely from its offerings. Such a fix, by sledgehammer rather than scalpel, is not an ideal solution. Operators should work to identify issues and fix them in a nuanced manner, that reflects a full understanding of the issue in question.

IV. Conclusion

For the foregoing reasons, the Commission finds that Encore violated G.L. c. 23N, § 3; 205 CMR 247.01(2)(a)(2); and the Massachusetts Sports Wagering Catalog. As a result, the Commission hereby fines Encore \$40,000.

SO ORDERED.

MASSACHUSETTS GAMING COMMISSION

By:



Cathy Judd-Stein, Chair

² While the present decision applies to Category 1 Sports Wagering Operator Encore, the Commission notes that Occupational Licensees, Sports Wagering Vendor Licensees, and Sports Wagering Registrants are also potentially subject to discipline for their actions. 205 CMR 232.

Eileen M. O'Brien

Eileen M. O'Brien, Commissioner

Bradford R. Hill

Bradford R. Hill, Commissioner

Nakisha L. Skinner

Nakisha L. Skinner, Commissioner

Jordan M. Maynard

Jordan M. Maynard, Commissioner

DATED: February 20, 2024