

Emergency Hearing Set for FanDuel and DraftKings

By Dori Kojima, J.D. Candidate 2016 | November 23, 2015

On Wednesday, November 25th, while many households prepare for the Thanksgiving holiday, New York-based users of fantasy sports companies, FanDuel and DraftKings, will also be awaiting [the outcome of an emergency hearing before the New York Supreme Court](#). The hearing could decide whether the companies receive a preliminary injunction to operate while the illegal gambling cases against them are pending, a process that could take over a year.

The hearing will be the latest match up in [the ongoing public legal battle](#) between New York Attorney General Eric Schneiderman and the two largest daily sports fantasy companies. On November 10th, Schneiderman sent “cease-and-desist” orders to FanDuel and DraftKings, instructing the companies to stop accepting illegal bets from New York residents. In response, FanDuel and DraftKings requested relief through a temporary restraining order to stop Schneiderman until the companies could present their cases. The court denied the companies' requests but set the date for the emergency hearing.

Daily fantasy sports sites like FanDuel and DraftKings are accelerated versions of traditional fantasy sports in which users compete by building a team of professional athletes from a particular league or competition and earn points based on the actual statistical performance of the athletes. Rather than competing over an entire season, users of daily fantasy sites compete over short-term periods, such as a week or single day and pay an entry fee each time they participate. Depending on their team’s overall performance, users can win a share of a pre-determined cash prize. Entry fees help fund the prize while a portion of the entry fee goes to the fantasy sports company.

The legal dispute concerning FanDuel and DraftKings centers on one section of the definition of “gambling” under New York state law. According to N.Y. Penal Law § 225.00, “a person engages in gambling when he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence.” This means that “gambling” depends on whether the outcome of the risk or stake is determined by luck or skill. For example, billiards, according to the New York Supreme Court is a game of skill and therefore, neither the billiard player nor the person who bets on a game of billiards or pool is gambling.

[FanDuel and DraftKings argue that their contests are similarly “games of skill”](#) that have legally operated for years under New York state law and [the 2006 federal law](#). Though the federal law cracked down on online gambling, it exempted fantasy sports if they reflected the skill of the participants as opposed to pure luck or chance. The companies assert that their daily fantasy sports contests reflect the skills of their users.

While Manhattan-based FanDuel has stopped accepting New York entries pending the results of the hearing, Boston-based DraftKings has continued to allow its New York customers to play. The outcome in New York will most likely influence other states that are considering fantasy sports legislation.