

**COMMONWEALTH OF MASSACHUSETTS
Massachusetts State Lottery Commission
Boston, Massachusetts**

In re: Appeal of Frank Obey

Appearance for the State Lottery Commission:

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Appearance for Frank Obey

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RECOMMENDED FINDINGS AND DECISION

Frank Obey has appealed the decision of the Executive Director of the Massachusetts State Lottery (“Executive Director” and “Lottery”) upholding his suspension pursuant to 961 C.M.R. 2.43(2). Because the evidence shows that Mr. Obey is a high-frequency prize winner as defined in 961 C.M.R. 2.03, and that his submission of over twenty claims for Lottery prizes, each with a value of at least \$1,000.00, within a period of less than 365 days is factually and statistically improbable, the Hearing Officer recommends that the Massachusetts State Lottery Commission (“Lottery Commission”) affirm the Executive Director’s decision.

Procedural Background and Evidence Presented

After an investigation by the Lottery’s Compliance and Internal Audit and Investigations Department (“Compliance Department”) concluded that Mr. Obey was a high-frequency prize winner as defined by 961 C.M.R. 2.03, pursuant to 961 C.M.R. 2.43 (2) the Compliance Department suspended his ability to file claims for a ninety-day period. Mr. Obey appealed that determination, and on May 2, 2019, pursuant to 961 C.M.R. 2.43 (2)(c), an informal hearing was

held on his appeal by a designee of the Executive Director. The decision on that hearing (the “Executive Director’s Decision”) was issued July 8, 2019, and affirmed the imposition of the suspension. Mr. Obey’s ninety-day suspension took effect July 16, 2019.

Mr. Obey appealed the Executive Director’s Decision, and the hearing on his appeal was held on October 2, 2019, in accordance with G. L. c. 10 and c. 30A, 801 C.M.R. 1.02, and 961 C.M.R. 2.43 (2)(c). Candace Hodge, Esq., appeared on behalf of the Lottery, and Ethan Warren, Esq., appeared on behalf of Mr. Obey. Although the ninety-day suspension would have been complete shortly after the hearing, Mr. Obey chose to go forward with the appeal because of its potential impact on future determinations by the Lottery. Maureen McHugh, Compliance Analyst, and Elizabeth Pottier, Internal Auditor, testified on behalf of the Lottery; Mr. Obey testified in his own behalf. Nine exhibits were admitted.

Exhibits

- Exhibit 1. Spreadsheet showing Lottery prize claims by individuals who had submitted twenty or more claims for Lottery prizes of \$1,000.00 or more, during the period of July 27, 2018, through January 27, 2019; printed January 28, 2019 (60 pp.).
- Exhibit 2. Spreadsheet showing Lottery prize claims submitted by Mr. Obey from July 27, 2018, through January 27, 2019, for Lottery prizes of \$1,000.00 or more; printed January 28, 2019 (6 pp.).
- Exhibit 3. Spreadsheet showing Lottery prize claims filed by Mr. Obey from July 27, 2018, to January 27, 2019, prize claims per Instant Game, and payout odds for each Instant Game (6 pp.).
- Exhibit 4. Notice of Suspension issued to Frank Obey pursuant to 961 C.M.R. 2.43(2), dated April 2, 2019 (2 pp.).
- Exhibit 5. Letter to Lottery Sales Agents, from Lottery Executive Director Beth Bresnahan, June 23, 2015 (1 p.).
- Exhibit 6. Massachusetts State Lottery Commission Claim Form (1 p.).
- Exhibit 7. Executive Director’s Decision, July 8, 2019 (6 pp.), with cover letter (1 p.) (total, 7 pp.).
- Exhibit 8. Letter by Ethan Warren, Esq., on behalf of Mr. Obey to Gregory Polin, Lottery General Counsel, appealing Executive Director’s Decision, July 25, 2019 (1 p.).

Exhibit 9. Transcript of Hearing held May 2, 2019, Lawrence P. Mayo, Esq., presiding. (68 pp.).

Findings of Fact

1. Effective July 27, 2018, by emergency action, the Lottery amended its regulations to add to 961 C.M.R. 2.03 a definition of a high-frequency prize winner, and to establish in 961 C.M.R. 2.43(2) periods of prize claim suspension should, upon examination, such a person's prize claims be determined to be factually or statistically improbable. 1376 MA. Reg., 127, October 19, 2018; G.L. c. 10, § 24.
2. That regulation defines a high-frequency prize winner as "a person . . . who submits at least 20 claims for Lottery prizes, each with a value of at least \$1,000.00, within any period of 365 days." 961 C.M.R. § 2.03.
3. Compliance Analyst Maureen McHugh, who has worked at the Lottery since May 2000, testified that six months after the effective date of 961 C.M.R. 2.43(2), the Compliance Department undertook a review of the Lottery's claims data for individuals who had filed multiple prize claims of \$1,000.00 or more during the six-month period of July 27, 2018, through January 27, 2019 ("the review period"). Tr. 15; Exhibit 1; Exhibit 9, p. 9.
4. The Compliance Department's review found that there were thirty-six individuals who had filed more than twenty claims for prizes of \$1,000.00 or more during the review period, including Mr. Obey. Exhibit 1; Tr. 15 - 16.
5. During the review period, Mr. Obey submitted 334 prize claims for prizes of \$1,000.00 or more. The great majority of the claims were for \$1,000.00, but the claim values reached as high as \$100,000.00. Together, the prize claims totaled \$690,738.50. Exhibits 1 and 2.
6. In each of the six months of the review period, Mr. Obey submitted more than twenty claims for prizes of \$1,000.00 or more. Exhibits 1 and 2.
7. Mr. Obey does not dispute that he made these 334 prize claims, nor that he made them during the review period.

8. The evidence therefore clearly establishes, and that Hearing Officer so finds, that during the review period Mr. Obey met the definition of a high-frequency winner set forth in 961 C.M.R. 2.03, as he is a person who has “submit[ted] at least 20 claims for Lottery prizes, each with a value of at least \$1,000.00, within any period of 365 days.”
9. Because of the number and the monetary value of Mr. Obey’s prize claims, the Compliance Department reviewed his case more closely to determine whether his claims were factually or statistically improbable. Tr. 15 – 21.
10. Of the thirty-six individuals who had filed more than twenty claims for prizes of \$1,000.00 or more during the review period, Mr. Obey had filed the third-highest number of claims. Eighteen of those thirty-six individuals had filed between 21 and 33 claims, *i.e.*, each had filed fewer than one-tenth of the total number of claims Mr. Obey submitted. Exhibit 1.
11. The total value of the prize claims Mr. Obey submitted exceeded the value of the claims filed by all individuals save one, and was ten times the value of the claims filed by twenty of the thirty-six high-frequency prize winners. Exhibit 1.
12. The data the Lottery assembled also included the location of the Lottery sales agents that sold the winning tickets. Ms. McHugh testified that the geographic range and high number of the Lottery sale agent locations that had sold the tickets on which Mr. Obey claimed prizes differed from the pattern shown by most Lottery players. Most players, she testified, generally purchased tickets from Lottery sales agents that were located close to the players’ homes, and most purchased a majority of their tickets from a ‘favorite’ location. Tr. 21, Exhibit 1.
13. The purchasing patterns shown by many of the thirty-six individuals identified as having more than twenty prize claims of \$1,000.00 or more are consistent with Ms. McHugh’s testimony. The Lottery’s data showed that many had purchased the majority of their winning tickets from Lottery sales locations in their home city or town, or from agents located in a small set of adjacent cities or towns. There were even four individuals whose prize claims all arose from purchases at a single location. Exhibit 1 generally, and at pp. 14-15, 46-47, 50, and 56.

14. In contrast, Mr. Obey claimed prizes on tickets that had been purchased from sales agents whose locations ranged across northeastern Massachusetts through the Greater Boston area. On August 1, 2018, alone, he claimed prizes of \$1,000.00 or more on fifteen tickets that had been sold by fifteen different Lottery sales agents. Five of those claims had been sold in his home city of Lynn, yet even they had been purchased at separate locations. Exhibit 1.
15. In preparation for the Director-level hearing, Paul Mandeville, Assistant Executive Director of the Lottery Information Technology Department, created a spreadsheet that identified and described the 274 Instant Game tickets that represented the majority of Mr. Obey's prize claims during the review period, and examined the statistical probability of Mr. Obey's winnings both overall and on each game. Exhibit 3; Exhibit 9, p. 21; Tr. 31-32.
16. At the Director-level hearing, Mr. Mandeville explained that he focused on Instant Games because they are not truly a random product the way that "draw" games are: For each Instant Game, the number of winners and the amounts of the prizes are pre-set. Within each game, the odds of winning are based on the prize tier. Mr. Mandeville used a weighted average of the combined odds of winning \$1,000.00 or more to calculate the overall odds he used. Exhibit 3; Exhibit 9, p. 21.
17. Mr. Mandeville was unavailable to testify at this hearing, and Elizabeth Pottier, Internal Auditor for the Lottery, explained the items shown on Mr. Mandeville's spreadsheet, marked here as Exhibit 3. Tr. 31.
18. During the review period, Mr. Obey submitted 334 prize claims, each with a prize value of \$1,000.00 or more, of which 274 were for Instant Games and sixty were for "draw" games. Exhibit 3 displays the name and number of each of the Lottery's Instant Games, the odds of winning a prize of \$1,000.00 or more on that game, and the number of prizes Mr. Obey had claimed on each Instant Game during the review period. Exhibit 3.
19. On the fifty games in which Mr. Obey claimed prizes, the odds of winning a prize of \$1,000.00 or more ranged from 839.69 to one (Game #37) to 91,636 to one (Game #171). Exhibit 3.

20. Ms. Pottier explained the methodology used to calculate the odds of winning prizes claimed by Mr. Obey, using as an example Game #37, "\$10,000 a Week for Life," an Instant Game that cost \$20 per ticket. Tr. 32-37, Exhibit 3.
21. Mr. Obey had submitted claims for six winning tickets in Game #37. The overall payout on that game was 80.4 percent, and the odds of winning a prize of \$1,000.00 or more in it were 839.69 to one. Statistically, to win six \$1,000.00 tickets, one would have needed to purchase over 5,000 tickets ($6 \times 839.69 = 5,038.14$), at a total cost of over \$100,000 ($5038 \times \$20 = \$100,760$). Because the great majority of instant game prizes are for less than \$1,000.00, the expected prize total is much larger than the amount attributable solely to the larger prizes. For Game #37, Mr. Obey's total expected winnings, including prize amounts of less than \$1,000.00 dollars, would have been over \$80,000. Tr. 32-33, Exhibit 3.
22. From a statistical perspective, in order to win \$1,000.00 or more 274 times, and to do so on the specific fifty Instant Games on which Mr. Obey submitted claims, he would have needed to purchase nearly 875 thousand tickets, at a cost of just over \$7 million. With that many tickets purchased, he would have been expected to win not just the \$690,000 he claimed in tickets valued at \$1,000.00 or more, but including smaller prizes, about \$5 million. Tr. 32-33, Exhibit 3.
23. Further, to purchase 875 thousand tickets in six months, Mr. Obey would have had to purchase over 4,750 tickets per day, every day, at a rate of nearly 200 tickets per hour, 24 hours every day. Travel time reflective of the purchasing pattern Ms. McHugh pointed out would have made achieving that number of purchases even more challenging. Exhibit 3.
24. The Compliance Department considered both the evidence that it had collected regarding the number and value of the prize claims that Mr. Obey had made, as well as the likelihood of such a large number of winnings. It determined that Mr. Obey met the definition of a high-frequency prize winner, and that it should recommend a ninety-day suspension under 961 C.M.R. 2.34(2). Tr. 44-45, Exhibit 4.

25. On April 2, 2019, Mr. Obey was notified of the Lottery's determination that pursuant to G. L. c. 10, § 26 and 961 C.M.R. 2.43(2)(c) his ability to claim Lottery prizes with a value of \$600 or more was being suspended for a period of ninety days, to begin April 23, 2019. Exhibit 4.
26. Mr. Obey testified that he has been a regular Lottery player since the Lottery began. He has participated in group purchases where several people combine their money to purchase multiple tickets and to share in the winnings; and testified that he was typically the person who would cash the winning tickets for the group. Tr. 54 – 55.
27. This led, Mr. Obey testified, to becoming known as someone who would cash tickets for others. He stated that his friends and family typically ask him to cash tickets because they lack transportation to the Lottery Office, or cannot miss work. He said that nearest Lottery Office to his home in Lynn is in Woburn, and it is only open eight hours a day, and closed on weekends, thus making it inconvenient for many to cash their own tickets. Tr. 53-56.
28. In support of his practice of claiming tickets won by others, Mr. Obey offered a letter dated June 2015, addressed to Lottery sales agents, and signed by then-Lottery Director Beth Bresnahan ("2015 Agents' Letter"). Overall, the 2015 Agents' Letter is a cautionary letter regarding the importance of adhering to the Agents' Code of Conduct; it stresses sales agents' obligations to the Lottery and the general public. Mr. Obey highlighted a portion that stated "... while Lottery tickets, if not signed, can be transferred through gift or sale between two consenting private parties, any attempt to claim Lottery prizes for others to assist them in the avoidance of financial obligations, including paying taxes or child support, is against the law." Tr. 49-50, Exhibit 5.
29. Mr. Obey testified that he would never cash a winning ticket for a stranger, and he would not cash a ticket for anyone who says that they cannot cash the ticket. Further, he stated that he only cashes winning tickets from customers who have not signed the ticket. He testified that he was aware of the certification required by the Lottery claim form, *i.e.*, that, "[the claimant] is ... not claiming this prize to assist another in the avoidance of financial obligations." Tr. 51-52, 56; Exhibit 6.

30. In both this hearing and the director-level hearing, however, Mr. Obey disclaimed any knowledge of whether any of the those from whom he bought winning tickets might owe back taxes or child support, stating at both hearings, "I have no idea what anybody's business is." Exhibit 9 at 35; Tr. 58.
31. Mr. Obey testified that when he cashes a \$1,000.00 ticket for someone else, he pays them \$950.00, *i.e.*, the amount the Lottery will pay him after withholding \$50.00 for estimated taxes. In exchange, that person also gives Mr. Obey new, unscratched Instant Game tickets or new 'quick pick' tickets for a Lottery draw game. With respect to the new tickets that were part of the transaction, Mr. Obey testified in the Director-level hearing that he did not need to ask them to bring those tickets, as "... they know the story." Tr. 59; Exhibit 9, pp. 38-39.
32. Mr. Obey described a recent transaction thusly: his customer brought him a winning ticket with a prize of \$1,000.00, plus twenty new Lottery tickets. Ten of the new tickets were 'quick pick' Mass Cash tickets; and ten were unscratched, \$10 Monopoly [Jackpot] game tickets. The net result of the transaction was that Mr. Obey paid \$950.00 for a winning ticket with a prize value of \$1,000.00, and twenty new Lottery tickets with a total purchase price of \$110.00. Tr. 59.
33. Prompted by a recording of his interview with State Trooper Sean Barry, Mr. Obey acknowledged that he searched trash barrels to find discarded Lottery tickets to use both in second chance drawings and to increase his tax deductions. He stated that his interview with Trooper Barry came about because he had found a \$50,000 winning ticket in a trash barrel, and went to the Lottery to inquire whether it was a valid ticket. Tr. 65- 66.
34. Mr. Obey testified that he not only continues to play the Lottery, but purchases many tickets, and often buys full books of tickets at a time. In this hearing, he asserted that he has bought 90 to 97 percent of the tickets for which he has filed claims. This assertion is directly contrary to his testimony in the Director-level hearing, where, when asked whether the majority of his winning tickets were purchased from sales agents, found, or acquired from others, he answered that, "... my percentage is small compared to the ones I am getting from other people." Tr. 60-63, 72-73; Exhibit 9, 34-35.

35. Mr. Obey's assertion in this hearing that he has purchased 90 to 97 percent of his winning tickets directly from Lottery sales agents is not credible. Certainly luck is the principal feature of all lotteries, and with luck, the purchase of a single Lottery ticket is enough to win a jackpot prize. Lottery Instant Game tickets, however, are printed with a finite number of winners, with pre-set odds of winning. The more often one plays the more likely it becomes that the player's results will approach the mean, and the more likely that the statistical odds will be predictive of the player's actual results. More credible is Mr. Obey's testimony that the great majority of the winning tickets he claimed were not ones he had purchased from Lottery sales agents, but from other players who paid him to cash winning tickets on their behalf.

ANALYSIS AND CONCLUSIONS OF LAW

Effective July 27, 2018, by emergency action, the Lottery amended its regulations to add to 961 C.M.R. 2.03 a definition of a High-Frequency Prize Winner, and in 961 C.M.R. 2.43(2) to establish periods of prize claim suspension should such a person's prize claims be determined to be factually or statistically improbable. The Lottery promulgated this regulation to assist its efforts to meet its statutory mandate to guard against abuses and evasions of the state lottery laws and regulations, and the use of the Lottery for corrupt purposes. As patterns of high-frequency claims could be evidence of illegitimate activities, the Lottery determined that temporarily delaying payments to those individuals would allow it to verify the legitimacy of those claims. G. L. c. 10, § 24; *see also* Mem. of Decision and Order on Mot. for Prelim. Injunction, *Ali Jaafar, et. al. v. Mass. State Lottery Comm'n, Super. Ct. No. 1984CV2931-C*, October 19, 2019.

This appeal arises under those amendments, and the issues it presents are narrow: whether Mr. Obey is a high-frequency winner as defined in 961 C.M.R. 2.03; and whether, pursuant to 961 C.M.R. 2.43(2), Mr. Obey's submission of 334 claims for \$1,000.00 or more in a period of six months should be determined to be "factually or statistically improbable" and the 90-day prize claim suspension properly imposed. Because, as found above, Mr. Obey met the definition of high-frequency winner set forth in that regulation, the issue for analysis is whether Lottery acted

reasonably under 961 C.M.R. 2.43(2) in suspending Mr. Obey's ability to file claims. That regulation states:

(2) High-frequency Prize Winner.

(a) The Director may conduct an internal review of a High-frequency Prize Winner, as defined in 961 C.M.R. 2.03, to determine if the submission of at least 20 claims for Lottery prizes, each with a value of at least \$1,000.00, within any period of 365 days, is factually or statistically improbable. If the Director makes such a determination of factual or statistical improbability, the Director may impose a prize claim suspension, as provided in 961 C.M.R. 2.43(2)(b).

(b) Penalties. The Director may impose a prize claim suspension, as follows:

1. First Violation. A High-frequency Prize Winner shall be suspended from claiming lottery prizes, with a value of \$600 or more, for a period not to exceed 90 days.
2. Second Violation. A High-frequency Prize Winner shall be suspended from claiming lottery prizes, with a value of \$600 or more, for a period not to exceed 180 days.
3. Third Violation. A High-frequency Prize Winner shall be suspended from claiming lottery prizes, with a value of \$600 or more, for a period not to exceed 365 days.

961 C.M.R. § 2.43.

Pointing to the text of 961 C.M.R. 2.43(2)(a), Mr. Warren draws a distinction between Mr. Obey's submission of claims for prizewinning tickets, and the manner in which he acquired them. He argues that although the Lottery has presented evidence that it is factually and statistically improbable that Mr. Obey directly *purchased* all the prize-winning tickets at issue from Lottery outlets, it has failed to show that the *submission* of the prize claims was factually and statistically improbable. As Mr. Obey has freely admitted that purchased the winning tickets he submitted from other Lottery players and explained the growth of the volume of ticket cashing he does for others, Mr. Warren argues that submission of the claims is fully explained, and thus is neither factually nor statistically improbable. Lottery tickets, he argues, are payable to the bearer, and thus freely transferable. Mr. Obey has in each case certified that he is not claiming the prize to aid another's avoidance of financial obligations. The regulation, he asserts, is being used to bar legal activity based merely on the speculation that if one is frequently

cashing checks for others, it is being done illegally. The practice of cashing Lottery prizes for others is not illegal, he asserts, and has been fostered by the Lottery's requirement that prize tickets for \$600.00 or more can only be cashed at certain Lottery offices, and only during regular business hours. The suspension, he argues, should therefore be overturned.

In response, Counsel for the Lottery argues that as Mr. Obey is a high-frequency winner as defined by 961 C.M.R. 2.03, and the high number of Lottery prizes Mr. Obey claimed are factually and statistically improbable, that his suspension was properly imposed.

Mr. Obey's arguments are not persuasive. First, they are grounded in an erroneous interpretation of the assignability of rights to a Lottery prize claim, and thus do not support his argument that the high number of claims is both fully explained and lawful. Instead, in addition to concerns about the validity of the many assignments of prize tickets, the evidence raises serious questions about the lawfulness of the prize claims, and thus justifies a claim suspension to permit further examination of the legitimacy of Mr. Obey's claims.

1. Assignment of the Rights to Lottery Prizes is Strictly Limited

It is well-established that a Lottery ticket represents a contractual arrangement between the Lottery and its customers; and the terms of that contract are set by statute, Lottery regulations, and Lottery rules. *Ruggiero v. State Lottery Comm'n*, 21 Mass. App. Ct. 686, 689 (1986) (Lottery rules constituted contractual arrangement). "By purchasing a ticket the plaintiff entered into a contractual arrangement with the commission and is deemed to have reasonable notice of the pertinent regulations and rules of the game." *Bretton v. State Lottery Comm'n*, 41 Mass. App. Ct. 736, 741 (1996).

Although Massachusetts law generally permits assignment of contract rights, those rights cannot be assigned when assignment is forbidden by statute, by the terms of the contract, or when public policy would preclude it. *Rubenstein v. Royal Ins. Co. of Am.*, 45 Mass. App. Ct. 244, 246 (1998), citing *American Employers' Ins. Co. v. Medford*, 38 Mass. App. Ct. 18, 22 (1995) and *Garber's Auto Rental Inc. v. Genoa Packing Co.*, 2 Mass. App. Ct. 298, 301–302 (1974). Such is the case with the assignments of rights to Lottery prize money. Only under narrow circumstances are assignments of rights to Lottery prize tickets permitted, and in all other cases such assignments are invalid. As stated in G.L. c. 10, § 28 ("Section 28"):

The right of any person to a prize drawn is not assignable except under the following limited circumstances:

- (1) Payment of any prize drawn may be paid to the estate of a deceased prize winner or to the IV-D agency under chapter 119A.¹
- (2) Payment of any prize drawn may be made to any person under an appropriate judicial order.
- (3) The commission may, by regulations adopted under section 24, permit assignment of prizes for purposes of paying estate and inheritance taxes, or to a trust the beneficiaries of which are the prize winner, his mother, father, children, grandchildren, brothers, sisters or spouse.

G.L. c. 10, § 28.

The four statutory exceptions set forth in subsections (1) – (3) must be construed narrowly, and indeed “[t]he prohibition of prize assignments, rather than the allowance of assignments, must be assumed to constitute the legislative policy here.” *Singer Friedlander Corp. v. State Lottery Comm’n*, 423 Mass. 562, 563-564, 566 (1996). These requirements are echoed in 961 C.M.R. 2.28 (1), which restates the statutory prohibition on assignment and the limited exceptions to that prohibition.

The limitation on assignments is narrowed further in Subsections (4) through (13) of Section 28, which detail a comprehensive set of conditions, all of which must be met prior to the Superior Court’s approval of an assignment. Finally, Subsection 14 reiterates the introductory prohibition in Section 28, stating that a prize assignment that is in violation of Section 28 is invalid; and the Commonwealth, the Lottery Commission, the Executive Director, and the agents and employees of the Lottery are not liable to make payments pursuant to such an assignment.

With respect to Mr. Obey’s prize claims, as found above, the evidence supports the conclusion that Mr. Obey purchased Lottery tickets whose owners had already determined that they were prize winners. However, there is no evidence that any of the winning tickets were assigned to Mr. Obey under one of the statutory exceptions. Mr. Obey’s reliance on the 2015 Agents’ Letter

¹ Section 1 of G.L. c. 119A provides that “[t]he department of revenue shall be the single state agency within the commonwealth that is designated the IV-D agency pursuant to Title IV, Part D of the Social Security Act and hereinafter in this chapter shall be referred to as the IV-D agency.” The referenced portions of the Social Security Act establish provisions to enforce the child support obligations of noncustodial parents. 42 U.S.C.A. § 651.

to support these assignments is misplaced: Even if that letter could be interpreted to permit assignments of prize tickets without limitation, such a communication cannot override a statutory prohibition. Further, although a Lottery ticket is, in general, treated as a bearer instrument, and 961 C.M.R. § 2.39 may permit the Lottery to accept claims based on the certifications made by claimants, the Lottery has a concurrent responsibility to ensure that prizes are only paid when consistent with controlling law.

Mr. Obey has failed to produce evidence that any of his many prize claims were the result of lawful assignments. His argument that the high number of claims he filed was due to lawful purchases from others, and thus are fully explained, must therefore fail.

2. Mr. Obey's Suspension is Supported by the Evidence.

As found above, Mr. Obey submitted an extraordinarily high number of Lottery prize claims. The evidence presented raises concerns that relate directly to the impetus for the promulgation of 961 C.M.R. § 2.43 (2): the lawfulness of such an improbable number of claims, and protecting the integrity of the Lottery.

The Legislature has clearly expressed the high priority it gives to maintaining the integrity of the Lottery, and the proper apportionment of its revenues. In significant part, G.L. c. 10, § 24 ("Section 24") provides

The commission is authorized to carry on a continuous study and investigation of said lottery throughout the commonwealth in order (1) to ascertain any defects in the state lottery law or in the rules and regulations issued thereunder whereby any abuse in the administration and operation of the lottery or any evasion of said law or said rules and regulations may arise or be practiced, (2) to formulate recommendations for changes in said law and the rules and regulations promulgated thereunder to prevent such abuses and evasions, and (3) to guard against the use of said law and rules and regulations issued thereunder as a cloak for the carrying on of organized gambling and crime.

G.L. c. 10, § 24.

The Legislature has also prioritized the collection of revenues owed to the Commonwealth, and money owed for child support. See, G.L. c. 10, § 28A, which requires the Lottery Commission to ensure that prior to disbursement of a prize in excess of \$600.00, payment is made of any past

due child support or taxes owed to the Commonwealth. Similarly, G.L. c. 10, § 28B requires the Lottery Commission to notify the Department of Transitional Assistance, the Executive Office of Health and Human Services, the Office of Medicaid and the Department of Revenue, each month, of all persons who were the holders of a winning ticket in excess of \$600 in the prior month.

The stringent limits on assignments, discussed above, also reflect the Legislature's concern for the Lottery's integrity, as "[t]he prohibition against unpermitted assignments was, no doubt, intended to prevent the creation of a secondary, unregulated market in winning tickets, a legitimate legislative goal." *Welford v. Nobrega*, 30 Mass. App. Ct. 92, 103 (1991), *aff'd* 411 Mass. 798 (1992).

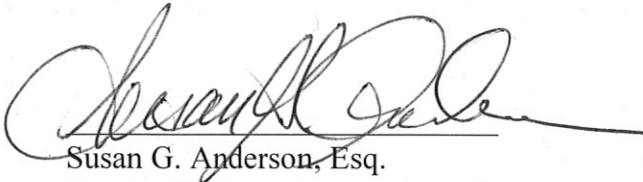
Consistent with the Legislature's charge to it, the Lottery promulgated 961 C.M.R. 2.43(2) to assist its efforts to meet its statutory mandate to guard against abuses of the Lottery, and to ensure the proper collection of outstanding tax and child support liabilities. *See* Mem. of Decision and Order on Mot. for Prelim. Injunction, *Ali Jaafar, et. al. v. Mass. State Lottery Comm'n*, Super. Ct. No. 1984CV2931-C., October 19, 2019,

In addition to the issue of improper assignment of tickets, the evidence presented here shows that additional evaluation of Mr. Obey's claims is warranted. First, Mr. Obey's testimony regarding the use of fresh Lottery tickets as currency in his purchases of winning tickets, raises the issue of whether these transactions are of G. L. c. 10, § 29, which prohibits any person other than a licensed Lottery sales agent from selling Lottery tickets. More significantly, consideration of his testimony regarding the sales of tickets to him, must include what is in essence a "Don't Ask Don't Tell" policy with respect to the certification on the claim form that it is not submitted to aid another in avoiding a financial liability. Considered as a whole, the evidence strongly suggests that Mr. Obey is aiding, if not abetting, unlawful actions that include tax evasion, avoidance of child support liabilities, and fraud on publicly-funded social service programs.

Collectively and separately, these issues provide more than sufficient justification for the Executive Director's decision to temporarily suspend Mr. Obey's ability to file new claims while the Lottery further assessed his claims.

RECOMMENDATION

For all the reasons set forth above, the Hearing Officer concludes the evidence shows that during the period at issue Mr. Obey was a High-frequency Prize Winner, as defined in 961 C.M.R. 2.03, and that his submission of over twenty claims for Lottery prizes, each with a value of at least \$1,000.00, within a period of less than 365 days was factually and statistically improbable. The evidence failed to show that Mr. Obey's many claims were both explained and lawful. The Hearing Officer therefore recommends the Massachusetts State Lottery Commission so find and rule, and that it affirm the Decision of the Lottery's Executive Director.



Susan G. Anderson, Esq.
Hearing Officer
Department of the State Treasurer
One Ashburton Place, 12th Floor
Boston MA 02108

Dated: August 2, 2022